

(1999) 08 GUJ CK 0033

In the Gujarat High Court

Case No : Spl. Civil Application No. 1944 of 1999

Siddhi Travels

APPELLANT

Vs

Indian Air Lines Ltd. and Another

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 299

Citation : AIR 2000 Guj 102 : (2000) 1 GLR 174

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : Navin K. Pahwa, for the Appellant; Suresh M. Dikshit, (for No. 1) and Mukund M. Desai, (for No. 2), for the Respondent

Judgement

1. Through this Special Civil Application, the petitioner has sought a writ against the impugned action of respondent No. 1, Indian Airlines Limited, in respect of the award of the contract at Ahmedabad Airport, for providing one big passenger coach (TATA 1050) and one mini passenger coach (TATA 709) for passenger transport inside the Airport at Ahmedabad on monthly hire basis under annual contract for three years. Specifications were mentioned in the letter dated 1st February 1999 sent by the Indian Airlines to the petitioner. Such letters were also sent to other parties which are said to be 10 in number. The petitioner claims to be an operator of luxury buses since last 10 years and it is also conducting tours as an organiser. The petitioner also claims to have vast experience in the field of travels and that it is also a contractor for ONGC and IFFCO since last four years. The petitioner has come with the case that when the sealed quotations were invited as above, it was also stipulated vide letter dated 1st February 1999 itself that the rates per Kilometer plus additional charges, if any, may be quoted for taking the coach to the city in case of exigencies and it was further stipulated that the rates quoted should be inclusive of all taxes, insurance, diesel, driver, cleaner, maintenance, etc. Thus, quotations were to be deposited in a sealed envelope addressed to the Station Manager, Indian Airlines Limited, Ahmedabad and the last date for submission of such quotations at Ahmedabad was 8th

February 1999. A copy of letter dated 1st February 1999 has been placed on record at Annexure "A" to the petition. The petitioner submitted quotations on 6th February 1999 in the office of the Manager, Indian Airlines, Ahmedabad and the petitioner quoted Rs. 75,500/- for big bus for unlimited Kilometers (KMs.) per month. So far as mini bus is concerned, the petitioner quoted Rs. 54,500/- for unlimited KMs. per month. The petitioner's quotation dated 6th February 1999, Annexure "B", shows that while quoting Rs. 75,500/- for the big bus for unlimited KMs per month, it was mentioned that it cannot be used outside Airport. While quoting Rs. 54,500/- for mini bus for unlimited KMs per month it was also mentioned that for use out of the Airport, rate would be Rs. 9.00 per KM. Further that if timing of operation per day exceeds 15 working hours, extra amount of Rs. 250/- per hour will be charged. It has been explained that this refers to item 7 of the letter by which quotations were invited and it means that in case the timing of operation exceeds 15 working hours per day, Rs. 250/- per hour shall be charged. The petitioner also agreed with the terms and conditions as contained in letter dated 1st February 1999, and also mentioned that it would provide buses within three months from the date of placing the order. It is further case of the petitioner that one Messrs Dipti Gas Services, Ahmedabad and respondent No. 2, Messrs Neel Tej Travels, Malad (West), Mumbai had also submitted their respective quotations for this contract. The sealed quotations were opened in presence of the bidders on 9th February 1999 at the office of the Manager, Indian Airlines Ltd., Airport at Ahmedabad and there is no dispute between the parties that Messrs Dipti Gas Services Ltd. had quoted the lowest. However, it is the common case of the parties that Messrs Dipti Gas Services opted out. Thereafter as per the rates quoted by the petitioner and respondent No. 2, the contest remained only between the petitioner and respondent No. 2 as to who should be the second lowest after Dipti Gas Services. It is the claim of the petitioner that the petitioner was the second lowest and respondent No. 2 was the third lowest. However, the petitioner has alleged that respondents Nos. 1 and 2 are stationed at Mumbai and therefore, respondent No. 1 wanted to grant contract to respondent No. 2 by making private negotiations and after entering into negotiations with respondent No. 2 in absence of the petitioner and without inviting the petitioner for negotiations, the petitioner was elbowed out and respondent No. 1 was going to give contract to respondent No. 2. It is also alleged that the contract in question is to be executed at Ahmedabad and the respondent No. 2 does not have any office or establishment at Ahmedabad. The respondent Corporation, therefore, may not be able to get complete benefit of the service of a party which is stationed out of the State. It has also been alleged that the contract in question involves maintenance of buses at the Ahmedabad Airport and the job involves care of the flights and the passengers. This Special Civil Application was filed before this Court on 7th March 1999. The matter came up before the Court on 6th April 1999. Notice returnable on 29th April 1999 was issued and on the same date ad interim order was also passed in the following terms :

"Till then finalisation of contract with Messrs Siddhi Travels and Messrs Neel Tej Travels shall remain stayed."

