

(2006) 09 JH CK 0016

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3543 of 2006

Ripley and Company Limited

APPELLANT

Vs

Central Coalfields Limited and Others

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226

Citation : (2007) 1 BLJR 401 : (2007) 4 JCR 415

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : S.K. Kapur, R.S.P. Sinha, Chandra Nath Mukherjee and Ravi Kapur, for the Appellant; Ajit Kr. Sinha, Anoop Kr. Mehta and Ashutosh Anand for Respondents 1 to 3, Pandey Neeraj Rai, for Respondent No. 4, Ramesh Kr. Singh and Kalyan Roy, for the Respondent

Judgement

Permod Kohli, J.—Petitioner, a Ltd. Company, has called in question the action of respondent Nos. 1 to 3, denying the consideration to the petitioner for allotment of works of extraction and transfer of coal from Quarry face of ashoka and Piperwar project by deploying surface miners, pay loaders and other allied equipments and transportation of transferred coal by contractor's tipping trucks to R M C/ Bachra/ K D H siding and Piperwar C P P/C H P siding, by not opening the Part-II tender of the petitioner. A further direction in the nature of mandamus is sought for, according consideration to the petitioner's tender for allotment of aforesaid works. Another prayer is made seeking restraint order for not allotting the works of contract, in question, in favour of respondents 4, 5 and 6, without considering the tender of the petitioner.

2. It is relevant to briefly notice the factual background, as emerged from the pleadings of the parties. Respondent No. 3 issued Notice Inviting Tender (NIT) vide its Tender Notice No. CCL/CGM (T)/2005/139 to 144 dated 23rd December, 2005, inviting sealed tenders from reputed and experienced contractors for execution of the works, mentioned hereinabove. The tender was required to be

submitted in two parts i.e. (i) Credential Part and (2) Rate Part. The NIT contained all other usual stipulations relating to the period of completion, the amount of earnest money and other instructions for submission of tender etc. Claiming to be qualified, petitioner filed his tender for all the three contract works, mentioned in the tender notice, and submitted his tender in two parts, Containing credential an rate. It is alleged that the petitioner complied all the conditions of NIT and submitted necessary documents, besides furnishing the bank guarantee to the tune of Rs. 50,00,000/-(rupees fifty lacs) for each tender i.e. total Rs. 1.50 Crore. Respondents 4 to 6 are also the tenderers, who have submitted their tenders in response to the aforesaid NIT. As averred by the petitioner, the credential part of the tender was opened on 28th January, 2006, wherein, all the tenderers, including the petitioner, were found to be eligible. The rate part was to be opened on a later date. It is stated that respondent No. 3 issued notices to some other tenderers, except the petitioner, inviting them to participate in the tender opening programme, scheduled to be held on 16th May, 2006 at 1.00 p.m. in his office. Petitioner submits that he was expecting a similar call to him for participation in the tender opening programme in respect to the 2nd part relating to rate. However, he was not invited for the purpose. Petitioner, accordingly, claims to have served a notice to respondent No. 3 on 16th May, 2006 itself i.e. the date fixed for opening of the 2nd part of the tender. Petitioner also claims to have met respondent No. 3 when allegedly he was assured of considering its tender. The opening of 2nd part of the tender was, however, postponed and it was finally opened on 28th June, 2006. Respondents 4 to 6 were invited to participate in the tender opening programme on the said date but the petitioner was again excluded from the participation. Petitioner has also stated that earlier it was awarded two contract works, which are being executed under Agreement No. CT/04/299 dated 16th August, 2004 and under Agreement No. PPR/CT/CTV 2005/81 dated 1st September, 2005. According to the petitioner, these works are being done by the petitioner to the full satisfaction of the respondents. Petitioner has also placed on record a certificate dated 17th December, 2005 (Annexure-3), wherein, its performance is stated to be satisfactory. It is also relevant to notice that this certificate has been issued at the request of the contractor for tendering purposes. Reference is also made to an earlier dispute between the parties in respect to an earlier contract, awarded to the petitioner in the year, 2003, for which W.P.(C) No. 139 of 2004 is stated to be pending. However, in the rejoinder file, it is mentioned that this writ application has been withdrawn with a view to seek other available appropriate remedy. Petitioner has also mentioned that respondents 4 and 5 are not eligible for award of the contract, as they have abandoned an earlier awarded contract and, thus, they are not entitled to be considered in terms of Clause 5.4.3(b) of the NIT.

