

(2002) 03 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No's. 24289 and 24290 of 2001 and WPMP No's. 35991 and 35992 of 2001

TTBL Tea and Technologies Limited, Formerly called Tamil Nadu Tea Brokers Limited (TTBL) and Forbes Ewart and Figgis (P) Limited, also called-Forbes and Company

APPELLANT

Vs

Government of Tamil Nadu, Tamilnadu Tea Plantation Corporation (TANTEA), Contemporary Target Limited, Coonoor, Best Tea Brokers Pvt.Ltd., Coonoor and Imperial Tea Co., Pvt., Ltd., Coonoor

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 MLJ 65

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Sriram Panchu, for J. Sivanandaraj, for the Appellant; R. Muthukumarasamy, A.A.G. for V.S. Sethuraman, Special Govt., Pleader, P. Theogaraj and P.N. Raman, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Aggrieved by the order of the third respondent dated 28-11-2001, appointing respondents 4 to 6 as Tea Brokers in

respect of tea factories of TANTEA, the petitioners have filed the above writ petitions to quash the said order on various grounds.

2. The case of the petitioner in W.P.No. 24289 of 2001 is briefly stated hereunder:- According to them, their company was established in 1984

by orders of the first respondent in G.O.Ms.No. 338 dated 4-4-1986 and G.O.Ms.No. 1107 dated 23-10-87. The sole objective in formation of

the petitioner company was to provide the second respondent, Public

Undertaking with specialized Tea Broking services. Further, the petitioner was assured by the first respondent that fair amounts of teas will be given to the petitioner for the purpose of broking. The petitioner company therefore was specially formed with technical experts, skilled personnel and consultants only to provide the second respondent with necessary expertise and effective service in Broking its Teas. The first respondent appointed the petitioner as Brokers for the second respondent as the latter is totally controlled by the first respondent. The second respondent has drawn up a list of Brokers to encourage competition and ensure transparency in the transactions. This list of Brokers including the petitioner has been the same for the last 12 years but for minor changes. However, the impugned order dated 28-11-2001, the third respondent in total contravention to the provisions of the Tamil Nadu Transparency in Tenders Act of 1998, has allotted all the Teas produced by the second respondent to respondents 4-6, who lack the necessary experience and expertise in Broking. The third respondent has passed the impugned order in total contravention of the legal procedures only under pressure and due to severe and coercive tactics applied by certain political elements breeding nepotism and favouritism, at the expense of public interests. The third respondent has no power or authority to pass such an order, as the petitioner has been appointed by the first respondent.

3. Tea is an essential commodity being perishable and prices of tea being fluctuating in nature, depending upon international and national market trends, the Broking of teas constitutes a highly specialized and technical operation requiring vast experience and technical expertise. However, the third respondent in the impugned order has appointed respondents 4 to 6 as its Brokers who neither have the expertise nor the experience to perform such complex operations.

4. The Broking of Tea is a highly technical function involving a high degree of precision and experience. On an average the second respondent dispatches atleast Rs.15 lakhs worth of tea every day for the purpose of Broking. The Broker is solely responsible for the turnover of the producer of tea, as it is the Broker who sells the teas for the producer. It is because of these complexities involved in Broking of teas that the Tea Act of 1953 was passed providing for the constitution of the Tea Board of India u/s 4 of

the Act to regulate the Broking of Teas. The Tea Board issues license to Brokers as per its own procedure and lays down the minimum requisites for the same. The Tea Board lays down stringent laws to regulate the marketing of Teas by the Brokers.

5. On 4-4-86, G.O.Ms.No. 338 was issued by the Forests and Fisheries Department of the first respondent, the promoter of the second

respondent herein, approving the proposal forwarded by the second respondent for the formation of the petitioner company as a separate Broking

firm in the Joint Sector by the name of Tamil Nadu Tea Brokers Limited (TTBL) for the purpose of Broking the Teas produced by the second

respondent. The said order directed that urgent action be taken in the formation of the petitioner company. The said order directed that the

petitioner company be started with the first respondent holding 51 per cent of the shares through its instrumentalities, the second respondent and

INDCO each holding 25.5 per cent shares. The rest of the shares were to be held by private parties, including Mr. Philip John and Mr. Indrajit

Chatterjee. As per the proposal the petitioner company was incorporated on 18-4-1984. However, as per the Tea (Marketing) Control Order

