

(1997) 04 DEL CK 0073

In the Delhi High Court

Case No : Civil Writ Petition No. 3157 of 1996

SAB Industries Ltd.

APPELLANT

Vs

Chief Executive Officer, Central Government Employees
Welfare Housing Organisation

RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 3 AD 294 : AIR 1997 Delhi 326 : (1997) 2 ARBLR 280 : (1997) 67 DLT 908 : (1997) 41 DRJ 704

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mukul Rohatagi, Manmohan, V.K. Makhija and Adesh Jain, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition is directed against the decision of respondents 1, 2 and 3 in not opening the price bid of the petitioner and to declare respondents 4 and 5 as lowest bidders for construction of 1088 residential flats in three packages at Gurgaon, Haryana.

(2) The facts as stated in the writ petition are that Sa Builders Ltd. was a private limited company incorporated in 1978 under the Indian Companies Act, 1956 and has now been re-named as Sab Industries Ltd. The turnover in the last five years has been more than Rs. 15 crores per annum. The petitioner has successfully executed a number of projects all over India including the Housing Scheme for Gas Authority of India at Guna, 874 Bed Hospital for the Indian Army at a cost of Rs. 30 crores, B.R.Ambedkar University at Hyderabad, Housing Project for Ministry of defense at Port Blair at a cost of Rs. 700 lakhs, Research Centre for Drdo under Ministry of defense at a cost of Rs. 12.5 crores. Main Plant Building along with 200 houses at a cost of Rs. 25 crores for Indian Acrylic Limited. All these projects have been completed to the satisfaction of the owner without

resort to any litigation or arbitration proceedings.

(3) On May 21, 1996 a Notice Inviting Tenders was published in the leading newspapers on behalf of respondent No. 1 for construction of 1088 residential flats in three packages complete in all respects at Sector 56, Gurgaon, Haryana. This was a beneficial project, it is alleged, for the Central Government employees. Respondent No. 1 is a State within the meaning of Article 12 of the Constitution of India and is amenable to the writ jurisdiction of this Court.

(4) Three separate packages for complete building works including expert services were as under:

(I)Package-I:309 Type B + 202 Type A and 12 Type AA.

(II)Package-II:387 Type C

(III)Package-III: 178 Dx along with 2 Nos. Community Centre.

(5) The advertisement invited sealed lump sum/item rate tenders for the construction of 1088 flats under a two envelope system from reputed eligible building contractors. The first envelope was to contain eligibility criteria and techno commercial bid and the second envelope was to contain the price bid. The eligibility criteria prescribed in the Nit (Notice Inviting Tenders) was that the contractor should be registered with Cpwd, Mes Railways, State Pwd in unlimited class or the Contractor should have executed a housing project of at least 300 dwelling units during the last five years. The contracting company should not have incurred any loss during the last five years and should also have not brought forward losses. Copy of the advertisement published in the newspapers is filed as Annexure "B" to the writ petition which reads as follows: "Central Government Employees Welfare Housing Organisation (An Autonomous Body of the Govt. of India) Notice inviting tender Construction of 1088 residential flats in three packages complete in all respects at Sector 56, Gurgaon, Haryana. Sealed lump sum/item rate tenders are invited for the above mentioned work in 2 Envelope System (Envelope-1 should contain eligibility criteria and techno Commercial Bid only and Envelope-2 the price Bid) from reputed eligible Building Contractors. Scope of work; Three separate packages for complete building works including external services as under: 706 Package-1 :309 Type B+202 Type A & 12 Type Aa Package-2 : 387 Type C Package-3 : 178 Dx along with 2 Nos. Community Centre Eligibility criteria Contractors registered with Cpwd, Mes Railways, Stale Pwd in unlimited class or Contractors who have executed a housing project of at least 300 dwelling units or a project costing Rs. 5 crores during last 5 years. The company should not have incurred loss in any of the last 5 years and also with no brought forward losses. Earnest money deposit Earnest Money of Rs. 2 (two) lacs only by way of Bank Guarantee/Draft drawn on a scheduled Bank, in the stipulated format in favor of Ceo, Cgewho to be enclosed separately for each package in Envelope-1. General conditions i) Contractors may bid for one or more Package(s). For each package a separate Bank Draft/Bank Guarantee is to be submitted. ii) Conditional tenders will be rejected. iii)

