

(1992) 09 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 0853 of 1992

Vadi and Patwa

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1992) 09 GUJ CK 0044

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : M.D. Pandya, for the Appellant; H.M. Mehta, Govt. Standing Counsel, B.B. Naik, M.N. Bhavnani and C.T. Dayani, for the Respondent

Judgement

A.P. Ravani, J.—In response to the notice inviting tender for construction of telephone exchange building, estimated cost of which was Rs. 69,04,748/- (Rupees sixty nine lakhs four thousand seven hundred fortyeight), the petitioner, a partnership firm, filled in tender for total amount of Rs. 1,00,18,711.50 ps. (One crore eighteen thousand seven hundred eleven and paise fifty) stating that on all items rebate of 4.5% was to be given. Thus deducting the amount of rebate of Rs. 4,50,843.36 ps. (Four lakhs fifty thousand eight hundred fortythree and paise thirty six), the tender was for net amount of Rs. 95,67,898.14 ps. (Ninetyfive lakhs sixtyseven thousand eight hundred ninetyeight and paise fourteen only). The respondents considered the tender of the petitioner as being for Rs. 4,58,39,753.20 ps. (Four crores fiftyeight lakhs thirtynine thousand seven hundred fiftythree and paise twenty only). According to the department, the petitioner had not quoted Rs. 19,000/- (nineteen thousand) for supply and installation of two overhead syntex water tanks of 2000 liters capacity, but it had quoted Rs. 3,80,000,00/- (Three crores and eighty lakhs). Therefore, the department did not consider the petitioner's tender for acceptance. The petitioner-firm has felt aggrieved by the decision of the department and hence the petition praying that the decision of the department rejecting the tender of the petitioner be declared illegal and invalid and step consequent upon this

decision be also declared illegal and invalid. The petitioner has also prayed for other ancillary reliefs for issuance of appropriate order and direction to the respondents.

2. The petitioner is a partnership firm doing business as building contractors. It is registered as class I contractor with Posts and Telegraphs Department. Respondent No. 5 herein, the Executive Engineer, Telecom Civil Division, Ahmedabad, issued notice dated 28th August, 1991 inviting sealed item rate tenders for the work of construction of telephone exchange building at Kalol, District Mehsana. The construction work was for two different portions, (i) building portion, and (ii) internal water supply and sanitary installation. The estimated cost for the entire work was Rs. 69,04,748/- (Rupees sixty-nine lakhs four thousand seven hundred forty-eight) The last date for submission of tender is October 3, 1991. The petitioner filled the tender and other four contractors also filled the tenders. Their names are as follows :

1. M/s. M. B. Shyani and Company.
2. M/s. Ballar Builders.
3. M/s. Navyug Builders.
4. M/s. Associated Construction Corporation.

The tenders were opened on October 3, 1991 itself. According to the petitioner the tender was for Rs. 1,00,18,711.50 ps. (one crore eighteen thousand seven hundred eleven and paise fifty) deducting rebate at the rate of 4.5% over the rates of all the items, the amount of rebate came to Rs. 4,50,843.36 ps. (Four lakhs fifty thousand eight hundred forty-three and paise thirty six only). Thus the net amount of tender quoted by the petitioner was Rs. 95,67,898.14 ps. (Ninety five lakhs sixty-seven thousand eight hundred ninety-eight and paise fourteen only). On this basis the tender filled in by the petitioner is 38.57% higher than the estimated cost mentioned in the tender notice.

3. However, according to the department the comparative position of the tender filled in by each contractor as follows :

(See the comparative position below)

Sr. Name of the tenderer Tender amount No. as per the calculation made by the department

1. Vadi & Patwa	4,58,753.20	(563.89% above estimated cost)	2. M. B. Shyani & Co.	1,00,61,651.80	(45.72% above estimated cost)	3. Ballar Builders	1,03,52,849.00	(49.92% above estimated cost)	4. Navyug Builders	1,00,30,925.14	(44.88% above estimated cost)	5. Associated Construction Corporation	98,27,096.04	(42.32% above estimated cost)
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On the other hand according to the petitioner the comparative position tender filled in by each contractor should be as follows :

Sr. Name of the tenderer Tender amount No. as per the calculation made by the department

----- 1.
Vadi & Patwa 95,67,898.14 (38.57% above estimated cost) 2. M. B. Shyani & Co. 1,00,61,651.80 (45.72% above estimated cost) 3. Ballar Builders 1,03,52,849.00 (49.92% above estimated cost) 4. Navyug Builders 1,00,03,925.14 (44.88% above estimated cost) 5. Associated 98,27,096.40 (42.32% above estimated cost) Construction Corporation

Note : The amount shown is net amount after deducting the rebate mentioned by each tenderers.

