
(1999) 04 MAD CK 0014
In the Madras High Court

R.J. Veeraraghavan

APPELLANT

Vs

The Tamil Nadu Slum Clearance Board and Others

RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Constitution of India, 1950 — Article 233
Evidence Act, 1872 — Section 57(6)
Penal Code, 1860 (IPC) — Section 472

Citation : (1999) 3 MLJ 274 : (2000) WritLR 869 : (2000) WritLR 72

Judgement

1. All these writ appeals are preferred against the common order passed by the learned Judge of this Court in W.P.Nos. 15787, 15788 and 15789 of 1998.

2. W.A. 1693 of 1998 arises from W.P. 15787 of 1998 and W.A.Nos. 1694 and 1695 of 1998 are preferred against W.P.Nos. 15788 and 15789 of 1998 respectively.

3. The facts may be summarised thus: petitioner/appellant is the Proprietor of a building construction firm by name M/s. Vira Builders. Sealed

tenders were invited by the Superintending Engineer, Tamilnadu Slum Clearance Board from contractors for taking several items of works in

relation to construction of 112 tenements at Valluvar Kudiyruppu as development works in Corporation Division No. 107. In the tender

conditions, some of the relevant provisions in the notification are stated thus:

The tender should be accompanied by three separate envelopes ("A", "B", and "C") duly superscribed on it the name of work reference No. and

due date of tender with the name of the tenderer and sealed with the following particulars.

Envelop "A" - Should contain Earnest Money Deposit in the form prescribed.

Envelop "B" - Should contain filled in prequalification schedules.

Envelop "C" - Should contain filled in price schedule.

All the three envelopes should be enclosed in over all envelop duly sealed and superscribed with the name of work, ref. No. due date of tender

and name of the tenderer and addressed to the Superintending Engineer, Chennai South Circle, Tamilnadu, Slum Clearance Board, No. 5,

Kamarajar Salai, Chennai - 5.

At the time and date notified above for opening the over all envelope and cover "A" will be opened - Envelop "B" for those bidders who satisfied

the requirement of EMD only will be opened on the same day. If any of the bidders indicated the price in envelop "A" or "B" they will not be read

out and shall be rejected. The envelope "C" of those who confirm to the prequalification requirements will be opened in the presence of those who

choose to be present on a later date, time and place notified to them well in advance.

...

The tenderer should quote his specific rates for each item. Both in words and in figures and furnish the total for each item and components of every

work and the grand total of the whole contract, otherwise the tender will be summarily rejected.

4. According to petitioner/appellant, he submitted his tender after fulfilling all conditions and he also participated at the time of opening the tenders.

During that time, other respondents, who are competitions in the business were also present. One Manoharan, who also filed his tender was

eliminated at the preliminary stage itself since the cover submitted by him did not contain all the three separate covers "A", "B" and "C", as

mentioned above. After excluding Manoharan, there were only four tenderers before 4th respondent. It is said that at the time of opening of cover

"A", tenders of aforesaid four tenderers including that of petitioner were found to be in order.

5. Thereafter, cover "B" of all the tenderers were opened and the authorities took time for analysing the date submitted by the tenderers and the

appellant was called upon to substantiate some of the particulars given in his cover "B". In fact, 4th respondent by his letter dated 1.5.1998,

required petitioner to produce certain documents for inspection, particularly with

regard to all matters covered in cover "B". All the particulars required by 4th respondent were submitted by appellant on 7.9.1998. It is said that having satisfied the pre - tender conditions, 4th respondent issued a letter on 7.9.1998 stating that the price schedule contained in cover "C" for the work in question would be opened on 10.9.1998 at 3.00 p.m. Petitioner/appellant's representative was present at that time on 10.9.1998, when price schedule cover was opened. Other competitors were also present and on verification, it was found that the price quoted by petitioner was lowest in relation to the price quoted and price by petitioner was 6.48% lower than the estimated cost given in the tender. At that time, i.e., at the time of opening covers "A", "B" and "C" there was no objection to the effect that the tender submitted by petitioner/appellant was not according to the conditions specified. It is seen that the competitors filed an objection on 11.9.1998 that petitioner's tender should have been rejected at the threshold.

