

(1999) 03 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 791 of 1999

Truvolt Engineering Company Private Limited, Calcutta and
Another

APPELLANT

Vs

Bangalore Mahanagara Palike and Others

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (1999) ILR (Kar) 2046 : (1999) 5 KarLJ 489

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : M/s. Jayaram and Jayaram, for the Appellant; Sri B.V. Acharya, for Sri D.R. Basi Mallik and Sri Puttegowda, for the Respondent

Judgement

1. The first petitioner, in this petition, is a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Calcutta. The second petitioner is the Managing Director of the first petitioner-Company.

2. In this petition, the petitioners have sought for a declaration that the resolution dated 28th of October, 1998 in Subject No. 38 (291), a copy of which has been produced as Annexure-M, passed by the first respondent-Bangalore Mahanagara Palike (hereinafter referred to as "the Corporation"), wherein the first respondent had resolved to entrust the work relating to erection of two electric cremation furnaces in Bangalore City, to the 6th respondent, is illegal, unconstitutional and void; and for a direction to respondents 1 to 5 not to give effect to the said resolution; and for a further direction to the first respondent to accept the tender submitted by the first petitioner for erection of the said electric cremation furnaces.

3. The facts, which are not in serious dispute and have bearing for the disposal of this petition, may be stated as hereunder:

(a) The Corporation, by means of paper publication dated 22nd of November,

1996, invited applications to decide pre-qualifications from established, reputed and financially sound firms, who have experience in design, manufacture, supply and erection of equipments, such as, furnaces, transformers etc., for the purpose of erection of two electric cremations to be located at places known as "Banashankari" and "Bommanahalli" in Bangalore City on turnkey basis. The estimated cost for erection of each of the electric furnaces was fixed at Rs. 90,31,000/-. As per the notification issued, the equipments are to be erected by the successful contractor inside the buildings to be constructed by some other agency. The scope of work to be executed by the successful contractor includes design, manufacture, supply, erection, testing, commissioning of electric crematoria equipments; and the work is required to be completed in twelve months" time. The first respondent, on consideration of the applications for pre-qualification submitted by the first petitioner, the 6th respondent and others, selected the first petitioner, 6th respondent and M/s. Asea Brown Boveri (for short "M/s. ABB") as the contracting agencies who satisfy the requirements of the notification for the projects in question. Accordingly, the first petitioner and the 6th respondent submitted their tender documents along with the earnest money deposit of Rs. 1,00,000/- before 25th of May, 1997, which was the last date prescribed for submitting the tender documents. Thereafter, the tender documents were opened on 26th of May, 1997 and since M/s. ABB had not submitted its tender documents along with the Bank Draft for Rs. 1,00,000/- as required, as part of the conditions of the tender documents, the tender submitted by M/s. ABB was rejected by the Corporation at the threshold. In the tender documents submitted by the petitioners and the 6th respondent, while the petitioners had quoted the price to execute the work for each of the furnaces at "Banashankari" and "Bommanahalli" at Rs. 58,95,000/-, the 6th respondent had quoted Rs. 83,97,985/-. The petitioners, while quoting the price as stated above, had also offered a discount of 2 per cent on the total price in respect of both the works; and 4 per cent of discount if certain additional advance payments were to be made to the first petitioner by the Corporation.

(b) The material on record discloses that after consideration of the tender documents submitted by the first petitioner and the 6th respondent, the concerned Engineer has, on 9th of July, 1997 recommended to the Commissioner to accept the tender of the 6th respondent for a sum of Rs. 83,97,985/-. The material on record also shows that the Commissioner and the Joint Commissioner, by means of their order dated 23rd of July, 1997 accepted the proposal of the Engineer and directed that the matter be placed before the Standing Committee. However, before the matter was placed before the Standing Committee as per the note of the commissioner and the Joint Commissioner, the papers were placed before the Additional Commissioner and he, on consideration of the materials on record, by his order dated 8th of August, 1997, directed to obtain the details of pollution control equipments installed by the first petitioner and the 6th respondent, from the places where they have executed the work. It transpires that pursuant to the order made by the Additional

Commissioner, the Corporation entered into correspondence with the Bombay Municipal Corporation, Rajkot Municipal Corporation and Calcutta Municipal Corporation with regard to the credentials of both the first petitioner and the 6th respondent in the matter of erection and performance of electric furnaces and pollution control equipments by both the first petitioner and the 6th respondent. The Bombay Municipal Corporation sent letters dated 3rd and 20th of January, 1998 certifying the satisfactory performance of crematorium erected by the 6th respondent. The Calcutta Municipal Corporation sent letter dated 1st of January, 1998 certifying the satisfactory performance of the work executed by the first petitioner.

(c) After getting the certificates from the Municipal Corporations, referred to above, the Additional Commissioner directed formation of an Expert Committee. Accordingly, an Expert Committee consisting of Sri M.P. Chowdaiah, former H.O.D., Mechanical Engineering Department, U.V.C.E., and Sri N.M. Ramdas, Assistant General Manager, Mecon, was constituted.

(d) Subsequently, the petitioners and the 6th respondent were called for negotiations by the Superintending Engineer of the Corporation on 17th and 20th of March, 1998. During the course of the negotiation, it transpires that both of them had intimated the Superintending Engineer stating that they would confirm their rates through letters. Accordingly, on 21st of March, 1998, the 6th respondent gave its letter reducing its rate from Rs. 83,97,985/- to Rs. 60,42,000/-. However, the petitioners, on 23rd of March, 1998 had sent their fax message confirming the rate earlier quoted by them and further stating that there is no scope to reduce the price.

(e) The Expert Committee, after consideration of the tender documents submitted by the petitioner and the 6th respondent and also the prices quoted by them and all other relevant circumstances, gave their opinion. Subsequent to the receipt of the opinion given by the Expert Committee, the matter was placed before the Standing Committee of the Corporation on 28th of September, 1998. The Standing Committee of the Corporation, by means of its resolution dated 28th of September, 1998, resolved to accept the tender offered by the 6th respondent for a sum of Rs. 60,42,000/-. Thereafter, the resolution of the Standing Committee was again placed before the Council of the Corporation and the Council of the Corporation, on 28th of October, 1998 unanimously resolved to approve the resolution of the Standing Committee and approved the tender of the 6th respondent.

(f) In the meanwhile, the petitioners being aggrieved by the resolution of the Standing Committee and also that of the Council of the Corporation, addressed a letter to the State Government making out a grievance about the non-entrustment of the contract to the first petitioner and giving of the same to the 6th respondent. On 14th of December, 1998 an agreement was entered into between the Corporation and the 6th respondent setting out the terms and conditions under which the 6th respondent was entrusted with the works in

question. Thereafter, on 16th of December, 1998, the Corporation issued the work order to the 6th respondent.

(g) The petitioners have, on 8th of January, 1999 presented this petition before this Court.

(h) It is the case of the petitioners in this petition that though the first petitioner was the lowest tenderer having submitted its tender agreeing to execute the work relating to each of the electric crematoriums in a sum of Rs. 58,95,000/- and in all, in a sum of Rs. 1,17,90,000/- as per the terms and conditions stipulated in the tender documents, respondents 1 to 4, without calling the petitioners for negotiation, clandestinely called the 6th respondent for negotiation and permitted it to reduce the tender amount initially offered at Rs. 83,97,985/- to Rs. 60,42,000/- for each of the electric crematoriums and decided to award the works in question to the 6th respondent. According to the petitioners, it was not permissible for the Corporation to negotiate only with the 6th respondent and permit it to change the price quoted by it as the same being expressly prohibited in the tender documents; and such an order is totally opposed to the principles of natural justice, fairness and would constitute an act of extreme capriciousness and favouritism in awarding the contract and conferring financial benefit upon a tenderer who was not only less qualified, but has lesser experience than the first petitioner; and such action would seriously infringe the rights guaranteed to the petitioners under Article 14 of the Constitution of India. It is also the case of the petitioners that the first petitioner has been in the field of executing the work relating to erection of electric crematorium for the last 40 years and it has already erected more than 50 electric crematoriums in various parts of the country. In other words, it is the case of the petitioners that the petitioners are more suitable, better experienced, qualified and professionally more skillful and competent to execute the works in question than the 6th respondent; and without any justification, the 6th respondent is made to show as if it has better experience than the first petitioner in erecting electric cremation furnaces, venture scrubbers and metal chimneys, which are devices meant, to control pollution, on the sole ground that it had executed a crematorium with pollution control devices. It is their case that the Expert Committee constituted by the Corporation having recommended the case of the first petitioner, there was absolutely no justification to accept the tender offered by the 6th respondent. It is the further case of the petitioners that all the doubts and objections raised by respondents 1 to 4 with regard to the capability of the first petitioner, were satisfactorily explained to respondents 1 to 4 by the representative of the first petitioner both in the course of the discussion with the officials of the Corporation and also by means of their letters, copies of which have been produced as Annexures-H1 to H3, J1 to J3 and K1 to K12 series produced along with the petition.