1984 passed by the Central Government in exercise of its powers under Sub Section 5 of Section 30 of the Tea Act of 1953, a producer of Tea

could not simultaneously perform the function of a Broker. Although the Department of Forests of the first respondent had passed the

G.O.Ms.No. 338 dated 4-4-86 approving the formation of the petitioner company, it did not obtain a Broker's licence from the Tea Board India

due to the marketing regulating orders of the Tea Board of India. As the petitioner company was started and huge sums of monies had already

been invested, the petitioner company requested some assured business from the second respondent and INCOS. G.O.Ms.No. 1107 dated 23-

10-87 specifically enjoins the second respondent and INCOSERVE to give a fair share of their tea sales to the Tamil Nadu Tea Brokers limited,

the petitioner herein. Therefore, the petitioner herein has a legitimate right to a share in the Broking of tea produced by the second respondent.

The petitioner company has been serving the second respondent company for 12 continuous years.

6. In 1998 the Tamil Nadu Transparency in Tenders Act was passed. The said Act

of 1998 makes it mandatory for Public Sector Undertakings to issue tenders for the procurement of goods and services. The said Act of 1998 came into force on 1st October, 2000. The second and third respondents were well aware that the existing list of authorised auctioners including the petitioner are the best in the business. Due to political pressure if the second respondent was to draw a fresh list of authorised Brokers the second respondent has to strictly abide by the Tamil Nadu Transparency Tenders Act, 1998. Hence, if the second respondent was going to draw a fresh list of authorised brokers the second respondent has to invite tenders as per the Tamil Nadu Transparency in Tenders Act of 1998. However, all of a sudden for extraneous considerations without prior notice or enquiry, the third respondent by its order dated 28-11-2001, has allotted its entire produce from all its tea factories to its new list of authorised Brokers which only includes three new Brokers-respondents 4-6 eliminating the petitioner and other authorised Brokers from its list of Brokers. Respondents 4 to 6 have been appointed and the existing Brokers have been removed without following the procedure laid down in the Tamil Nadu Transparency in Tenders Act, 1998. The impugned order is unfair, arbitrary and contrary to the principles of natural justice as the second respondent has neither given the petitioner notice of such blacklisting nor has the second respondent provided any reasoning for non-allotment of teas to the petitioner. Hence the present writ petition.

7. Another company by name Forbes Ewart and Figgis Private Limited has filed a similar writ petition, namely, W.P.No. 24290 of 2001 and also raised similar averments.

8. The second respondent has filed a counter affidavit disputing various averments made by the petitioner. It runs as follows:- The Tea Act, 1953 was enacted to provide for the constitution of the Tea Board of India u/s 4 of the Act to regulate the Broking of Teas. As per para 17 of the Tea (Marketing) Control Order, 1984, every registered manufacturer of tea in the States of Assam, West Bengal, Tamil Nadu and Kerala shall sell not less than 75 per cent or such higher percentage as may be specified from time to time by the Tea Board, of tea manufactured by him in a year through Public Auction in India held under the control of organizers of Tea Auction licence to do as under the provisions of the said order.

Accordingly, the second respondent-Corporation is selling the tea manufactured through the licensed organizers of tea Auction viz., (i) Coonoor Tea Trade Association (ii) Tea Trade Association of Cochin (iii) Tea Trade Association of Coimbatore through the Brokers, who have obtained licence under the Tea Marketing Control Order, 1984. There are 9 Broking Companies operating in the various auction centres in India. At the beginning, the brokers to sell their teas were appointed by the Board of Directors. Later the Board of Directors in its 75th Meeting held on 7-10-89 authorised the Chairman-cum-Managing Director to allot or re-allot teas among the brokers based on their performance and accordingly the teas have not been allotted to the various brokers, who got licence from the Tea Board. The Broking company licensed from the Tea Board which is controlled by the Ministry of Commerce, Government of India can be entitled to compete with any other broker to get the tea from the manufacturers in this present global market scenario. The present action of the second respondent is not in contravention of the provisions of Tamil Nadu Transparency in Tender Act, 1998, since this Act has no relevance to the present action of the second respondent. This Act will not apply to the sale of tea through auction and the object of this Act is to provide transparency in the public procurement and to regulate the procedure in inviting and accepting tenders and matters connected therewith or incidental thereto. During December, 1996, the performance of the petitioner broking company was not good or to the expected level, when they were acted as a broker for Tiger Hill Tea Factory of their Corporation. Therefore, the appointment of the petitioner as a broker for selling Tiger Hill Teas was cancelled on 24-12-1996 with immediate effect and given to the other broker. This was not challenged and accepted the decision of the second respondent. The respondent-Corporation is holding plantation and running a business by selling teas through auction centres on appointment of necessary brokers. The quantity of tea for which the brokers have sold, they are entitled to brokerage commission only. Therefore, there is no question of issuance of any notice, conducting any enquiry or affording an opportunity before passing the impugned order. Similar averments have been made in the counter affidavit filed by the second respondent in Writ Petition No. 24290 of 2001.