6. Fourth respondent overruled the objections and appellant was called for discussion on 11.8.1998 and some discussions also went on. In fact, it was suggested that if some reductions are made, his tender will be considered. Believing the suggestions, appellant also reduced the rates for some of the items and the same was submitted before 4th respondent as per the letter dated 12.9.1998. While reducing rates as suggested by 4th respondent, appellant's tender was 9% lower than the estimated cost.

7. It is stated that petitioner was expecting work order will be issued and site also would be handed over for the work. But, all of a sudden, petitioner received a letter on 23.9.1998 stating that his tender is not accepted and he is directed to contact the Executive Engineer for refund of his Earnest Money Deposit. According to petitioner, the said order is invalid for, it has not disclosed any reasons. It is also said that rejection of tender is arbitrary, faciful and issued with ulterior motive. According to petitioner/appellant, the rejection of his tender is not bona fide.

8. In the various grounds taken in the writ petition, it is said that the rejection is invalid when it has not assigned any reasons and therefore it is non - est in law. It is also alleged that the rejection was intended to get rid of appellant somehow or other and to allot the work particularly to respondents 5 and 6. When recommendation has been made by 4th respondent

for issuance of contract, his quotation being lower, without assigning any reason, not accepting the tender is nothing but mala fide exercise of power. It is said that direction by 4th respondent to call for fresh tenders is also not bona fide and the same is to be restrained by temporary injunction.

9. For the above reasons, petitioner wanted issuance of writ of certiorarified mandamus calling for the records of respondents relating to the order of 4th respondent dated 23.9.1998, quash the same and direct respondents 1 to 4 to proceed further on the basis of tenders received and opened on 19.8.1998 in relation to the said work of construction of 112 tenements at Valluvar Kudiyruppu Scheme adopting T.D.No. 9/96 with development works in Corporation Division No. 107 and pass such other reliefs.

[Para Nos. 10 to 26 - omitted - Ed.]

27. We will first consider the question whether the impugned order issued by 4th respondent is one without jurisdiction?

28. The impugned order read thus:

Gentleman/men,

Sub; TNSCB - SE(C) - Dn. V - Constn. of 112 tenements at Valluvar Kudiyruppu adopting T.D.No. 9/96 with development works in Corpn.

D.No. 107 - Tender - Rejected - Reg. Ref: Your tender dated 19.8.98.

...

Your reference to the above, your tender for the above work is not accepted. Hence, you are requested to contact the Executive Engineer, Division

V, Chennai - 18, for the refund of your deposits.

Sd.G. Subramaniam

Superintending Engineer(C).:

29. Even though the impugned order does not disclose the reasons, it is admitted fact that it is based on the remarks of the Financial Adviser and

Chief Accounts Officer, Tamil Nadu Slum Clearance Board such an order was passed.

[The rest of para. 29 - omitted - Ed.]

30. On 22.9.1998, the Tender Committee resolved to cancel the tenders and call for retender at short notice incorporating further conditions.

Whether the remarks made by the Financial Adviser and Chief Accounting Officer is valid or not will be considered in the subsequent portion of

this Judgment. Now, on the point of jurisdiction, we only consider the powers of the Tender Committee.

31. It is admitted that the work in all these cases is above Rs. 50 lakhs.

32. u/s 43 of the Tamil Nadu Slum Clearance Board Act, regulations have been framed. A Committee has been constituted which shall consist of

(1) Chairman, (2) Chief Engineer, (3) Financial Adviser and Chief Accounts Officer, (4) Concerned Tamil Nadu Slum Clearance Board as its

member. It also says that the Tender Committee shall be presided over by the Chairman and in the absence of Chairman, other members of the

Committee have to choose one among themselves to preside over the meeting. Regulation 3 deals with business of the Committee. It says, the

Committee shall transact the following business:

(1) recommendation on all tenders which are to be disposed of by the Board;

(2) recommendation on all policy issues relating to tender procedures and delegation of powers which are to be approved by the Board.

(3) and (4) omitted.

33. On 26.2.1990, the Chairman placed a note before the Board for formation of Tender Committee, in the Tamil Nadu Slum Clearance Board

and for delegation of powers and the same was submitted for Board's approval. As per the said proposal, the Chairman wanted Superintending

Engineers of the concerned Board also to be included as member of the Tender Committee. This note or suggestion or proposal by the Chairman

was considered by the Board on 30.3.1990 and finally on that date, a circular was issued by the Board to the following effect.