4. The astronomical difference in calculation of the total amount has arisen in case of the petitioner and in case of Navyug Builders on account of the method adopted in calculation of the total amount for item No. 4 in Schedule B to the tender. That item is for supply and installations of syntex plastic water storing tank of 2000 liters of net capacity vertical cylindrical tank close. In column 3 which relates to quantity, it was written two numbers of 2000 liters. In column No. 4, the heading of which is "rate in rupees", the petitioner wrote Rs. 9,500/- both in figures and words. In column No. 5 which pertains to unit, in words it was typed the tender itself "one ltrs". In column No. 6 which pertains to amount, the petitioner wrote Rs. 19,000/-. The department calculated the total amount of two syntex tanks of 2000 liters capacity as Rs. 3,80,00,000/- (three crores and eighty lakhs). The department proceeded on the footing that the petitioner had quoted Rs. 9,500/- per one liter and not per one tank. On this basis, the tender of the petitioner was processed and the department came to the conclusion that the petitioner's tender was for total amount of Rs. 4,58,39,753.20 ps. (four crores fiftyeight lakhs thirtynine thousand seven hundred fiftythree and paise twenty only). Thus it was a tender which was 563.89% above the estimated cost and not a tender at 38.57% above the estimated cost. In this view of the matter, according to the department, the tender of the petitioner was very much on the higher side. Hence, it was left out of further consideration.

5. Since the petitioner did not hear anything after the opening of the tenders on October 3, 1991, the petitioner wrote a letter on December, 6, 1991. Therein the petitioner drew the attention of the department that the rate quoted for overhead water tanks was as per water tank and not as per liter. According to the petitioner, it was item rate tender, therefore, the petitioner and other tenderers were expected to quote for the quantity of the unit to be supplied. In the instant case, what was required to be supplied and installed was tank. According to the department, this explanation was an afterthought on the part of the petitioner. The department proceeded further to negotiate with respondent

No. 6 herein which had quoted Rs. 98,27,096.40 ps. (ninetyeight lakhs twentyseven thousand ninetysix and paise forty only) i.e. 42.32% above the estimated cost as per the tender. After negotiations, respondent No. 6 accepted to work for consideration of Rs. 95,57,100/- (ninetyfive lakhs fiftyseven thousand and one hundred only). The department executed the contract with respondent No. 6 on January 16, 1992. Since the petitioner did not hear anything, the petitioner wrote another letter dated January 17, 1992 making grievance that its earlier letter was not replied to. The petitioner also drew the attention regarding the extension of validity period up to February 15, 1992. The petitioner sought clarification from the department as to whether the petitioner was considered as the lowest tenderer and as to what was the rate taken into consideration for two overhead water tanks. The petitioner also requested to clarify as to whether the department has called for any other tenderer for negotiations and as to what procedure the department contemplated to follow in case the department wanted to accept the tender of the tenderer other than the lowest tenderer i.e., that of the petitioner.

6. By letter dated February 5, 1992, the petitioner was informed by the Executive Engineer, respondent No. 5 herein, that the tender of respondent No. 6 was considered to be the lowest tender and the contract was executed on January 16, 1992. The petitioner was also informed that earnest money deposited by the petitioner has been sent to it vide office letter dated January 24, 1992. The petitioner felt aggrieved by the decision of the respondents in ignoring the petitioner from consideration solely on the ground that the petitioner's tender was very much on higher side. According to the petitioner its tender was the lowest and, therefore, there was apparent mistake on the part of the department in calculating the amount of rate quoted by the petitioner in respect of two overhead water tanks of 2000 liters capacity.

