

(1991) 01 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 284 of 1989

Sharad Manilal Gosalia

APPELLANT

Vs

Superintending Engineer, Government of Goa and Others

RESPONDENT

Date of Decision : 21-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1992) 1 BomCR 244

Hon'ble Judges : H.W. Dhabe, J; E.S. De'Silva, J

Bench : Division Bench

Advocate : F. Rebello, for the Appellant; G.U. Bhobe, for the respondents 1 to 3, S. Albuquerque, for the respondent No. 4, for the Respondent

Judgement

H.W. Dhabe, J.—The petitioner challenges in this petition the award of the works contract in question to the respondents No. 4 and claims that the same should have been awarded to him, since his tender was, admittedly, the lowest in regard to works contract in question.

2. The facts are that by notice dated 15-10-1988 the Executive Engineer, Works Division XIV, Irrigation Department invited item rate tenders for several works. The last date for submission of the tenders was 21-11-1988 and the time before which the tenders were to be submitted, was 3.00 p.m. By letter dated 15-11-1988, the last date for receipt of the tenders was extended upto 3.00 p.m. on 16-12-1988. These works for which the tender notice was issued were in relation to provision for On-Farm Development Works in the Command Area of Branch Canal of SIP for the Water Courses No. 9. The estimated cost of the work as set out in the said tender notice was Rs. 12,83,075/- and the earnest money deposit was Rs. 20,000/-

3. There were three persons who submitted their tender from for the above works contract, viz. the petitioner, the respondent No. 4 and one Shri H.S. Kirtani. Their offers were as follows :-

(1) Shri Sharad Manilal Gosalia (Petitioner) ... Rs. 13,45,847/-

(2) M/s. Jayashree Constructions

(respondent No.4) ... Rs. 15,68,784.17

(3) Shri H.S. Kirtani ... Rs. 16,44,570.76

It is clear from the above offers given by the tenderers that the offer given by the petitioners was the lowest.

4. Since the offer given by the petitioner was the lowest, the Executive Engineer called him for negotiations and in negotiations, the offer by the petitioner was further reduced to Rs.12,77,542.50. It has to be seen that since the works contract was for an amount of Rs. 10 lakhs and above, it was the State Government which was competent to accept the tenders in that regard. The tender of the petitioner being the lowest, his case was submitted for consideration to the higher authorities. When it reached the Chief Minister, the Chief Minister made a query whether, at any time before, the works contract of the petitioner or his father was cancelled. Upon that query, there was further inquiry in the matter. It was then found that the petitioner had not completed his earlier works in time and that his performance was not good in regard to the work of construction of Distributory D2-D3 of S.I.P. main canal from Chainage 1.681 to 2.49 kms. Since the work in question was quality work and speedy execution of the same was necessary, it was decided not to award the said work to the petitioner to which ultimately approval was given by the Chief Minister. Accordingly, by letter dated 12-4-1980, the petitioner was informed by the Superintending Engineer i.e., the respondent No. 1 that his tender cannot be accepted in view of his failure of completion and his bad performance of works of construction of Distributory D2-D3 of S.I.P. main canal from Chainage 1.681 to 2.49 kms referred to above.

5. It appears that when the file came from the Chief Minister for considering the question whether earlier the contract of the petitioner or his father was cancelled, the authorities concerned also invited the next lowest tenderer i.e, the respondent No. 4 for negotiations and during the said negotiations, the offer was reduced by him to Rs. 12,77,542.50 which was still lower than the above negotiated offer given by the petitioner. It is however, pertinent to see that before the respondent No. 4 was called for negotiations, he had already withdrawn his earnest money deposit on 23-12-1988 which was returned to him also on the same date, which would show that he perhaps was not interested in the contract in question. We are not, however, called upon to consider the question whether despite the fact that he had withdrawn the earnest money deposits, he could be considered for award of contract in the instant case, because as we shall subsequently show, he had made an application in this Court on 24-11-1989 that he was not interested in the instant works contract. After negotiating the amount of contract with him, his proposal was forwarded and was ultimately approved by the Government on 5-8-1989. It is thereafter and

the learned Counsel for the petitioner, has brought to our notice that after the instant Writ Petition was filed, that the respondent No. 4 made the earnest money deposit again on 16-8-1989. It is necessary to state here that the narration of facts in the above paras about the process of taking decision on the question of the acceptance of the tender is based upon the Government file which was produced before us by the learned Counsel for the State at the instance of the petitioner.