Contractors must attach Registration Certificate, Solvency Certificate, Income Tax Clearance Certificate and Audited Balance Sheet of the last 5 years in Envelope-1. iv) Contractors should attach letter of Intent and Completion Certificate, as a proof for having executed projects of 300 dwelling units under single project or of the value of Rs. 5 Crores. v) Tender forms may be collected on payment of Rs. 5,000.00 by Bank Draft in favor of Ceo, Cgewho payable at New Delhi from the head office on any working day during working hours, from 23.5.96 to 21.6.96. vi) Sealed tenders along with the Emd and documents, as indicated above to be submitted by 1100 hours on 08.7.96, at the Head Office. vii) Envelop-I, shall be opened on the same day at 1130 hours in the presence of tenderers, who choose to be present. Dale and time for opening Envelope-2 shall be intimated at a later date, to the selected bidders. viii) The time for completion of the total work shall be (21) twenty one months inclusive of monsoon period. The owner reserves the right to accept/reject any or all tenders in part or whole without assigning any reasons. Chief Executive Officer Central Government Employees Welfare Housing Organisation Janpath Bhawan, "A" Wing, Janpath, New DELHI-110 001" 707 The tender documents are filed as Annexure "D" to the writ petition. The relevant portions with regard to Instructions and information for tendering may be reproduced as follows: "5. The Tender shall contain the following documents separately for each package: a) A detailed construction programme in the form of Bar chart/CPM showing the Tenderer's proposed sequence of operations together with the estimated time for each activity, including, construction/manufacture, delivery,, erection & commissioning to ensure that the overall construction period is maintained. It shall be on the basis of the general bar chart enclosed with the documents with or without modifications as defined in the conditions. b) Full details of any special methodology or technique the contractor proposes to use to complete the construction or for any other purpose. c) The Tenderer's proposals for supervising the work, including the Curriculum Vital of the various grades of supervisory personnel/officers to be deployed in this project. d) Schedules of labour requirements of different trades showing the total estimated labour force, for each month of construction period. e) Proposal for major construction facilities to be erected on site including workshops, offices and storage areas. (f) Schedule of proposed sub-contractors/associates along with their credentials and experience. (g) Schedule of monthly electric power consumption including peak power requirement. h) Information of pre-qualification as per this format of questionnaire enclosed. i) The Tenderer shall attach to his tender a copy notarially authenticated of the documents containing the constitution of the consortium, company or firm by which the Tender is submitted so as to show by what persons and in what manner a Contract may be entered by the consortium, company or firm and what persons, would be directly responsible for the due performance of the contract and can give valid receipt on behalf of the Consortium, company or Firm. j) Tenderers have to return all the documents issued to them while submitting their tender duly filled, stamped and signed as per instruction, on the stipulated date and time. Organisation reserves the right

to reject, accept or prefer any tender in part or full without assigning any reason whatsoever. The Tender as described in clause 5 & 6 above shall be submitted at the office of Central Government Employees Welfare Housing Organisation at a time and Date indicated in the Tender and also endorsed "Tender for Civil, Sanitary-Plumbing and In 708 external Electrical Works for Housing Scheme at Section 56, Gurgaon, Haryana and be submitted in two separate sealed envelopes. Envelope No. 1 should contain i) Earnest money for the packages quoted. ii) All information & schedules is sought at para 5 above. iii) Conditions of Contract (Vol. 1), each page duly signed. iv) Specifications (Vol. II) v) Drawings vi) Power of Attorney in the name of the person signing the Tender Document. Envelope No. 2 shall contain only the priced bid marked original & complete in all respect. Envelope No. 1 will be opened at hours on 1996 in the office of the Ceo, Cgewho, New Delhi in the presence of the tenderers or their authorised representatives Who choose to be present. After opening of the Envelope No. 1 and assessing the submittals as required and conditions, the owner will, if they so decide, inform all the tenderers any change in the tender conditions. Tenderers who agree to the changed conditions along with original in too will be allowed to make modification in their tender prices by means of a letter to be submitted in sealed cover which along with their original price bid will form the final price bid. Any tender which proposed deviation from the above procedure shall not be a ccepted." The basic information to be supplied by the tenderers is referred to as follows: "Part-1: Basic Information Details To Fill Up HERE; Attach As 1. Nature of work for which application for pre-qualification is submitted : 2.a) Name of the Firm : b) Address of Registered Office: c) Year of Establishment: 3. Status of the firm (whether Public Limited/ Private Ltd. Sole Proprietorship Partnership etc. and their professional qualification, experience and standing): 4. Details of Constitution (Board of Directors in case of Partners in case of Public Ltd. Co. Name of Partners in case of Public limited company. Name of partners in case of Partnership etc. and their professional qualification, experience and standing): ANNEXURE-I 5.a) Authorised capital: b) Subscribed Capital: c) paid up Capital: 709 6.a) Name(s) of Banker(s) : b) Solvency Certificate: ANNEXURE-II 7. Particulars, if any of Registration with other Govt. Deptt/P.S.U. "s Semi Govt. Organisation (Give details including Limit of tendering: ANNEXURE-III 8. Power of Attorney in the name of person signing application: ANNEXURE-IV 9. True copy of latest Income Tax clearance certificate: ANNEXURE-V 10. P.F.Registration No. and the copy of certificate thereof: ANNEXURE-VI 11. Audited balance sheets for the last five years duly attested by CA/Auditor: ANNEXURE-VII 12. Indicate, if involved, in any arbitration at present/past involving construction contracts : ANNEXURE-VII 13. Any civil suit(s) arisen in the contract of works executed during last 5(five) year,. If yes, give brief details: ANNEXURE-VII 14. State experience in multistoreyed residential of similar nature: ANNEXURE-IX 15. Indicate Nos. of Annexures attached : Place: Signature Date - Name and Designation Organisation/firm" The petitioner submitted its bid in two envelopes along with nine Annexures as referred to above and as specified in the Notice Inviting