9. Respondents 4,5 and 6 have filed a separate counter affidavit highlighting the procedure followed by the respondents 2 and 3 and their

respective merits as well as the reason for selecting them as Tea Brokers in respect of various tea factories of TANTEA.

10. Heard Mr. Sriram Panchu, learned senior counsel for the petitioner, Mr. R. Muthukumarasamy, learned Additional Advocate General for

respondents 1 to 3, Mr. P. Theogaraj for 4th respondent and Mr. P.N. Raman for respondents 5 and 6.

11. Mr. Sriram Panchu, learned senior counsel for the petitioners, would contend that inasmuch as the petitioners were not given notice or

opportunity to put-forth their case, the impugned order allotting respondents 4 to 6 as Tea Brokers for the tea factories of TANTEA cannot be

sustained. He also contended that in the absence of any allegation against the petitioners, without any enquiry, the action of the respondents 2 and

3 is liable to be quashed. He contended that the present action of the respondents 2 and 3 is violative of Article 14 of the Constitution of India as

well as the provisions of The Tamil Nadu Transparency in Tenders Act, 1998 and the Rules made thereunder. On the other hand, Mr. R.

Muthukumarasamy, learned Additional Advocate General, contended that the Tamil Nadu Transparency in Tenders Act, 1998 is not applicable to

the cases in hand. He also contended that after considering the past performance, merits of all the competitors, the third respondent appointed

respondents 4 to 6 as Tea Brokers for the tea factories of TANTEA; hence there is no arbitrariness or mala fide intention in the act of respondents

2 and 3. He further contended that no assurance was given by the Government as claimed by the petitioners. Learned counsel for respondents 4,5

and 6 after highlighting their merit and performance in selling tea, reiterated the argument of the learned Additional Advocate General. They also

contended that the provisions of Tamil Nadu Act 1998 are not applicable and in the absence of other brokers before this Court, the present writ

petitions are liable to be dismissed. They further contended that in any event, the petitioners are no way affected by the impugned order and even if

there is any grievance, it is open to them to avail the arbitration clause in terms of the agreement.

12. I have carefully considered the rival submissions.

13. It is seen that Tea Act, 1953 was enacted to provide for the constitution of the Tea Board of India u/s 4 of the Act to regulate the Broking of

Teas. The Tea Board issues licence to brokers as per its own procedure and lays down its minimum requisites for the same. The Tea Board also

licenses the formation of the local Tea Traders Association in the various Tea Auctioning Centres in India, to regulate the conduct of tea auctions,

etc. It is the case of the respondents 1 to 3 that tea being a common consumption commodity, the supply of which into the market has to be

regulated in order to avoid malpractices. Further, as the tea market is dynamic with prices fluctuating on the basis of demand and supply, the Tea

Board lays down stringent laws to regulate the marketing of Teas by the Brokers. It is further seen that as per para 17 of Tea (Marketing) Control

Order, 1984, every registered manufacturer of tea in the States of Assam, West Bengal, Tamil Nadu and Kerala shall sell not less than 75 per cent

or such higher percentage as may be specified from time to time by the Tea Board, of tea manufactured by him in a year through public auction in

India held under the control of organizers of tea auction licence to do as under the provisions of the said control order. It is also the case of the

respondents 2 and 3 that TANTEA is selling the tea manufactured through the licensed organizers of Tea Auction viz., (i) Coonoor Tea Trade

Association (ii) Tea Trade Association of Cochin, (iii) Tea Trade Association of Coimbatore through the Brokers, who have obtained licence

under the Tea Marketing Control Order, 1984.