5-A. Feeling aggrieved, the petitioner has preferred the instant writ petition claiming relief that the rejection of the tender of the petitioner although lowest, as per the letter dated 12-4-1989 and the award of the contract instead to the respondent No. 4 on 5-8-1989 is illegal, arbitrary and violative of Article 14 of the Constitution. He has also claimed a writ of mandamus that the respondents 1 to 3 be directed to accept the tender of the petitioner and to award him the works contract in this matter. At the time of admission of the instant writ petition on 21-8-1989, this Court has granted interim injunction restraining the respondent No. 4 from carrying out any work under the works contract in question. Accordingly, it is not in dispute that the said work has not actually commenced.

6. It is not necessary to go into the question in the instant writ petition, whether the award of the contract to the respondent No. 4 is illegal, arbitrary and discriminatory and thus, violative of Article 14 of the Constitution, because the respondent No. 4 by his application dated 24-11-89 made in this Court, has stated that he is not interest in the said contract and does not went to carry on the same. Without going into merits, we would have, therefore, normally directed the respondents 1 to 3 to invite fresh tenders in the matter, but since the petitioner has contended before us that the said respondents should be directed to award the said contract to him as per the tenders invited by them on 15-10-1988, it is necessary for us to consider the contention raised by him in this regard.

6A. The learned Counsel for the petitioner has urged before us that since the amount offered by the petitioner was the lowest for the works contract in question, the respondents 1 to 3 should have accepted his tender. He has also urged that the reasons given for rejecting his tender are false and also an after-thought because it was originally decided by the authorities concerned to accept his tender. He has further contended that different standards have been applied by the authorities concerned while considering the question of acceptance of the tender of the petitioner and of the respondent No. 4. According to the learned Counsel for the petitioner, the respondent No. 4 had also not completed his earlier works in time and his past performance also was not good and still he was selected for the award of the tender in question . His submission is that the said test should have been made applicable to him also. If the petitioner and the respondent No. 4 were thus similarly situated, the further submission is that there was discrimination in the award of the contract, to the respondent No. 4

when the tender of the petitioner was the lowest.

6-B. It is also urged that before coming to the conclusion that there was failure on the part of the petitioner to complete the work within the stipulated period and that his past performance was not good in relation to the work of construction of Distributory D2-D3 of S.I.P. main canal from chainage 1.681 to 2.49 kms no show-cause notice was given to the petitioner and no inquiry held. In fact, the submission is that the said contract was not terminated on these grounds by the respondents 1 to 3 and on the contrary, they allowed him to carry out the said work. He has also shown to us a certificate recently issued on 18-1-1991 by the Executive Engineer, which according to him shows that his work in relation to construction of Distributory Canal was satisfactory. He has urged that the above work is the same work which is referred to in the letter of the Superintending engineer dated 20-4-1989 (Ex. D) who has described it as unsatisfactory while replying to the representation of the petitioner dated 18-4-1989 against the rejection of his tender.

7. To appreciate the contentions raised on behalf of the petitioner, the learned Counsel for the petitioner has requested us that we should call for the file in relation to this works contract, which according to him, would show that his tender was accepted even by the Chief Minister when the said file was sent to him for approval. The learned Counsel appearing for the State in the instant case produced before us the relevant Government file. We have perused the said file. It shows that although the tender of the petitioner was forwarded by the Officers concerned for being accepted as his tender was the lowest, there is a noting in the said file by the Chief Minister that before accepting his tender, it should be inquired whether his previous contract or the previous contract given to his father was cancelled. It is, therefore, clear from the above noting in the file that the tender of the petitioner was not accepted by the chief Minister but he had directed an inquiry in the matter before its acceptance. The contention raised on behalf of the petitioner that his tender was accepted by the Chief Minister, therefore, cannot be accepted.