3. Respondents 1 to 3 have filed their disclaimer to the writ application, resisting the writ petition and the reliefs, claimed therein, primarily on the ground that the petitioner has earned disqualification in terms of Clause 5.4.3 of the NIT dated

23rd December, 2005. It is alleged that earlier petitioner was awarded the work of extraction of coal by Surface Miner in Piparwar Mines against Tender Notice No. CCL/GM(T)/S.Miner-2/2003/83 dated 25th January, 2003 but he even failed to commence the work. This led to loss of production and further action plan of Piparwar. The contract allotted to the petitioner had to be terminated and his earnest money was also forfeited, as communicated to the petitioner vide letter dated 8th December, 2003 (Annexure-A with the counter filed by respondents 1 to 3). Thus, the case of the respondents is that the petitioner is not entitled to be allotted the works, in question. Respondents have further stated that after receipt of tenders, submitted up to 25th January, 2006, the last date for submission of tenders, 28th January, 2006 was fixed for opening Part-I i.e. the credential part. However, for the 2nd part of the tender i.e. the rate part various formalities were to be completed by making scrutiny of more than 500 papers of each tenderer. On completion of formalities, on 15th May, 2006 notices were issued to the successful tenderers of technical part for opening of the rate part on 16th May, 2006 in terms of Clause 21.2 of general terms and conditions. Respondents have stated that only the qualified tenderers were issued such notices and petitioner, being not eligible, was not issued any such notice. It is further stated that the petitioner was aware of the fact that his tender was not opened in view of Clause 5.4.3. Respondents have further admitted the receipt of representation of the petitioner, filed on 16th May, 2006, but denied that any assurance was extended to the petitioner for consideration of its bid, relating to 2nd part. It is further mentioned that the representation of the petitioner was examined by respondent No. 3 and a report was submitted on 23rd June, 2006, wherein, it is reported that the representation dated 16th May, 2006 has no merit. A copy of the report has been placed on record as Annexure-C with the counter affidavit. Respondents have mentioned that the 2nd part of the tender i.e. the rate part was finally opened on 28th June, 2006. These respondents as also respondents 4 and 5, who have also filed their counter affidavits, have denied the allegations of the petitioner that they were ineligible, having abandoned any earlier work, so allotted. -

4. When this writ petition came up for consideration on 7th August, 2006 before Hon"ble the then Acting Chief Justice, following observations were recorded:

One of the questions requires for determination in this case is whether before alleging poor performance such as abandoning the work and thereby before disqualifying a tenderer on that ground under Clause (b) of Sub-clause 5.4.3 of Clause 5 of the terms and conditions of Notice Inviting Tender whether the tenderer should have been given an opportunity of hearing by the authorities.

5. Respondents 1 to 3, who had filed their counter affidavit by then, were allowed further opportunity to file additional affidavit on the above question/observation. In response to the aforesaid direction of this Court, respondents 1 to 3 have filed a supplementary counter affidavit. Reference to this shall be made at appropriate stage hereinafter.

