

(1986) 03 GAU CK 0017
In the Gauhati High Court
Case No : Civil Rule No. 4 of 1984

Shri Dilip Kumar Dutta

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 11-03-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1986) 1 GLR 367

Hon'ble Judges : S.N. Phukan, J; R.K. Manisana Singh, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, B.K. Goswami, S.B. Roy and S.N. Sarma, for the Appellant; D.P. Kundu, B. Das and S. Dev, for the Respondent

Judgement

S.N. Phukan, J.—It was decided to expand the existing 1.5 million gallon discharge capacity water Treatment Plant at Agartala, the capital of Tripura by constructing another 2 million gallon discharge capacity Water Treatment Plant at Badargbat, Agartala. As the Municipal authority did not have require technical personnel the work was entrusted to the Public Health Engineering Department, Government of Tripura. The Executive Engineer of the Public Health Engineering, Respondent No. 2 issued abridged tender notices on turn key basis at an estimated cost of Rs. 20 lakhs twice i.e. on 20.10.81 and 27.3.82. On both the occasions the tenders received were not accepted. Finally on 20.11.82 third call abridged tender notice on the same terms and condition was issued. The Petitioner along with six other persons submitted their tenders, The present petition arises out of this third call tender notice.

2. The Petitioner contacted M/s. Project Services and Systems Consultant, Calcutta and M/s Geo Millon and Co. (P) Limited Calcutta; two of the most reputed engineering firms in this field for collaboration and both the firms agreed to do so. The existing 1.5 million gallon discharge capacity Water Treatment Plant at Agartala was constructed by M/S Geo Miller and Co. (P) Limited, Calcutta and the Petitioner states that the present plant is working to the entire satisfaction of

the authorities.

3. According to the tender form the tender was to be submitted in three separate envelopes being envelope "A", "B" and "C". Envelope "A" should contain deposit receipt of earnest money, envelope "B"- techno commercial offer and envelope "C" price offer. The envelope "A" was to be first opened and if it was found that tenderers have deposited the requisite earnest money their envelopes marked "B" would be opened on that date and the envelope marked "C" would be opened on latter date to be notified. Accordingly envelopes "A" and "B" were opened on 12th January, 1983. Since it was a turn key project the Petitioner after investing considerable money, devised and designed the said plant in consultation with his collaborators and submitted lay-outs, designs, specifications and drawings of the project to Respondent No. 3 in envelope "B". The Petitioner came to know that after evaluating the documents including the techno-commercial offer, the tender of the Petitioner more particularly the techno-commercial offer, drawings, designs etc. was found to be the best and in good shape whereas the tenders of the other six persons were found defective. On 25th January, 1983 the Petitioner forwarded another drawing to Respondent No. 5 with a copy to Superintendent Engineer, Respondent No. 4 providing for future expansion of the project. The Petitioner has also alleged that even the team of experts from Calcutta Metropolitan Development Authority was of the unanimous opinion that drawings, designs etc. submitted by the Petitioner were best in every respect.

4. Thereafter on 10th March, 1983 the Superintendent Engineer, Respondent No. 4 demanded a declaration that in the event of failure of their collaborators joining with them the tenderers would be liable to pay a sum of Rs. 1 lakh which was duly furnished by the Petitioner.

5. On 21st March, 1983 the Superintendent Engineer, Respondent No. 4 forwarded to the tenderers lay-outs, designs etc. requesting them to sign there documents as a token of acceptance and to intimate the extra amount, if any, in respect of tender price which will be added or deducted from the lump sum price quoted in envelope "C". According to the said direction of Respondent No. 4 the said drawings, designs etc. along with price variation, if any should be submitted in a separate envelope marked "D". The Petitioner has alleged that the above layouts, designs, drawings, maps etc. circulated by the Respondent No. 4 were lay-outs, designs etc., with minor variation submitted by him in envelope marked "B" and accordingly he lodged a protest on 7.4.83 in writing. The Petitioner also drew the attention of Respondent No. 4 that the direction to submit the said envelope "D" is a clear deviation, from the requirement of the notice inviting tender. Petitioner has further alleged that Respondents have acted to the serious detriment and prejudice of the Petitioner by divulging his techno-commercial offer, designs, lay-outs etc. without his permission. However, on 11th April, 1983, without prejudice to his right and under protest the Petitioner submitted the envelope-D to Respondent No. 5. Envelopes "C" and "D" were opened on the