2. In response to the said notice, affidavits in reply dated 27.4.1999 and 28.4.1999 were filed by respondents Nos. 2 and 1 respectively. Thereafter, an affidavit in rejoinder dated 12th May 1999 to the reply of respondent No. 1 was filed by the petitioner. An affidavit in Sur Rejoinder dated 28th June 1999 was filed by respondent No. 1 in reply to the affidavit in rejoinder dated 12th May 1999. An affidavit in Sur Sur Rejoinder dated 30th June 1999 was filed by the petitioner in reply to the Sur Rejoinder of respondent No. 1. Thereafter, when the matter came up before the Court on 30th June 1999, after hearing both the sides, rule was issued and the matter was posted for 9th July 1999. The arguments were heard on 2nd August 1999 and the matter was posted for dictation of the order.

3. From the pleadings as have been filed on behalf of respondent No. 1, it is found that according to respondent No. 1, respondent No. 2 was the second lowest, who had quoted Rs. 70,000/- for the big bus and Rs. 55,000/- for the mini bus. These rates quoted by the respondent No. 2 were coupled with the condition that R.T.O. permission and tax shall be paid by Indian Airlines as per Ex.2 produced on record by respondent No. 1, with its affidavit in sur rejoinder dated 28th June 1999. According to petitioner the amount of tax for big bus comes out to be Rs. 12,500/-, making the rate of respondent No. 2 for big bus as Rs. 82,500/- and that for mini bus comes out to be Rs. 7000/- making the rate of respondent No. 2 for mini bus as Rs. 62,000/-. thus, it is clear from the quotations of the petitioner and the quotations of respondent No. 2, as it appears on the face of it that for both the items, rates of the petitioner were lower because the petitioner's rates were inclusive of tax liability whereas the rates of the respondent No. 2 were exclusive of tax liability. Otherwise, for big bus, the rate as was quoted by the petitioner was higher than that of respondent No. 2 and so far as the mini bus is concerned the rates quoted by the petitioner were lower in comparison to that quoted by respondent No. 2. But that is not the end of the matter, reference has been made to the two quotations and on that basis while the petitioner claims that the rates quoted by him are more favourable to the Indian Airlines on overall basis in comparison to those which were quoted by respondent No. 2 and therefore, on the basis of the rates and terms and conditions as quoted by the petitioner and respondent No. 2 it is to be seen as to whose rates and terms were more favourable to the Indian Airlines in the matter of contract in question. In this regard a controversy has been raised on the basis of a document dated 6th February 1999 addressed to the Station Manager, Indian Airlines Ltd., Ahmedabad Airport by respondent No. 2 handed over to the Manager, Ground Support Department at Mumbai. This document bears an endorsement dated 8th February 1999 under the signatures of the Manager, Ground Support Department of Mumbai, who has marked it to the concerned officer with the endorsement "Please act as required". While respondent No. 1 in its pleadings has referred to this document dated 6th February 1999 and has

pointed out that respondent No. 2 had conveyed through this letter that in its quotation with regard to the payment of tax, it may be read as "us" instead of "Indian Airlines Ltd."

It has also been mentioned in this letter dated 6.2.1999 that respondent No. 2 has its corporate office at Ahmedabad and address of such corporate office has also been mentioned. On behalf of the petitioner repeated reference was made to the affidavit in reply dated 27th April 1999, filed by respondent No. 2 and it has been submitted that in this affidavit in reply respondent No. 2 himself has not made any reference to such a letter dated 6.2.1999. It has also been submitted that the pleadings of respondents Nos. 1 and 2 even on the question of negotiations were mutually contradictory inasmuch as respondent No. 2 has raised a grievance in para 10 of its affidavit in reply dated 27.4.1999 that till the date the respondent had not initiated any negotiations with us, while respondent No. 1 in para 4.7 of its reply dated 28.4.1999 had mentioned about negotiations with respondent No. 2 on 4.3.1999. On the question of tax amount, respondent No. 2 has stated at the end of para 8 that it had never mentioned any tax amount in its quotation and that it had clearly been written in the tender; "as per the terms and conditions of the tender", while Ex.2, i.e. quotation of respondent No. 2 filed by respondent No. 1 with its reply dated 28.6.1999 clearly mentions that tax shall be paid by Indian Airlines Ltd. It is, of course, true that respondent No. 2 has in this reply claimed to be the lowest bidder. So far as respondent No. 1 is concerned its case is that the last date for submission of tenders was 8th February 1999. In response to the notice, tenders were received from the petitioner and others at the office of respondent No. 1 at Ahmedabad, which were opened on 10th February 1999. Thereafter, said tenders received by respondent No. 1 at their office at Ahmedabad were forwarded to the Regional Headquarters, Western Region of respondent No. 1 at Mumbai. It is also the case of respondent No. 1 that prior to opening of the aforesaid tenders duly forwarded by the Station Manager, Ahmedabad of respondent No. 1 to Mumbai, a corrigendum dated 6th February 1999 on behalf of respondent No. 2 was submitted before the Ground Support Department at Mumbai on the last date of submission of tenders, i.e. 8.2.1999 and tenders were opened thereafter on 10.2.1999. Said corrigendum, inter alia, referred to the quotations already sent by respondent No. 2 to the office of respondent No. 1 at Ahmedabad and the corrigendum dated 6th February 1999 submitted at Mumbai, inter alia, clarified that the quotation dated 1.2.1999, stands modified as the RTO permission and tax shall be paid by respondent No. 2, Neel Tej Tours & Travels instead of Indian Airlines Ltd. as was stated in the quotation dated 1.2.1999. It has been pleaded that all the tenders were thereafter scrutinised by the negotiating committee consisting of the Deputy General Manager (Finance), Manager (Ground Support) and the Station Manager, Ahmedabad and the said negotiating committee after careful scrutiny of the aforesaid tenders came to the conclusion that Messrs Dipti Gas Services was the lowest tenderer, but said Messrs Dipti Gas Services when called for negotiations on 9.2.1999 it had sought time to submit revised offer.