8. It may then be seen that after the Chief Minister asked the Officers concerned to verify whether the previous contract of the petitioner or his father was at any time cancelled, there was further inquiry made by the officers concerned. The papers relating to Shree Damodar Constructions belonging to the petitioner's father were also enclosed with the note of the Superintending Engineer and forwarded to the Secretary. In fact, the Chief Engineer had made a query as to why the lowest tender of the petitioner should not be accepted. Pursuant to that query, it appears that the information was supplied to him whereafter he had noted on the file that the work of Distributory D2-D3, second ridge was not progressing satisfactorily, and therefore, the contract should be negotiated with the next lowest tenderer. The file, then shows the noting of the Secretary that since the work of the petitioner was not satisfactory as pointed out by the Chief Engineer and since the Department wanted quality work as also speedy

execution of the project, he agreed with the proposal of the Chief Engineer and also the Under Secretary to award the contract to the respondent No. 4. The above noting of the Secretary is approved by the Chief Minister which also shows that he had not accepted the lowest tender of the petitioner.

9. The learned Counsel for the petitioner has urged before us that what the Chief Minister was to be satisfied about was the question whether the previous works contract of the petitioner or his father was cancelled, and therefore, according to him, no other inquiry could have been made by the officers concerned. His submission, therefore, is that the rejection of his tender is based upon extraneous considerations. It may be seen that the steps taken in the process of the formation of its opinion upon the administrative matters by the State Government and its officers by making enquiries or consultations are not open to judicial review as such. It is possible that at one stage, the Chief Minister might have asked his officers to inquire about one particular question, but if during the inquiry some other things are found which have a bearing on the question of awarding of a works contract, it cannot be said that such things could not have been taken into consideration and brought to the notice of the chief Minister by the officers concerned. As regards the administrative orders, it is well settled that the administrative order is final only when it is communicated to the party who is affected by the said order and till then the order cannot be regarded as anything more than provisional in character. See *Bachhittar Singh Vs. The State of Punjab*, which in turn relies upon *The State of Punjab Vs. Sodhi Sukhdev Singh*.

10. It has to be borne in mind that all relevant aspects which are germane to the award of the contract have to be taken into consideration before awarding the same. It cannot be gainsaid that the past performance of a contractor is a factor which is germane to the awarding of the contracts to him in future. If, therefore, after further inquiry, the officers felt that the work of the petitioner in the previous contract was not satisfactory or upto the mark, the said factor can be brought to the notice of the higher authority before any subsequent contract is awarded to him. In the instant case, the Chief Engineer has opined that the past performance of the petitioner in respect of Distributory D2-D3 referred to above was not satisfactory which opinion was approved by the Secretary and ultimately by the Chief Minister. There is nothing in law to bind the Chief Minister by first query, viz; that the question whether the previous contract given to the petitioner or his father was cancelled. We cannot, therefore, accept the submission made on behalf of the petitioner that the officers could not have inquired into the question of his past performance because the Chief Minister did not require them to do so.

11. The next question to be considered is whether the reasons given by the respondent No. 1 in his letter dated 12-4-1989 for rejection of the tender of the petitioner in relation to the works contract in question are good reasons or are false and an after-thought, because it is well settled that even if the tender of a

party is the lowest, it can be rejected if there are good reasons to do so. The learned Counsel for the petitioner has brought to our notice that immediately after the receipt of the said letter dated 12-4-1989, rejecting his tender, the petitioner had made a representation on 13-4-1989 to the Superintending Engineer in which he had shown that there was no failure on his part to complete and there was not bad performance in relation to the work of construction of Distributory D2-D3 of S.I.P. main canal from Chainage 1.681 to 2.49 kms. which were the reasons given in the letter of the Superintending Engineer dated 12-4-1989 for rejecting his tender. The Superintending Engineer has replied to his aforesaid representation dated 18-4-1989 by his letter dated 20-4-1989. He had stated in the said letter that the justification of the petitioner for delaying the completion of his work in relation to Distributory D2-D3 contract was not correct, because all the difficulties expressed by him had been removed. He had further pointed out that there was ample stock of cement available with the Department. He had also shown how there was a long delay in the works in question. In furtherance of his aforesaid letter dated 20-4-1989 he had also addressed another letter to the petitioner on 9-5-1989 justifying the rejection of his contract on the grounds given in his letter dated 12-4-1989.

12. The learned Counsel for the petitioner has urged before us that if his work in Distributory D2-D3 contract was delayed and if his work was not satisfactory, his contract would have been terminated by the respondents 1 to 3. Since such a step is not taken, the submission is that his work was satisfactory and because of the difficulties pointed out by him in his representation dated 18-4-1989, he was allowed to continue the said contract and complete the work thereunder. It is also urged that thereafter another similar contract was given to the petitioner which would show that his work was satisfactory. It is further urged that before coming to the conclusion that the work of the petitioner was not satisfactory, he should have been given an opportunity of being heard in that regard particularly when it has the effect of adversely affecting the award of contracts to him in future.