7. The petitioner filed the present petition on February 6, 1992. On February 11, 1992, this court ordered to issue notice to the other side and granted ad interim relief restraining the department from taking further action pursuant to the acceptance of tender in relation to the work in question. The petitioner has prayed for the relief as indicated in para of this judgment.

8. The petition is resisted both by the department as well as by respondent No. 5. On behalf of the department, Executive Engineer, Telecom, Civil Division, Ahmadabad has filed affidavit in reply, while Sri Narattambhai Patel, a partner of respondent No. 6 firm has filed affidavit in reply containing the claim of the petitioner both on this as well as on law points.

9. The learned counsel appearing for the respondents submitted that the department has already executed the contract on January 16, 1992. The work order was issued to respondent No. 6 on the same date. The site was made clear on February 9, 1992. The foundation stone was laid on February 11, 1992. On this factual basis, it is submitted that the contract has already been executed and therefore petition under Article 226 of the Constitution of India is not

maintainable. In support of this contention, reliance is placed on a decision of the Supreme Court in the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, .

10. It may be noted here that this court (Coram : M. B. Shah, J.) admitted the petition on February 25, 1992 and after hearing all the parties directed to continue the ad interim relief granted earlier. Against the order passed by the learned single Judge, L.P.A. No. 124/92 was filed for and on behalf of the department. The Division Bench which heard the LPA (Coram : G. T. Nanavati and D. G. Karia, JJ.) did not interfere with the interim relief and directed that the main petition be listed for final hearing in the next week i.e., in the week of July 13, 1992. It may be noted that respondent No. 6 did not file L.P.A., but it was the department which had filed LPA against the interim order passed by the learned single Judge. It also appears that though formal contract has been executed, no work much less substantial work appears to have been carried for the performance of the contract. At any rate no such material is placed on the record of the petition.

11. Now the contention of the respondents that the petition invoking the provisions of Article 226 of the Constitution of India is not maintainable be examined. In para 12 of the reported decision in the case of Mahabir Auto Stores (supra), the Supreme Court inter alia observed that Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into to call upon the State to account for its actions in its manifold activities by stating reasons for such action. The aforesaid observations are required to be read in the context in which the same are made. The Supreme Court referred to its earlier decision in the case of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, therein the petitioner challenged the orders of the State of Bihar revising the rate of royalty payable under lease of the year 1970. The petitioners also challenged the legality and validity of letter dated March 15, 1975, whereby the lease was cancelled. In para 10 of the judgment, the Supreme Court inter alia observed that after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions, but by the legally valid contract which determines rights and obligations of the parties inter se. Thus the aforesaid observations made by the Supreme Court in the case of Mahabir Auto Stores (supra) and in the case of Radhakrishna Agarwal (supra) are to the effect that after the contracts have been entered into, Article 14 of the Constitution cannot be construed as a charter for judicial review of the State action and these observations are in respect of the parties who have entered into the contract. As far as the parties to the contract are concerned, their rights and obligations are governed by the contract. A party to the contract may not be in a position to invoke the provisions under Article 14 of the Constitution and seek for judicial review of the State action. Therefore, this contention would not be available to the respondents as far as the petitioner who is not a party to the contract.

12. However, the position of law as it stands today is altogether different. In the case of *Srilekha Vidyarthi v. State of U.P.*, the question of applicability of Article 14 of the Constitution in the matters of contract with the State had arisen. It was a case in which the action of the State Government of U.P. was challenged whereby the Government had terminated by a general order the appointments of all Government counsels (Civil, Criminal Revenue) in all the districts of the State of U.P. Therein it was contended that the matter was in the realm of contract and it was not permissible to the petitioners to invoke the provisions of Article 14 of the Constitution. Repelling the contention, the Supreme Court observed that there was difference in the contracts between the private parties and contracts to which the State is party. Private parties are concerned only with their personal interest whereas the State while exercising its power and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. The Supreme Court further observed that wherever a challenge is made on the ground of violation of Article 14 alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. The Supreme Court held that an additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

13. In para 24 of the judgment, it is further held that the requirement of article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act even in contractual matters. There is a basic difference between acts of the State which must invariably be in public interest and those of a private individual engaged in similar activities being primarily for personal gain, which may or may not promote public interest.