Time was granted upto 25.2.1999 which was further extended to 26.2.1999. However, ultimately on 3.3.1999, said Dipti Gas Services communicated their unwillingness to undertake the said work. It has been then pleaded that respondent No. 2 was the second lowest, who had quoted Rs. 75,000/- and Rs. 55,000/- inclusive of taxes for big coach and mini bus respectively and subsequently during the course of negotiations on 4.3.1999 said Messrs Neel Tej Travels, respondent No. 2 also agreed to reduce the rate from Rs. 75,000/- to Rs. 48,000/- and from Rs. 55,000/- to Rs. 45,000/- for the big bus and mini bus respectively inclusive of all taxes. It has also been stated that in such circumstances on 4.3.1999, minutes of finalisation for awarding the contract were drawn up and duly signed by the members of the negotiating committee, the matter was also discussed by the members with the Station Manager, Ahmedabad over telephone and the minutes were sent by fax to the Station Manager, Ahmedabad, who confirmed the minutes and finalised on 4.3.1999 and it was agreed that the contract for the aforesaid work be awarded to respondent No. 2 in view of the facts that the rates quoted by respondent No. 2 as per their tender dated 1.2.1999 read with corrigendum dated 6.2.1999 were next to Messrs Dipti Gas Services and the same were subsequently reduced further as stated above. It has been denied that respondent No. 2 was secretly called for negotiations. It has also been stated that while the petitioner had quoted Rs. 75,500/ and Rs. 54,500/- for the big bus and mini bus respectively, respondent No. 2, Messrs Neel Tej Travels had submitted quotation of Rs. 70,000/- and Rs. 55,000/- for big bus and mini bus respectively inclusive of taxes as read with corrigendum dated 6.2.1999, submitted to the office of respondent No. 1 at Mumbai on the last date of submission of tenders, i.e. 8.2.1999 and prior to the opening of tenders at Ahmedabad by the office of respondent No. 1 on 10.2.1999 and thus, there is no mala fide intention whatsoever on the part of respondent No. 1 in finalising the contract pursuant to the tender dated 1.2.1999 and the corrigendum dated 6.2.1999. It is specifically denied that respondent No. 1 was seeking to give benefit to respondent No. 2 by over writing the offer of the petitioner and it has also been denied that respondent No. 1 had called the respondent No. 2 for private negotiations to the exclusion of the petitioner and it is further denied that respondent No. 1 is seeking to grant contract to respondent No. 2 by making private negotiations in absence of the lowest bidder, i.e. the petitioner, because respondents Nos. 1 and 2 are both stationed at Mumbai. In para 5 of the affidavit in sur rejoinder filed by respondent No. 1, it has been submitted that the petitioner had expressed their inability in its quotation to allow respondent No. 1, Indian Airlines to operate the coach outside the Airport premises and that it had been categorically stated by the petitioner, Messrs Siddhi Travels that they cannot allow user of the big bus out of the Airport premises. As against that respondent No. 2 in their quotation dated 1.2.1999 stated that they will allow the big bus to be used out of the Airport on same terms and conditions and use of the big bus out of the Airport Included diesel, cleaner, driver charges upto 24 working hours and that the rate quoted by respondent No. 2 was Rs. 12 per KM for the big bus and no charges whatsoever

on hourly basis. It has been denied that respondent No. 2 quoted Rs. 70,000/- plus taxes (Rs. 12,500/-) for the said big bus and Rs. 55,000 plus taxes (Rs. 7,000/-) for the mini bus as alleged by the petitioner.

In support of this averment, respondent No. 1 has referred to documents, exhibits 1 and 2, respectively, i.e. quotation dated 6.2.1999 of the petitioner and quotation dated 1.2.1999 of respondent No. 2.

4. It has been then pleaded in para 6 of this affidavit in sur rejoinder filed by respondent No. 1 that payment of road tax levied by RTO has been exempted, if the said coach is operated within the Airport premises. Government of India vide their Notification dated 3rd November 1992 had exempted the specialised equipment used for aircraft handling under the Motor Vehicles Act from registration and payment of tax and such exemption had also been in fact granted by Government of India in respect of payment of tax for transporting passengers within the Airport premises, but in case of exceptional circumstances like due to delay of flight, big bus has to be used for transporting passengers from the Airport to the city in which case tax has to be paid. A reference has been made to the Government of India Circular dated 3.11.1992.