13. In appreciating the last submission, viz. that the petitioner should have been given show cause notice or an opportunity to show that his work was satisfactory, because it had the effect of affecting the award of contracts to him in future, it has to be seen that this is not admittedly a case of blacklisting the petitioner so that he is wholly barred from competing for any tenders in future and to be considered for award of the contracts from the State Government. If it was such a case, it was necessary for the State Government to serve show cause notice to the petitioner and to give him an opportunity of being heard, because black-listing a contractor has civil and/or evil consequences as the right of the contractor to bid and to be considered for future contract is thereby permanently impaired apart from casting a stigma upon him. See *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, . See also *Raghunath Thakur v. State of Bihar* AIR 1989 S.C. 520.

14. It may, however, be seen that the past performance of a contractor is a valid criteria which can be taken into consideration for judging his suitability for award of any particular contract to him. When such a criteria is made applicable, it is of necessity to depend upon the assessment of his work by the officers concerned. When such an assessment is made for considering the question of awarding a particular contract, it does not cast any aspersions as such upon the contractor and does not debar him from competing for any contracts to be awarded by the State in future and it does not, therefore, cause him any civil and/or evil consequences as in the case of black-listing of a contractor. It may further be seen that there is no right in the petitioner to get the contract from the State. In view of Article 14 of the Constitution, he has a right to bid and to be considered along with others when the State issues a tender notice for award of a contract. See the judgement of the Supreme Court in *Erusion Equipment & Chemicals Ltd.* cited supra. The principles of natural justice are attracted when any existing right of a person is sought to be affected by any State action or when the State action causes him civil and/or evil consequences.

15. The learned Counsel for the petitioner has, in support of his contention that the principles of natural justice are applicable while rejecting the claim of the petitioner on the ground of past performance, relied upon the decision of the Supreme Court in the case of *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, . It has to be seen that it is well settled that the mandate of Article 14 is applicable at the state of entering or not entering into a contract and would, therefore, be applicable when the tenders are invited and the question of acceptance of tenders is involved. This is clear right from the judgement of the Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . The application of Article 14, however, depends upon the facts in each case. In this regard, the Supreme Court has in para 13 of its judgement in *Mahabir Auto Stores*" case cited supra observed that the existence of the power of judicial review depends upon the nature and right involved in the facts and circumstances of the particular case. In para 12 of the judgement, the Supreme Court has observed, "even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and nondiscrimination in the type of the transactions and nature of the dealing as in the present case."

16. It may be seen that in *Mahabir Auto Stores*" case supra, the facts were that for over a long period of 18 years there were transactions between the said Mahabir Auto Stores and the Indian Oil Corporation involving large amounts of money. The Indian Oil Corporation sold to the said Mahabir Auto Stores large quantity of lubricants for over a long period of 18 years. These transactions according to the appellant firm, constituted a contract although there was no formal contract between the parties. However, all of a sudden, the sales of lubricants were stopped by the Corporation on the ground that there was a

change in the policy. According to the appellant firm, it was not covered by the alleged change in the policy. The Supreme court, therefore, held that before stopping the sales of the lubricants to the appellant firm, fair play and the principles of natural justice required that the appellant - firm viz., Mahabir Auto Stores should be allowed to put forth its case to the corporation and the Corporation should consider its case afresh viz. whether the existing arrangement amounts to a contract although there was no formal contract between the parties and whether the new policy does not cover the appellant firm so that its distributorship can continue. The facts in the said case are thus entirely different and the ratio of the said case is not applicable to the facts in the instant case.

17. In the instant case, however, as pointed out above, the criterion of past performance is made applicable for determining whether a particular contract should be awarded to the petitioner or not in this case. It is true that such a criterion should be applied uniformly to all the tenderers in question and not to the petitioner only. If such a criterion is made applicable to all the tenderers whose claims are considered by the State, it cannot be complained that there is breach of equality clause under Article 14 of the constitution or that the State action is arbitrary. However, while applying the said test, no obligation is case upon the State of giving an opportunity to the petitioner of being heard in this regard. If this action of the State is malafide in the sense that deliberately, without there being any reason if the contract is not awarded to the lowest tender on the false and imaginary ground that his past performance was not good, such an action can be struck down as malafide. However, that does not mean that the said ground of past performance in rejection of the tender implies the application of the principles of natural justice in the sense that the show cause notice or an opportunity of being heard should be given before rejecting the tender on the said ground. The above contention raised on behalf of the petitioner, therefore, cannot be accepted.