1. A proposal for formation of a Tender Committee in T.N.S.C.B. was placed before the Board meeting on 6.3.1990.

2. The Board, after careful consideration, in its resolution No. 35, dated 6.3.90 has resolved to accept the proposal of formation of "Tender

Committee" in T.N.S.C.B. and directed that the following powers be delegated to the "Tender Committee" in regard to accepting tenders.

a. Tender Committee will take decision on all tender where the value exceeds 5% but upto 10% over the estimated value prescribed for each

accepting authority.

b. The Tender Committee will also take decision on all tenders where the value of work exceeds Rs. 50.00 lakhs, upto 10% over the estimated value.

c. For all tenders where the value exceeds 10% over the estimated value, the Board is the competent authority to take decision based on the recommendations of the committee. Only after getting Board's approval, work should be awarded in such cases.

3. The Tender Committee consists of the following members,

(i) the Chairman, as the Chairman of the committee,

(ii) The Chief Engineer as Member,

(iii) The Financial Adviser and Chief Accounts Officer as member.

Tenders falling within the competence of the committee shall be put up to the committee by the tender calling authority.

Where any tender falls within the competence the Board such tenders may also be routed through the committee by the tender calling authority.

34. Consequently, the powers were also delegated to various Officers as regards technical sanction and acceptance of tender for implementation in

the Board. Superintending Engineers and Executive Engineers were requested to impisment the delegation of powers and to make amendments in

the works code accordingly. The nature of powers delegated, existing and proposed to be revised are as follows:

Nature of power	Existing	Proposed
delegated		

(f) Tender Committee	All tenders upto Rs. 50.00 lakhs where the tender exceeds 5% upto 10% over the estimate value.	All tenders upto Rs. 150.00 lakhs where the tender exceeds 5% but upto 10% over the estimated value.
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(g) Board	All tenders above Rs. 50.00 lakhs and all tenders exceeding 10% over the estimated value based on the recommendation of the Tender Committee.	All tenders above Rs. 150.00 lakhs and tenders exceeding 10% over the estimated value based on the recommendation of the
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Tender Committee.

35. On the basis of this circular, learned Senior Counsel argued that Tender Committee can only recommend and it is for the Board to take the decision. The argument was the power to recommend should not be equated to take decision.

In this case exercising power of recommendation, they have rejected the tender submitted by the appellant and hence the same is without jurisdiction.

36. Even though he thought that the argument considers merit, after considering the legal position, we find the said contention is only to be rejected.

37. The meaning of the word, "recommend" is given in the Oxford Study Dictionary, 1994 Edition. It means,

1. to advise (a course of action or a treatment etc.) 2. to praise as worthy of employment, favour, or trial etc. 3. (of qualities or conduct) to make acceptable or desirable

In New Gem Dictionary, the meaning of the word "recommend" is given as, entrust; present favourably; make acceptable.

38. In A. Panduranga Rao Vs. State of Andhra Pradesh and Others, , their Lordships considered the meaning of the word "recommend" as stated

in Article 233 of Constitution of India. The question that came before their Lordships was in connection with the appointment of District Judges in

Andhra Pradesh. Under Article 233 of the Constitution of India, the appointment will have to be made only on the recommendation of the High

Court. In paragraph 8 of the Judgment, their Lordships held thus,

8. A candidate for direct recruitment from the Bar does not become eligible for appointment without the recommendation of the High Court. He

becomes eligible only on such recommendation under Clause (2) of Article 233. The High Court in the judgment under appeal felt some difficulty in

appreciating the meaning of the word "recommended". But the literal meaning given in the Concise Oxford Dictionary is quite simple and opposite.

It means, "suggest as fit for employment". In case of appointment from the Bar it is not open to the Government to choose a candidate for

appointment until and unless his name is recommended by the High Court.

39. The above decision was followed by the Kerala High Court in Mary Teresa

Dias v. Chief Justice, 1986 K.L.T. 324. In paragraph 8 of the judgment, it is held thus:

8. Article 233 of the Constitution insists that a member of the Bar can be appointed as a District Judge only if he "is recommended by the High Court for appointment." The High Court alone is the constitutional repository of the power of recommendation for appointment to the post of District Judge. Delegation of this essential constitutional function by the High Court is not permissible.