April 1983 and the Petitioner has alleged that according to the opinion of Respondent No. 5 and the Divisional Accountant, on the basis of the guidelines given by the Calcutta Metropolitan Development Authority his tender was considered to be the best and was recommended for acceptance. Thereafter no action was taken for about three months and on 3rd October, 1983 afresh, notice inviting tender for the same work was issued by the Respondent No. 5 at an increased estimated cost of Rs. 70 lakhs. The Petitioner applied for tender papers on 18th October, 1983 which was received by him on 14th December, 1983 and on scrutiny he found that the Respondents used his drawing, design etc. with minor variation in this fresh tender notice.

6. The Petitioner has alleged that the Respondents, who were-public officers, instead of acting fairly, honestly and with just way, acted in a high handed, arbitrary and malafide manner. The Petitioner has further alleged that he apprehends that the malafide act of Respondent Nos. 3 and 4 in not awarding the contract to the Petitioner emanated ulterior motive and to ensure personal benefits to a particular tenderer.

7. According to Respondents all the tenderers including tenderers submitted by the Petitioner and others in response to third call notice dated 20.11.82 were found not fit by the work Advisory Board, the final authority under the C.P.W.D manual which applies to Tripura and accordingly ordered that fresh tender notice be issued.

8. The Respondents have denied malafide, violation of any rules or norms in dealing with the tender of the Petitioner or any arbitrariness or that they acted in a high banded manner. The Respondents have further denied chat the expert team from the Calcutta Metropolitan Development Authority considered the tender of the Petitioner all the best, or that they used drawings included in the techno-commercial offer of the Petitioner.

9. At this stage we would like to consider the preliminary objections raised by Mr. D.P. Kundu, Advocate General. Mr. Kundu urged that the present petition is liable to be thrown but as it is based on disputed facts and also for non-joinder of necessary parties and that the prayer of the Petitioner for a mandamus directing the Respondents to award the contract in his favour cannot be granted in a petition under Article 226 of Constitution.

10. Regarding non-joinder it has been urged that all the persons who submitted tenders in response to third call notice dated 20.11.82 and also the members of the Works Advisory Board, namely, Chief Secretary, PWD. Secretary and Finance. Secretary should have been impleaded as parties. According to Mr. J.P. Bhattacharjee the law on this point is well settled and, the above persons are not necessary parties as no relief has been, claimed against them and the present dispute can be decided in, their absence. Regarding the members of the works Advisory Board Mr. Bhattacharjee further contended that since no malafide has been alleged against them, they need not be made parties as they are only

functionaries of the Government, who is before us.

11. Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, is a leading case on this subject. In that case their Lordships held that law on the sub set is well settled-a necessary party is one without whom no order can be made effectively, a proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision on the question involved in the proceeding. In A. Janardhana Vs. Union of India (UOI) and Others, (para 36) the question of validity and legality of the revised seniority list of some officers of the Military Engineering Services was considered and the Supreme Court rejected the contention that the members of the service who had scored a march over the Appellant in the seniority list should be impleaded as Respondents. Their Lordships pointed out that relief was sought only against the Union of India and the concerned Ministry and not against any individual, nor any seniority is claimed by any one individual against another particular individual, This question was also dealt with by their Lordships In B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, Rejecting the objection of non-joinder it was held that even if some individual affected parties were not impleaded their interests were identical and those had been sufficiently well represented. Learned Advocate General, Tripura drew our attention to Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, and also to Jaidev Jain and Co. Vs. The Union of India (UOI) and Another, In Prabodh Verma (supra) it was held that a High Court ought not to hear and dispose of writ petitions under Article 226 without the persons, who would be vitally affected by its judgment, being before it as Respondents or at least some of them being before it as Respondents in a representative capacity if their number is too large to join them as Respondents individually. In Jaidev Jain and Company (supra) a Single Bench held that persons who have participated in the scrutiny and recommended for acceptance of tenders are necessary parties and their non-joinder affects maintainability of petition especially when particulars regarding them were available to the Petitioner.