18. In the instant case, the Superintending Engineer i.e., the respondent No. 1 has stated in his letter dated 20-4-1989 in reply to the representation of the petitioner dated 18-4-1989 that although the difficulties pointed out by the petitioner were removed in the aforesaid Distributory D2-D3 contract still he had delayed the work. It has to be seen that the question of past performance has to be considered from the point of view of the requirements of the new contract for which the tender is invited. In the instant case, the office file shows that the contract in question requires completion expeditiously and also quality work which according to the officers concerned is not possible if the contract is awarded to the petitioner. It is from this point of view that his past performance was assessed by the officers concerned. The question thus clearly rests upon the subjective satisfaction of the authorities concerned and if they find that from his past performance the works contract in question which required quality work and speedy execution should not be entrusted to the petitioner, it is not possible for us to interfere with their discretion in the writ jurisdiction of this Court.

19. The learned Counsel for the petitioner has, however, urged before us that if the petitioner was responsible for not completing the work in D2-D3 contract within the stipulated period or if his work in the said contract was not satisfactory, his above contract would have been terminated by the respondents 1 to 3. The submission therefore, is that the fact that his above contract was not terminated by the respondents 1 to 3 would show that his work in the above contract was satisfactory and for the delay in completion of the work in the said contract he was not responsible. It is pertinent to see that there can be more than one reason why the contract given to a contractor may not be terminated for any lapses on his part or for delay in completion of the work within the stipulated period. For instance, if the contract is terminated mid-way, there may be lot of time consumed in the procedure to entrust the remaining work in the contract to some other person or even otherwise if the said termination is challenged in the Court of law and if any interim orders are passed the work may come to a stand still or at any rate the State's time and money would be spent in unnecessary litigation for which reason it may be found advisable not to terminate the contract. However, because the contract is not terminated, it would not necessarily mean that the work of the petitioner in the above contract was satisfactory or that he was not responsible for the delay in the completion of work in the said contract. The above submission made on behalf of the petitioner cannot, therefore, be accepted.

20. The learned Counsel for the petitioner has relied upon the certificate of the Executive Engineer which he has recently issued on 18-1-1991 to show that his work of construction of Distributory D2-D3 of S.I.P. main canal from Chainage 1.631 to 2.49 kms. was satisfactory. The said certificate is shown to us for the first time during the hearing of the writ petition which has naturally deprived the respondents of submitting their say in that regard. It may be seen that the present contract was awarded in August 1989 to the respondent No. 4 and the question of suitability of the petitioner for award of the said contract was also considered at that time. His work at that time in the above contract is assessed by the officers concerned at that time. Their consideration which is subjective cannot be allowed to be tested by the assessment of his work now in the same contract. The above submission made on behalf of the petitioner, therefore, deserves to be rejected.

21. The learned Counsel for the petitioner has then urged that the said reason about unsatisfactory work and the delay in completion of the work in the above contract for not accepting the tender of the petitioner is extraneous because the same is not made applicable in the case of the respondent No. 4. It is also submitted that if the respondent No. 4 was also guilty of the said reason and if the contract could be still awarded to him, there was no reason why it should not have been awarded to the petitioner when the past performance of both was unsatisfactory, particularly in the sense that both had delayed the completion of their work. As already pointed above, the test of past performance has to be uniformly applied to all the tenderers in view of the mandate of Article 14 of the

constitution. It is clear from the affidavit filed on behalf of the State Government that the above test of past performance was made applicable by the respondents 1 to 3. It is after the above affidavit is filed on behalf of the respondents 1 to 3 that the petitioner has filed a rejoinder in which he has for the first time raised a ground in para 10 that the past performance of the respondent No. 4 also was not good. Since the above question was raised in the above rejoinder filed by him, it appears that the respondents has no opportunity to reply to the same, because in the original affidavit such a ground was not made out by the petitioner.