6. Petitioner-Company has also preferred rejoinder to the counter affidavit, filed on behalf of respondents 1 to 3. While explaining its position in respect to the earlier contract, arising out of Tender Notice No. CCL/GM(T)/S.Miner-2/2003/83 dated 25th January, 2003, which was later terminated, resulting in forfeiture of earnest money in terms of letter dated 8th December, 2003 (Annexure-A), the petitioner has mentioned that stipulations, contained in Clause 5.4.3 of the NIT have no application to the case of the petitioner and its case does not fall within the purview of this Clause of NIT. Alternatively, petitioner has challenged the legality, propriety and rationality of this Clause and has prayed that the same may be declared as ultra vires and arbitrary, being violative of Article 14 read with Article 19(1)(g) of the Constitution of India. It is also pertinent to note that, the petitioner has pleaded that the action of the respondents in excluding it from consideration for allotment of the contract works, in question, on the ground of alleged abandoning of the earlier contract, amounts to black-listing it. It is further pleaded that the petitioner has not been provided any opportunity of hearing before black-listing it and hence the action of the respondents is illegal and impermissible in law. Another plea raised by the petitioner by way of rejoinder is that in the earlier contract petitioner has already been punished by way of forfeiture of the security deposit and depriving it from future participation in the contract not only amounts to black-listing but also amounts to awarding double punishment. This plea has been raised without admitting that the petitioner had abandoned the earlier contract. Petitioner has again tried to explain the circumstances, whereunder, it could not commence the execution of the contract, awarded in the year, 2003. I am of the opinion that reference to the pleas raised by the petitioner and respondents 1 to 3 in respect to earlier contracts is irrelevant as the question regarding the validity or otherwise of the action in the earlier contract is not an issue before me, though it is referred to by both the parties for examining the impugned action and nothing more. It is also not out of context to note another averment made in the rejoinder in paragraph 10 thereof, wherein, petitioner has stated that even after the termination of its earlier contract and forfeiture of the earnest money, petitioner was awarded another contract at KDH Mines of CCL by the respondents and the said work is being executed properly and to their satisfaction. Petitioner has also attempted to make certain allegation of connivance of respondent No. 3 with the private respondents. However, I have decided not to go into this question for the simple reason that respondent No. 3 has not been impleaded as party by name and has no occasion to meet these allegations.

7. I have heard Mr. S.K. Kapur, learned Senior Advocate, appearing on behalf of the petitioner, Mr. Ajit Kumar Sinha, learned Counsel, appearing for respondents 1 to 3, Mr. Pandey Neeraj Rai, learned Counsel, appearing for respondent No. 4, Mr. R.K. Singh, learned Counsel, appearing for respondent No. 5 and Mr. Kalyan Roy, learned Advocate, appearing for respondent No. 6. Learned Counsel appearing for respondent No. 6 has argued and stated that no affidavit may be required on behalf of this respondent whereas respondents 4 and 5 have filed

their counter affidavits.

8. Respondents 1 to 3 have placed on record the report dated 23rd June, 2006, prepared by C.G.M.T., respondent No. 3 in this case. This report refers to the decision of the Tender Committee at the time of opening and consideration of Part -I of the tender, representation of the petitioner and also the basis for excluding the petitioner from consideration zone for the purposes of examining Part-II of its tender, relating to rate. The relevant extract of this report relating to the petitioner is reproduced hereunder:

2. M/s Ripley & Company Ltd: The Tender Committee on scrutiny of the Part-I documents submitted against the referred tenders have observed as under:

The Tender Committee deliberated on the tender offer of M/s Ripley it Co. Ltd. and noted that the tenderer have submitted their credentials as per NIT requirement. The TC noted that the tenderer has been awarded the work of transportation of coal from KDH OC Face to FB/CHP for a period of three years from 1-7-04 and their performance in the said contract is satisfactory.

However, the said party was awarded the same work (for extraction only) in Piparwar OC against NIT no CCL/GM (T)/S.Miner-2/2003/83 dated 25-1-03 but they failed to even commence the work. This had resulted in loss of production and had seriously affected future action plan of Piparwar OC Mine. Considering their un-reliability, their tender officer against NIT No. CCL/CGM(T)/S.Miner/2003/1011 dt. 22-10-03 (Extraction of coal by Surface Miner and transportation to RCM/Bachra Sdg.) was not considered by the Tender Committee.