Tender. The following declaration had also to be filled up as contained in the tender documents: "DECLARATION Form To Be Filled In And Signed By The Intending Contraction Firms 1. I/We have read the instructions appended with the performs and I/We understand that if any false information is detected at a later date, any future contract made between ourselves and the contracting firm on the basis of the information given by me/us may be treated as invalid by Central Govt. Employees Welfare Housing Organisation, New Delhi. 2. I/We agree that the decision of the Chief Executive Officer Central Govt. Employees Welfare Housing Organisation, New Delhi in Selection of the contractors and phasing of construction works, will be final and binding to me/us. 3. All the information and data, furnished herewith under Part-I, Part-II and Part-III are correct to my/our best of knowledge. 710 4. I/We also agree that we have no objection if inquiries are made about construction work and its related areas regarding all projects and works listed by us in the accompanying sheets or any other inquiry on the information furnished herewith in the accompanying sheet. Place Signature Date: Name and Designation Organisation/Firm." Eighteen Contracting parties had participated in the tender for three different packages and on August 1, 1996 only the first envelope containing the eligibility criteria and techno commercial bid was opened.. The petitioner alleges that he fulfilled all the eligibility conditions prescribed in the Notice Inviting Tender and, Therefore, had to be considered. The petitioner came to know on-August 13, 1996 that price bids for the tender are being opened by respondents 1; 2 and 3 and on August 14, 1996 as the petitioner had not been intimated about the opening of the price bid, the petitioner wrote a protest letter to respondent No. 1 stating that it had not received any advance notice rejecting his technical bid. It was pointed out to the respondent's organisation that rejection of the petitioner's bid was arbitrary and legal as no prior notice and reasons for rejecting the technical bid was given to the petitioner. The price bid of only 7 contractors was opened on August 14, 1996 and the lowest tenderer for packages I and II was M/s Krishna Construction Company, respondent No. 4 M/s Vij Constructions, respondent No. 5 herein was lowest for package III. The petitioner's bids in all the three packages were lower than the bids declared to be lowest by respondents 1 to 3. The respondents, it is contended, would have saved more than Rs. 2 crores and 85 lakhs in case the bids of the petitioner had been accepted. The comparison is so stated in the writ petition and reads as follows: L-I Sab Package-I Rs. 14.93 crores Rs. 14.75 crores Package-II Rs. 16.94 crores Rs. 16.49 crores Package-III Rs. 14.79 crores Rs. 12.57 crores The decision of respondents 1,2 and 3 is, Therefore, assailed as arbitrary, mala fide as well as in breach of the rules of natural justice as no reasons have been communicated by respondents to the petitioner as to why its price bid could not be opened. Respondents 1 and 3 have filed their counter affidavit wherein the following averments are made: (A) The advertisement invited sealed lump sum/item rate tenders for construction of 1088 flats under a "Two Envelope System" from reputed contractors as per the terms and conditions stated in the tender notice and detailed tender documents. While Envelope -1 was to contain eligibility criteria and techno-commercial bid, Envelope II was to