12. Thus from the above authorities of the Supreme Court we hold that in a writ petition under Article 226 of the Constitution a necessary party is one without whom no order can be made effectively and a party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision on the question involved in the proceeding. We further hold that necessary parties to such petition are those against whom relief is sought and in whose absence no effective order can be rendered by the Court. In a petition where an order is challenged by which a large number of persons are affected, even if some individual affected parties are impleaded the petition is still valid in as much as the interests, which are "identical, are sufficiently well represented.

13. The members of the Works Advisory Board, namely. Chief Secretary, Finance Secretary and Secretary, P.W.D. are officers of the Government of Tripura. State has filed their counter and the Secretary, P.W.D, who was a member of the said

Board has also sworn in affidavit in support of the counter. No malafide has been alleged against the member of the Board. The order, if any, will be passed against the Government and not against the members of the Works Advisory Board. The proceedings of the Board is before us. We are of the Arm opinion that we can pass the final order in this writ petition without making the members of the Works Advisory Board parties to the proceeding. That apart, their presence is also not necessary for complete and final decision involved in the proceeding. The reliefs sought for in this present petition is against the State Government and not against any individual tenderers who submitted their tenders in response to third call notice dated 20.11.82. On the authority of the Supreme Court in A. Janardhan (supra) we hold that the tenderers are not necessary or proper parties in this proceeding as the relief, if any, granted will be against the Government and not against any tenderer. The fresh notice inviting tender was issued on 3.10.83 and the tenders were submitted after the present petition. No relief has also been sought for against the said tenderers. Therefore, there is no force in the contention of the learned Advocate General. That apart, in this present petition the Division Bench of this Court took note of the fact that the above tenderers were not parties to the present proceeding and accordingly by an order dated 28.3.84 observed, inter alia, on the admitted position that if ultimately the rule is discharged the validity of the tenders submitted by the tenderers, who are not parties before the Court, would be surely affected adversely and the Court would be indirectly a party for causing, prejudice to the tenderers and accordingly permitted the Respondents, to do everything necessary for the purpose of processing the tenders. The Court further ordered that this will not prejudice the right of the Petitioner and to safeguard the interest of the Petitioner it was directed that if any tender is chosen or selected the letter of appointment may be kept ready, but it may be despatched only after obtaining the leave of the Court. According to the said order if the petition is allowed, natural consequences will follow, which may include asking the Respondents, not to despatch the letter to the successful tenderer. Thus it appears that the interest of the tenderers to the notice dated 3.10.83 was looked after by the State and this Court after considering the entire matter passed the above order and as such they are not necessary parties to the proceeding.

14. On perusal of Jaidev Jain and Company (supra) relied on by the learned Advocate General, Tripura it appears that the law laid down by the Supreme Court was not brought to the notice of the Hon"ble Court. That apart, that tender was in respect of street collection and delivery of goods and parcel from Calcutta, which was to be awarded on behalf of the Eastern Railway who was not made a party. In the present case the contract was to be awarded by the Respondents and the function of the works Advisory Committee was to give advise regarding suitability or otherwise of the tenderers, We are of the opinion that Jaidev Jain and Co. (supra) is not applicable to the facts of the present case.

15. Regarding the disputed facts, we are of the view that we need not enter into these facts as the fate of this petition will depend on other factors, namely

asking the tenderers to furnish envelope "D" etc. and we feel that this petition can be disposed of without deciding their disputed facts.

16. Regarding the prayer of the Petitioner Mr. J.P. Bhattacharjee has fairly conceded that this Court need not sit in appeal and award the contract, but can definitely pass appropriate orders as per law.

17. Let us now consider the main issues involved in the present writ petition. By the notice in question lump sum tenders were invited forth expansion of the scheme on "turn key" basis. Procedures have been laid down under the heading "Special condition for dropping of tenders", according to which the tenderers are supposed to deliver three sealed envelopes with the marking "A", "B" and "C" as stated above. The offer will have to be very elaborate giving full details of assumption made and factors considered for design and specification of various categories of civil, mechanical and electrical etc. works.