22. Be that as it may, when the said test is made applicable by the State Government, it would imply that it is made applicable to all the tenderers. However, even assuming that the work of the respondent No. 4 was also faulty, it would only mean that the award of the contract to him would be arbitrary and improper. It cannot mean that the said test was not made applicable at all because not only the affidavit but the office file of the Government also shows that such a test was made applicable, at any rate, to the petitioner. Therefore, if the past performance of the respondent No. 4 is found to be bad, the only result would be to direct the State Government to issue fresh tender notice to invite fresh tenders and to award the contract to the person whose past performance is satisfactory. No work order can in that case be issued by the State Government in favour of the respondent No. 4. However, we are relieved of examining the question whether the work of the respondent No. 4 was also unsatisfactory and that he was also guilty of non completing his contract within the stipulated period because the respondent No. 4 has filed an application in this Court that he is not interested in the contract in question in the instant case. In any case, if the petitioner and the respondent No. 4 are both *pari-delicto*, it can only mean that the contract should not be awarded to either of them. It is, therefore, difficult to appreciate the submission made on behalf of the petitioner that if the respondent No. 4 suffers from the same vice viz.,. unsatisfactory past performance and delay in completion of work like the petitioner, the contract should be directed to be awarded to him since his tender is the lowest.

23. At any rate, this Court cannot exercise its extraordinary jurisdiction under Article 226 of the Constitution in substituting one wrong for another. The relief claimed by the petitioner that we should direct the respondents 1 to 3 to award him the contract in question cannot, therefore, be granted to him. In our view, when the respondent No. 4 is not interested in contract and when no work order is up-till now issued to him in view of our interim order in the instant writ petition and taking into consideration the fact that so much time has elapsed after the tender notice was issued for the work in question on 15-10-1988, the proper course would be to direct the respondents 1 to 3 to issue a fresh tender notice and to award the contract after considering the cases of all the tenderers in the light of the uniform criteria which the respondent 1 to 3 may choose to adopt.

24. Even otherwise, when a writ of mandamus is claimed in any matter, the High

Court normally issues in the first instance, a writ for consideration of the claim after striking down the illegal or extraneous considerations, if any, in the decision of the State Government. Even in the judgement of the Supreme Court in Mahavir Auto Stores" case cited supra, what has been directed is not the continuance of the supply of the lubricants to the appellant firm, but what has been directed is the consideration by the State Government of the case of the appellant firm which has been given an opportunity to put forth its case. In any view of the matter, no such mandamus as claimed by the petitioner can be issued in his favour.

25. The learned Counsel for the petitioner has expressed an apprehension that if the past performance of the petitioner, according to the respondents 1 to 3 is bad, it will come in his way in bidding for contracts in future including the present contract in which the tenders may be invited by the respondents 1 to 3 in the light of our decision. It is necessary to see in this regard that admittedly the petitioner has been getting other contracts even though the respondents 1 to 3 were not satisfied about his work in Distributory D2-D3 contract which would show that the respondents 1 to 3 are considering the question of awarding each contract looking to its requirements and the suitability of the competing tenderers for the same. Unless the contractor is blacklisted, the question of his past performance to judge his suitability for award of any contract to him in future will depend upon the assessment of his work from the point of view of requirements of the said contract. Even otherwise, his work may improve with passage of time by experience and therefore, it is not correct to say that once his past performance is bad, the same will hold good always. If his future performance has improved, the said factor can be taken into consideration for considering his case for award of a contract. In this regard, it may be seen that if the work of the petitioner is satisfactory as per the certificate dated 18-1-1991 issued recently by the Executive Engineer, the said factor can be taken into consideration in any contract for which the tenders may be invited now. The above apprehension expressed on behalf of the petitioner is, therefore, ill-founded and cannot be entertained.

26. In the result, the instant writ petition partly succeeds. The award of the works contract in question to the respondent No. 4 is set aside. The respondents 1 to 3 are, however, free to issue a fresh tender notice in regard to the said works contract and if and when such a tender notice is issued, it is open to the petitioner to bid for such a works contract and in that event, it is directed that his case should be considered by the respondents 1 to 3 on its own merit along with others on the basis of the uniform criteria which may be adopted by the respondents 1 to 3 to judge the suitability of the competing tenderers for the works contract in question. Rule made absolute in the above terms. No costs.