contain the price bid. Eligibility criteria of the contractors was also prescribed in the tender notice. Amongst other conditions in the notice inviting tenders there was also a clause that owner reserves the right to accept/reject any or all tenders is part or Whole without assigning any reason. 711 (B) As per the procedure of selecting/short listing the tenders, a tender evaluation committee was formed to screen and to pre-qualify the bidders before the price bids of the short listed tenders were opened. This tender evaluation committee which was to assess the techno-commercial bid and recommend the pre qualification of the contractors comprised of Director Technical, Deputy Director Technical, Assistant Director Technical, Assistant Director Finance and Architect consultant. (C) Against the notice inviting tenders for Gurgaon project, 38 tenders were purchased. On due date i.e. 1.8.96, 18 tenders in two envelopes i.e. Envelope 1 & 2 were received in the office of the respondent organisation. Envelope I contained the techno-commercial part of all the 18 bidders which offers were opened and examined by the said tender evaluation committee. Following eighteen contractors submitted the tenders:- 1. M/s Wig & Sons 2. M/s Krishna Constructions 3. M/s Hscl 4. M/s Lanco Constructions 5. M/s Mitra Guha Builders 6. M/s Nanu Ram Goel 7. M/s J.R.C.Grids 8. M/s Vij Constructions 9. M/s Bhalla & Associates 10. M/s Sab Industries. 11. M/s United Builders 12. M/s Stp Limited 13. M/s Era Constructions 14. M/s Cimmco Birla Ltd. 15. M/s Globe Constructions 16. M/s Dewan Chand 17. M/s Rajasthan State Bridge Cons. Corp. 18. M/s Uppal Engineering Co. (D) The information supplied by various contractors in Envelope I was scrutinised and examined by the Tender Evaluation Committee as per the approved bidding systems. Of the total 18 parties, under scrutiny as per the bidding systems, the committee observed as follows:- (i) That 4 parties did not meet the Stage-1 requirements i.e. the basic mandatory criteria of evaluation regarding turn over, profitability and having executed or in hand one similar project. These 4 parties were:- 1. M/s Wig & Sons 2. M/s Nanu Ram Goel 3. M/s Bhalla & Associates 712 4. M/S Hscl (ii) M/s Uppal Engg. Co. had been blacklisted in A who and the respondent organisation had a written confirmation in this regard and was Therefore no found suitable. (iii) M/s Stp had no work in and around Delhi and was basically a Calcutta based company. (iv) M/s United Builders did not supply the complete information as desired by the respondent. (v) Three parties under consideration apart from others under consideration were those already executing the project of the respondent organisation and these parties were: 1. M/s Mitra Guha Builders 2. M/s Jrc Grid Engineers 3. M/s Lanco Constructions. In view of the above, as per the tender evaluation committee only 12 out of 18 contractors including the petitioner could qualify to be considered for the Techno Commercial bid. (E) As per the procedure of the respondent organisation, the tender evaluation committee (notwithstanding the contractor's qualification based upon the certificates issued by it's past and current employers) before recommending the contractor for being considered and subsequently being qualified for the price bid opening, physically inspects the work site and satisfying itself for the quality of construction executed by the contractor, as per replying respondent's yardsticks and evaluations and only