14. It is the specific case of the petitioner in W.P.No. 24289 of 2001 that their company was established in 1984 by orders of the Government in

G.O.Ms.No.338 dated 4-4-86 and G.O.Ms.No. 1107 dated 23-10-87. It is also their case that the first respondent's sole objective in formation

of their company was to provide the second respondent-Public Undertaking with specialized Tea Broking services. It is also their case that they

were assured by the first respondent that fair amounts of teas will be given to the petitioner for the purpose of broking. These aspects have been

stoutly denied in the counter affidavit. As a matter of fact, the fourth respondent in their counter affidavit, particularly in para 10 has specifically

stated that broker firms are made of competent individuals and the petitioner is not a successor to the company known as Tamil Nadu Tea

Brokers Limited. It is also stated that the original company of Tamil Nadu Tea Brokers formed under G.O.Ms.No. 1107 was disbanded as its

formation was not recognised by the Tea Board. The said factual aspects have not been controverted by the petitioner in W.P.No. 24289 of 2001

by filing a reply affidavit. In such a circumstance, as rightly contended by the learned Additional Advocate General, the plea of estoppel is liable to

be rejected. Equally, the third respondent has not violated the Government Orders as claimed by the petitioner.

15. Regarding the power of the Chairman and Managing Director of TANTEA in passing the impugned order, it has been specifically explained in

the counter affidavit of the third respondent that the Board of Directors in its 75th meeting held on 7-10-89 authorised the Chairman-cum-

Managing Director to allot or re-allot teas among the brokers based on their merits/performance. It is further seen that there are 9 broking

companies operating in various auction centres in India. They are:-

- i. M/s. J. Thomas and Company Pvt., Ltd.
- ii. M/s. Carritt Moran and Company Pvt., Ltd.
- iii. M/s. Forbes, Ewart and Figgis Company.
- iv. M/s. Contemporary Target Limited.
- v. M/s Paramount Tea Marketing Pvt., Ltd.
- vi. M/s TTBL Tea and Technologies Limited.
- vii. M/s BestTea Brokers Private Limited.
- viii. M/s. Imperial Tea Company.
- ix. M/s. Global Tea Brokers.

It is further seen that the tea produced from all the tea factories of the third respondent Corporation are despatched to the various auction centres

and stored in warehouses and the appointed brokers sell the same in the auction centres at Cochin, Coonoor and Coimbatore in South India. The

brokers will be paid necessary percentage of brokerage fixed by Tea Trade Associations concerned for the services they have rendered.

According to the third respondent, at the beginning, the brokers to sell their teas were appointed by the Board of Directors. Later, the Chairman-

cum-Managing Director was authorised to allot or re-allot teas among the brokers based on their performance and accordingly the teas have not

been allotted to the various brokers, who got licence from the Tea Board. It is further seen that in the initial stage, that is, during early 80s, the number of licensed broking companies are very minimum and over a period, the number of broking companies have been increased. In such a circumstance, as rightly contended by the respondents, the petitioners are not entitled to claim any monopoly for selling the tea of the third respondent's corporation. Regarding the assertion that the petitioner in W.P.No. 24289 of 2001 is the only authorised broker of the third respondent corporation, in the counter affidavit of the third respondent, particularly in para 7 the same has been denied as misleading statement. In this regard, it is explained that the broking company licensed from the Tea Board which is controlled by the Ministry of Commerce, Government of India can be entitled to compete with any other broker to get the tea from the manufacturers in this present market scenario. In such a circumstance, the contrary claim made by the petitioners cannot be accepted.

16. Mr. Sriram Panchu, learned senior counsel for the petitioners, has very much relied on a decision of the Supreme Court in Mahabir Auto

Stores and others Vs. Indian Oil Corporation and others, . While considering the exercise of power to enter into or not enter into contract with

individuals as well as the fact that person must be governed by rule of law and must be informed by reason, Their Lordships have held: (para 18)

18.....It is true that there is discrimination (distinction) between power and right but whether the State or the instrumentality of a State has the right

to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances of the situation, but such

exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party

whose rights and powers affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of

knowledge if not being taken into confidence.

Their Lordships also held: (para 20)

20. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to be parties

concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the appellant should have

been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not

to treat the contract as subsisting...

In the very same judgment, Their Lordships have also held:

17. We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of

the case. The dichotomy between rights and remedies cannot be obliterated by any straight jacket formula. It has to be examined in each particular

case...