Failure in similar nature job/work in past as stated above, attracts the provision of Clause 5.4.3 of NIT.

Keeping in view above and the fact that 4.50 MT of coal per year is proposed to be extracted and transported against the said tender, which is more than 11% of the total company's production, the TC is of the opinion that if Ms Ripley & Co. is awarded the job and fail to execute the work satisfactorily, The production & profitability of CCL will be affected adversely and it will have serious consequences.

In view of above, TC decides not to open the rate part (Part-II) of M/s Ripley & Co. under Clause 5.4.3 of NIT.

9. From the above report it is evident that the Tender Committee has decided not to award the contract, in question, to the petitioner-Company on its failure to execute/commence an earlier contract in Piparwar OC against NIT dated 25th January, 2003, by invoking Clause 5.4.3 of NIT and on the same basis petitioner's representation has also been rejected. It is useful to notice Clause 5.4.3 of the Tender Notice, whereunder, action has been taken by the respondents (Tender Committee). This Clause reads as under:

5.4.3 Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have:

- a. made misleading or false representations in the forms, statements and attachments submitted in proof of the qualification requirements, and/or
- b. record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failure etc.

10. Respondents have initiated the action under Clause 5.4.3.

11. Mr. Ajit Kumar Sinha, learned Counsel appearing for the respondents, has challenged the maintainability of the writ application and has also vehemently argued that power of judicial review can not be exercised to examine the validity of the action of the respondents in awarding a contract or even rejecting a tender as these matters fall within the realm of administrative action. He has placed reliance upon various decisions of the Apex Court.

12. The Apex Court while examining the scope of judicial review in the matters of award of contracts, observed as follows in the case of *Tata Cellular v. Union of India* reported in (1994) 6 SCC 651:

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

XXX XXX XXX

74. Judicial review 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.

XXX XXX XXX

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

1. Whether a decision-making authority exceeded its powers?
2. Commuted 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.

In the case of *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, . :

7. ...The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point....

In the case of *Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others*, ., following the dictum of *Tata Cellular (supra)* and *Air India Ltd. (supra)*, the Apex Court observed as under;

9. It is well settled now that the courts can scrutinize the award of the contracts by the Government or its agencies in exercise of their powers of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such matter....

XXX XXX XXX

12. ...That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.

In the case of Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, . , the Apex Court again concurred with its earlier decisions noticed hereinabove.

13. From the conjoint reading of various decisions of the Apex Court, noticed hereinabove, it can be safely concluded that the Court, in exercise of power of judicial review can examine the decision making process in the award of a contract but cannot scrutinize the decision itself. The power of judicial review has to be exercised with utmost restraint and under the situations, enumerated in Tata Cellular's case, noticed hereinabove.

14. Applying the tests, laid down by Hon"ble Supreme Court in the above quoted cases, validity of the action of the respondents needs to be examined.

15. From the report of respondent No. 3, wherein, the decision of the Tender Committee is reflected, it is manifest that the petitioner-Company fulfilled all the requirements of the tender up to the stage, of its credential part of the tender. Thus, it was fully qualified to be considered for the award of tender, subject to its rates, which were to be compared with the other eligible tenderers. However, the petitioner has been excluded from further consideration on the solitary ground of its having failed to execute/commence an earlier contract, awarded to it in the year, 2003. It is also not out of context to note that the Tender Committee also recorded its satisfaction in respect to another contract awarded to the petitioner-company for transportation of coal from KDH OC Face to FB/CHP for a period of three years from 1st July, 2004. Obviously this contract appears to have been awarded to the petitioner-company later in time than the contract arising out of NIT dated 25th January, 2003, which was cancelled on 8th December, 2003, In the light of the above observations of the Tender Committee, as are revealed from the note of respondent No. 3, the question arises whether the action of the respondents in denying the right of consideration to the petitioner for award of contract by opening its 2nd Part i.e. rate part of tender is justified. The validity of the action of respondents also hinges upon another question whether the refusal to consider the petitioner for award of contract on account of its alleged earlier non-completion/ abandonment of contract amounts to "blacklisting" and is "stigma" on its credibility.