14. Thus the position of law laid down by the Supreme Court is that even in respect of contractual rights and obligations of the parties, the State is not relieved of its obligations to comply with the provisions of Article 14 of the Constitution of India i.e. to act justly, fairly and reasonably. The State action should be governed by reason and should be free from arbitrariness. It should be just and reasonable whether the State action is at the entering stage of the contract or during its execution of the contract or even at the conclusion stage of the contract. At all stages, State is bound by Article 14 of the Constitution. In this connection in para 22 of the judgment, the Supreme Court has also observed that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. This being the position of law, the contention that now when the contract has been executed, the

petition under Article 226 of the Constitution of India wherein the provisions of article 14 of the Constitution of India have been invoked is not maintainable cannot be accepted.

15. Now the factual position may be examined. The petitioner offered to supply and instal two overhead water tanks one each of 2000 liters of capacity. The total amount quoted by the petitioner-firm for two overhead water tanks was Rs. 19,000/-. The petitioner could never have demanded more than Rs. 19,000/- for supply and installation of these, two overhead water tanks. However, by resorting to rules of interpretation framed by the department, the respondents Nos. 1 to 5 say that the petitioner's offer for supply and installation of two overhead water tanks was for Rs. 3,80,00,000/- and not for Rs. 19,000/- only. The total amount for two overhead water tanks quoted was for Rs. 19,000/- only is also supported by the fact that if the total amount of tender is calculated on this basis it comes to Rs. 1,00,18,711.50 ps. If the rebate of 4.5% as quoted by the petitioner is deducted from the aforesaid amount, the net amount comes to Rs. 95,67,898.14 ps. Thus the amount of Rs. 4,50,843.36 ps. is the amount of rebate calculated at the rate of 4.5% over the total amount of Rs. 100,18,111.50 ps. quoted by the petitioner in its tender. Thus the amount of Rs. 95,67,898.14 ps. is 38.57% above the estimated cost as per the tender. It is evident that little intellectual exercise would have shown that the petitioner never intended to quote Rs. 3,80,00,000/- for supply and installation of two overhead water tanks of 2000 liters capacity. In this factual back-ground, even if there be any rule which may be conceivably read to enable the department to arrive at the calculation as done by the department, the question which requires to be examined is : was it permissible to the department to read and understand rule in such a hyper technical and pedantic manner which leads to absurdity ?

16. In para 10 of the affidavit in reply filed by respondent No. 5 i.e. Executive Engineer, Telecom Civil Division, Ahmedabad, it is stated that the net amount quoted by the petitioner was not Rs. 95,67,898.14 ps. (Rupees ninety five lakhs sixty seven thousand eight hundred ninety eight and paise fourteen only) as stated by the petitioner, but the total amount quoted by the petitioner in respect of each items came to Rs. 4,58,39,753.20 ps. (Four crores fiftyeight lakhs thirtynine thousand, seven hundred fiftythree and paise twenty only) as per the calculation made by the department. For adopting this method of calculation, reliance is placed on rule 11 which reads as follows :

"When the rate quoted by the contract in figures and in words tallies but the amount is not worked out correctly, the rate quoted by the contractor shall be taken as correct and not the amount."

The aforesaid rule would apply in case where the rate quoted in figures and words tallies but the amount is not worked out correctly.

17. The aforesaid rule does not apply to the case wherein the rate quoted is not as per the unit indicated in the tender. According to the department, the unit

indicated in the tender for the supply and installation of two overhead water tanks was one liter. While according to the petitioner, the unit for which the rate was required to be quoted was one tank of 2000 liters. The department assumed that the amount of Rs. 9,500/- quoted by the petitioner in the tender was for one liter and not for one tank of 2000 liters capacity. There is no warrant for such assumption. Hence the aforesaid rule on which reliance is placed has no applicability.

18. If one were to go by the words printed and typed in column No. 5 of the tender document, below the heading unit in words it is written "one ltrs." Gramatically, "One ltrs." would be erroneous. From this phrase, either, word "one" will have to be treated as redundant or the letter's occurring in "Ltrs. Will have to be considered unnecessary. Probably, this printing mistake has caused ambiguity and created trouble. The petitioner was led to believe that the rate to be quoted for two overhead water tanks was as per one tank of 2000 liters capacity. Out of the five tenderers, petitioner and one another tenderer, i.e. Navyug Builders were led to believe that the rate was required to be quoted per one water tank of 2000 liters. Thus in this factual background, invocation of the aforesaid rule 11 for interpreting the tender documents submitted by the petitioner was itself unreasonable, unjust and unfair to the petitioner and other tenderers.