In the present cases, I have already referred to the particulars furnished by the respondents 3 to 6, namely, the nature of the trade, their previous

experience, expertise knowledge in the trade etc. The second respondent-TANTEA authorised the third respondent-Chairman and Managing

Director to allot or re-allot teas among the brokers based on their performance, and accordingly the teas have now been allotted to the various

brokers who got licence from the Tea Board. In such a circumstance, it cannot be said that the the third respondent has violated any of the

statutory provisions or norms.

17. The next decision referred to by the learned counsel for the petitioners is in the case of M/s. Southern Painters Vs. Fertilizers and Chemicals

Travancore Ltd. and another, . The following observation has been pressed into service:(para 11)

11. The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it,

could only be done consistent with and after due compliance with the principles of natural justice...

Admittedly, the petitioner company was not blacklisted by third respondent. Among the 9 brokering companies operating in the various auction

centres in India, who are all duly licensed by the Tea Board, considering their performance, the third respondent has allotted the teas of TANTEA

to respondents 4 to 6. If the performance of the petitioners is improved in the future years, undoubtedly they will be considered by the third

respondent.

18. The other decision referred to is in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, . The following

observation is pressed into service: (para 16)

16. It is also necessary to remember that price may not always be the sole criterion for awarding a contract. Often when an evaluation committee

of experts is appointed to evaluate offers, the expert committee's special knowledge plays a decisive role in deciding which is the best offer. Price

offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services which are offered, assessing such quality on

the basis of the past performance of the tenderers, its market reputation and so on, all play an important role in deciding to whom the contract

should be awarded. At times, a higher price for a much better quality of work can be legitimately paid in order to secure proper performance of

the contract and good quality of work - which is as much in public interest as a low price. The court should not substitute its own decision for the

decision of an expert evaluation committee.

The said conclusion only supports the case of the third respondent. As stated earlier, by virtue of the power given by the Board of Directors of the

second respondent, the third respondent after analysing the performance of all the approved and licensed broking companies, selected respondents

4 to 6. In such a circumstance, as observed by the Hon'ble Supreme Court, the Court should not substitute its own decision for the decision of an

expert evaluation committee, in our case the third respondent.

19. The other decision referred to by the learned counsel for the petitioner is in *Bakatawar Singh Vs. State of M.P. and Others*, . As a matter of

fact, the said decision supports the case of the respondents. The Division Bench of the Madhya Pradesh High Court after referring to the earlier

decisions of the Supreme Court, has concluded that, (para 21)

21....In the light of the fact that the Supreme Court ""ordinarily"" required the reasons to be communicated to the concerned parties, we are

constrained to say that only because the reasons for rejection of its lowest bid was not communicated to the petitioner, impugned award of

contract cannot be held to be bad or biased.

The above decision makes it clear that there is no obligation on the part of the 2nd and 3rd respondents to communicate the decision or reason for

non allotment of Teas to the petitioners.

20. After taking me through the various provisions from the Tamil Nadu Transparency in Tenders Act, 1998 which came into force on 1-10-2000, learned senior counsel for the petitioner would contend that the second respondent has to strictly abide by the provisions of the said Act by inviting Tenders. On the other hand, it is the contention of the learned Additional Advocate General and the learned counsel for respondents 4 to 6 that the Act is applicable only for procurement and not to the nature as stated in these cases. In order to appreciate the rival contentions, it is useful to refer certain provisions relied on by both sides.

Sec.2. Definitions.- In this Act, unless the context otherwise requires,

(a) "Construction" means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or any other related works;

(b) "Goods" means raw materials, products, equipment and other objects of every kind and description and includes electricity;

(d) "Procurement" means acquisition by any means by purchase of goods or services and also of construction;

Sec.3. Prohibitions of procurement except by tender.-

(1) No procurement shall be made by the procuring entity except by tender.

(2) The provisions of sections 9 and 10 shall not apply to any procurement made by a procuring entity, in the normal course, if it is for carrying on

business of selling and buying goods:

Provided that in case of procurement by the procuring entities on behalf of and for sale to Government or Government organisations for any

Government programme, such procurement shall be only by tender.

