

(2007) 02 DEL CK 0212
In the Delhi High Court
Case No : OMP No. 71 of 2007

Shivaai Industries (P) Ltd.	Vs	APPELLANT
Rites Ltd. and Another		RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Specific Relief Act, 1963 — Section 14

Citation : (2007) 2 ARBLR 256 : (2007) 1 ILR Delhi 1103

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : A.S. Chandhiok, S.K. Maniktala, A.P. Singh, Sonia Arora and Vijay Chauhan, for the Appellant; Parag P. Tripathi and Sumeet Pushkarna, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner in this petition, filed u/s 9 of the Arbitration and Conciliation Act, 1996 (for short, "the Act"), is aggrieved against the action of the respondent No. 2 Delhi Transport Corporation (hereinafter referred to as "DTC") in inviting tenders from national and international firms/joint ventures/consortium for allotment of about 225 shelters/sites on but basis against display of commercial advertisement thereon, as according to the petitioner it is given the contract for these sites and during the currency of the license agreement with the petitioner, the respondent No. 2 cannot take such a step.

2. First, the factual matrix to appreciate the grievance of the petitioner. As per the averments in the petition, DTC had earlier issued a tender pursuant where to the petitioner had also submitted its bid. This tender was for grant of advertisement rights on all the shelters (BQS/TKB) of the DTC falling in various zones and was for a period of three years. The petitioner was successful bidder in respect of ten zones and the DTC issues letter of award in respect of these zones on the monthly license fee. The particulars of these zones, security deposit by

the petitioner in respect thereof, monthly license fee payable and the contract period for these zones are indicated in the following table:

S. No.	Zone	Security License Fee/month	Contract period	(Rs.)	(Rs.)				
1.	Rohini-II	36,12,504	12,04,168	3.11.04 - 8.11.07	2.	Shahdara(N)-I	15,12,504	5,04,168	8.11.04 - 7.11.07
3.	City Zone-I	66,87,504	22,29,168	8.11.04 - 7.11.07	4.	West Zone-I	23,75,004	7,91,668	8.11.04 - 7.11.07
5.	Civil Line-II	24,48,126	8,16,042	8.11.04 - 7.11.07	6.	City Zone-II	20,87,502	6,95,834	9.11.04 - 8.11.07
7.	Najafgarh(R)-I	18,12,504	6,04,168	8.11.04 - 7.11.07	8.	South-I	61,62,504	20,54,168	7.11.04 - 8.11.07
9.	South-III	81,75,000	27,25,000	8.11.04 - 7.11.07	10.	South-IV	82,55,001	26,51,668	8.11.04 - 7.11.07
TOTAL				4,31,28,153					

The monthly license fee, as per the terms of the allotment, was payable in equal proportion to the DTC and the Municipal Corporation of Delhi (MCD), which according to the petitioner it has been paying from time to time. In the year 2000, DTC had invited bids in respect of certain other zones and the petitioner bagged contract in respect of two such zones, particulars whereof are as under:

S. No.	Zone	Security License Fee/month	Contract period	(Rs.)	(Rs.)				
1.	South Zone-I	51,00,000	17,00,000	13.1.2005 - 12.1.2008	2.	Shahdara(S)-I	38,25,000	12,75,000	13.1.2005 - 12.1.2008

However, thereafter the petitioner surrendered five zones and it is now having contract in respect of seven zones, namely, City-I, Civil Lines-II, Najafgarh-I, South-III, South-IV, South-I and South-II. The contract for these zones is up to 7.11.2007, except in respect of South-I, which is up to 8.11.2007, and South-II, which is up to 12.1.2008.

3. It is the case of the petitioner that during the subsistence of the aforesaid contracts the DTC had no right to invite tenders in respect of those Bus Queue Shelters (for short, "BQS"), which fall in the aforesaid zones. According to the petitioner, there are approximately 1800 sites covered by these seven zones and in the impugned tender floated on 15.1.2007, the DTC is going to take away as many as 225 shelters/sites, which fall in the aforesaid zones.