18. Thus it appears that the notice inviting the tender was on turn key basis. Learned Counsel for both sides have drawn our attention to the relevant portion of the manual on Water Supply and Treatments (2nd Edition) (2nd impression), published by Central Public Health and Environmental Engineering Organisation, Ministry of Works and Housing, New Delhi, 1977 (at page 15) to elaborate their contention regarding "turn key" project. On perusal of the said manual it appears to us that tender for such work is invited on a lump sum basis either on the performance specification "turn key" projects or descriptive specification. Where performance specifications are given, process, design and construction become responsibility of the contractor while in the descriptive specification the contractors responsibilities cease with the construction of the point conforming to the specification laid down, Since the present project is a "turn key" project it is the responsibility of the contractor to design and construct the project. So the envelope-B is vital as it contains the techno-commercial offer containing details of technical specification of the project on the basis of which the tender will be selected.

19. Mr. J.P. Bhattacharjee, learned Counsel for the Petitioner urged the following points:

(i) The authorities cannot depart from the norms and procedure notified in the tender as per law laid down by the Apex Court, Mr. Bhattacharjee submits that the Petitioner has a right to have his tender namely envelopes "A", "B" and "C" considered on merit by the Works Advisory Board and as there was a departure from the notified norms, the actions of the Respondents were unauthorised, illegal and arbitrary and issuance of fresh tender dated 3.10.83 was also illegal.

(ii) Since it was a "turn "key" project, there was an assurance on the part of the Respondents to consider the tender, as per notified procedure on the basis of which the Petitioner invested considerable amount of money for obtaining necessary drawings, specifications etc. and as such the Respondents were bound by their promise to complete the notified procedure and Respondents could not

have issued the tender notice on 3.10.83 without first considering the Under of the Petitioner contained in envelope "A", "B" and "C".

(iii) Independently, Mr. Bhattacharjee has also attacked the notice inviting tender dated 3.10-83 on the ground that it was issued without authority and the notice is contradictory in nature as it is a mixture of turn key specifications and descriptive specification which is wholly unknown and against the established norms and standards and the Respondents have also used the drawings, specifications etc. of the Petitioner.

20. Mr. D.P. Kundu, learned Advocate General Tripura urged that in view of the delay of nine months in filing the petition it is liable to be rejected, that by furnishing the envelopes the Petitioner submitted to the jurisdiction of the Respondents and as such he was estopped now front questioning the procedure. The learned Advocate General further urged that Work Advisory Board, the final authority, considered all the tenders and rejected these after taking into account all the relevant factors as per tender notice. After applying its mind the Board, while rejecting the tenders gave good and sufficient reason and this Court in a writ petition cannot sit as an appellate authority over the judgment of the Works Advisory Board. Mr. Kundu also stated that the Works Advisory Board did not take into consideration any extraneous circumstances and as such the decision of the Board is legal, valid and proper. Our attention has also been drawn to the comparative statement which was prepared for arriving at a final decision.

21. According to Mr. Kundu the doctrine of promissory estoppel does not apply to the present case and further contended that the Petitioner has no locus standi to challenge the notice inviting tender dated 3.10.83 as he did not submit his tender though he purchased tender papers.

22. In *Union of India and Ors. v. M/s Anglo Afghan Agencies etc.* AIR 1968 SC 718 the Textile Commissioner published a scheme providing incentives to exporters of wollen goods. According to the scheme import licence up to the value of goods exported was to be issued which was not followed in case of the Company. Their Lordships held that even assuming the provision relating to issue of Trade Notices offering inducement to prospective exporters were in character executive, the Union Government and its officers were not entitled at their mere whims to ignore the promises made by the Government. According to their Lordships the Textile Commissioner was, in the ordinary course, required to grant import certificate for the full value of the goods exported. The Court further held that it is open to a party who had acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it. If the promised import licence was not given to an exporter, who had acted to his prejudice relying on the representation Courts are not powerless to grant relief.

23. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, a notice was issued inviting tender by the International Airport Authority

of India for putting up and running a second class restaurant and two Snack Bars at Bombay Airport for a period of three years. There was a condition of eligibility that a person submitting a tender must be a registered IInd class hotelier having at least five years experience. The Supreme Court held that this condition of eligibility must be satisfied before a tender can be considered. It was held that it is well settled rule of administrative law that an executive authority must be rigorously held to, the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of then. This test of eligibility laid down was an objective test and not a subjective one and the authority cannot accept tender of persons who does not fulfill the requisite qualifications. Their Lordships further observed that it is obvious having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law that the International Airport Authority was not entitled to act arbitrarily in accepting the tender of 4th Respondent (who was not a registered IInd class hotelier having at least five years experience), but was bound to conform to the standard or norm laid down in para 1 of the notice inviting tender.