16. No doubt, performance and non-performance of a contract relates to the mutual contractual obligations, arising out of any contract. But when non observance of a contractual obligation or even a breach of a contractual stipulation becomes an impediment for a contracting party for award of future contract, it is not simplicitor a case of performance or non-performance of certain contractual obligations but has its impact on a long way. To deny the right of participation to a tenderer in future contracts on account of one or the other breach in an earlier contract definitely not only casts stigma and black mark on it but dearly amounts to blacklisting notwithstanding whether it is said so in so many words or not. The validity of the action is to be examined on the basis of its overall impact on a person. If any action indicates a penal consequence for its

past acts in future it cannot be but a penalty.

17. Another important aspect of the matter which can not be lost sight of is that when the petitioner was found fully qualified and had complied all the conditions of the NIT as per the report, referred to above, then excluding it from further consideration and disqualifying it during the process of tender on account of an earlier action, relating to another contract by invoking Clause 5.4.3 (b), can be said to be justified and not an act of arbitrariness or a bias, warranting judicial review of the action. As observed above, earlier contract relating to NIT dated 25th January, 2003 was cancelled on 8th December, 2003 followed by forfeiting the earnest money of the petitioner. Both the parties have tried to canvass their own points, relating to the merits and demerits of the cancellation order. This contract was subject matter of a different petition and I am not required to go into merits of this question. However, one fact is required to be noticed that the petitioner has been imposed penalty of forfeiture of earnest money, coupled with cancellation of the contract. This concludes so far that contract is concerned, may be that the parties may agitate that issue in different proceedings. However, it is pertinent to note that even after the cancellation of that contract and forfeiture of the earnest money, petitioner was awarded another contract in the year, 2004, which is being successfully executed and the Tender Committee has recorded its satisfaction. Can the respondents then utilize the earlier dispute between the parties, relating to another contract to disqualify the petitioner in this contract even when in between another contract has been awarded to the petitioner and is being executed by it satisfactorily. Respondents cannot be permitted to act according to their whims. On the one hand after cancellation of 1st contract, another (2nd) contract has been awarded to the petitioner and at the time of awarding a third contract skeleton from the grave has been dug out and placed as a ghost to disqualify the petitioner. If this is not an act of arbitrariness or bias, then what can it be termed as. Bias can be personal, it can be official and it may be in the subject matter. Though the petitioner has alleged personal bias against respondent No. 3, even if it is assumed that there is no personal bias particularly said respondent having not been impleaded as a party by name, there appears to be at least an official bias or may be the bias in the subject matter with a view to award the contract to other persons by disqualifying the petitioner. This is a case where the Court is definitely concerned with the manner of exercise of power to disqualify the petitioner and, thus, the judicial review in such a case is permissible. There is another aspect to be noticed; first contract was awarded and cancelled in the year, 2003, second contract was awarded in the year, 2004 and is in currency, the third contract was notified by NIT in December, 2005 and the petitioner is sought to be dislodged from the competition after a period of almost three years of the award of 1st contract, even if it is assumed that the petitioner failed to execute that contract. It is to be presumed that once a defaulter is always a defaulter? As a matter of fact, respondents themselves condoned the 1st default by awarding a 2nd contract in the year, 2004. If that 1st default has been taken into

consideration for dislodging the petitioner, then why the second successful execution of the contract, awarded in the year, 2004, has not been taken into consideration. Perhaps there is no answer with the respondents. Such an approach definitely pricks the mind of the Court and action cannot be justified under the given circumstances.

18. Now coming to the question whether the invocation of Clause 5.4.3(b) debarring the petitioner from future participation, even though it is fully qualified and eligible in all respect, amounts to blacklisting. Even though the word "blacklisting" has not been used either in Clause 5.4.3 or in the note of respondent or the minutes of the Tender Committee, but in sum and substance, the action amounts to blacklisting and casts stigma. That being the situation, such an action without observing the principles of natural justice has to be set aside and annulled.