40. Taking into consideration the decisions in decided cases and also the meaning given to the word "recommend" the court feels that without the recommendation of Tender Committee, the Board cannot approve any tender. When a tender is submitted, the Tender Committee will consider whether the applicant is fit to be engaged and if only it is found eligible and all tender conditions are fulfilled, it makes recommendation to the Board for its approval. In fact, the power of the Board is to approve or not to approve the recommendation if recommendation is made by the Tender Committee. The impugned order rejecting the tender is consequent to the refusal to recommend to the Board. Legally it cannot be said as rejection of tender by the Tender Committee, though by refusing to recommend to the Board for approval, the effect will be the same. When Tender Committee feels that appellant is not fit to be recommended, it cannot be said that it has no power to exercise that power. Without recommendation, petitioner also cannot get work order from the Board. The contention that the impugned order is without any jurisdiction is therefore rejected.

41. The further question that arises for consideration is whether various reasons of Tender Committee in refusing to recommend is proper?

42. We have already extracted the salient features of the tender notification and how the tender will have to be submitted. Even from the affidavit of the appellant it is clear what the first respondent wanted was a "sealed tender". It is not disputed that the conditions mentioned therein are basic conditions for acceptance of tender. What the three separate envelopes should contain is also specifically stated. These three covers were stapled and the same was enclosed in a over all envelope and sealed by the appellant. According to the Tender Committee, petitioner has violated the

condition since envelopes "A", "B" and "C" are not "Sealed". Mere stappling cover will not amount to sealing was the view taken by the Tender

Committee. It may be noted that even Superintending Engineer was also of the same view though he recommended the case of petitioner/appellant

since he has submitted the lowest tender.

43. On going by the averments in the writ petition also we do not find that petitioner has a case that stappling of covers "A", "B", "C" will amount

to sealing. In the writ petition it is only stated that such an objection should not have been allowed to be raised after all the tenders were opened

and belatedly.

44. The conduct of petitioner also shows what he understood by the word "Sealing". Covers "A", "B" and "C" were stappled and when all the

three covers are enclosed in another envelope, the same was sealed with wax. So, he himself took two different standards, though the word used

is only "sealed" for both the purposes.

45. The word "Seal" is defined in P. Ramanatha Aiyar's Law Lexicon, 1997 Edition, thus.

Seal is taken either for wax impressed with a device and attached to deeds, & c, or for the instrument with which the wax is impressed. In Law the

former is the most usual sense. (Tomlins Law Dic.)

An indication or mark of office; an engraved stamp of metal or other hard material to make an impression (Section 57(6), Indian Evidence Act and

Section 472, I.P.C.) to set a seal to, to stamp, to set one's seal to; 3. to fasten with a seal.

SEAL is an impression upon wax, wafer, or some other tenacious substance capable of being impressed (Warren v. Lynch 5 Johns (N. Y) 239: 4

Kent 452). It does not seem necessary that an impression to be made. (6 C.P.411)

Lord Coke defines a seal to be wax with an impression (3 Inst. 169, Brooke, Abr.) but any other material besides wax may be used. An

impression made with ink, by means of a wooden block, is sufficient sealing (R. v. St. Paul Covent Garden 14 L.J.M.C. 10.

If a party seal the deed with any seal besides his own, or with a stick, or any such like thing which makes a print it is good."" (Tough. 57) Merline

defines a seal to be a plate of metal with a flat surface on which is engraved the

arms of a prince or nation or private individual or other device with which an impression may be made on wax or other substance, on paper or parchment, in order to authenticate them; the impression thus made is also called a seal.

At common law, and in early times, a seal, no doubt, meant an impression made on wax, or other thing that would receive and retain an impression; for seals were introduced by the Normans, and used, in fact, as a signature at a time when each man had his signet and a certain coat of arms or engraving on it.

[Italics supplied]

In Wharton's Law Lexicon, 1993 Edition, the word, "Seal" is defined as. wax or wafer with an impression.

In the Oxford Study Dictionary, the word, "Seal" is defined thus,

1. a gem or piece of metal etc. with an engraved design that is pressed on wax or other soft material to leave an impression; seals of office those

held by a person while he or she should a certain position, e.g. as Lord Chancellor or Secretary of State.

2. this impression or a piece of wax bearing it, attached to a document as a guarantee of authenticity, or to an envelope or box or room etc. to

show that (while the seal is unbroken) the contents have not been tampered with since it was affixed....