4. It may be noted that the DTC, in its reply, has given the justification in inviting fresh tenders on the ground of public policy. It is urged by the DTC that the DTC being an undertaking of Government of NCT of Delhi is entrusted with the task of providing Public Bus Transport and for creating facilities like BQS for community convenience. Improving Public Transport infrastructure is essential to ease traffic congestion by encouraging public to use this mode instead of private vehicles. Improving street furniture (which includes BQS) is also essential in the context of the Commonwealth Games scheduled in 2010. As a matter of public policy and with a view to improving civil facilities, specially as a part of preparation for the Commonwealth Games, the Government and the Corporation are undertaking numerous new developmental projects. Construction of approximately 225 new, aesthetically designed, sleek, disabled friendly and environment friendly BQS with modern facilities and features is one of such projects. DTC has engaged M/s.

RITES (respondent No. 1 herein), a Government of India Enterprise, as Bid-Process Manager for this new project.

5. The petitioner's challenge to the tender notice is on the following grounds:

(a) as per the terms and conditions of the agreement signed between the parties, the petitioner is given the contract for a period of three years in respect of these sites, most of which are valid up to 7.11.2007, and there is no valid and justifiable reason for cutting short this period. It is submitted that approximately 120 shelters falling in the aforesaid zones are demolished by the DTC without any valid reason. Reliance is placed on Clauses 16 and 17 of the agreement. Clause 16 stipulates that even if a particular shelter/booth is removed/demolished, the tenderer is to be permitted to display the advertisement on the alternative shelter/booth constructed/allotted in the same vicinity of the concerned sub-zone and, Therefore, after demolishing of these shelters if other shelters were going to be constructed at the same place or at some other place within the same zone, it is the right of the petitioner to display the advertisement on the said alternative shelters. Clause 17 provides that even if new shelters come up in the same zones, which are under contract with the petitioner, it is the right of the petitioner to get those shelters by paying the additional license fee for them. On this basis, it is argued that it is the petitioner only who will have the right to commercially exploit these shelters during the contract period as the aforesaid clauses confer exclusivity of the contract upon the petitioner;

(b) though the contract provides for termination, it can be only for valid reasons and not arbitrarily. Clause 18 of the agreement stipulates that contract can be terminated on breach by the tenderer of any terms and conditions of the tender or of the agreement. It is further argued that though Clause 22 authorises the DTC to terminate the contract without assigning any reason, by way of three months' notice, the DTC being instrumentality of the State under Article 12 of the Constitution of India, is to act fairly and there cannot be the termination of the contract without any justifiable cause. Mr.Chandhiok, learned senior counsel appearing for the petitioner, referring to provisions of Section 14 of the Specific Relief Act, 1963, submitted that none of the clauses mentioned therein could be attracted in the present case. In support, reliance is placed upon the judgment of a learned single Judge of this Court in Pioneer Publicity Corporation Vs. Delhi Transport Corporation and Another, , which had taken note of various judgments of the Supreme Court as well as the Division Bench judgment of this Court in the case of Rajasthan Breweries Ltd. Vs. The Stroh Brewery Company, . It is the submission of the petitioner that no cogent or reasonable Explanation is forthcoming as to why during the subsistence of the contract with the petitioner, the DTC wanted to award these shelters on but basis;

(c) it is the further submission of the petitioner that the whole action is mala fide and actuated by extraneous considerations. This argument is based on the premise that some disputes have arisen between the petitioner and the DTC with regard to the petitioner's liability for monthly license fee vis-a-vis its entitlement

for rebate in respect of a large number of missing and/or non-existent shelters. In this behalf, the petitioner has filed OMP No. 466/2005 u/s 9 of the Act, which is pending in this Court, wherein there is an interim order against the termination of the petitioner's contract. It is pointed out that as per the clause in the agreement, for resolution of the disputes, the matter is also referred to the Disputes Redressal Committee of the DTC and with a vengeance to oust the petitioner, because of the aforesaid dispute, the present step of inviting tenders is taken by the DTC to spite the petitioner.