Sections 9 and 10 speak about functions of the Tender Inviting Authority and evaluation and acceptance of tender. First of all the statement that

the petitioners in these cases are the only authorised brokers of the second respondent is factually incorrect. As rightly argued by the respondents,

the broking company licensed from the Tea Board which is controlled by the Ministry of Commerce, Government of India can be entitled to

compete with any other broker to get the tea from the manufacturers. This Act will not apply to the sale of tea through auction and the object of

this Act is to provide transparency in the public procurement and to regulate the

procedure in inviting and accepting tenders and matters connected therewith or incidental thereto. There is no procurement through tender arises in the case of Tea Broking Company and in fact the manufacturer/producer of tea is selling the tea through the registered and licensed brokers in the auction centres. Further, the brokers should be the members of respective Tea Trade Association of various auction centres in India and they (brokers) are not permitted to be the owners of tea.

Further, the broking company shall arrange and collect from both buyer and sellers, the full brokerage, commission and charges which are from time to time prescribed by the Managing Committee of the respective Tea Trade Association. As rightly argued by the learned Additional Advocate General and the learned counsel for respondents 4 to 6, the Tamil Nadu Transparency in Tenders Act, 1998 is not applicable to matters relating to appointment of brokers as the same is not done by invitation of tenders. It cannot be done by invitation of tenders as remuneration is fixed at 1 per cent by the Tea Board. No brokers can underquote the said commission and therefore calling for tenders or accepting the lowest tender will be against law, against Tea Act and the various rules framed under the Tea Act. In such circumstances, I am satisfied that the third respondent cannot call for tenders as per the Tamil Nadu Transparency in Tenders Act, 1998 and hold that the said Act is inapplicable. On the other hand, appointment of Tea brokers is done as per Tea Act and the rules framed under it. It is for the third respondent to judge on satisfaction of the performance of the licensed tea brokers. It is also relevant to note the decision referred to by the learned Additional Advocate General, namely, State of U.P. and others Vs. U.P. State Law Officers Association and others, . The case in this decision relates to Law officers engaged by State Government to conduct cases on its behalf in High Court. In the order of appointment there is specific stipulation that appointment was terminated at any time without assigning any reason. The respondent therein challenged the termination of those appointments without reason. In such a circumstance, the Supreme Court has held that the said termination without assigning reasons is not an arbitrary action. The following observation of Their Lordships is pressed into service:- (para 6)

6.....The Government or the public body represents public interests, and

whoever is in charge of running their affairs is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner is his primary duty.

The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interests. This obligation imposes

on them the duty to engage the most competent servants, agents, advisors, spokesmen and representatives for conducting their affairs. Hence, in

the selection of their lawyers, they are duty bound to make earnest efforts to find the best from among those available at the particular time. This is

more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far-reaching

consequences.

The principle enunciated in the above decision is applicable to our cases. As rightly argued, in the interest of tea growers under the control of

TANTEA, the third respondent is well within his power to engage the most competent tea brokers.

21. In the light of what is stated above, I am unable to accept any one of the contentions raised by the petitioners. Further, when the appointment

of the petitioner in W.P.No. 24289/2001 as a broker for selling Tiger Hill Teas was cancelled on 24-12-96 with immediate effect and entrusted it

to the other broker, the same was not challenged and thus it is clearly established that the petitioner company accepted the decision of the third

respondent. I am also satisfied that there is no procedure of floating the tender in fixing the broking companies. The broking company cannot levy

or increase or decrease the percentage of brokerage, as the payment/percentage of brokerage is monitored and controlled by the Tea Board and

respective Tea Trade Associations. The rate of brokerage is standard one and fixed by the respective Tea Trade Associations and brokers cannot

alter or change the said brokerage commission. I am also satisfied that the petitioners broking companies have not been blacklisted as alleged and

the third respondent has got every right to allot and re-allot the teas of the Corporation factories from time to time to any broking company,

without assigning any reason. The respondent Corporation is holding Plantation and running a business by selling teas through Auction Centres on

appointment of necessary brokers. The quantity of tea for which the brokers

have sold, they are entitled to brokerage commission only and, therefore, there is no question of issuance of any notice, conducting any enquiry or affording an opportunity before passing the impugned order. It is also brought to my notice that the petitioners are not only dealing with the second respondent, but also dealing with various other tea manufacturing companies and, therefore, no damage is caused to them. I am satisfied that the allotment made to respondents 4 to 6 are perfectly in order and there is no mala fide intention in allotting the tea to these respondents. Accordingly, there is no merit in both the writ petitions and they are dismissed. No costs. W.P.M.P.Nos. 35991 and 35992 of 2001 are also dismissed.