5. The petitioner through the affidavit in sur sur rejoinder dated 30th June 1999 has submitted that the rates indicated by respondent No. 2 were treated as reduced by ignoring the tax liability and in this behalf it has been sought to be demonstrated that for big bus tax comes to Rs. 12,500/- and for mini bus it comes to Rs. 7000/- and on that basis rates as were quoted by respondent No. 2 for big bus comes to Rs. 82,500/[Rs.70,000 + Rs. 12,500 = Rs. 82,500] and for mini bus it comes out to be Rs. 62,000/- [Rs.55,000 + Rs. 7,000 = Rs. 62,000]. Therefore, rates of respondent No. 2 were certainly higher in comparison to the rates quoted by the, petitioner and It has been further submitted that even if the amount of tax is not added to the rates quoted by respondent No. 2, yet, in respect of mini bus, the rates quoted by respondent No. 2 were higher than the rates quoted by the petitioner. On the question of operating the big bus out of the Airport premises, in para 4 of this sur sur rejoinder, it has been pleaded that the body of the bus has to be of a particular specification of low ground clearance which cannot be used outside the Airport. Further that the petitioner has no objection if the big bus is used outside the Airport premises by the respondent Airlines and that the petitioner will not charge any payment for the same. It has further been pleaded that in any case with regard to mini bus the petitioner has not imposed any restriction even with regard to plying the bus outside the Airport premises.

Therefore, there was no reason for the respondent Airlines not to call the petitioner for negotiations. On the question of providing buses within three months from the date of order, it has been stated that this time was required for building the body of the bus as the respondent Airlines required the body of the bus with a particular specification and that in any case this period could be reduced depending upon the requirement. On the question of quoting Rs. 9 per

KM for the mini bus out of the Airport and Rs. 250/- per hour it has been submitted that buses are taken outside the Airport only once or twice a year. In the end of para 4 of this sur sur rejoinder dated 30.6.1999, it has been reiterated that vide alleged corrigendum respondent No. 2 has admitted that the rates quoted were ex clusive of taxes and therefore, the rates quoted by respondent No. 2 are more as com pared to the rates quoted by the petitioner. In para 5 it has been pleaded that it is not true that the passenger coaches operating within the Airport premises are exempted vide Government of India Notification dated 3.11.1992; said Notification only seeks to make a request to the State Government to consider for dispensing with registration and payment of tax by the passenger coaches operating within the Airport premises; that the State of Gujarat has not acted upon the said request and as per the provisions of Section 3 of the Bombay Mo tor Vehicles Act every vehicle is required to be registered and is liable to payment of tax. Therefore, even the passenger coaches are liable to pay tax, if they are taken out of the Airport premises. For the big bus tax comes to Rs. 12,500/- and for minibus it comes to Rs. 7,000/-. It is further stated that even the tender notice states that the bidders are required to quote rates inclu sive of RTO charges and taxes and that in fact the Airport authorities are con scious that the tax is required to be paid on the passenger coaches.

6. On the basis of the pleadings as aforesaid there cannot be any doubt about the factual position that the said corrigendum dated 6:2.1999 was given on 8.2.1999 at Mumbai and the same has been taken into consideration by respondent No. 1 to the advantage of respondent No. 2, while considering the rates of respondent No. 2 to be the lowest. It has also been clearly made out on the basis of the pleadings as aforesaid that respondent No. 2 had also been called for further negotiations and the rates which have been further reduced by respondent No. 2 as a result of negotiations have been taken into consideration. Whether the tax in fact is payable or not is a question which has to be decided with reference to the provisions and circulars to which reference has been made by the parties. Further, this is clearly brought out that in case the tax is payable and the amount of tax is added to the rates which were initially quoted in the quotation dated 1.2.1999 by respondent No. 2, its rates would be certainly higher in comparison to the rates quoted by the petitioner. But the question arises as to whether respondent No. 1 could take into consideration the corrigendum dated 6.2.1999 so as to find that the taxes were included and to take the view that the amount of taxes is included in the rates quoted by respondent No. 2?

Now if the rates quoted by the petitioner and respondent No. 2 are compared, a question arises whether the rates quoted by the respondent No. 2 could be considered with the aid of the corrigendum dated 6.2.1999 or not? In this regard it may be clarified that even if the tenders were required to be submitted at Ahmedabad and even if the corrigendum dated 6.2.1999 had been given to the Manager, Ground Support Department at Mumbai, this was given at Mumbai on the last date on which tenders were to be received. In this view of the matter,