(d) The petitioner has challenged the so-called public policy, which allegedly prompted the DTC to issue such a tender, and the submission of learned Counsel for the petitioner in this behalf is that:

(i) under the cloak of such a policy, valid and subsistent contract between the petitioner and the DTC cannot be superseded. What is sought to be done by the DTC can only be commercial expediency and not a matter of public policy. The DTC is attempting to fetch better price by allotting these shelters on but basis, which cannot be termed as a public purpose, but is a move to get better revenue;

(b) public purpose should be such which would outweigh the private interest of the petitioner and no such case is made out, as would be clear from the locations of BQS mentioned in the new tender, which would show that most of the sites are existing ones and, thus, it is clear that the hidden purpose is to earn better revenue and such a purpose cannot be a public purpose;

(c) it was pointed out that even as per the DTC's case, put at its highest, the shelters on but basis are needed for Commonwealth Games, which are scheduled to be held in the year 2010. In the new tender, it is mentioned that the construction of these shelters, as per the approved design, is to be completed within 26 weeks. Thus, only six months period is required for construction of these shelters. Large part of the contract with the petitioner is up to November 2007. Thus, there was no tearing hurry in inviting such tender as the DTC could take such step even after November 2007 and still manage to get the said BOTs constructed much before the start of Commonwealth Games. This would further show that the plea of Commonwealth Games is merely a bogey, which should not be given any credence. Otherwise, submitted the learned Counsel, even when the contract was given to the petitioner in the year 2004, decision had already been taken to hold the Commonwealth Games and, Therefore, there was no reason even to award the contract to the petitioner in the first instance.

6. Mr. Tripathi and Mr. Pushkarna, learned Counsel appearing for the respondent No. 2, refuted these submissions. It was argued that the present petition u/s 9 of the Act was not even maintainable. It was submitted that the action of the DTC in inviting tenders on but basis, which was a policy decision, was not arbitrable and did not arise out of the contract between the parties and, Therefore, when the matter itself was not fit for arbitration, particularly in view of the prayer contained in para 9(b) of the petition, the present petition for interim measure

was also misconceived. On merits, it was argued that Clause 22 of the agreement clearly provided that the respondent could terminate the contract, without assigning any reason, by giving three months' notice. Thus, when the contract was determinable by nature, the petitioner could not ask for an injunction and this aspect was fully covered by the Division Bench judgment of this Court in Rajasthan Breweries (supra). It was further submitted that even if it is presumed that on account of this termination the petitioner would suffer some loss, the only remedy available to the petitioner was to claim compensation/damages for prematurely terminating the contract. Allegations of mala fides and arbitrariness were strongly refuted by arguing that there was real public purpose behind the proposed action, inasmuch as it was necessary to design and construct BQS, which fall in the area located on the roads contiguous to the NDMC area and on roads leading to ISBTs, railway stations and airports and on roads leading to Commonwealth Games venues. It was emphasized that such a decision was taken at the highest level in the Government involving the Chief Minister of Delhi, Chief Secretary of Delhi and all nodal agencies including NDMC and not by DTC alone and, Therefore, it could not be a case of mala fides. It was also argued that once the public purpose is proved, this Court would not go into the question as to whether such a decision was the best decision or there could be other alternatives, as it was not the function of the Court to substitute its decision for that of the experts in the field. Reliance was placed on the judgments of the Supreme Court in the case of The Managing Director, Orix Auto Finance (India) Ltd. Vs. Shri Jagminder Singh and Another, ; Punjab Communications Ltd. Vs. Union of India and Others, ; and Narmada Bachao Andolan Vs. Union of India and Others, . It was also submitted that once public purpose was established, even the legitimate expectation of the petitioner to have the contract till its expiry had to give way to the said public purpose, as held in Union of India (UOI) and Another Vs. International Trading Co. and Another, ; and Punjab Communications (supra).

7. I have considered the respective submissions of both the parties.

8. Since there is an eloquent exposition of the law relating to the termination of the contracts between a private party and the Government/ instrumentalities of the Government in the judgment rendered by a single Judge of this Court (per Vikramajit Sen, J) in Pioneer Publicity (supra), which also happened to be a case involving DTC and on which strong reliance was placed by learned Counsel for the petitioner, it would be prudent to first note as to what this case decides. That was also a petition filed u/s 9 of the Act praying that the DTC be restrained from taking down or defacing the advertisement panel on the back as well as side panels of the DTC buses. As is obvious, the contract awarded by the DTC in the said case was for displaying the advertisement on the buses, i.e. "back panel right side space and inside space above the window panel". The contract was for a period of three years, valid up to 27.9.2003. However, Clause 9 (c) of the said contract, which entitled the DTC to terminate the contract without assigning any reason and by giving three months' notice in writing (analogous to Clause 22 of