(i) However, respondents 1 to 4 and respondent 6 filed their objections and resisted the claim of the petitioners. They denied the claim of the petitioners that

the first petitioner is more suitable than the 6th respondent to execute the works in question and that the first petitioner was not called for negotiation both with regard to the nature of the work to be executed by it and also with regard to the price quoted. It is their case that Sri Chowdaiah, one of the members of the Expert Committee, had recommended for acceptance of the tender submitted by the 6th respondent "in view of superiority in design, technology and operation, if the lowest quotation is not only the criteria". It is their further case that the other member of the Committee Sri Ramdas had only stated that the offer submitted by the first petitioner is "technically acceptable"; and therefore according to them, the assertion made by the petitioners that the Expert Committee had recommended for accepting the tender submitted by the first petitioner is not correct. It is their further case that after careful scrutiny of the tender documents submitted by the first petitioner as well as the 6th respondent and on consideration of all the materials produced by them in support of their respective claim and keeping in mind the nature of the work required to be executed by the tenderer and the interest of the Corporation and public interest, the Standing Committee as well as the Council of the Corporation, after thorough discussion in the matter, had accepted the tender submitted by the 6th respondent; and the said decision of the Standing Committee as well as the Council of the Corporation is not liable to be interfered with by this Court in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. They also strongly countered the allegations made by the petitioners that the 6th respondent was shown undue favour by respondents 1 to 4; and on account of extraneous reasons and irrelevant considerations, the tender submitted by the 6th respondent was accepted by the Corporation.

4. Sri A.N. Jayaram, learned Senior Counsel appearing along with Sri Raghavendra for petitioners, made five submissions in support of the prayer of the petitioners that the impugned resolution of the Corporation accepting the tender submitted by the 6th respondent, is liable to be quashed. Firstly, he submitted that the price negotiation was held by the officials of the Corporation with the 6th respondent behind the back of the first petitioner and, therefore, the petitioners were denied of an opportunity to reduce the price quoted by the first petitioner in the tender submitted by it and also to show to respondents 1 to 4 that as a matter of fact, there is no substantial reduction in the price originally quoted in the tender submitted by it. Elaborating this submission, the learned Senior Counsel pointed out that though in Annexure-K4, the first petitioner has stated that "there is no scope to reduce the price", the contents of letter Annexure-K4 has to be understood in the backdrop of the factual situation that the petitioners were not informed of the reduction of the price quoted by the 6th respondent from Rs. 83,97,985/- to Rs. 60,42,000/-. Therefore, he submitted that the entire action of the officials of the Corporation in negotiating with the 6th respondent alone at various stages and enabling the 6th respondent to unilaterally reduce the price quoted from Rs. 83,97,985/- to Rs. 60,42,000/- without giving a further opportunity to the first petitioner to reduce the price, is

totally illegal, arbitrary and is violative of the rights guaranteed to the petitioners under Article 14 of the Constitution of India. In support of the plea that there was no proper negotiation with the first petitioner, he submitted that if the negotiation had been properly held with the first petitioner, the first petitioner could have demonstrated that it is technically and professionally superior to that of the 6th respondent and also could have explained to the Corporation that the so-called reduction of price, made by the 6th respondent to accept the tender of the 6th respondent was, as a matter of fact, no reduction in price, but the reduction was a result of withdrawal of certain items. According to him, this is very clear from the fact that the heating element in the secondary chamber was removed by the 6th respondent in the course of negotiation. He further submitted that the first petitioner, in addition to the sum of Rs. 58,95,000/- quoted by it, had also agreed to give a reduction of 2% in the amount quoted by it. He also submitted that to show the bona fides of the first petitioner that the first petitioner is prepared to reduce the price, he has given the modified rate in the sealed cover to the Court. He submitted that such an exclusion of the petitioners from effective negotiation has caused serious injury to the first petitioner, who remained the lowest tenderer even after the price reduction submitted by the 6th respondent. He further submitted that the first respondent being the Corporation, its every action must be fair and reasonable. Secondly, he submitted that the Expert Committee having recommended the case of the first petitioner, it was not permissible for the Standing Committee as well as the Council of the Corporation to accept the tender of the 6th respondent and especially when the tender submitted by the first petitioner was the lowest. Elaborating this submission, he pointed out that the report of the Expert Committee is given a go-bye both by the Standing Committee and the Council of the Corporation without assigning any reason. He pointed out that since the works in question involves execution of erection of electric cremation furnaces, which deals with execution of various types of work to complete the project, the opinion of the experts should have prevailed upon the members of the Standing Committee and the Council of the Corporation. He further pointed out that the letter dated 1st of January, 1998 written by the Calcutta Municipal Corporation clearly shows that the first petitioner is far superior to the 6th respondent; and therefore the Standing Committee and the Council of the Corporation ought to have accepted the tender of the first petitioner. Thirdly, he submitted that the impugned resolution is vitiated on account of the fact that the tender conditions were not adhered to and the tender submitted by the 6th respondent has been accepted by permitting it to modify the tender submitted by it though the tender conditions do not permit modification of the tender documents. He submitted that every emphasis has been made in the impugned resolution to the venture scrubber and tall chimney to make it appear as if the 6th respondent alone is qualified or experienced to undertake the works in question and the same has been done with a view to deny the entrustment of the work to the first petitioner. In this connection, it is his further submission that the first petitioner also manufactures its own scrubber, but offered to provide the very best scrubber

manufactured by M/s. ABB, a highly reputed company. He also submitted that the chimney required to be installed to the crematorium, is also an item procured from other parties; and therefore, there is absolutely no basis to hold that the 6th respondent has better experience in installing the pollution control devices. He submitted that the first petitioner, who had already executed more than 50 projects all over the country, cannot have any difficulty in installing the pollution control devices as all these works are got executed with the assistance of the experts in the field and the materials which the first petitioner offered to supply, are the best ones. Fourthly, he submitted that the impugned resolution is also liable to be quashed on the ground that it is vitiated on account of extraneous and irrelevant considerations. Elaborating this, Sri Jayaram pointed out that the decision of the Standing Committee as well as the Council of the Corporation is based on three factors. They are - (1) the so-called superior technology of the 6th respondent in regard to the pollution control; (2) subsequent to the reduction in price quoted by the 6th respondent, the difference in the price quoted by the petitioner and the 6th respondent is not substantial; and (3) the first petitioner is a private limited Company and the 6th respondent being a public limited Company, requires preference. He submitted that attempts have been made from the beginning to favour the 6th respondent and, therefore, the entire exercise which ultimately resulted in accepting the tender of the 6th respondent is vitiated on account of mala fides. In this connection, he referred to me the averments made in the petition. Finally, he submitted that though the impugned resolution states that the acceptance of the tender submitted by the 6th respondent is subject to the sanction by the Government, till today the Government having not accorded sanction, the contract entered into between the Corporation and the 6th respondent is liable to be quashed. In this connection, he referred to me sub-section (2) of Section 182 of the Karnataka Municipal Corporations Act (hereinafter referred to as "the Act") and Rule 6-A of the Karnataka Municipal Corporation Rules (hereinafter referred to as "the Rules"), which prohibit authorisation of contract involving an expenditure exceeding Rs. 20 lakhs without the sanction of the Government. Sri Jayaram in support of his contentions, also relied upon the decision of the Supreme Court in the case of *Harinder Singh Arora v Union of India and Others* and *Food Corporation of India v M/s. Kamadhenu Cattle Feed Industries*.