merely because corrigendum was submitted to the Manager, Ground Support Department at Mumbai, and not at Ahmedabad, it cannot be said that the same could not be taken into consideration. Had this document been submitted after 8.2.1999, which was the last date for submission of tenders, the things would have been different. Even if respondent No. 2 had mentioned in their quotation dated 1.2.1999 that RTO permission and taxes shall be paid, by the Indian Airlines Limited with extra charge for whatever additional payment of running, etc. and subsequently it came out before the expiry of last date of submission of tenders that the tax will be payable by respondent No. 2 and not by the Indian Airlines Ltd., the same could not be excluded from consideration merely because it was submitted at Mumbai and not at Ahmedabad or for the reason that it amounts to modification of the rates quoted in the quotation dated 1.2.1999 submitted by respondent No. 2. In such matters, bodies, like Indian Airlines, operate at different places. May be that in this case contract was meant for Airport at Ahmedabad, but even if it was handed over to the Manager of the Ground Support Department at Mumbai on 8.2.1999, it cannot be said that on this ground alone it should have been excluded, even if it was advantageous to the Indian Airlines. In such matters it can at the most be said to be a procedural irregularity, but that procedural irregularity does not go to the root of the matter to limit the rates quoted by the respondent No. 2 in its quotation dated 1.2.1999, when it is a fact that 8.2.1999 was the last date for submission of tenders and this document was submitted on 8.2.1999. The mere fact that it was submitted at Mumbai, instead of Ahmedabad and further that xerox copy of this document as has been submitted by the Indian Airlines in this Court also does not bear any inward number are of little significance, rather insignificant. I do not find that on these grounds the corrigendum dated 6.2.1999 given by respondent No. 2 should have been kept absolutely out of consideration and hence nothing turns out against the respondents merely because this corrigendum was taken into consideration. Even if it is assumed in favour of the petitioner that this document was not available at Ahmedabad when the authorities opened the tenders, the fact is that at the time when the tenders were scrutinised, this document was already there and the same could be taken into consideration at that time, more particularly when it bears an endorsement dated 8.2.1999 (the last date for submitting tenders), under the signature of the Manager of the Ground Support Department. I do not find any reason either to disbelieve the endorsement or to discard the said corrigendum.

7. Then comes the question as to whether while comparing the rates quoted by the petitioner and respondent No. 2, the respondent No. 1 has taken into consideration the overall rates as could be favourable to Indian Airlines and further as to whether the petitioner has been given a fair treatment in the matter of processing this contract vis - a - vis respondent No. 2 because the petitioner and respondent No. 2 were the only parties left in the contest for this purpose. It is the admitted position that respondent No. 2 was called for negotiations subsequently, i.e. on 4.3.1999 the day following 3.3.1999 when the first lowest

party had opted out, but the petitioner was not called for such negotiations. Before I examine the question as to whether the petitioner was given a fair treatment in the instant case or not I may refer to the terms quoted by the petitioner as well as respondent No. 2 at a glance so as to see, prima facie, as to whose rates could be considered to be more favourable to Indian Airlines, who should have been considered to be second lowest and as to whether as a result of the negotiations with respondent No. 2, respondent No. 1 has lightly considered the terms of respondent No. 2 to be lower in comparison to that of the petitioner, while the petitioner was not given any such opportunity to reduce or revise its rates through negotiation.

8. The rates, terms and conditions as have been quoted by the petitioner as well as respondent No. 2 are enumerated as under.

Messrs Siddhi Travels (petitioner):

Big Bus Rs.75,500/- (for unlimited KMs.)

Cannot be used out of Airport.

Mini Bus Rs.54,500/- (for unlimited KMs.)

For use out of Airport Rs.9.00 per KM.

Extra use Rs. 250/- per hour, i.e. beyond 15 working hours of timing of operation per day. Buses to be provided within the period of 3 months from the date of order.

Messrs Neel Tet Travels (Respondent No 2):

Big Bus Rs 70,000 +

Rs 12,500=

Rs 82,500

(as per quotation dated 1 2 1999) Rs 70,000 - with the aid of corrigendum dated 6 2 1999

Mini Bus Rs 55,000+

Rs 07,000=

Rs 62,000 (as per quotation dt 1 2 1999)

Rs 55,000 (as per corrigendum dated 6 2 1999)

- If there is increase in rates of oil/diesel the rates will increase in ratio of cost of increment. Extra charge for whatever additional KMs. running at the rate of Rs. 12/- per KM. Supply within 6 to 8 weeks time after receiving confirm contract. Diesel, Cleaner, Driver upto 24 working hours.

9. The rates as contained in the quotation of the petitioner dated 6th February

1999 appear to be straight and without any conditions and so far as the other terms and the mention that big bus cannot be used out of the Airport has been sought to be explained by the learned counsel for the petitioner by submitted (submission) that as per specifications required by the Indian Airlines for big bus, the ground clearance of 7 inches was required whereas according to Rule 204 of the Bombay Motor Vehicles Rules, 3959, it has to be above ground by not less than 210 millimetres, i.e. about 9 inches and it was for this reason that a mention was made that if the ground clearance is only 7 inches, it may not be permissible to take such a big bus out of the Airport. It has further been mentioned in Rule 204 of the Bombay Motor Vehicles Rules that when the vehicle is fully loaded, sufficient allowance shall In addition be made to provide for the wear of the tyres, settling down of the springs, or other causes likely to reduce height so that the minimum clearance of 280 millimetres is at all times maintained. 280 millimetres would mean 28 cm., i.e. about 11 inches. It was in this context that it had become necessary for the petitioner to mention in the quotation that it cannot be taken out of the Airport. Besides this, it has also been pointed out that in the letter dated 1.2.1999 itself the Indian Airlines had mentioned against item No. 5, i.e. ground clearance, at column No. 4, "As permissible". Thus, this mention was only as permissible under the Rules. It is, therefore, clear that the rates and terms as were quoted by the petitioner were without any if s and but's and without any conditions. It was further mentioned in the petitioner's quotation that the petitioner agrees to the terms and conditions mentioned in the letter dated 1.2.1999. Now if we look at the quotation as was given by respondent No. 2, we find that its rates were coupled with the condition that if there is increase in the rate of oil/diesel, the rate will increase in ratio of cost of increment. Even with regard to ground clearance of the coach, it was mentioned that it will be 7 to 8 inches. So far as the figures as such are concerned, even if it is taken with the aid of corrigendum dated 6.2.1999 that the rates quoted by respondent No. 2 were including the tax, so far as the rates for mini bus are concerned, the petitioner's quotation was certainly lower. However, the petitioner's quotation was Rs. 5500/more for the big bus in comparison to what is quoted by respondent No. 2, if the tax, liability is treated as included in the rates quoted by respondent No. 2 read with its corrigendum dated 6.2.1999. With the liability of tax on Indian Airlines, the rates quoted by respondent No. 2 in the quotation dated 1.2.1999 were certainly higher in comparison to that of the petitioner with regard to big bus as well as mini bus and in any case, if the Indian Airlines had to go only on the basis of lower rates, so far as the mini bus is concerned, the petitioner had to be considered to be the second lowest even if the corrigendum dated 6.2.1999 is taken into Consideration to the advantage of respondent Nos. 2.