19. The learned counsel for the respondents submitted that the officers were required to follow the general rules of interpretation of tenders and guidelines issued by the department in this respect. In his submission, it was the bounden duty of the officer concerned to calculate the amount of each item as per these rules and guidelines. Departure from these rules and guidelines is not permissible. If such departure is permitted, it may open floodgates for playing mischief and it may result into undesirable practice. No body says that the officers concerned should not follow the rules and guidelines issued by the Government for interpreting the tender documents. Section 20 of C.P.W.D. Manual, Volume II contains guidelines with regard to receipts and acceptance of tenders. It indicates the procedure to be adopted by the officers concerned while receiving and accepting the tender documents. Guidelines have been issued by the Government of India "with a view to avoiding the possibility of original tender documents being tempered with". While opening the tenders, officer concerned is required to note the ambiguities in rates quoted by the tenderers on each page of the schedule attached to the tender to which it concerns. The guidelines lines also provide that the contractors should be asked to fill in the tenders properly and carefully and the contractors are required to avoid quoting absurd rates. The term "absurd" has been explained to mean abnormally high or low. Sub-clause (b) of clause (xii) of the guidelines occurring in Section 20 CPWD Manual, Volume II inter alia provides that care should be taken in preparing and scrutinising comparative statements of tenders to guard against arithmetical and other mistakes. Failure to do this may result in work being awarded to a contractor whose tender is not the lowest acceptable tender, a contingency which must be

guarded against. As per the guidelines, the Divisional Officer himself is required to make intelligent scrutiny of the tenders and statements. If the rules and guidelines are properly read and understood, it is difficult, rather impossible, to infer that there is a mandate to the officer concerned to interpret the tender documents in unreasonable and fanciful manner. On the contrary, the guideline requires intelligent scrutiny of the tenders and care is required to be taken in preparing and scrutinising comparative statements of tenders with a view to guard against arithmetical and other mistakes. While placing mechanical reliance on rule 11, the department has failed to take into consideration the substance of the rules and guidelines.

20. The very purpose of issuance of guidelines in the C.P.W.D. Manual appears to be to avoid unreasonable and arbitrary action by any officer. It also appears that meticulous care is taken while preparing the guidelines to see that there is no tampering with the documents by the contractors and no mischief is played by the contractor with the tender documents. Overall reading of the guidelines shows that mechanical and too technical or pedantic approach is not permitted. The mandate of the guidelines is to see that no mischief is committed by any contractor with the tender documents. Another object also appears to be to avoid unreasonable and arbitrary action by the officers. At the same time contractors are also required to be instructed to fill in the tender properly and carefully and avoid quoting absurd rates. Reading the relevant guidelines and rules from the aforesaid perspective, it is evident that the department was not justified in reading the tender documents submitted by the petitioner as it did.

21. Even if it is assumed for the sake of argument that rule 11 on which reliance is sought to be applicable, then also it is required to be construed and interpreted in just, fair and reasonable manner. If rule 11 is invoked and applied as sought to be done by the department, it would amount to creating havocs by resorting to technicalities. It would also amount to ignoring the guidelines contained in the Manual which requires the officer concerned to take care in scrutinising the comparative statements of tenders and to guard against arithmetical and other mistakes. If rule 11 as interpreted and applied by the department is permitted, it would mean that the officers concerned are not required to make intelligent scrutiny of the tender documents and guideline that intelligent scrutiny is (necessary) will pale into insignificance.