[Italics supplied]

in New Gem Dictionary, the same is defined thus,

piece of metal or stone engraved with device for impression on wax, etc. impression thus made (on letters, etc.) affix seal to; ratify; mark with

stamp as evidence of some quality; keep close, or secret; settle, as doom - great seal.

46. The purpose of affixing a seal is to attach a document as guarantee for its authenticity and also that is it not liable to be tampered with. It is also

intended to maintain the contents secret. Stapling a cover will not serve that purpose. Removal of stapler pin can be done without any effort and

the contents also can be replaced without any difficulty. When "sealed tenders" are invited, there is a purpose behind it, i.e., the qualification of

tenderer, offer he has made; how far it is competitive all should be kept secret.

Otherwise there is possibility of collusion among the tenders and the competition may become a farce.

47. learned Counsel for appellant relied on the decision reported in *The Martand Dairy and Farm Vs. The Union of India (UOI) and Others*, and

argued that stappling also will amount to affixing seal. Paragraph 8 of the Judgment was relied upon him for the said purpose. Relevant portion

reads thus,

8. "Sealed container" merely means a container which is "so closed that access "to the contents" is impossible without breaking the fastening". The

expression "seal" in this context does not involve an affixure of the seal of the seller such as impressing a signet in wax etc., as evidence or

guarantee of authenticity....

[Italics supplied]

In that case, their Lordships considered what is meant by "sealed container" and differentiated the word "seal" from that of "sealed container". In

fact, from a reading of the said paragraph, it is clear that their Lordships also approved that the word seal means "impressing a signet in wax as

evidence or guarantee of authenticity. The said decision according to us will not help the appellant in any way.

48. The second ground on which Tender Committee refused to recommend it was that person competent to open to the tender was only

Superintendent Engineer and not the Executive Engineer. Tender was invited only by the Superintending Engineer and tender notification dated

9.7.1998 also said that the same will be opened only by the Superintending Engineer in the presence of tenderers. The only reason why the

Executive Engineer opened the tenders was the Superintending Engineer was on Casual leave on that date. The fact that Executive Engineer had no

authority to open is not a matter in dispute. The only argument put forward by the learned Senior Counsel for appellant was in the case of

emergency, the Officer who is next in rank presumed to be in power. Counsel also relied on the Code of Organisation and Activities on

Engineering Branch of Public Works Department for the said purpose. learned Counsel submitted that authorities who are entitled to pen the

tenders are stated therein. The argument was that Superintending Engineer alone shall open the tenders is not the rule and there are exceptions

Officers junior in rank are also entitled to open the same. We do not find any merit in the said submission. It is not the case of Executive Engineer

himself that he has been authorised to open the tenders. When power is given to one particular officer, the power is only to be exercised by him

and not by any others. As rightly noted by the Tender Committee, if the Superintending Engineer was not available on that date, he could have

made arrangements to adjourn the date of opening of tenders. The decision of Tender Committee in that regard is only to be uphold.

49. The third ground on which the tender was rejected was that he has violated the special conditions, which we have already extracted. Appellant

has not given grand total of the contract, and has also not furnished total for each items. When the special condition says that omission of the

special rules will render summary rejection, we cannot find fault with the finding of the Tender Committee.

50. All the three grounds found by Tender Committee, for rejection of tender of the appellant are valid reasons.

51. When petitioner's tender was rejected, Tender Committee thought, it is only proper to have retender with modified conditions. It is only

consequent to non - recommendation of tender. The petitioner/appellant cannot challenge the retender once we hold that the non -

recommendation is proper.

52. An argument was also put forward by the learned Senior Counsel for appellant that in the retender a condition was incorporated and the same

is only to avoid him. In fact, the new condition that is imposed read thus

the contractor should have executed the works of a similar nature costing more than 50% of the value of works put to tender in a single contract

pertaining only to Government Departments.

In this Connection, the submission recorded by learned single while disposing of writ petition also requires consideration. At the time of argument

before the learned Judge, it was submitted by learned Counsel for the Slum Clearance Board that the above condition will be modified or deleted.

Learned Judge recorded the submission. In fact, petitioner cannot have any grievance once the Board has agreed to modify the condition. Hence,

finding on the said condition has become unnecessary.