10. Besides this, the terms as have been quoted by respondent No. 2 with regard to the increase in the rates corresponding to the increase in the rates of oil/diesel in the ratio of cost of the increment was in itself a condition to keep the option open for the purpose of increasing rates as had been quoted. Therefore, it

appears that in the manner of taking the decision there has not been an objective appraisal of the terms and conditions as a whole because in certain aspects the conditions as were quoted by respondent No. 2 were not as favourable as those of the petitioner and the riders and conditions of respondent No. 2 would lead to the increase in rates in future - even during the period of the contract whereas such conditions were wanting in the case of rates quoted by the petitioner. In such a situation when the Indian Airlines even if treated that respondent No. 2 as the second lowest tenderer, with the aid of corrigendum dated 6.2.1999, while choosing for negotiations, the petitioner could not be justifiably excluded from the opportunity for negotiations and the petitioner too should have been called for negotiations. It is an admitted position that respondent No. 2 was called for negotiations whereas the petitioner was not called for negotiations. In such a case when negotiations have to follow, the competing parties whose tenders have been found to be valid could not be subjected to a differential treatment in the manner of taking decision. Had the petitioner been called for negotiations it could have clarified the position with regard to the permissible use of such big bus outside the Airport or it could have suggested certain device so as to meet the requirement with reference to permissibility as also with regard to period in which the buses were to be provided - eight weeks or three months in such cases do not make much difference - and that too could be negotiated. The mention of the condition in the quotation of respondent No. 2 that it was prepared to supply within six to eight weeks after receiving confirmation of the contract and the mention by the petitioner that it will provide buses within three months of placing the order were certainly the terms on which the petitioner could have certainly entered Into negotiations . In any case the manner in which the decision has been taken in this case does not inspire confidence. The petitioner has not been given a fair treatment inasmuch as the petitioner was excluded from the process of negotiations, which was adopted as the part of the decision making. The usual practice in such cases is to call the parties for negotiation, more particularly, when the rates quoted by one party are not unconditional and they are coupled with more than one ifs and but''s, whereas the rates quoted by the other party are straight and unconditional and may be more favourable as a whole. The manner in which the decision has been taken so as to consider and call only one party for negotiation to the exclusion of the other cannot be said to be fair. The decision making authority has to be fair because the principle of fairness is inherent in the requirement of following natural justice and such agencies and instrumentalities while taking the decision have to follow the principles of natural justice and minimum standards of fair ness. On the one hand respondent Indian Airlines decided to take into consideration the corrigendum dated 6.2.1999 as was given by respondent No. 2 at Mumbai on 8.2.1999 and could decide to give indulgence to the respondent No. 2 and on the other hand it did not even call the petitioner for negotiations while call ing the respondent No. 2. All these circumstances attendant and preceding to the manner in which the decision has been taken do swing the needle of suspicion against respondents and put a

question mark on the fairness of respondent No. 1. It may not be a case of favouring any particular party merely because it was stationed at Mumbai, but the authorities have to take a rational decision and if that decision suffers from the vice of arbitrariness or there is lack of fairness in any manner towards any party, the decision stands vitiated. The fact that despite rates in respect of mini bus as quoted by the petitioner being lower in comparison to that of respondent No. 2 and even with the inclusion of the tax liability, the rates of respondent No. 2 for this item were higher and yet the petitioner was not treated as second lowest, has not been explained by any reasonable or plausible explanation. It is clear from the two documents, namely, the quotations of the petitioner and respondent No. 2, that for big bus respondent No. 2 was the second lowest with the aid of corrigendum dated 6.2.1999 and for mini bus the petitioner was the second lowest, but in this case on overall basis having regard to the terms and conditions in totality the petitioner could not be excluded altogether from negotiations and both the parties should have been called for negotiations across the table in the interest of Indian Airlines itself.