5. However, Sri B.V. Acharya, learned Senior Counsel appearing along with Sri D.R. Basi Mallik and J.P. Udgata for 6th respondent, and Sri. K.N. Puttegowda, learned Counsel appearing for respondents 1 to 4, strongly refuted every one of the submissions made by the learned Senior Counsel appearing for the petitioners, with equal vehemence and clarity. They pointed out that in a contract where professional skill and competency is required to be possessed by a contractor for executing a contract, the price quoted for executing the work cannot be the predominant factor and in that background, if the Standing Committee of the Corporation; after elaborately considering the several factors including the report of the Expert Committee and the materials furnished by the

petitioners and the 6th respondent, keeping in mind the interest of the work and public interest, has resolved to accept the tender submitted by the 6th respondent; and the said recommendation of the Standing Committee of the Corporation was, after thorough discussion and consideration of several relevant factors which weighed in the mind of the Standing Committee of the Corporation, was taken into consideration by the Council of the Corporation, which consists of 103 members, cutting across the party lines, resolved to accept the tender submitted by the 6th respondent, it is not permissible for this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, to interfere with the decision taken by the Corporation and nullify the impugned resolution. It is also their submission that it is not permissible for this Court while exercising its writ jurisdiction, to examine whether the first petitioner or the 6th respondent is more suitable to execute the works in question. According to them, this is a matter which lies with the discretion of the Corporation. They submitted that the fact that an Expert Committee was constituted and their opinion was obtained, clearly shows that all precautions were taken to pick up a more suitable contractor; and on consideration of the report of the experts and other materials on record, if the Corporation has accepted the tender submitted by the 6th respondent, the said decision is not liable to be interfered with by this Court. They also submitted that absolutely there is no merit in the submission of the learned Counsel for the petitioners that the decision was taken either by the Standing Committee or the Council of the Corporation on account of either extraneous or irrelevant considerations or vitiated on account of mala fides. Relying upon Clause 17(3) of the tender conditions, they pointed out that it was the duty of the tenderer to submit every detail in support of his claim, in respect of which tenders had been called for. They also submitted that Clause 17(3) of the tender conditions also makes it clear that the Corporation reserved its right to reject or accept any tender submitted. According to them, the impugned decision of the Corporation cannot be termed either as capricious, unreasonable or discriminatory in the nature or violative of the rights guaranteed to the petitioners. They also submitted that there is no merit in the contention of the petitioners that they were not called for negotiations. Strongly relying upon letter Annexure-K4, they pointed out that the said letter clearly shows that the petitioners were called for negotiations on 17th and 20th of March, 1998 and in the letter Annexure-K4, the first petitioner had made it clear that there is no scope for reduction of price quoted. They further pointed out that it is not the case of the petitioners in the writ petition or at any stage in the course of the correspondence with respondents 1 to 4, that the petitioners were not informed of the reduction of the price quoted by the 6th respondent from Rs. 83,97,985/- to Rs. 60,42,000/-; and if the first petitioner was informed of the reduction of the price quoted by the 6th respondent, the first petitioner would have further reduced the price quoted by it. Under these circumstances, the price quoted by the petitioners in a sealed cover before this Court should not be taken into consideration while deciding the validity of the decision already taken. They further submitted that since the sanction of the Government has already been

given for implementation of the project in question, the question of the Corporation obtaining further sanction does not arise. Therefore, they submitted that the grievance of the petitioners that the provisions of sub-section (2) of Section 182 of the Act and Rule 6-A of the Rules has not been complied with, is totally misconceived. They submitted that this petition is liable to be dismissed also on the ground that the petitioners have totally misled this Court by making inaccurate statements that the petitioners were not called for negotiations and also on the ground of delay and laches on the part of the petitioners in approaching this Court. In this connection, they pointed out that the first petitioner having obtained the copy of the impugned resolution passed by the Corporation on 11th of November, 1998, has filed this petition only on 9th of January, 1999 i.e., nearly two months after obtaining the copy of the resolution. The learned Counsel for the 6th respondent submitted that pursuant to the contract entered into between the Corporation and the 6th respondent, the 6th respondent has made substantial progress for the purpose of executing, the contract by placing orders with others by making huge commitments; and therefore, at this stage, if this Court interferes with the impugned resolution and sets at naught the contract in question, the 6th respondent would be put to irreparable injury and hardship.

6. Sri Puttegowda further submitted that one of the crematoriums in Bangalore City has already been closed in view of the fact that the said crematorium, did not possess requisite pollution control devices; and therefore any delay in execution of the work in the matter of erection of electric crematoriums in question would result in serious injury to the public. He submitted that in a contract where the period fixed for execution of the work is 12 months, two months delay in approaching this Court is fatal; and if, in the circumstances of the case, the Corporation is directed to reconsider the matter, it would cause delay in execution of the work and it will be totally against the public interest. Sri Acharya and Puttegowda relied upon the decision of the Supreme Court in the cases of *Sterling Computers Limited v M/s. M and N Publications Limited and Others*; *Raunaq International Limited v I.V.R. Construction Limited and Others*²; and that of the Kerala High Court in the case of *N. Kunhiraman v State of Kerala and Others* .

7. The only question that would arise for my consideration in this petition, is as to whether the impugned resolution is liable to be quashed by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India in the light of the various contentions advanced by the learned Counsel appearing for the parties?

8. Now, let me examine each of the contentions advanced by Sri Jayaram, learned Senior Counsel appearing for the petitioners.

9. Insofar as the first contention of the petitioners, referred to above is concerned, if Sri Jayaram is right in his submission that the first petitioner was not called for negotiation and without calling it for negotiation, the 6th

respondent alone was called for negotiations and it was allowed to reduce the original price quoted by it and on that basis, the tender submitted by it was accepted, I am of the view that the impugned resolution is liable to be quashed. It is well-settled that the State or its instrumentalities which invite tenders, is not required to accept the lowest price quoted and it is open to them to negotiate with all the tenderers and after giving equal opportunity to all of them to improve the price quoted in the tender submitted by them, to get the best price to its advantage on the basis of such negotiations. This principle is founded by the Courts in order to see that all State actions are fair, reasonable and should not suffer from vice of discrimination or arbitrariness and satisfy the guarantees provided to a person under Article 14 of the Constitution of India. Further, the lowest price quoted by one of the tenderers need not always be the best price to the advantage of the State or its instrumentalities which invites tenders. Therefore, the authorities must have discretion not to accept the price quoted in the tender and call all the parties who have submitted tenders, for negotiation to get the best price for its advantage. Now, it is well-settled that even in contractual spheres as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution and they cannot act arbitrarily and enter into relation with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the best of reason and relevance. In this connection, it is useful to refer to the decision of the Supreme Court in the case of Food Corporation of India, *supra*, strongly relied upon by Sri Jayaram. In paragraphs 7, 8 and 9 of the judgment, the Supreme Court has observed thus:

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the, Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is "fair play in action". Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the

requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether, the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

9. In *Council of Civil Service Unions v Minister for the Civil Service* 1985 AC 374 : 1984 All ER 935, the House of Lords indicated the extent to which the legitimate expectation interfaces with exercise of discretionary power. The impugned action was upheld as reasonable, made on due consideration of all relevant factors including the legitimate expectation of the applicant, wherein the considerations of national security were found to outweigh that which otherwise would have been the reasonable expectation of the applicant. Lord Scarman pointed out that "the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter". Again in *re Preston* 1985 AC 835 : 1985 All ER 327, it was stated by Lord Scarman that "the principle of fairness has an important place in the law of judicial review" and "unfairness in the purported exercise of a power can be such that it is an abuse or excess of power". These decisions of the House of Lords give a similar indication of the significance of the doctrine of legitimate expectation. Shri A.K. Sen referred to *In Re: H.E.H. The Nizam's Jewellery Trust*, which holds that Court should interfere where discretionary power is not exercised reasonably and in good faith".

(b) Again, at paragraph 10 of the said judgment, the Supreme Court has stated as follows:

"10. Inadequacy of the price quoted in the highest tender would be a question of fact in each case. Retaining the option to accept the highest tender, in case the negotiations do not yield a significantly higher offer would be fair to the tenderers besides protecting the public interest. A procedure wherein resort is had to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good".