24. In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, their Lordships observed that where a Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily of its sweet will. Every activity of the Government has a public dement in it and it must therefore, be informed with reasons and guided by public interest, If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test it would be unconstitutional and invalid. In *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, the Financial Corporation of Gujarat was approached for a loan and the Corporation sanctioned the same on certain terms and conditions which was duly accepted by the Company. Acting, on the solemn undertaking of the Corporation the Company proceeded to undertake and execute the project. However, trouble arose and the Corporation did not disburse the loan. The Supreme Court held that principle of promissory estoppel would come into play and definitely estoppel the Corporation from backing out of its obligation arising from the solemn promise. Mr. J.P. Bhattacharjee has also placed reliance on *Ram and Shyam Company Vs. State of Haryana and Others*, in support of his contention that in considering tenders the State is bound to adhere to the notified norms declared by it in the notice inciting tender as in such case State will be discharging its administrative function and in doing so it cannot violate the fundamental principle of fair play. Mr. Kundu urged that grant or refusal of the contract is entirely in the discretion of the State and as such the doctrine of promissory estoppel is not applicable in the instant case and he has placed reliance in *Chingleput Bottlers Vs. Majestic Bottling Company*, This case, in our

opinion, is not applicable to the present petition as the case relates to granting of liquor licence which stands on a different footing and for which there was a separate rule for granting of such licence.

25. In the light of the decisions cited above we hold that the Government and its officers are not entitled to ignore the promises made in the notice inviting tender. There is a promise on the part of the Government while issuing the notice to adhere to some norms and the said promise must be fulfilled. The executive authority must scrupulously observe the standards laid down in the notice inviting tender. From Article 14 and the administrative law evolved by the judicial decisions the Respondents, in the instant case, should scrupulously follow the norms laid down in the notice inviting tender, and they can not introduce any new condition to the said notice after the tenders were submitted. We would also like to point out; that in entering contracts the Government cannot act arbitrarily; at its sweet will as every activity of the Government has a public element in it and it must, therefore, be informed with reasons and guided by public interest. The validity of the action of the Government shall have to be tested on the touchstone of reasonableness and public interest and if it fails to satisfy either test the action of the Government would be illegal and unconstitutional.

26. In the preterit petition it is not disputed that in the abridged notice dated 20.11.82 conditions were laid down asking each tenderer to submit the tenders in three envelopes marked "A", "B" and "C". It was specifically mentioned that at first envelope "A" will be opened and the tenderers who are found to have deposited the requisite earnest money will be eligible for further consideration and their envelopes marked "B" will be opened on the same day. Envelope "C" will however be opened on a later date to be notified afterwards. Those promises were made on behalf of the Government in the notice inviting tender and as per law laid down by the Apex Court the officers are not entitled to ignore the said promises made and the officers must scrupulously observe the standards laid down in the notice. But we find that on 21st March, 1983 the Superintendent Engineer, Respondent No. 4 issued a letter (Annexure-K) to five tenderers including the Petitioner informing them that the envelope containing earnest money and techno-commercial offer; were opened on 12.1.83 and that the technical specification and general condition enclosed in the said letter were fixed for the work on the basis of techno commercial offer given by different tenderers. By the said letter the tenderers were asked to sign these technical specification, general condition etc. particulars along with drawings, as a token of acceptance thereof and there after should be submitted to the Respondent No. 5 in another envelope marked "D". The tenderers were also asked to intimate extra amount or rebate which will be added to or deducted from the lump sum price quoted in envelope "C". These facts are not disputed. The Petitioner's contention is that the drawings, designs etc. enclosed with Annexure-K was his drawings, with minor modifications. But this has been disputed by the Respondent and we need not enter into this controversy. On the basis of the admitted facts it appears that

the officers of the Government-completely ignored the promises made in the original notice inviting tender by introducing this envelope "D". Respondents cannot introduce this new fact in the tender notice, more particularly after the tenders were submitted and envelopes "A", "B" and "C" were opened. This departure from the original notice cannot stand in view of the law laid down by the Apex Court. In "turn key" projects process, design, construction etc. become responsibility of the contractor. That will also appear from the tender paper. If we look at the short description of the project mentioned in causes 43 and 46 of the tender notice it is absolutely clear that complete detail drawings including general arrangement of the treatment plant and Intake structure should be given by the tenderer. It is highly improper on the part of the Respondent No. 3 to prepare a separate design and drawing on the basis of the materials supplied by the tenderer which they have procured after spending considerable amount of money. If we test the action of the Respondents on the touchstone of reasonableness and public interest we find that they have failed to satisfy the above tests.