the present contract) was invoked vide letter dated 2.11.2002 and the contract was sought to be terminated with effect from 2.2.2003. The reason given in the letter terminating the contract was that such a step was taken in view of the directions of the Hon''ble Supreme Court as well as of the Government of NCT of Delhi. This action was challenged by the licensee, who was awarded the contract. On behalf of the DTC, it was argued that since the contract was terminable by three months'' notice, the petitioner could not seek enforcement of this contract and the only remedy was to seek compensation for wrongful termination but not a claim for specific performance of the agreement. Various judgments of the Supreme Court as well as this Court were cited, including the case of Rajasthan Breweries (supra). The petitioner in the said case, on the other hand, had argued that the distinguishing feature was that the cases cited by the counsel for the DTC related to the contracts between the private parties and not between a private party on the one hand and a public body on the other. The contracts with the Government/public bodies were to be governed by different yardsticks as per the law laid down by the Supreme Court in Kumari Shrelekha Vidyarthi and Others Vs. State of U.P. and Others, ; and Ester Industries Ltd. Vs. U.P. State Electricity Board and Others, . It was also argued by the petitioner in that case that since the contract itself stipulated that damages could not be claimed, the objections pertaining to provisions of the Specific Relief Act, 1963 would not come into play.

9. After considering these submissions, the position in law relating to contract with the Government was recounted in para 7 of the judgment and this is the opportune stage to reproduce the same:

I have given due thought to the contentions of the rival parties. The freedom which exists under the realm of private contract in respect of the performance of contractual obligation does not apply in the same measure where the Government is a party. Every action of the Government has to pass the rigorous inquisition of fair play, lack of arbitrariness, and its being founded on good and sound reasons. Government''s freedom to contract as well as freedom to break free from the obligations of a contract is now rightly restricted in diverse manners. While the Government may enjoy the role of distribution of largesse, it may also suffer from the vulnerability of committing errors or perpetrating an inequitable or unjust implementation of its policies through its faceless and unidentifiable officers and agents. It, Therefore, behoves the Court to treat Government contracts in a manner altogether different to that of the compact between private parties. Reliance of Ms. Jyoti Singh on the decisions mentioned above is of no avail as the learned authors of the judgments have taken care to highlight the fact that they had to pronounce upon contracts between private parties. The Hon''ble Supreme Court has opined that even where the State is empowered by a particular clause in a contract to terminate it by a notice simplicitor, the only possible construction that can be given to such a clause is that the reasons which prevailed upon it for justifying the termination need not be conveyed to the adversary. The Apex Court has clarified that such a clause

does not permit the taking of arbitrary, biased, unreasonable or an ill- informed decisions.

10. Thereafter, the learned Judge proceeded to apply those principles on the fact situation prevailing in the said case and opined that there were no adequate reasons to justify the action for prematurely terminating the contract. In the process, it was observed that a distinction must be drawn between termination and determination. The said contract was determinable in the context of the Specific Relief Act on the expiry of three years and it could be terminated prior thereto only when it is founded and predicated on good and express reasons and it should be unbiased. For our benefit, para 8 containing this discussion is extracted below:

Applying these principles to the present case, I am left in no doubt that the DTC has not been able to adequately justify its action for terminating the Contract before it was otherwise determinable (i.e. after three years), on the grounds disclosed by it above. The reasons which are now sought to be relied upon were in existence at the time when the Contract was entered into and also when it was given a fresh lease of life after the compromise. This is not to say that the DTC like any other public body would be precluded from correcting errors which have been occasioned due to an oversight of the law or legally valid directions and binding judicial Orders. In the present case the DTC has failed to disclose any happening which has made it aware of the judgment of the Hon''ble Supreme Court or of directions of the Government of NCT of Delhi. As far as I can see it, its actions are whimsical and devoid of reasons. I cannot ignore the fact that bus-shelters have been constructed which contain and comprise attractive and fetching advertisements. Quite recently hallows or garbage collection centers, public lavatories etc. comprising even larger and more attractive advertisements have mushroomed all over the capital. These ventures equally pose traffic distraction and hazards. In the NDMC area it is permissible to carry advertisements on lamp-posts. Is it then open to the State, or any of its instrumentalities to predicate its decision to terminate a contract on grounds which it does not adhere to itself. The Court cannot turn a blind eye to the fact that the advertisements on bus shelters, hallows, public lavatories and garbage collection centers is a larger traffic hazard than advertisements on the back of a DTC bus. So far as advertisements inside these buses are concerned it is difficult to comprehend any reason or manner in which these advertisements would act as traffic hazards. In regard to `side panels'', these are altogether outside the vision of traffic proceeding in the same direction as well as on the opposite direction on which the DTC bus is proceeding. The judgment of the Hon''ble Supreme Court in *P. Narayan Bhatt v. State of Tamil Nadu and Ors.* CA 2803/2001 is apposite and relevant. The Apex Court accepted the appeal against the finding of the High Court that the mere visibility of the hoarding to the traffic is sufficient for either removing the hoarding or from refusing to grant a license or from renewing a license. Mr.Chandhiok has also pointed out that the Commissioner-Secretary, Transport Department, Government of NCT had filed an

affidavit in Writ Petition No. 13029/1985 titled M.C. Mehta v. Union of India pending before the Hon''ble Supreme Court praying that the advertisements and hoardings be permitted on Kiosks and street lamp posts as also on DTC bus shelters with appropriate restrictions of size and the colour as such advertisements or hoardings would generate necessary funds for the agency. I cannot appreciate the Respondent's stand that its decision to put an end to the Contract was to implement the direction of the State Government. This is merely an ipse dixit. Keeping in view the provisions of Order XXXIX Rule 2 it is no longer possible to contend that the Court does not possess power to prohibit or prevent the breach of contract. If this is possible in the realm of private contracts, it is an obligation in the realm of pubic enterprises. Furthermore, the provisions of Specific Relief Act relied upon by Ms.Singh are not attracted for the simple reason that the contract itself prohibits the claim of grant of compensation. A distinction must be drawn between a termination and determination. The present contract was determinable in the context of the Specific Relief Act on the expiry of three years. It could be terminated prior thereto but as has been laid down by the Hon''ble Supreme Court, where this power is to be employed by the State, it should be founded and predicated on good and expressed reasons and it should be unbiased. After the expiry of two and a half years of the contract nothing new has crept up to sufficiently justify its precipitated termination.

It is clear from the aforesaid that the Court found that the termination was whimsical and devoid of reasons. The reason given by the DTC was that the termination was based on the directions of the Hon''ble Supreme Court in the case of M.C. Mehta v. Union of India (W.P. No. 13029/1985). However, in the said case the Supreme Court had banned advertisements and hoardings on kiosks and street lamp posts as also on DTC bus shelters and, Therefore, in the guise of these directions, it was not permissible to terminate the contract of the petitioner in the said case, which related to advertisement on the back panel ride side space and inside space above the window panel on the DTC buses itself.

11. I may only add here that in series of cases decided by the Apex Court, a distinction is drawn between the contracts with the Government/Governmental agencies which are purely in private law domain and the contracts having public law element and/or statutory flavour and the view taken is that the contracts of former category are to be dealt with differently, though the distinction between the two is getting blurred but not totally obliterated. However, it is not necessary for me to go into these aspects as these were not argued and insofar as the present case is concerned, I proceed on the basis of dicta contained in para 7 of the judgment in Pioneer Publicity (supra). The underlying ratio in this judgment is that the Government body and/or instrumentality of the State would terminate the contract prematurely only on justifiable reason, though they need not be conveyed to the adversary. Thus, such a decision has to pass through the test of non-arbitrariness as well as reasonableness and the respondent should be able to justify such an action on cogent and valid reasons. Whether the DTC has been able to pass this test is the question which I proceed to consider now.