10. Therefore, having noticed the law laid down by the Supreme Court, now the question that requires to be examined in this petition is, whether, as a matter of fact, the petitioner was not called for negotiations, as contended by Sri Jayaram. As observed by me earlier, the contention advanced before me is two-fold. Firstly, the grievance of the petitioners is that the reduction of the price made by the 6th respondent from Rs. 83,97,985/- to Rs. 60,42,000/- was not informed to the first petitioner and if it was informed, the first petitioner also would have further reduced the price earlier quoted by it. Secondly, since the first petitioner was not called for negotiations, it could not highlight to respondents 1 to 4 that the price reduction made by the 6th respondent is, as a matter of fact, not a price reduction; and the first petitioner, in the matter of execution of the works in question, has higher capabilities than the 6th respondent. Having elaborately heard the learned Counsel appearing for the parties on this question, I am of the view that the submission of Sri Jayaram does not merit grant of relief by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. It is not the case of the first petitioner either in the correspondence that has taken place between the petitioners and respondents 1 to 4 or for that matter, in the pleadings in the petition, that the petitioners were not informed of the reduction of the price done by the 6th respondent by means of private negotiations. The averments made in the petition show that the grievance of the petitioners was that respondents 1 to 4 proceeded to independently and privately negotiate with the 6th respondent to allow it to change the price quoted by it inspite of the term in the tender document expressly prohibiting change of the price quoted, to accept the tender submitted by the 6th respondent. This is clear from the averments made in paragraphs 29, 30 and 39 of the petition. It is useful to extract the said paragraphs, which read as hereunder:

"29. From the copy of the said resolution, the petitioners were surprised to find that in spite of the tender documents expressly providing that no change in the price bid quoted by the tenderers would be entertained, the respondent authorities had independently negotiated with the respondent 6 and had allowed it to reduce its price from Rs. 87,97,000/- to Rs. 60,42,000/- and had decided to award the work to the respondent 6 at the reduced price, which also is admittedly higher than the price quoted by the petitioner 1 on the sole ground that the respondent 6 had experience in erecting electric cremation furnace with scrubbers and chimney. The respondent authorities thereby accepted that the price of scrubbers and chimney quoted by the petitioners were not unusually low and that effective scrubbers and chimney could be supplied at the said price.

30. While deciding to award the work to the respondent 6 the respondent authorities thus proceeded to independently and privately negotiate with the said respondent, to allow it to change the price quoted by it in spite of the same being expressly prohibited in the tender documents, to accept the higher price offer of the respondent 6 and to disregard the forty years experience of the petitioners and the more than 50 electric cremation furnaces designed and erected by it. The respondent authorities further proceeded to place undue

reliance on the experience of the respondent 6 founded on the erection of a singular furnace.

39. The respondent authorities proceeded to clandestinely negotiate with the respondent 6 behind the back of the petitioners and to accept the revised price offer of the respondent 6 in spite of the tender conditions themselves expressly providing that no change in the price by the tenderers would be entertained. The said purported resolution does not proceed to mention as to when the respondent 6 revised its price bid or as to when the same was entertained. The purported justification of the respondent authorities for accepting the higher price offered by the respondent 6 is on the face of it mala fide".

(emphasis supplied)

Therefore, the case sought to be made out by the petitioners in the petition, was that though there was a prohibition in the tender documents for change of price quoted, respondents 1 to 4 "proceeded to independently negotiate with the 6th respondent to allow it to change the price quoted by it in spite of the same being expressly prohibited in the tender documents to accept the higher price offered of the 6th respondent". Further, the contention of the petitioners that the first petitioner was not called for negotiation, as has been done in the case of the 6th respondent, it appears to me, is contrary to the facts and the same is belied by letter Annexure-K4, dated 23rd of March, 1998 written by the petitioners to the Superintending Engineer of the Corporation. In the said letter, the second petitioner, who is the Managing Director of the first petitioner, has, in unequivocal terms, referred to the meeting he had with the Superintending Engineer of the Corporation and the experts on 17th and 20th of March, 1998 at the office of the Superintending Engineer of the Corporation. In the said letter, he has confirmed the points, which were verbally agreed at the meeting. The contents of the said letter would make it clear that the petitioners had made it clear at the time of discussion that "there was no further scope to reduce the price quoted by the first petitioner". It is useful to extract the said letter, which reads as hereunder:

"We refer to the above and the undersigned's discussion on the subject during a meeting with you and your experts on 17th and 20th March at your office and are to confirm the following points which were verbally agreed at the meeting.

1. Our price is firm and will remain firm throughout the period till completion of the work.
2. There is no further scope to reduce our prices.
3. We are confident that we will be able to complete the work as per the schedule of delivery stated in your tender document.
4. We are agreeable to accept any standard penalty clause for delay in delivery and work completion due to our fault, subject to force majeure condition.
5. We are confident that the price quoted by us is reasonable, workable and also

reasonably profitable for us, the difference between estimated value and our quoted price is high as in our opinion the estimated price might be on the higher side.

6. Regarding the performance of scrubber we are confident that our make scrubber will work perfectly, even so we are agreed to purchase scrubber from other reputed manufacturers, if you so desire.

7. There was no discussion about the commercial points like payment of advance, frequency of R/A payment, time delay for R/A payment from the date of R/A bill, etc.

8. We are agreeable to visit your office any time again if you require for further discussion.

9. We have agreed to set up a maintenance facility for the furnaces we are to erect, which facility can be utilised by you for maintenance of the existing furnaces.

10. We will arrange to maintain adequate inventory of maintenance spare at Bangalore for speedy repair of furnaces, whenever such occasion may arise.

11. Our maintenance facility can be continued after guarantee period also for post guarantee period maintenance work against payment of charges.

12. We have already a representative at Bangalore, Mr. Nilanjan Dutta, who has already met you and he will be keeping contact with you. He is duly authorised to represent us at Bangalore".

(emphasis supplied)

Again, letter Annexures-K5, dated 23rd of May, 1998 written by the second petitioner also refers to the rebate or discount in the price quoted and also their technical capabilities in executing the work. It is useful to extract the relevant portion of the said letter, which reads as hereunder:

"1. Validity: The validity of our offer expired after 180 days as stipulated in the tender document, we have extended the validity twice thereafter maintaining our price and all other conditions unaltered. We are again extending the validity till 15th June, 1998 without any change. Kindly note in view of the forthcoming budget it may not be possible for us to keep the price at the same level after expiry of the current validity period up to 15-6-1998.

2. Price: Our quoted price per site is Rs. 58,95,000/-. Our total price for both the sites is Rs.1,17,90,000-00 (Rupees one hundred seventeen lacs and ninety thousand only).

Note-1. This price is subject to rebate on discount of 2% + 2% or 4% (four per cent) subject to certain condition mentioned in page 3 of our offer letter No. 606/SKS/285/97-98, dated 22-5-1997. If this rebate is availed the rebate amount is Rs. 4.716 lacs. Therefore the net price is reduced to Rs. 113.184 lacs (one

hundred thirteen lacs eighteen thousand four hundred only).

Note-2. This price is also inclusive of 8% (eight) Central Sales Tax and 4% (four) Entry Tax. Therefore, the net price offer subject to rebate and payment of taxes and duties is on 101.057 lacs only (Rupees one hundred one lac and five thousand seven hundred only).

Therefore our price for two sites is Rs. 1,01,05,700/- Plus 8% CST, Plus 4% Octroi which please note.

Note-3. The above price is inclusive of spares.

Technical:

- a. We are the manufacturer and erector of highest number of electric crematorium in the country at present.
- b. We have agreed to introduce/fix additional 27 KW heater coils in the secondary incinerating chamber of the furnace without any extra cost.
- c. We have amply clarified our position regarding the scrubber and option are open for you to take scrubbers of reputed make like ABB (formally Flakt India) or Insight Technologies or alternatively we have offered to keep an additional percentage of security deposit on the scrubber price only (as per our letter referred to above)".

It is relevant to point out that the 6th respondent had, by its letter dated 21st of March, 1998, reduced the price earlier quoted by it, whereas the first petitioner had, in its letter dated 23rd of March, 1998 Annexure-K4, stated that there is no scope for further reduction. Letter Annexure-K5, dated 23rd of May, 1998 written by the first petitioner long after the reduction of the price quoted by the 6th respondent also clearly indicates that the first petitioner did not intend to reduce the price further. Letter dated 10th of June, 1998, a copy of which has been produced as Annexure-K7 written by the second petitioner, also shows that he had visited the office of the Superintending Engineer on 4th and 5th of June, 1998 as indicated by him in his letter Annexure-K5, dated 23rd of May, 1998. Letters dated 10th of June, 1998 and 25th of June, 1998, copies of which have been produced as Annexures-K8 and K9 respectively, show that the petitioners had clarified certain matters in respect of which doubts were expressed by the officials of the Corporation. All these matters on record clearly show that the petitioners were called for negotiations by respondents 1 to 4 in the presence of the experts on 17th and 20th of March, 1998 and thereafter, the petitioners had clarified certain matters, as set out in detail by them in their letter Annexure-K9, dated 25th of June, 1998. Therefore, in the absence of clear assertion made by the petitioners either in the petition or at any time earlier to the filing of the petition that they were not informed of the reduction of the price initially quoted by the 6th respondent, I find it difficult to accept the version of the petitioners that it was not informed to them as contended by Sri Jayaram in the course of the hearing of this petition.