19. Hon'ble Supreme Court observed as follows in the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, . :

15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The black lists are "instruments of coercion?".

XXX XXX XXX

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

In the case of Raghunath Thakur Vs. State of Bihar and Others, . .

4. ...it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realized that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order insofar as it "directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law....

20. It is strenuously argued on behalf of the respondents that the respondents have not passed any order of blacklisting the petitioner but only enforced the contractual obligations and, thus, there was no necessity of affording opportunity of being heard to the petitioner-company. It is further stated that the action of the respondents is a usual routine action in accordance with the NIT. This

contention of the learned Counsel itself stands belied from the "port of respondent No. 3, wherein, the petitioner has been debarred from participating in the tender process by refusing to open its 2nd bid of rates, on the ground of its alleged past performance. It is not necessary that for blacklisting a person, a formal order of declaring him a "Blacklist" is to be passed and communicated. If the action of the State-respondent itself demonstrates that it has intended to debar a person from exercising its right to enter into a lawful contract with the government and its instrumentalities, it amounts to blacklisting. Such an action definitely visits with civil consequences and prevents the person from seeking a consideration or exercising a right of entering into a lawful contract in a lawful manner. In the case of *Southern Painters v. Fertilizers & Chemicals Travancore Ltd. and Anr.* reported in 1994 Suppl. (2) SCC 699, deletion of the name of the contractor from the list of the approved contractors and withholding of the tender, form on the basis of some vigilance report was considered to be an act of blacklisting and observance of principles of natural justice was considered imperative. The Apex Court in the aforesaid judgment observed as under:

11. The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after due compliance with the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition.

21. It is no more *res integra* that where the State and/or its agency, instrumentality and arm is engaged in distributing State Largesse either by awarding a contract for profit or any other means of licences or quotas, its action has to be fair, rational, non-arbitrary non-discriminatory, without bias and in consonance with Article 14 of the Constitution of India. The observation of Justice Bhagwati in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . , may be noticed hereunder:

12. ...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 largesse, 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 norms which is not arbitrary, irrational or irrelevant. The power of discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and nondiscriminatory 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.

22. A Division Bench of this Court in the case of *Ramesh Kumar v. State and Ors.*

reported in 2002(1) JLJR 525, has observed that where a contracting party has been imposed a penalty of forfeiture of earnest money on account of breach of a contractual obligation, there may not thereafter exist any ground for blacklisting such party. Relevant portion of the judgment is quoted hereunder:

5. Admittedly, the appellant has already been penalized by the forfeiture of the security deposit. If, in a situation where a party to contract does not perform his part of the contract and there is a forfeiture clause and, as a penalty, the earnest money security deposit made by such a so-called defaulting party is forfeited, there may not thereafter exists any ground for black listing such a contracting party in the matter of participation in future contracts. Black listing is a very harsh and severe punishment of an extreme nature. By blacklisting, the contracting party is prevented from participation in all the contracts in future....

23. In the light of my findings and circumstances, noticed above, the action of the respondents in disqualifying the petitioner from further participation in the tender process is totally an act of arbitrariness, irrational and discriminatory in nature, warranting interference, in exercise of the power under Article 226 of the Constitution of India. I, accordingly, declare the action of the respondents in disqualifying the petitioner as illegal and nonest in the eyes of law. As a consequence, respondents are directed to open the 2nd part of the tender, submitted by the petitioner, relating to financial bid (rate) and evaluate the same in comparison with other qualifying tenderers, whose tenders have been entertained and financial bids opened and considered. On consideration of all the financial bids, including that of the petitioner, and on the basis of inter se comparison of the rates, contracts, in question, be allotted to the successful tenderer. Interim order passed on 19th September, 2006 shall stand merged in the above directions.