12. In order to justify its decision, which according to the DTC is based on public policy, the DTC produced the relevant records. Perusal of the record shows that for the purpose of Commonwealth games, it is planned that state of art bus shelters should be constructed on the roads which would be utilized during the games. These are the roads which are contiguous to the NDMC area and the ones" leading to ISBTs, railway stations and airports and those leading to Commonwealth Games venues. The Commonwealth Games, as the very name indicates, which are going to be hosted by India and Delhi as the venue, are the games where all Commonwealth nations would be participating. These include countries from almost all continents. It also cannot be disputed that for holding these games, the host country is bound to meet the specification and requisite standards as laid down by the Organizers of these games relating to the infrastructure, proper and necessary facilities at the venues of the games etc. Of course, need to revamp existing stadia and construct more; provide facilities for player and sports persons, including "Games Village" is manifest. Such facilities and infrastructure are not and cannot be confined to various stadia and venues alone where games are to be held. For watching these games, people from all the participating countries would be thronging the city. In fact, to make the event a success and generate revenue, it is necessary to attract the people from all over and to achieve that proper infrastructure in all respects has to be in place. Such an event is always exploited as "Sports and Tourism" combined. It is for this reason, these requirements include providing adequate hotel and other accommodation, necessary infrastructure outside venues, including transportation, etc. Above all, Delhi as a city and NCR region will have to show its best face. For this, all types of facilities like more luxury and budget hotels, making metro rail fully operational, modernisation of airports etc. is needed. Other facilities like proper and well constructed roads, flyovers, availability of all forms of transportation including private and public modes of transportation is required as well. This brings the necessity of state of art BQS and construction of toilets as well. Judicial notice can be taken of the fact that Organizers of the games have been visiting Delhi and inspecting the progress insofar as the preparation for these games are concerned and they have also expressed, in the past, their concern over the slow progress. To meet the deadlines, it is necessary to bring impetus to progress in this direction.

13. It seems that with this end in view, letter dated 26.6.2006 was written by the Special Secretary to the Chief Minister of Delhi based on the deliberations of meeting held by the Chief Minister with the Commissioner of MCD on 22.6.2006 and the decisions taken in the said meeting were forwarded to various bodies like MCD, DDA, DTTDC, NDMC, PWD, Commissioner (Transport) Delhi, DTC, etc. The perusal of this letter would show that various steps were to be taken in this behalf. As many as ten actions were proposed and it was also advised that a core group consisting of officers from the aforesaid departments be formed immediately to work out the common parameters for planning, execution and funding of the projects mentioned therein and for sorting out inter-departmental

issues. These actions included the following one, with which we are concerned in this petition:

The bus queue shelters in the city must be upgraded with modern designs and may be given on but basis for their upkeep and maintenance. MCD will extend the necessary cooperation in the matter. (Action: Commissioner (MCD); Commissioner (Transport), CMD, (DTC).

14. One thing is amply clear. The decision was taken at the level of the Chief Minister, in consultation with the Municipal Commissioner to:

(i) upgrade the BQS int eh city with modern design; and

(ii) they be given on but basis.

It appears that with this purpose in mind, the Chief Secretary, Government of NCT of Delhi had called a meeting on 21.7.2006 regarding standardization and finalization of designs for BQS and construction of toilets on but basis and necessary steps warranted for this purpose were formulated in the said meeting. The decisions taken were minuted by the DTC and sent to the Chief Secretary, which was okayed by him. Reading of the minutes would show that the Chief Secretary had emphasized that the design of the BQS must provide for, inter alia, sufficient space for passengers, proper shelter from Sun and rain, space for signage/ advertisements. The design could be modular so as to suitably enhance/ reduce the available shelter space, depending upon the passengers' traffic movement. NDMC had prepared the model for these shelters in respect of 190 places, on but basis, which was discussed in the said meeting. The representative of NDMC had informed that the said shelter would be built with stainless steel components, poly carbonate roofing, facilities for proper drainage of rain water, water harvesting, passenger information system, advertisement panel, electric illumination, etc. It was also informed that this design was appropriate for physically challenged persons. Various other nuances of these shelters were discussed. The NDMC design, with certain modifications suggested by the CMD (DTC), was approved by the Chief Minister as recorded in her note on 21.8.2006, inter alia, to the effect that the NDMC design, with suggested modifications, can be taken for BQS "initially the DTC Bus Shelters may be taken up in the zones contiguous to the NDMC area and the roads leading to games venues and other areas at present economic design already in place and suggested by the CMD could continue". The Chief Secretary was instructed to call a meeting of all the agencies, including MCD, "to give their commitment to implement this project without delay". The meeting was, accordingly, held on 14.9.2006 and further modalities were worked out. It is not necessary to take note of each and every step taken thereafter. Suffice it to state that this ultimately culminated in the decision for construction of BQS as per the NDMC design, with certain changes, on but basis falling on the roads contiguous to the NDMC area and on roads leading to ISBTs, railway stations and airports and on those leading to Commonwealth Games venues. Such BQS were earmarked and

thereafter tender in question was floated.