27. For the reasons stated above we hold that Respondents completely ignored the promises made in the tender notice by introducing envelope "D" and also did not follow scrupulously the; norms laid down in the tender notice. The Respondents also violated the fundamental principle of fair play by preparing their own drawing and design on the basis of drawings and designs-submitted by the tenderers in envelope marked "B". The action of the Respondents cannot stand and is liable to be quashed.

28. At the time of bearing, the proceedings of the meeting of the Works Advisory Board held on 30th July, 1983 were-placed before us. From the proceedings it appears that tenders-were considered, but all the tenders were rejected on the grounds, inter alia, that in the tender notice estimated cost was-shown as Rs. 20 lakhs, though the lowest tender was valued at Rs. 48 and odd lakhs which was even considered unworkable. The Board also noted that the notice did not clearly set out the nature of A, B, C, D procedure. Board was of the view that though envelope "D" was not mentioned in the notice it was not a serious lapse as opportunity was given to all valid tenderers to submit envelope "D". We do not find from the proceedings as to what papers were placed before the Board. The Petitioner has annexed the analysis made by the Executive Engineer as Annexure-P. 1 and the observation of Divisional Accountant, PHE Division No. 1 as Annexure-P. 3. In these two Annexures it is clearly stated that introduction of envelope-"D" was against the norms laid down in the notice inviting tender. The Executive Engineer has further stated in his note that there may be legal implications. It appears to us that these papers were not placed before the Works Advisory Board as otherwise such a high level Board would not have observed that introduction of envelopes "D" was not a serious lapse, without at least obtaining expert legal opinion. In this connection we would like to refer to Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, In that case their Lordships accepted the following views expressed in Richard Westbrook v. Vestry

of St. Pancras (1890) 24 QBD 371 at page 375: namely:

If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts considered not to be proper for the guidance of their discretion, then in the eye of law they have not exercised their discretion.

Their Lordships further held that it is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstances. From the proceedings of the Works Advisory Board we find that the Board also considered the envelope-D which was not supposed to be in existence in the tenders submitted by the tenderes. We, therefore, hold that the proceedings of the meeting of the Board held on 30th July, 1983 cannot stand, as the Board did not consider the tenders on the basis of the notified norms and also ignored the, promises made in the notice inviting tenders.

29. At the bar the P.S. Sadasivaswamy Vs. State of Tamil Nadu, has been cited regarding delay as urged by Mr. Kundu. In that case their Lordships observed that there is no period of limitation for Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise this extraordinary power under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to, unsettle settled matters. The present Petitioner approached this Court immediately after knowing that a fresh notice inviting tender has been issued on 3.10.83. So this is not a case where the Petitioner is trying to invoke the jurisdiction of the Court for the purpose of unsettling settled thing and there was no delay on his part. We are, therefore, of the view that this contention has no force. Mr. Kundu has also drawn our attention to William Lacey (Houmlaw) Ltd. v. Davis (1937) 2 All. E.R. 713 in support of his contention that even if the Petitioner submitted the tender after spending considerable amount of money he cannot claim any legal right as he undertook this work as a gamble. According to Mr. J.P. Bhattacharjee assuming that the Petitioner was gambling he has a right to consider his tender according to norms notified in the notice inviting tender. We are in complete agreement with the contention of Mr. Bhattacharjee in view of the law laid down by the Apex Court. Since the tender of the Petitioner was not considered as per norms laid down in the notice inviting tender this Court in exercise of its jurisdiction can definitely interfere.

30. Mr. J.P. Bhattacharjee urged that even the last tender dated 3rd October, 1983 was not issued according to direction issued by the Works Advisory Board. He further contended that in this notice the Respondents have used the drawings submitted by him. We are not going to consider this aspect as this is a disputed fact". But on perusal of the proceedings of the meeting of the Work Advisory

Board held on 30th July, 1983 it appears to us that the direction of the Board was that the work must be retendered and in issuing this notice the procedure regarding envelopes A, B, C and D should be clearly set out. In the notice the procedure of envelopes was completely dropped and the notice was a mixture of turn key specifications and descriptive specification, which is not according to the procedure laid down by the Central Public Health and Environment Engineering Organisation, New Delhi. The directions of the authority were definitely not followed and no records have been placed before us to justify this action.