22. In the instant case, as indicated hereinabove, in the tender document itself there was typing or printing mistake. At the appropriate place it was typed as "One Ltrs." This led to confusion. The petitioner and one another tenderer (Navyug Builders) committed bona fide mistake and understood that the rate was required to be mentioned per one water tank and not per one liter. The guideline contained in C.P.W.D. Manual does not say that the bona fide mistake be not ignored or be not permitted to be corrected. While reading and understanding the tender documents all that is required to be seen is what is the intention of the officer. While the petitioner quoted for supply and installation of

two overhead tanks Rs. 9,500/- and made total of Rs. 19,000/-, no one could ever have conceived in wildest dream to treat the offer for supply and installation of two overhead tanks for total amount of Rs. 3,80,00,000/-. On the face of it, such calculation is absurd. It was in such cases that the guideline to avoid arithmetical and other mistakes should have been called in aid. An intelligent scrutiny as indicated in the guidelines should have been resorted to. One should have gone by the dictates of common sense rather than adopting an unusual and curious way of resorting to rule 11 which in fact did not apply.

23. In view of the aforesaid discussion, the decision taken by the department by interpreting the offer of the petitioner for Rs. 3,80,00,000/- (Three crores and eighty lakhs) for supply and installation of two overhead water tanks instead of Rs. 19,000/- (Nineteen thousand) cannot be sustained. The manner and method of calculation of offer of the petitioner adopted by the department is not just and fair to the petitioner and by no stretch fair to the petitioner and by no stretch of reasoning it can be said to be reasonable. Either from the stand-point of the guidelines contained in C.P.W.D. Manual or even from the standpoint of the provisions of Article 14 of the Constitution of India, the decision taken by the department for not accepting the petitioner's tender for consideration solely on the ground that the offer made by the petitioner for supply and installation of two overhead water tanks of 2000 liters capacity was for Rs. 3,80,00,000/- and was not for Rs. 19,000/- is unjust and unreasonable. Such decision is not in conformity with the provisions of Article 14 of the Constitution which cast obligation on the State to act fairly, justly and reasonably and exercise its power and discharge functions for public good and in public interest.

24. For the aforesaid reasons, the decision of the department not to consider the tender of the petitioner on the basis that it was not for Rs. 95,67,898.14 ps. (Ninetyfive lakhs sixtyseven thousand eight hundred ninetyeight and paise fourteen only) and it was for an amount of Rs. 4,58,39,753.20 ps. (Four crores fiftyeight lakhs thirtynine thousand seven hundred fiftythree and paise twenty only) is unjust, arbitrary and unreasonable and the same cannot be sustained as being violative of Article 14 of the Constitution of India.

25. It is not correct to say that there was afterthought on the part of the petitioner when the petitioner clarified the position as regards the rate quoted by it for supply and installation of two overhead water tanks of 2000 liters capacity. As indicated hereinabove, confusion arose on account of the mistake in printing and/or typing or for any other reason there was a bona fide mistake. In such cases also, the department is not absolved from its duty to act in just, fair and reasonable manner and for public good and in public interest. Therefore, the contention that the petitioner had an afterthought and that the petitioner did not raise objection when the tender documents was read out in presence of all the tenderers has no merits. Be it noted that in the presence of all the tenders when the tender documents were opened, only the rates in respect of each item were read out. At that time, total amount of the tender was not calculated. This is

made clear by the learned counsel for the respondents at the time of hearing of the petition. In this view of the matter, the representative of the petitioner would never have come to know as to how the department was to calculate the total amount for supply and installation of two overhead water tanks of 2000 liters capacity. Therefore, the contention that the petitioner had an afterthought and therefore the petitioner cannot be permitted to assert its claim as it is being done in the petition has no merits.

26. The learned counsel for the respondents submitted that if the petitioner's contentions are upheld and the decision taken by the department rejecting the tender of the petitioner is held to be violative of Article 14 of the Constitution of India, it may amount to setting aside the contract already executed by and between respondent No. 6 and the department. Therefore, it is submitted that the prayer made by the petitioner be not granted. The contention is based on an assumption that the contract is lawful and valid. Before executing the contract the department took first step of excluding the petitioner's tender from considering the same as lowest tender. This decision of not accepting the petitioner tender for consideration itself is held to be violation of Article 14 of the Constitution. There fore all the subsequent steps pursuant to this decision are tainted with vice of unconstitutionality. The agreement which is based on the decision which itself is violative of Article 14 of the Constitution cannot be said to be lawful. Therefore, such an agreement cannot be said to be an agreement enforceable at law. If such agreements are considered as enforceable at law and are given effect, it would amount to circumventing the provisions of Article 14 of the Constitution of India. Such action would certainly be against the public policy. In this view of the matter, there is no sub-stance in the argument that if the prayer is granted it would amount to sitting aside the contract already executed.