11. Further, the next question is, even if the reduction in the price made by the 6th respondent as has been done, was not communicated to the first petitioner, whether, on that ground, the acceptance of the tender offered by the 6th respondent would be vitiated? Normally, when the difference between the price quoted by the two tenderers like the first petitioner and the 6th respondent, is huge and to the tune of Rs. 25,02,985/-, I am of the view that if such a reduction is not informed to the lowest tenderer like the first petitioner and the tender offered by the person who has quoted more than Rs. 25 lakhs as in the case of the 6th respondent is accepted, without giving an opportunity to the lowest tenderer, acceptance of such a tender requires to be nullified as one being opposed to fairness and violative of the rights guaranteed to the parties under Article 14 of the Constitution of India. It is natural for a person who has quoted nearly Rs. 59 lakhs not to venture to reduce it further when the price quoted by the competing tenderer is above Rs. 83 lakhs. But, it is also natural that business people and the contractors if they come to know that the competing contractor or a businessman has reduced the price quoted by him considerably to make it almost equal to the price quoted by him, it is reasonable to expect that they would also further reduce the price, provided it is workable, in their anxiety to get the business. Therefore, I am of the view that fairness in action requires where the difference in price quoted by the competing tenderers is substantial; such reduction in the price quoted in the tender submitted must be communicated to the competing tenderer, who has quoted the lowest price. This is necessary in public interest and also with a view to avoid arbitrariness on the part of the State or its instrumentalities and with a view to afford an opportunity to the tenderer who has quoted the lowest price. A tenderer, who was modest or reasonable in quoting the price; and would have legitimate expectation when the difference in the price quoted by him and the competing tenderer is too large that his tender would be accepted, would not normally reduce the price unless he is also told that pursuant to the negotiation held, the competing tenderer has also reduced his price. This is the normal human conduct and more particularly of business people, whose main object is to make substantial profit in the work they undertake. However, this does not mean that the reduction in the price so made should be communicated for an indefinite period to the other competing tenderer. That, in my view, would not be the correct legal position. However, I am inclined to think that it would be reasonable to take the view that the first stage of the reduction when the difference is substantial, should be communicated to the lowest tenderer and if it is done, it would satisfy the requirement of fairness in action. This is necessary to be done not only from the point of view of demonstrating that the action of the authorities is fair, reasonable and does not suffer from vice of arbitrariness or discrimination, but also from the point of public interest. When there are competing tenderers, the communication of the reduction of the price quoted by one of the tenderers, who has submitted fairly high price to the tenderer who has given the lowest price, would inspire him to further reduce the price quoted by him if it is workable to him, which would enure to the benefit of the authorities to save substantial

money to the authorities. This would serve the larger public interest. In my view, this is a matter on which the authorities concerned with little bit of commitment to the public cause and public revenue and the interest of the institution in which they work, must keep in mind while taking appropriate decision in the matter. However, it is also necessary to point out that if the difference in the price quoted is not substantial and it is only marginal, if an opportunity is given to all the tenderers to reduce the price, mere non-communication of the reduction of the price quoted to each of the tenderers whose price is lower than the others, will not vitiate the acceptance of such contract. These are the matters, as observed by me earlier, which should be assessed and adjudged depending upon the facts and circumstances of each case, keeping in mind whether such an action was fair and reasonable and has, in any manner, prejudiced any one of the tenderers and has resulted in any public injury. But, in the present case, as noticed by me earlier, I am unable to come to the conclusion that the petitioners were not aware of the reduction of the price made by the 6th respondent from Rs. 83,97,985/- to Rs. 60,42,000/-. Letter Annexure-K4 and letter Annexure-K5 would give an indication that the first petitioner had come to know about the reduction of the price quoted by the 6th respondent. In fact, when the first petitioner was called for negotiation, is it not reasonable for the first petitioner to expect that the authorities of the Corporation also would negotiate with the 6th respondent about the price quoted by it? In that situation, if, as a matter of fact, the petitioners were not aware of the reduction of the price made by the 6th respondent, when the petitioners had given so many details in their letters addressed to the authorities of the Corporation on various other matters, they would have asked for information with regard to the final price quoted by the 6th respondent. In none of the letters written by the petitioners, there is any doubt raised by them with regard to the final price quoted by the 6th respondent. Under these circumstances, I am unable to accept the contention of Sri Jayaram that if the petitioners were told of the reduction of the price quoted by the 6th respondent, the first petitioner also would have further reduced the price quoted by it and also would have satisfied respondents 1 to 4 that the reduction in price made by the 6th respondent is not actually a reduction in price quoted by it. In response to the serious grievance made by Sri Jayaram that a sum of Rs. 3,66,000/- towards "secondary chamber heating element" in the original tender submitted by the 6th respondent is omitted. Only eliminating secondary chamber heating element, Sri Acharya explained that what is sought to be done in letter Annexure-R3 was only reduction in the price quoted in respect of the secondary chamber heating element, and not the elimination of the work relating to the secondary chamber heating element. He submitted that the said secondary chamber heating element work would be undertaken by the 6th respondent as per the tender submitted without claiming the cost of Rs. 3,66,000/- towards the cost of the said work. In this connection, a memo also has been filed before me on behalf of the 6th respondent, which reads as hereunder:

"The respondent 6 puts it on record that the elimination referred to in pages 66

to 68 of counter only refers to the elimination of cost and not ingredients and work".

In my view, if letter Annexure-R3, dated 21st of March, 1998 written by the 6th respondent to the Executive Engineer of the Corporation is properly understood, I find that what has been taken out is the price initially quoted in the tender submitted and not actually the elimination of the work as contended by Sri Jayaram. Therefore, while I am unable to accept the submission of Sri Jayaram that the petitioners were denied of an opportunity to show that the reduction in price made by the 6th respondent is not actually reduction in price, but it was done on account of the elimination of certain work, but as observed by me earlier, there is, as a matter of fact, no elimination of work done by the 6th respondent while reducing the price earlier quoted. This is clear from the statement made in letter Annexure-R3. In the light of the above conclusion that the petitioners have failed to prove that they were not informed of the reduction of the price quoted by the 6th respondent and also they have failed to show that they were not called for negotiations, I am of the view that the decision of the Supreme Court in the case of Food Corporation of India, *supra*, relied upon by Sri Jayaram is of no assistance to him. Therefore, I do not find any merit in the first submission succinctly advanced by the learned Counsel for the petitioners.

12. I am also unable to accept the second submission of Sri Jayaram that since the Expert Committee had recommended the case of the first petitioner, the first petitioner is more suitable than the 6th respondent to execute the works in question; and, therefore, the Standing Committee and the Council of the Corporation were not justified in accepting the tender submitted by the 6th respondent.

13. Before I proceed to consider this question further, it is useful to extract the relevant portion of the report dated 4th of July, 1998 submitted by Sri Chowdaiah and the report dated 8th of July, 1998 submitted by Sri Ramdas, who are the members of the Expert Committee.

(a) The report of Sri Chowdaiah reads as hereunder:

"Being the lowest quotation Truvolt may be considered subject to the conditions that they make up all deficiencies indicated without additional cost. However, according to revised quotation after discussion is only 60.42 lakhs i.e., difference is about 3 lakhs. If the lowest quotation is not only the criteria Adore Thermal Engineering may be considered in view of its superiority in design, technology and operation".

(b) The report of Sri Ramdas reads thus:

"Based on the clarifications furnished by Truvolt Engineering Company especially with regard to the pollution control requirements as well as the clearance from the Pollution Control Board to be obtained from him and also considering that the energy consumption is fairly low, their offer is technically acceptable".