11. In this regard Shri Dixit, learned counsel appearing for the Indian Airlines has placed strong reliance on the decision of the Supreme Court in *Tata Cellular Vs. Union of India*, , and has made the submission with regard to the scope of judicial review in such cases. Relevant principles have been laid down by the Supreme Court in the said case with regard to the requirements of valid tender and applicability of the principles of judicial review on contractual powers exercised by the governmental bodies. This case certainly lays down the scope of the judicial review and relevant principles to be followed in such cases. The Supreme Court has observed that

"It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

It has also been laid down that;

"Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matter whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits."

According to the Supreme Court these restraints bear hallmarks of judicial control Over administrative action. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself.

The duty of the court is to confine itself to the question of legality. Its concern should be :

Whether a decision making authority exceeded its powers; or committed an error of law or committed a breach of the rules of natural justice; or reached a decision which no reasonable Tribunal would have reached; or abused its powers.

The Supreme Court has also observed that it is not for the Court to determine whether particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under ;

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

(ii) Irrationality namely, Wednesbury unreasonableness; and lastly,

(iii) Procedural impropriety.

One of the principles which has been deduced in this context by the Supreme Court in the aforesaid decision is that the decision to accept tender or award contract is reached by the process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

The Supreme Court also held that the Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts) but must be free from arbitrariness not affected by bias or actuated by mala fides.

12. If we examine the manner in which decision has been taken in the instant case on the anvil and touchstone of principles as have been laid down by the Supreme Court as mentioned above, firstly it is found that financial interest was to be protected. For the purpose of determining as to how the financial interest of the concerned body is to be projected prima facie, the rates which are quoted by the parties would form basis and in this regard for one of the items in question the financial interest could be protected with the rates quoted by the petitioner and for the other item as per the figures it could be protected by accepting rates of respondent No. 2. In such a background, if the respondent Indian Airlines had option to select the best person or the best quotation on an

overall consideration of the terms and conditions quoted by both the sides it was certainly a case in which both the parties should have been called for negotiations and no explanation has been offered as to why the petitioner was not called for negotiations except that respondent No. 2 was considered to be the second lowest. In such circumstances, the manner in which decision has been taken does not withstand the test of the principles as laid down by the Supreme Court as above. In the ultimate analysis after negotiations with both the parties, the Indian Airlines could certainly take a decision one way or the other which was more favourable and more advantageous to it, but in this process one of the parties, i.e. the petitioner which was certainly the second lowest for one of the items could not be excluded and in the negotiations the petitioner too could have had an opportunity to consider further reduction in the rates quoted by it as has been done by respondent No. 2, as a result of negotiations. It is, therefore, a clear case in which the principle of fairness has not been adhered to. Hence I find that it is a case of breach of rule of natural justice which inheres the principles of fairness. Even if a body has power to take a decision, that decision has to be rational and if such a power is exercised in arbitrary manner, then also the resultant decision stands vitiated. It is certainly, for the expert body which considers and takes the decision to decide one way or the other, but in that process of decision, the decision to accept tender for awarding contract has to be reached by process of negotiations through several tiers, as per the principles which have been deduced by the Supreme Court in the case of *Tata Cellular Vs. Union of India*, .

13. Shri Dixit has also cited the Supreme Court decision in the case of *M.P. Oil Extraction and another v. State of Madhya Pradesh and others* AIR 1998 SC 145. In this case an argument was raised as is referred to in para 30 of the judgment that the power of negotiation stood conferred and tender/ auction stood automatically and necessarily excluded from the very date of the two contracts in 1979 which contained the renewal clause and it was submitted that in any event, it is well established that tender/ auction is not the only or sole method of distribution of State largesse. Even in the absence of specific contracts or agreements. State largesse may be dealt with by negotiation and not through tender or auction. In this case the Supreme Court was concerned with the industrial policy of 1979 which was subsequently revised from time to time and it was found that the same could not be held to be arbitrary and based on no reason whatsoever, but founded on mere ipse dixit of the State Government of Madhya Pradesh. The Supreme Court held that the executive authority of the State must be held to be within its competence to frame policy for the administration of the State. Unless the policy framed is absolutely capricious and not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes in conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive

functionary of the State. While examining the said policy, the Supreme Court has held that there was no material on record from which it could be reasonably found that the same was not unfounded by any reason whatsoever. The renewal clause in the impugned agreements were not found to be unjust or improper and the challenge to the renewal clause was not found to be entertainable unless it can be clearly demonstrated that the fact situation has undergone such changes that the discretion in the matter of renewal of agreement should not be exercised by the State. The contention that the respondents legitimately expect that the renewal clause should be given effect to In usual manner and according to the past practice unless there is any special reason not to adhere to such practice. The doctrine of legitimate expectation has been judicially recognised by this Court in a number of decisions. It has been concluded that in matters of economic rights and policy decision, the scope of judicial review is limited and circumscribed. What is discernible from the aforesaid decision is that so far as the policy decisions are concerned they have to be taken by the State Government and the Courts are not expected to interfere with such policy decision unless they suffer from the vice of arbitrariness or lack of reason, and the State largesse may be dealt with even by negotiations and not necessarily through tender or auction. There cannot be any quarrel with the propositions as have been laid down and the same have to be followed. But here is not a case with regard to any policy decision. Had no tenders whatsoever have been invited and the respondent Indian Airlines had decided to take a decision through negotiations only, it would have been a different matter altogether. But in the instant case, when quotations have been invited, of course, it was made available to the selected parties, and out of those selected Parties, when rates of the few parties, which ultimately remained in the contest were to be considered and a decision was to be taken and when one party was called for negotiations, the other party could not be excluded, merely because the Indian Airlines took a decision that respondent No. 2 was the second lowest, although so far as the second lowest is concerned on the facts of the case it is very clear that both the parties were at par inasmuch as for one of the items admittedly the petitioner was the second lowest whereas for the other item the respondent No. 2 was the second lowest, namely, mini bus and big bus, respectively. In such a situation, it cannot be said to be a plausible explanation to exclude the petitioner by saying that only respondent No. 2 was the second lowest. Even in cases where tenders are invited, if a party which comes with straight rates and terms and the other party with if's and but's and also gives clarification with regard to its terms subsequent to the submission of quotations, such conditions have also to be sifted against the rates and terms on overall basis as are quoted by both the parties and then it is to be assessed as to whose terms and conditions on overall basis are more favourable. This exercise precisely appears to be wanting in the facts of the present case. I do not find that there was any justification to call for respondent No. 2 only for the purpose of negotiations and to exclude the petitioner therefrom.

14. In this regard on the question of the inclusion or exclusion of the tax, Shri Dixit has also submitted with reference to Motor Vehicles Act, 1988. He referred to Section 2, Sub-section (28) and submitted that vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres is not included in the definition of motor vehicle. Therefore, there is no question of payment of tax. He has also made a reference to the Office Memorandum dated 5th May 1993 issued by the Union Ministry of Surface Transport forwarding therewith letter dated 3rd November 1992, regarding exemption from registration of specialised equipment used for aircraft. The contents of the letter dated 3.11.1992 provide that according to the Ministry of Surface Transport (Transport Wing).

(a) The specialised equipments adopted for use within the enclosed Airport areas only cannot be deemed to be Motor Vehicles u/s 2(28) of the Motor Vehicles Act.

(b) An aerodrome is apparently a restricted area. It cannot be deemed to be a public place as defined in Section 2(34) of the Motor Vehicles Act. It cannot, therefore, be deemed to be a public place as defined u/s 2(34) of the Motor Vehicles Act and further that

(c) As specialised equipment will be driven within the enclosed Airport areas only, no driving licence, in terms of provision of the Motor Vehicles Act, is necessary for driving these equipments. However, such a requirement may be laid down by the employer in their recruitment rules. On this basis a request was made to administrations of all the States that while deciding the question whether or not a specialised equipment used within the enclosed Airport areas is required to be registered under the Motor Vehicles Act, 1988, the State Governments/ Union Territory Administrations may kindly take into account the observations contained in para 2 therein.

The list of specialised equipments used for flight handling was enclosed; For "Passenger Coach", it has been mentioned that this equipment is used for transporting passengers on the tarmac. It is equipped with pneumatically operated doors. Shri Dixit, learned counsel has submitted that in registration of such type of specialised equipment which are used in Airport at Ahmedabad, exemption has been recorded in the registration itself. That may be so, but on the facts of the present case it is very clear that the Indian Airlines itself had mentioned in the letter through which quotations were invited that the big bus may be required to be taken out of the Airport also. Therefore, it cannot be said that so far as the big bus is concerned it was to operate only within the Airport. At times it may be taken out of the enclosed area of the Airport also. In any case, whether tax is exempted or not is to be determined on the basis of provisions of law and so far as the clarification, which had been given by respondent No. 2 through the corrigendum that the rates quoted by him may be treated to be including the tax or that the tax if payable shall be borne by respondent No. 2 itself instead of Indian Airlines is concerned, it has already

been taken into consideration in the earlier part of the order and all the submissions which have been made on behalf of both the sides have been considered with the aid of corrigendum dated 6.2.1999 with reduced quotation of respondent No. 2. Therefore, this controversy for exemption of tax or otherwise on the facts of the present case has lost its importance. It remains a controversy only of academic importance. I have dealt with this aspect only because it was argued by Shri Dixit, learned counsel with reference to Motor Vehicles Act and the Government Circulars, etc. at length.

15. Upshot of the adjudication as aforesaid is that the action of respondent No. 1 in favour of respondent No. 2 is found to be unlawful in the matter of giving the contract in question. In the facts and circumstances of the case, this Special Civil Application succeeds and it is directed that either the respondent Indian Airlines may call both the parties, namely, the petitioner and respondent No. 2, and enter into the negotiations across the table and take a decision on the basis of the negotiations in favour of either of the parties, whose terms and conditions are found to be more favourable and advantageous on the basis of the rates and other terms and conditions as well as quality of service which are found to be in the best interest-of Indian Airlines itself or it may also advert to initiate the entire process afresh, whichever it chooses.

16. This Special Civil Application is allowed accordingly. Rule is made absolute in the terms as aforesaid. No order as to costs.