thereafter approve/recommend the contractors for being short listed for opening the price bid. Upon considering the merits of the quality of the work executed at site of the short listed 12 contractors which also included the petitioner herein, the tender evaluation committee recommended only 7 contractors for being considered for the finance bid opening, whose names are as follows:- 1. M/s Era India Co. 2. M/s Cimco Birla Ltd. 3. M/s Mitra Guha Builders 4. M/s Jrc Grid Engineers P. Ltd. 5. M/s Lanco Constructions Ltd. 6. M/s Vig Constructions. 7. M/s Krishna Constructions (F) All the contractors which qualified for the techno commercial bid including the petitioner had also undertaken to comply with all the terms and conditions as contained in the tender documents. (G) Although the petitioner had fulfilled the condition for being prequalified to be considered for the techno-commercial bid but was not found suitable by the tender evaluation committee for being short listed amongst the 7. successful contractors to be considered for the price bid opening since the committee amongst other things found the performance as well as quality of petitioner's construction at his work site not to the mark which was one of the prime and essential reasons for not being considered for the price bid, notwithstanding the petitioner having fulfilled the other criteria for being qualified for the techno-commercial bid. The petitioner, having been not found suitable for the aforesaid reasons, was Therefore not qualified for the price bid opening and Therefore petitioner's offer was rejected. The contention and allegations of the petitioner that his elimination was done arbitrarily is, Therefore, not well founded. Even otherwise apart from his unsatisfactory work performance at petitioner's work site as physically verified by the tender evaluation committee, the aspect of the petitioner having abandoned a project, his involvement in litigation/arbitration cases and not having executed a single housing project since 1992 were certain other reasons for the petitioner for not being recommended to be considered for the price bid opening. Even otherwise contrary to the provisions of declaration form contained at page 18 of the tender, the petitioner had made a deliberate and willful misrepresentation of facts while making his tender offer. In fact in the proforma for prequalification the petitioner falsely stated that they did not have any past records of arbitration which was contrary to the information furnished by the petitioner as observed from the petitioner's Auditor's Report on the balance sheet. The petitioner's offer in any case was liable to be rendered invalid as per clause 1 of the declaration on account of his having made a false statement to this effect. In view of the above, it was argued that the petitioner was legitimately not found suitable for being considered for the price bid opening, and was Therefore, correctly eliminated from the competition. The learned counsel for the petitioner has, however, contended that respondents 1,2 and 3 have not only exceeded the decision making authority but have committed an error of law, abused their powers and reached a decision which no reasonable Authority would have reached. The labelling of work of the petitioner as of poor quality is a ruse and has been raised with the motive of helping the few contractors. The assessment has to be made only before issuance of tender. The petitioner was pre-qualified and the respondents, Therefore, had no authority to reject on the

grounds which are now sought to be highlighted. The Inspection Report is, Therefore, arbitrary, vitiated by bias and malice and is not only contrary to the certificates issued by the owners of the project, namely, the Indian Army but also because it presumes that the quality of hidden work will be as unsatisfactory as the flooring and plaster work. The petitioner can also not be blamed for not completing the project at Shillong as the same could not be completed because of local Khasi agitation. In fact, Mr. Justice P.C.Jain, retired Chief Justice of Karnataka High Court has already given an Award with regard to this project in favor of the petitioner. 714 The facts of the case may now be examined. Notice Inviting Tender clearly stipulated that tenders were invited in two envelopes system-envelope 1 should contain eligibility criteria and techno-commercial bid only and envelope-2 was to contain the price bid from eligible building contractors including the petitioner. Envelope-1 was opened in the presence of the tenderers who chose to be present and opening of envelope-2 was to be intimated at a later date to the selected bidders. Therefore, the petitioner was aware that its bid could be rejected at the First stage and the tender would not be opened in case it did not comply with the terms and conditions as contained in the tender notice as well as on the basis of clauses as incorporated in the tender documents. The following considerations have been highlighted by the respondents for not opening the tender of the petitioner and for not considering its price bid: (a) the quality of work as inspected by the Committee of Officers in the Hospital Project being constructed at Delhi Cantt was found to be unsatisfactory; (b) the petitioner had a record of having gone for arbitration in some projects in the past and creating disputes; (c) the petitioner had suppressed the fact that having gone into the arbitration by writing "N.A." (understood as "Not Applicable") under the questionnaire in the proforma "whether the party had gone into arbitration or not"; (d) some projects had been abandoned in the past when the same had become financially unviable; (e) there was considerable delay in most of the projects undertaken by the petitioner. The above assessment was made by the Committee who had inspected one of the works i.e. Hospital Project being constructed under Mes by the petitioner for the Indian Army at Delhi Cantt. The quality of work as examined by the Committee of officers consisting of Consulting Architect as well as four officers of the respondents who formulated the view taking into account the requirement of the Organisation. It was further highlighted that the petitioner made a false statement inasmuch as the petitioner had abandoned "Hospital project" and one "Leather Synthetic Project". Similarly, it was not denied by the petitioner company that in respect of the Assam project they had to resort to arbitration proceedings as disputes and differences arose between the parties. The respondents on the basis of the above assessment did not choose to open the price bid of the petitioner as well as of eleven other tenderers as they wanted to ensure selection of suitable parties so that the work is completed and there are no unnecessarily delays and springing of contractual claims. The facts and relevant documents will further establish that the petitioner has clearly agreed that it will be open for the respondents to examine the quality of their works and