31. Mr. D.P. Kundu, learned Advocate General drew our attention to the fact that all the tenderer who submitted tenders in response to third call notice dated 20.11.82 have withdrawn their earnest money and as such even if the direction is issued to re-consider the tender it will be infructuous. Mr. J.P. Bhattacharjee submitted that if some of the tenderers had-chosen to give up their legal right that cannot deprive the legal right of the Petitioner. We feel that there is considerable force in his contention and as such we are of the view that if the legal right of the Petitioner has been violated the petition cannot be dismissed on the ground put forward by Mr. Kundu.

32. Regarding the submission of Mr. Kundu on estoppel we are of the view that merely because the Petitioner submitted the envelope-D under protest he cannot be deprived of his legal right to approach this Court. We are also of the view that the Petitioner has a locus standi to file the present petition as he has been deprived of a valuable legal right. Regarding the decision of the Works Advisory Board, we have already observed that full facts were not placed before the Board/ and as such the said decision was erroneous.

33. Supply of drinking water in a welfare state is of vital public importance. During the course of argument Mr. Bhattacharjee submitted that the Petitioner has full faith on the Work Advisory Board, which is a high level body of the Government and if the proper facts would have been placed before the said Board he would have been able to get justice. This project is pending since 1981 and due to non-execution of the project the people of Agartala are suffering. Keeping in view the public interest we give the following direction.

Respondents shall place the tender of the Petitioner contained in envelopes marked "A", "B" and "C" before the Works Advisory Board and the Board shall consider the tender keeping in view the notice inviting tender dated 20.11.82 including all the conditions laid down therein and other clauses of the tender paper. In the event the tender of the Petitioner is selected the execution of the project may be entrusted accordingly. However, if the tender of the Petitioner is not accepted reasons may be recorded, a copy of which may be supplied to the Petitioner and thereafter the Works Advisory Board shall consider the last notice inviting tender dated 3rd October, 1983, as it was not issued according to the direction of the said Board and we give the Board liberty to decide the future course of action.

In the result, the petition is allowed to the extent indicated above. The Parties to bear their own costs.

R.K. Manisana Singh, J.

34. While respectfully agreeing with the judgment prepared by my learned Brother Phukan, J., I have thought it fit to add a few words as I consider it necessary to make it absolutely clear that the conclusion reached by us in this case is based entirely on the special facts and the circumstances which have been set out in extenso in the judgment of Phukan, J.

35. The tender form provides terms and conditions of tender in respect of the work, The CPWD Manual for short the Manual as applicable to Tripura provides for processing for the acceptance of the tender. If a tenderer does not satisfy one of the terms and the conditions of the tender the tender shall not be entertained. Therefore, the terms and the conditions and rules under the Manual are not idle rituals. In such a case, the compliance with the standard or norm is the only safeguard against the arbitrary executive action of the Government or its officer. It is based on the basic principles of "rule of justice and fair play" which includes judicial review of arbitrary executive action. Every action of the executive in such a case should be free from arbitrariness. That is the very essence of "rule of law" or "rule of justice and fair play". If the Government or its officer departs from the standard or norm, the action of the Government or its officer will be liable to be struck down, unless it can be shown by the Government or its officer that the departure is based on some valid principle which in itself is not irrational, reasonable (sic, unreasonable) or discriminatory. In this view of the matter, the compliance or sufficient compliance with the terms and conditions of the tender form and the Manual is required and if the Government or its officer violates the conditions provided in the tender form it would ex facie show that the action taken by the Government or its officer is arbitrary and/or void, and it is for the Government to establish to the satisfaction of the Court that it was done under a valid principle as already stated. (See Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another,

36. The facts and the circumstances of the case show that the Government or its officers have departed from the standard or norm. The Government or its officers have not been able to show that the departure is based on a principle which is not irrational, reasonable (sic, unreasonable) or discriminatory.

37. It is solely on this ground that we are partly allowing this writ petition and granting the reliefs specified in the judgment of Phukan, J.