15. This record, thus, clinchingly shows that the action of the respondent DTC is not mala fide or arbitrary as alleged. The action is not taken with a view to spite the petitioner or with an oblique motive to cut short its contract. It was not the petitioner's contract but upgradation of BQSs which was in mind when the decision to this effect was taken. That too was prompted by the consideration of Commonwealth Games, 2010. If the decision is taken to construct the BQS of specific design to meet international standards initially on the aforesaid roads, which are necessarily to be used for the purpose of the Commonwealth Games, this is a policy decision taken in good faith. Moreover, the decision taken is not even at the level of DTC but by the highest executive in the State Government, namely the Chief Minister, in consultation with all other agencies apart from DTC. By no stretch of imagination it can even be inferred that just to ensure that the petitioner's contract is prematurely terminated, the officers in DTC initiated this move. There cannot be any mala fides on the part of the Chief Minister, Chief Secretary, NDMC and other agencies, nor are these attributed or were even argued when during the course of arguments the basis for this decision and the level at which decision is taken was disclosed. Once it is accepted that the decision is taken to achieve the aforesaid public purpose, most of the arguments of the petitioner become redundant and fall into pale of insignificance, particularly those which were based on the premise that there was no public purpose to be achieved or the decision was arbitrary or there was no justifiable cause to take such a step. The other argument, namely, even if there was public purpose, the respondent could wait till the expiry of the contract period with the petitioner would also be of no avail. In the first place, what is to be noticed is that all round efforts on all fronts are to be made for the preparation of the Commonwealth Games. As pointed out above, letter dated 26.6.2006 from the Office of the Chief Minister to various agencies listed as many as ten steps to be taken. Action has to be in all directions simultaneously. That is proper management. There cannot be piecemeal efforts on individual fronts. That would be the very negation of the sound management policies and effective planning. If in the process one of the items is the construction of BQS and the decision to give the same on but basis, it may not be proper to defer the same to a future date only because there is a contract with the petitioner, which is subsisting one. Clause 22 empowers the DTC to terminate the contract by giving three months' notice. If the DTC has valid reason, as is shown in the present case, it would not be open to the petitioner to challenge the prudence behind such a decision only on the ground that such a step should be taken after the expiry of the contract with the petitioner or just before the Commonwealth Games, as these shelters could be constructed within six months period, as was suggested by learned Counsel for the petitioner. Above all, it is not even the province of this Court to suggest that there are other alternatives which may be more suitable or better. It is trite law that the courts are not to interfere with the decisions of expert bodies unless it is shown that such decisions are arbitrary, irrational or illegal. The Court

cannot substitute those decisions by providing its own wisdom and stating that there could be a better policy decision.

16. In *Narmada Bachao Andolan* (supra) the Apex Court observed as under:

There are three stages with regard to the undertaking of an infrastructural project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project are to be regarded as a policy decision. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a court may have to play is to see that the system works in the manner it was envisaged. (para 227)

xx xx xx The courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. (para 229)

xx xx xx The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, Therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law. (para 233)

The Court also categorically held that a hard decision need not necessarily be a bad decision.

17. In *Punjab Communications* (supra), it was observed:

The change in policy can defeat a substantive legitimate expectation if it can be justified on *Wednesbury* reasonableness. The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, Therefore, clear that the choice of the policy is for the decision maker and not for the Court. The legitimate substantive expectation merely permits the Court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could

have made (para 40).

18. Consequently, I do not find any merit in this application as the petitioner is not entitled to the relief claimed for. This petition is, accordingly, dismissed. There shall, however, be no order as to the costs.