As it can be seen from the report of Sri Chowdaiah, he has opined that the quotation given by the first petitioner being the lowest, it may be considered subject to the conditions the it makes up all deficiencies indicated without additional cost. He has further stated that if the lowest quotation is not that only criteria, the difference of the price quoted by the first petitioner and the 6th respondent is about Rs. 3 lakhs, the tender submitted by the 6th respondent "may be considered in view of its superiority in design, technology and operation". Therefore, Sri Chowdaiah has opined that design, technology and operation of the 6th respondent is superior to that of the first petitioner. Therefore, according to him, if the lowest price is not the basis for acceptance of the tender submitted by the first petitioner, the tender of the 6th respondent could be considered. Further, even Sri Ramdas, in his report, has stated that in the light of the clarification furnished by the first petitioner regarding pollution control requirements as well as the clearance from the Pollution Control Board to be obtained by it and also considering that the energy consumption is fairly low, the tender submitted by the first petitioner is technically acceptable. It is necessary to notice that even Sri Ramdas does not state that the first petitioner is either more suitable or the design or technology of the first petitioner is superior to that of the 6th respondent, but he only opines that the tender submitted by the first petitioner is "technically acceptable". On the other hand, as observed by me earlier, Sri Chowdaiah has stated in his opinion that the design, technology and operation of the 6th respondent is superior. In this background, if the Standing Committee of the Council (who are the Councillors), on consideration of the report of the Expert Committee and the tender documents submitted by the first petitioner and the 6th respondent and all other materials including the letters obtained by the Corporation with regard to the works executed by the first petitioner as well as the 6th respondent, had resolved to accept the tender of the 6th respondent and the said decision of the Standing Committee was approved by the Council of the Corporation the question is whether it is permissible for this Court in exercise of its jurisdiction under Article 226 of the Constitution, to interfere with the said decision merely because this Court, on reappraisal of the entire matter, can come to a different conclusion? In my view, this Court, while exercising the power of its judicial review under Article 226 of the Constitution, can interfere with the decision of the authorities, like, the Standing Committee or the Council of the Corporation, if such decisions are either capricious, arbitrary or unreasonable or suffer from vice of violation of the rights guaranteed to the parties under Article 14 of the Constitution of India or if the decision of the authorities is in disregard of the principles of natural justice or fairness in action or is actuated by extraneous or irrelevant considerations or mala fides either in law or on facts. However, merely because this Court can take a different view in the matter, is not a ground for this Court to nullify the decision of the State or its instrumentalities in the matter of acceptance of a tender or bid submitted by the parties. It is necessary to point out that while considering the contention of Sri Jayaram, as rightly pointed out by Sri Acharya and Sri Puttegowda, in a matter like this, the Court is required to

keep in mind the distinction between the tender submitted for purchase of articles belonging to the State where the predominant, or on many occasions, the only consideration would be the higher price to be secured by the authorities, and where the tender submitted relates to execution of contracts of the nature one before this Court where technical capabilities of the contractor, the infrastructure available with him, past experience would be the prime consideration in addition to the price quoted for execution of the contract. In my view, insofar as the former case, i.e., the case of disposal of the goods belonging to the State by inviting tenders is concerned, the discretion left to the State or its instrumentalities is that they have either no discretion or the discretion left is the minimum as the sole consideration is the best price offered. In the case of execution of works contract, which involves, as observed by me earlier, the skill, technology and various other factors referred to above earlier, the State or its instrumentalities, who intend to get the work executed, have a wide discretion to "play in between the joints". The authorities who take a decision in the matter, have to keep it in mind several relevant factors. The price quoted to execute the contract though it is one of the important considerations, cannot always be the sole criteria to decide the acceptance of the tender submitted, The capability of the tenderer to execute the contract on the basis of the technology he possesses, his past experience, the satisfactory execution of the works of others and the public injury that is likely to be caused in deficiency of the said works, the urgency in the matter of execution of the work, will be important considerations which are required to go into the decision making process. If these things are borne in mind and a decision is taken by the authorities, as observed by me earlier, it is not permissible for this Court to interfere with the discretion exercised by the authorities in accepting the tender offered by a tenderer though the price quoted is little higher than the other tenderer. These are the matters to be left to the discretion of the authorities so long as the said discretion is not arbitrarily exercised. But, from what I have stated above, it should not be understood that the difference in the price quoted has no bearing at all in the case of contracts of the nature one before this Court and the authorities could arbitrarily reject the lowest tender submitted, if the suit abilities of both are equal or difference in suitability is marginal as against the huge advantage in difference in price. If the difference in price quoted is substantial, it is necessary to state that acceptance of the tender of the person who has quoted higher price without there being valid and cogent reason given while taking a decision, may suffer from the vice of arbitrariness, unreasonableness and discrimination. When the difference in the price quoted is substantial, it is for the authorities to justify on the basis of the materials on record when a grievance is made by the lowest tenderer challenging the action of the authorities to show to the satisfaction of the Court that the decision taken is fair and reasonable and it has been taken keeping in mind only the interest of the work and public interest and nothing else. In this connection, it is useful to refer to the decisions of the Supreme Court in the case of Sterling Computers Limited, *supra*, and in the case of Raunaq International, *supra*, and also that of the Kerala High Court in the case of N.

Kunhiraman, *supra*.

(a) In the case of *Sterling Computers Limited*, *supra*, the Supreme Court has, at paragraphs 17, 18 and 19, observed thus:

"17. It is true that by way of judicial review the Court is not expected to act as a Court of appeal while examining an administrative decision and to record a finding whether such decision could have been taken otherwise in the facts and circumstances of the case. In the book *Administrative Law*, Prof. Wade has said:

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts *ultra vires*. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended. The decisions which are extravagant or capricious cannot be legitimate. But, if the decision is within the confines of reasonableness, it is no part of the Court's function to look further into its merits. "With the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority".

But in the same book Prof. Wade has also said:

"The powers of public authorities are therefore essentially different from those of private persons. A man making his Will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of "malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest.

There are many cases in which a public authority has been held to have acted from improper motives or upon irrelevant considerations, or to have failed to take account of relevant considerations, so that its action is *ultra vires* and void".

18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process". In this connection reference may be made to the case of *Chief Constable of the North Wales Police v Evans* (1982) 3 All ER 141, where it was said that:

The purpose of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the

same time as was said by the House of Lords in the aforesaid case, Chief Constable of the North Wales Police v Evans, the Courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution".

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an Appellate Authority by substituting its opinion in respect of selection made for entering into such contract. But, once the procedure adopted by an authority for purpose of entering into a contract is held to be against the mandate of Article 14 of the Constitution, the Courts cannot ignore such action saying that the authorities concerned must have some latitude or liberty in contractual matters and any interference by Court amounts to encroachment on the exclusive right of the executive to take such decision".

(b) In the case of Raunaq International, supra, the Supreme Court, at paragraphs 14 and 15, has observed as hereunder:

"14. Where there is an allegation of mala fides or an allegation that the contract has been entered into for collateral purposes, and the Court is satisfied on the material before it, that the allegation needs further examination, the Court would be entitled to entertain the petition. But even here, the Court must weigh the consequences in balance before granting interim orders.

15. Where the decision-making process has been structured and the tender conditions set out the requirements, the Court is entitled to examine whether these requirements have been considered. However, if any relaxation is granted for bona fide reasons, the tender conditions permit such relaxation and the decision is arrived at for legitimate reasons after a fair consideration of all offers, the Court should hesitate to intervene".

(c) In the case of N. Kunhiraman, supra, the learned Single Judge of the Kerala High Court has, at paragraphs 7, 8 and 9 of the judgment, has stated thus:

"7. As observed by Lord Hailsham, two reasonable persons can perfectly come to opposite conclusions on the same facts, without forfeiting their title to be regarded as reasonable man. Unless the decision is so unreasonable that no reasonable person would come to it, it does not merit interference. As observed by the Court of Appeal in the Tam side case 1976(3) All ER 665:

"No one can be properly labelled as being unreasonable, unless he is not only wrong, but so unreasonably wrong that no reasonable person could sensibly take that view".

It is also useful to refer to the observations of Squarraan, L.J. in Nottinghamshire Country Council v Secretary of State 1986(1) All ER 199:

"Unreasonableness must prima facie show that the official behaved absurdly or

must have taken leave of his senses".

8. The decision of the Municipal Council must be tested on the touchstone of these principles. The decision is not under appeal and the tenability of another view will be no ground to stamp the decision with vice. As already noticed, the past performance of petitioner-contractor, and the reports made by competent authorities were considered and a decision taken by an elected body of sixteen persons, after deliberation. The decision is not unreasonable.

9. While guarding against arbitrary exercise of power, one cannot lose sight of the fact that the foremost aspect to be considered is public interest. Proceedings of this nature do not involve a lis between parties. Such proceedings are more in the nature of a public interest litigation, than in the nature of litigation for establishment of private rights or redressal of wrongs. It is only to ensure that public interest is protected, that rival claims are considered, not for their own sake, nor in their own right. The facts reveal that any further delay in the matter would defeat the public purpose, and that the decision itself is not unreasonable. In these circumstances, there is no justification for interfering with the impugned decision".