then finalise the tender. The relevant declaration in this regard as filed by the petitioner reads as follows: "I/We also agree that we have no objection if inquiries are made about construction work and its related areas regarding all projects and works listed 715 by us in the accompanying sheets or any other inquiry on the information furnished herewith in the accompanying sheet." Moreover, it will not be open for this Court to discard the opinion of the Expert Committee as constituted to examine the works of the petitioner and arrive at a contrary finding when there is no error of law and mala fide which can be attributed to the action of the respondent Organisation. No specific instances in this regard have been pointed out. The law is well settled that it is not open for the petitioner to impugn the administrative decision of the respondent Organisation except on the basis of propositions as laid down by the Supreme Court in the case as reported in *Tata Cellular Vs. Union of India*, , such as that the decision which will require interference will have to be tested on the parameters as laid down by that Court in the cases of mala fide, arbitrariness to the extent of perversity that the decision making authority exceeded its powers, committed breach of rules of natural justice, reached a decision which no reasonable Tribunal would have reached or abused its powers. Similarly, it will not be open for this Court to reappraise the material on record to determine as to whether the petitioner has been excluded wrongly. The scope and ambit of judicial review with regard to the decisions in such matters has been elaborately explained in the above mentioned case. Paragraph 70 of the judgment may be reproduced as under: "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." It has been stated in paragraph 74 that 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. The duty of the Court is reiterated in paragraph 77 of the judgment which reads as follows: "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, 716 5-abused its powers. Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which

those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative 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 grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R.V. Secretary of State for the Home Department, ex Brind*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention". The situation in which the decision can be held to be irrational and unreasonable has been explained in paragraph 81 which is reproduced as under: "81. Two other facets of irrationality may be mentioned. (1) It is open to the court to review the decision-maker's evaluation of the facts. The Court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in *Emma Hotels Ltd. v. Secretary of State for Environment*, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion. (2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in *R.V. Barnet London Borough Council, ex P Johnson* the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down." The question now arises as to whether in the facts of the present case the decision of the respondents suffers from irrationality and can be termed as unreasonable. It is reiterated by the respondents that the Committee of officers had inspected one of the works i.e. hospital project being constructed by the petitioner and the quality of work was assessed by the Committee as not satisfactory. The Committee consisting of consulting architect as well as four officers of the Organisation made their own assessment in respect to the work undertaken by the petitioner as per the requirements of 717 the respondent organisation. It was also found as of fact that the petitioner abandoned some other projects and had gone to arbitration as well. The following plea as taken by the petitioner with regard to abandonment may be reproduced as follows: "During the year, company had abandoned "Hospital Project" and one "LEATHER Synthetic Project" and a sum of Rs. 22,71,313 and Rs. 61,294 respectively had been spent up to the previous year. However, in the opinion of

the management these projects have become commercially unviable. Therefore the same has been written off as commercial loss and charged to the Profit & Loss Account."

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(6) The respondent Organisation clearly held it as an indication of the tendency of the petitioner to abandon projects if the same were running into loss or became financially unviable. Though the reasons for delay in completion of projects were indicated as non-approval/non supply of approved drawings in time, shortage/non supply of cement and steel in time, not providing of land free from obstacle in time etc. the respondents came to the conclusion that the petitioner had the tendency of not being able to complete the project whatever may be the reasons and they could not afford such a Contractor to undertake the work on behalf of the Organisation. The respondents on the basis of the material and evidence on record came to the conclusions as have been explained above that the bid of the petitioner as well as 10 others placed in the same category could not be opened for the reasons as they did not reach the second stage of having qualified on the basis of their evaluation as elaborately explained in the counter affidavit. The petitioner had clearly agreed in its declaration that no objection will be raised if enquiries were made about the construction work and its related areas regarding all projects and works as stated. Therefore, the petitioner cannot now dispute the assessment as made by the respondent Organisation. This assessment was made by an Expert Committee as established for the purpose and it will not be open for this Court to re-evaluate the same. The plea that the award has been made in favor of the petitioner for its work in Assam will also be of no consequence and it is always open for the respondents to lay down the criteria that they will not deal with any Contractor who has abandoned any earlier project for any reason whatsoever. In view of the above, the present petition is devoid of merit. The same is, accordingly, dismissed. There will be no order as to costs.