53. With regard to other two writ appeals in W.A.Nos. 1694 and 1695 of 1998,

petitioner's tender was not accepted for the reason that the Board have taken policy decision not to accept the single tender. It is an admitted fact that three persons purchased the tender forms and appellant alone submitted the tender. Respondents bona fide believed that the other two persons might have colluded with petitioner and have withdrawn from the competition. For the best interest of respondents and for getting better competitive relates without any deterioration in the quality of work, if respondents have taken policy decision, not to accept the single tender, same cannot be said as mala fide.

54. At this juncture, Senior Counsel for petitioner submitted that the so called policy decision is applied only to petitioner and therefore the same is discriminatory. Senior Counsel also placed before this Court a list of single tender awarded under pre - qualification basis wherein three persons viz., B.S. Radhkrishnan, Rama Kutty and P. Thirumoorthy were awarded contracts violating the so called policy decision. It is submitted that contracts given to these persons are mostly above Rs. 50 lakhs and that too for the periods 1994 - 95, 1995 - 1996. The substance of argument of learned Senior Counsel is that the Slum Clearance Board are always violating single tender system and the policy decision is now taken only to oust the appellant. We cannot accept the said contention of learned Counsel. The proper authority, who is spending the amount for various construction is Slum Clearance Board. If they accept a competitive price, without fall in the quality and standard they cannot be found fault with for following the policy decision. Even if they have violated the said policy, court cannot direct respondents to continue to violate the policy. That is not the purpose of issuance of writ nor will be a ground to quash the order, which is legally made. In fact, the list that is submitted before this Court was not produced before the single Judge Slum Clearance Board did not have opportunity to place the records to countenance the submission made by the petitioner/appellant.

55. Learned Judge has also taken note of a resolution dated 13.7.1998 of the Board. That resolution is resolution No. 161 and it will not show that the Board has taken such policy. The contents of the resolution and circumstances under which such resolution was passed was not sought by the petitioner. On going by the records, we find for various reasons tender was

not accepted one of which was that it is not to accept single tender.

At least the resolution will show that there was an instance where the Board refused to have a single tender. Even if it is not a case of policy, there

is nothing wrong in the Board insisting not to accept single tender.

56. Learned Standing Counsel for the Board also placed before me the statement by the Honourable Chief Minister recently made in the

Legislative Assembly that the Government is sticking to the above policy decision and directed all the statutory boards also to follow the same. In

view of this, we do not find any illegality in the approach of the Board in sticking on to the policy decision. Learned single Judge also rightly held

that in regard to policy matters especially with regard to contracts, there should not be interference by court unless it is arbitrary or that is against

public interest.

57. The finding on this point may be sufficient for dismissing all the writ appeals.

58. At this juncture, learned Counsel for respondents also submitted that the jurisdiction of the court in regard to contractual matters is very limited.

Reliance was placed in *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, their Lordships in paragraph 17

approved the wordings of Prof. Wade on his book *Administrative Law*. In paragraph 18 of the Judgment, their Lordships followed the decision in

Chief Constable of the North Wales Police v. Evans (1982) 3 All E.R. 141. The relevant portion in which Honourable Supreme Court placed

reliance read thus,

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair

treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion, which is correct in the eyes of the court.

59. In *Tata Celular v. Union of India* (1994) 6 S.C.C. 65, the scope of judicial review was considered very exhaustively especially in the matter of

contracts. Their Lordships approved the dictum in *Sterling Computers Limited* case, where it was held thus:

...If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the Courts, such decisions are upheld

on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure

of freedom of "play in the joints" to the executive.

[Italics supplied]

In paragraph 94 of the judgment, their Lordships summarised the scope of Judicial review, which read thus:

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be

substituted its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally

speaking the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not,

such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body

functioning in an administrative sphere or quasi - administrative sphere. However, the decision must not only be tested by the application of

Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or

actuated by mala fides.

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

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.

In the same judgment, in paragraphs 69 to 77, their Lordships considered the scope of Judicial review and held thus,

69. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of

a valid tender:

1. It must be unconditional.

2. Must be made at the proper place.
3. Must conform to the terms of obligation.
4. Must be made at the proper time.
5. Must be made in the proper form.
6. The person by whom the tender is made must be able and willing to perform his obligations.
7. There must be reasonable opportunity for inspection.
8. Tender must be made to the proper person.
9. It must be of full amount.

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.