(emphasis supplied) Therefore, in the light of the legal position referred to above, the only question that would arise for my consideration is whether the impugned resolution is vitiated on the grounds urged by Sri Jayaram? Having carefully considered the submission of Sri Jayaram, I am unable to persuade myself to accede to his submission. As noticed by me earlier, the Standing Committee has, after considering the opinion of the experts and other relevant matters, given six reasons to accept the tender submitted by the 6th respondent. They are (1) the technical superiority and experience of the 6th respondent in erecting (a) venture scrubber in the secondary chamber; and (b) installation of chimney of 100 ft; (2) their experience and satisfactory completion of similar work at Bombay Municipal Corporation and Rajkot Municipal Corporation as certified by the letters issued by the authorities of the said two Corporations; (3) the first petitioner does not possess the requisite experience or qualification to install (a) venture scrubber and (b) tall chimney; (4) there has been serious complaint by the members of the public with regard to the four crematoriums already installed in Bangalore City which do not have requisite pollution control devices and on account of that, the Government has been giving several directions to control the environmental pollution; (5) the 6th respondent, which has already acquired experience in stalling pollution control devices while erecting electric crematorium, is acceptable than the one who does not have such experience; and (6) the first petitioner-company being a private company and the 6th respondent being a public limited company, the 6th respondent is preferred as against the first petitioner. Insofar as the first five reasons culled out above given by the Standing Committee is concerned, I am of the view that the said reasons cannot be dubbed as either totally extraneous or irrelevant to decide the question as to who is more suitable among the first petitioner and the

6th respondent. Insofar as the sixth reason is concerned, if the said reason alone is the basis of the decision, possibly the decision of the Standing Committee may be liable for serious attack on the ground that the decision is vitiated on account of taking into consideration the factors which are not germane or relevant while taking the decision. However, in addition to the 6th reason, since the five other reasons assigned are valid and germane to decide the matter in issue, I am unable to accept the submission of Sri Jayaram that the decision of the Standing Committee is totally vitiated. Further, even when the things are equally placed, if the Corporation prefers a public limited company as against a private limited company, in my view, that cannot be a ground for this Court to interfere with such decisions in exercise of its writ jurisdiction. This Court, while exercising its writ jurisdiction under Article 226 of the Constitution of India, cannot assess the reasons assigned in the matter of selection of contractors for execution of the work of the magnitude in question in mathematical exactitude. Ultimately, it is the Corporation and its authorities who are required to get the work executed by the contractor. They are the best persons to decide the suitability of the contract in the matter of execution of a work which involves technical know-how. If the reasons assigned by the authorities are fairly reasonable and acceptable and not arbitrary or actuated by any other extraneous considerations, this Court should not examine such reasons with suspicion and nullify the decisions. On many occasions, if it is done, it may do great harm to the public interest than protecting the public interest as there may be delay in execution of the work, and other supervening events may take place. In my view, the decision of the Council of the Corporation which has approved the decision of the Standing Committee, cannot be dubbed as either arbitrary, unreasonable, capricious or discriminatory in nature or in any manner, violates the rights guaranteed to the petitioners under Article 14 of the Constitution or is in gross violation of public interest. As observed by me earlier, in a matter like this, this Court cannot scrutinise the matters as an Appellate Authority. The reasons assigned by the Standing Committee in the impugned resolution, which has been approved by the Corporation, shows that there has been application of mind and the Standing Committee could give the reasons, referred to above, only on examination of the entire materials placed before it. It is necessary to point out that in the instant case, since the Council of the Corporation, which consists of 103 Councillors, as rightly pointed out by Sri Acharya and Sri Puttegowda, cutting across the party affiliations, have unanimously accepted the decision of the Standing Committee, this Court should not lightly interfere with the said decision. In a democratic set up, when political parties struggle and make an attempt to come to power by exposing the deficiencies and default of the party in power, it is reasonable to expect that there would be a thorough discussion in the matter and thereafter a decision is taken by the Council. Therefore, unless it is shown that the decision taken is either arbitrary, unreasonable or capricious or actuated by extraneous and irrelevant considerations or is against public interest, this Court should not lightly interfere with the decisions of the authorities merely because this Court can take a different view in the matter with regard to the suitability of the person

who has submitted the tender. The decision of the Kerala High Court in the case of Kunhiraman, supra, relied upon by Sri Acharya and Sri Puttegowda, supports the view I have taken above. Therefore, I do not find any merit in the second submission of Sri Jayaram and accordingly, it is rejected.

14. The third submission of Sri Jayaram is also devoid of any merit. Clause 17.3 in the tender document is intended to notify the tenderers that it is not permissible for them to modify the price quoted by them in the tender document. That does not mean that the authority who calls for submission of tenders, in the interest of the work and in public interest, cannot call for negotiations the parties who have submitted their tenders and negotiate with them either with regard to the price quoted by them or with regard to the quality of the work to be executed by them. It is necessary to point out that the object of calling for tenders are two-fold. The first one is to give an opportunity to the members of the public who are qualified to execute the work, to submit their tenders and consider their case for entrusting the work to them. This is from the point of view of the members of the public. The second and more important reason is in the interest of the Corporation and in public interest i.e., insofar as the Corporation is concerned, to get the work executed at the lowest possible price without there being any compromise with regard to the quality of the work to be executed, through the competent person with high degree of efficiency and maintenance of quality in execution of work. Therefore, depending upon the nature of the work to be executed, the facts and circumstances of each case may compel the State or its instrumentalities to negotiate the matter with the tenderers and take an ultimate decision in the interest of public. So long as all the tenderers are given an opportunity in the matter of negotiation and a decision is taken in good faith and in public interest, it is not permissible for the petitioners to complain before this Court that it was not permissible for the Corporation to modify the terms and conditions of the tender documents. While considering the first contention of Sri Jayaram, I have already taken the view that the petitioners were called for negotiations and given an opportunity to reduce the price quoted by them. Further, while considering the second submission of Sri Jayaram, I have taken the view that it is not permissible for this Court to assess the comparative merit of the first petitioner and the 6th respondent to decide as to who is more suitable for entrustment of the work by the Corporation. Therefore, in the background of the reasons assigned by the Standing Committee as well as the Corporation in the impugned resolution, I do not find any justification to accept the contention of Sri Jayaram that the first petitioner was more suitable than the 6th respondent for being entrusted with the work in question. The emphasis made by the Standing Committee and the Corporation with regard to the pollution control devices, cannot be treated as an undue emphasis given to prefer the 6th respondent and it was totally an irrelevant consideration. The correspondence that have taken place between the Corporation and the parties and the constitution of the Expert Committee and the decision taken in the light of the report of the Expert Committee would militate against the submission of Sri

Jayaram that every effort was made to favour the 6th respondent from the beginning on one ground or the other. Therefore, I do not find any substance in the third submission of Sri Jayaram.

15. I am also unable to accept the fourth submission of Sri Jayaram that the decision of the Standing Committee and also the Council of the Corporation is vitiated either on the ground they have taken extraneous considerations into account while passing the impugned resolution or it is mala fide. While dealing with the reasons assigned by the Standing Committee and also the Council of the Corporation, I have taken the view that the reasons assigned are not extraneous or irrelevant for the purpose of accepting the tender submitted by the 6th respondent.

16. Insofar as the grievance that the impugned resolution is vitiated on account of mala fides is concerned, I may state that the allegations of mala fides made are very vague and ambiguous. Proper foundation has not been laid in the pleadings. Further, I also do not find any substance in the said contention. Unless it is disclosed as to who is responsible for tilting the decision of either the Standing Committee or the Council of the Corporation in favour of the 6th respondent, it is not possible to accept the contention of the learned Counsel for the petitioners that the decision of the authorities is vitiated on account of extraneous or irrelevant considerations or mala fides. As noticed by me earlier, the Corporation has obtained the opinion of the experts. The matters were negotiated both with the first petitioner and the 6th respondent in the presence of the experts. Thereafter, the matter was placed before the Standing Committee. The Standing Committee as well as the Council of the Corporation, which consist of the Councillors representing various political parties, have taken an unanimous decision. If a very high decision making bodies like the Standing Committee and the Council of the Corporation, have taken an unanimous decision in the matter and the said decision has not generated any serious criticism as the one taken against public interest or has been taken with a view to show favouritism to the 6th respondent, this Court cannot infer favouritism shown by the said authorities to the 6th respondent unless the allegations of favouritism or mala fides are clearly pleaded and established. It is well-settled that when allegations of mala fides are made, the allegations are required to be clear, specific and necessary particulars are required to be furnished and the same has to be established. In this connection, as observed by me earlier, the allegations are vague and ambiguous and the petitioners have failed to establish the same. Merely because the authorities of the Corporation took considerable time to take a decision and the Standing Committee as well as the Council of the Corporation accepted the slightly higher tender submitted by the 6th respondent, cannot be a ground to infer mala fides on the part of the said two authorities. As noticed by me earlier, the difference in the price finally quoted by the 6th respondent, if compared with the price quoted by the first petitioner, is not substantial. Therefore, I am of the view that there is also no merit in the allegations of mala fides alleged by the petitioners against the authorities/officers

of the Corporation.