71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether

contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an

unfairness is set right by judicial review.

72. Lord Scarman in Nottinghamshire County Council v. Secretary of State for the Environment 1986 A.C 240 : 1986 All E.R. 199, proclaimed:

"Judicial review" is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system

upon the exercise of this beneficial power.

Commenting upon this Michael Supperstone and James Goudie in their work Judicial Review (1992 Edn) at p. 16 say,

If any one were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent

times, and therefore to be treated as an idiosyncratic aberration, it has received the endorsement of the Law Lords generally. The words of Lord

Scarman were echoed by Lord Bridge of Harwich speaking on behalf of the Board when reversing an interventionist decision of the New Zealand

Court of Appeal in *Butcher v. Petrocorp Exploration Ltd.* 18.3.1991.

73. Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive

functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's

ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

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 it - self.

75. In *Chief Constable of the North Wales Police v. Evans* (1982) 3 All E.R. 141, , Lord Brightman said:

Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

* * *

Judicial review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the court is

observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power." In the same case Lord

Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Order 53 in the following terms:

This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by

the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of

authorities, judicial, quasi - judicial, and as would originally have been thought when I first practised at the bar, administrative. It is not intended to

take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the

decisions. It is intended to see that the relevant authorities use their powers in a proper manner. (p. 1160).

In *R. v. Panel on Take - overs and Mergers, ex p Datafin plc* (1987) 1 All E.R. 564 Sir John Donaldson, M.R., commented:

An application for judicial review is not an appeal.

In *Lontha Pla v. Secretary of State for Trade and Industry*, (1989)2 All E.R. 609, Lord Keith said:

Judicial review is a protection and not a weapon.

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin, Re Amin*

v. Entry Clearance Officer, (1988)2 All E.R. 864, Lord Fraser observed that:

Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made... Judicial review is entirely

different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is

to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.

76. In *R. v. Panel on Take - overs and Mergers, ex.p in Guinness plc* (1990) 1 Q.B. 146 : (1989) 1 All E.R. 509, Lord Donaldson, M.R. referred

to the judicial review jurisdiction as being supervisory or "longstop" jurisdiction. Unless that restriction on the power of the court is observed, the

court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

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. Committed an error of law,
3. Committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only

concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put,

the grounds upon which a administrative action is subject to control by judicial review can be classified as under:

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

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad ground but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of*

State for the Home Department, ex Brind (1991) 1 A.C. 696, Lord Diplock refers specifically to one development, namely, the possible

recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, consider whether something has

gone wrong of a nature and degree which requires its intervention.

[Emphasis supplied]

60. The principle enunciated in *Tata Cellular case* (1994) 6 S.C.C. 651 was followed in *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, .

61. We will be failing in our duty if we do not take into consideration the Full Bench decision of our High Court reported in *The Aluminium*

Industries Ltd. v. The Minerals & Metals Trading Corporation of India Ltd., etc. (1997) 3 L. W. 741, where their Lordships held that even in

contractual matters, the scope for interference under Article 226 of Constitution of India arises only when decision making process is found to be

arbitrary.

62. In *Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others*, , in paragraph 7 of the judgment, their Lordships said:

...We reiterate that whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the tender notice. The

consideration of the tenders and the procedure to be followed in the matter of acceptance of a tender should be transparent, fair and open. While a

bona fide error or error of judgment would not certainly matter, any abuse of power for extraneous reasons, it is obvious, would expose the

authorities concerned....

[Italics supplied]

63. If we go by this dictum, if the procedure is transparent, fair and open, and conditions of acceptance is also stated in the tender form, scope of

judicial interference is Nil. Taking into consideration the facts of this case, we feel that the decision of non - recommending petitioner's tender was

strictly following the tender notice and the actions are also transparent and open. We also do not find any error in their decision.

64. learned Counsel for additional respondent also urged that petitioner has suppressed the material facts and that will be added reason for

dismissal of writ petition. He brought to our notice the various inconsistencies in the affidavit in support of the writ petition and also subsequent

affidavit. Though we are Prima facie of the view that the submission of learned Counsel has force, we do not want to enter a finding on the same,

for, we are dismissing the Writ appeals on merits.

65. In the result, we do not find any merits in any of the writ appeals and the writ appeals are dismissed. No costs. Consequently, connected

C.M.Ps are also dismissed.