17. I am also unable to accept the last contention of Sri Jayaram that the provisions of sub-section (2) of Section 182 of the Act and Rule 6-A of the Rules have not been complied with while entering into the contract between the first respondent and the 6th respondent. Clause (iii) of sub-rule (1)(a) of Rule 6-A of the Rules, on which reliance is placed by the learned Counsel for the petitioners, reads as hereunder:

"(iii) The Corporation shall not authorise making of contract involving an expenditure exceeding Rupees 20 lakhs unless it has obtained sanction of the Government".

From the reading of the rule extracted above, it is clear that the Corporation shall not authorise making of any contract involving an expenditure exceeding Rs. 20 lakhs unless it has obtained sanction of the Government. No doubt, in this case, the expenditure required to be incurred for execution of the works in question, exceeds Rs. 20 lakhs. Therefore, the only question is whether the sanction of the Government has been obtained? Sri Puttegowda submitted that since the Government has approved the project relating to the erection of two electric crematoriums by means of its order dated 22nd of June, 1995 in No. HUD 478 MNY 93, it was unnecessary for the Corporation to have obtained sanction over and again in terms of clause (iii) of sub-rule (1)(a) of Rule 6-A of the Rules. In support of this submission, he relied upon Annexure-R6 produced along with the statement of objections. Sri Mahesh, learned Government Advocate, also submitted that insofar as the works in question is concerned, since the Government has already approved the project, it was unnecessary for the Corporation to again seek sanction of the Government to execute the contract. He further submitted that the Government is willing to grant permission if such a sanction is required and, therefore, it would be against public interest to nullify the impugned contract. I find considerable force in the submission of Sri Puttegowda. Annexure-R6 relied upon by Sri Puttegowda clearly shows that the Government, by its order dated 22nd of June, 1995, has approved for the construction of two crematoriums in question. Under these circumstances, I am unable to accede to the submission of Sri Jayaram that the contract entered into between the first respondent and the 6th respondent pursuant to the impugned resolution is liable to be quashed. Since it is the stand of the Government that the Government is willing to grant the sanction in case such sanction is required to be obtained as contended by the learned Counsel for the petitioners, it is also permissible for the Corporation to seek for ex post facto permission. Ultimately, the substance of the matter is whether the resolution impugned passed by the Corporation is valid or not. The object of Rule 6-A of the Rules is to protect public interest. Therefore, even if there is any irregularity in compliance of Rule 6-A of the Rules, unless it is shown that the irregularity committed in not strictly complying with Rule 6-A of the Rules has resulted in public injury, I am of the view that should not be a ground for this Court to nullify the impugned resolution

and the contract entered into between the parties at this stage.

18. Apart from the fact that the petitioners have on merits failed to make out a ground to nullify the impugned resolutions, I am of the view that this petition is also liable to be dismissed on the ground of delay and laches on the part of the petitioners in approaching this Court. Admittedly, the impugned resolution of the Corporation was passed on 28th of October, 1998. It is also admitted that the petitioners have obtained a copy of the said resolution on 11th of November, 1998. The writ petition was filed only on 8th of January, 1999 before this Court and the matter was listed before the Court only on 13th of January, 1999. As per the terms of the tender documents, the successful tenderer is required to complete the work within 12 months from the date of the entrustment of the work. Therefore, when the period fixed for completion of the work is 12 months, I am of the view that nearly two months delay in a matter of this type is fatal to the relief claimed by the petitioners, unless serious public injury is shown. It is the case of the Corporation in its statement of objections that out of four electric crematoriums in Bangalore City, one crematorium situated on Mysore Road is closed for want of major repairs and three crematoriums available are not sufficient and on account of that, the people are put to lot of hardship. It is also the case of the Corporation that they have taken steps to execute the civil work. Further, it is also the case of the 6th respondent that pursuant to the contract entered into on 16th of December, 1998, the 6th respondent has made a financial commitment to the tune of Rs. 50 lakhs. The 6th respondent has filed a memo undertaking to execute each of the works for a sum of Rs. 58,95,000/-. The said memo reads as follows:

"May it please this Hon"ble Court that the respondent 6 doth hereby conveys to execute the work at Rs. 58.95 lakhs per work (furnace) quoted by the petitioner as per design, quality and scope of the tender document.

The fax message of the Executive Director of respondent 6 is hereby annexed for purpose of record".

Further, in the course of the hearing of this petition, learned Counsel for the 6th respondent also submitted that notwithstanding the interim order granted by this Court operating against them, the 6th respondent would complete the project within 12 months as per the terms and conditions of the contract. Even if 2% rebate the first respondent has agreed to give is taken into account, the difference in the price quoted by the first petitioner and the rate at which the 6th respondent has now agreed to execute the works in question, is nominal. It would be a little over Rs. 2 lakhs. For a project of this type, the said higher price is nominal. Therefore, I am also fully satisfied that no serious public injury would be caused if I do not interfere with the impugned resolution at the behest of the petitioners. Ultimately, in a matter like this, more than the rights of the parties, Courts, will have to keep in mind the public interest. However, I would like to add here that in a case of serious public injury, the delay in approaching this Court may not be a factor for this Court to refuse to interfere with the illegal action of

the authorities. But, in cases where there is no serious public injury, even if there are certain minor irregularities or illegalities, this Court will not nullify the action of the authorities if, by interfering with such action, it is likely to cause greater public injury than serving the public cause. In the instant case, I am fully satisfied that if I interfere with the impugned resolution, it would likely to cause further delay in execution of the works in question, which would cause serious public injury. Therefore, looked at from any point of view, I do not find any justification to interfere with the impugned resolution.

19. However, before parting with this order, I find it desirable to refer to one other aspect of the matter. The estimated cost of the project was notified by the Corporation at Rs. 90,31,000-00. The tender submitted by the first petitioner for execution of the works in question was in a sum of Rs. 58,95,000/- with a rebate of 2%. In the course of the hearing of this petition, the 6th respondent also reduced the price finally quoted by it to Rs. 58,95,000/-. All these factors would clearly show that the contractor is able to execute the work in question for around Rs. 57 lakhs to 59 lakhs. The estimate of the work is notified to give an indication to the intending tenderers the rough idea of the cost of the execution of the work. It is also well-known that the intending tenderers either quote less or more than the cost estimated. In this situation, it is surprising that the Corporation, which has all the facilities of securing the services of experts in the field and which has also number of Engineers both electrical, civil, etc., has notified the estimated cost of the work at Rs. 90,31,000-00. The note put up by the Executive Engineer (Electrical) shows that the difference of the price estimated and quoted by the first petitioner being more than 25%, the tender quoted by the first petitioner was treated as freak tender. He has further recommended to accept the tender submitted by the 6th respondent for a sum of Rs. 83,97,985/-. This was accepted by the Commissioner and the recommendation was made to place the matter before the Standing Committee. However, what would have been the decision of the Standing Committee is difficult to predict at this stage. But, such a situation was avoided by the Additional Commissioner taking a prompt action in the matter and directing constitution of an Expert Committee and getting its opinion. It is only thereafter the price quoted was negotiated with the parties and ultimate decision was taken. These things on record would speak volumes with regard to the total callousness in which the estimate of the work was done and notified. It is needless to observe that higher estimate by the Corporation in respect of a work to be executed by the contractor would give scope for the Corporation losing huge money as the human experience shows that on many occasions, intending tenderers would gang up together to make profit for themselves and avoid competition amongst themselves. Therefore, while the Standing Committee and the Council of the Corporation have to ultimately take a decision in the matter, it is needless to state that it is the Engineers and other bureaucrats of the Corporation, who have a duty to protect the interest of the Corporation and public interest and see that the work of the Corporation is executed by the

persons who are capable, professionally skillful and competent and considerably at a lower rate. They should do it undeterred by any other external pressure or persuasion and keeping in mind-only the interest of the Corporation and its work. In the instant case, it appears to me that without any justification, the estimated cost of each of the works was fixed at Rs. 90,31,000-00. However, Sri K.N. Puttegowda tried to justify the same contending that it is the first of the works the Corporation has taken up and therefore there was some difficulty in making proper assessment of the cost of the work. The said explanation is unconvincing. However, I am sure what I have stated above would be borne in mind by the officers and other authorities of the Corporation and the persons, who commit lapse on these matters, would be held accountable by the Corporation, at least in future.

20. In the light of the conclusion reached above, this petition is liable to be rejected and accordingly, it is rejected.

21. However, no order is made as to costs.