27. The petitioner prayed that the provisions contained in notice inviting tender and in the general rules and regulations mentioned in the tender enabling the respondents to reject the tender without assigning reasons be declared as arbitrary, unconstitutional and illegal. The expression "right to reject any tender without assigning any reasons" does not mean that the tender may be rejected without any reason at all. All that the expression indicates is that the reasons may not be communicated to the party. But it does not dispense with the existence of reasons. There must be good and valid reasons for rejection of the tender. In the case of *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, , the Supreme Court has interpreted the expression "without assigning any reason" to mean that reasons of course must exist for the decisions since the decision may only be taken if the authority is satisfied about the justness and propriety of the decision. (See para 22 of the reported decision). The principle laid down in the aforesaid decision has been reiterated by the Supreme Court in the case of *Shrilekha Vidhyarthi (supra)* (para 13 of the reported decision). The question as to whether reasons are required to be communicated or not is not required to be examined and decided in this case. As indicated hereinabove, the decision taken by the respondent-authorities not to consider the tender of the

petitioner is based on unreasonable and unjust decision. In the facts of the case it is not necessary to grant any declaration as to whether the respondent-authorities could reject the tender without assigning reasons to the tenderer.

28. The petitioner has prayed that the respondents be directed to accept the tender of the petitioner and be further directed to issue work order. I am afraid, it would not be proper to grant such a prayer by the court. The execution of the contract is after all an act of volition of parties to the contract. By an order of the court, ordinarily a party cannot be directed to enter into contract. As far as the State action is concerned, the court may in fit cases judicially review the action of the State. If the decision taken by the State is found to be unlawful and/or unconstitutional, the court may set aside the decision. Thereafter, ordinarily, it would be proper for the court to leave the matter and direct the State to act in accordance with law. This would be the proper course to be adopted instead of directing the department to accept the tender of the petitioner and to issue order that the work order be issued in favour of the petitioner.

29. It may be noted that on behalf of the petitioner-firm an undertaking is filed on September 4, 1992 by the partner of the firm, viz., Shri Anil Naraendra Patwa. The under-taking is in his capacity as partner and as Power of Attorney Holder of the remaining partners. The undertaking reads as follows :

1. "In the event the Hon"ble Court allows the petition and the work as comprised in the Notice Inviting Tenders dated 28.8.1991 is awarded to the petitioner-firm accepting the tender of the petitioner-firm dated 3.10.1991, the petitioner-firm shall carry out the work upon the same terms and conditions as indicated in the Notice Inviting Tenders and the General Rules and Directions appended to the tender from at the same tender's rates as quoted by the petitioner-firm (on which basis total estimated value of the work has been worked out at Rs. 95,67,898.14 which is 38.57% above the value of the work estimated by the department).

2. I say that the petitioner-firm shall not make any claim against the department of the respondent on the ground that the petitioner's tender was submitted on 3.10.1991 and the work is being allotted more than a year after the submission of tender and that the validity period of the tender has expired.

Solemnly affirmed on this 4th day of September, 1992 at Ahmedabad".

Despite the undertaking being filed on behalf of the petitioner, it would not be proper for the court to give direction to the respondent-department for execution of the contract and to issue work order in favour of the petitioner. It would be for the department to take appropriate decision in accordance with law after taking all the relevant facts and circumstances into consideration.

30. In the result, the petition is allowed. It is declared that the decision of the respondent not to consider the tender of the petitioner on the basis that the petitioner's tender was for an amount of Rs. 4,58,39,753.20 ps. (Rupees Four

crores fiftyeight lakhs thirtynine thousand seven hundred fiftythree and paise twenty only) is illegal and void and respondents Nos. 1 to 5 are directed to consider the petitioner's tender on the basis that it is for an amount of Rs. 95,67,898.14 ps. (Ninetyfive lakhs sixtyseven thousand eight hundred ninetyeight and paise fourteen only), 38.57% above the estimated cost. Respondent Nos. 1 to 5 are further directed to take appropriate actions pursuant to this order as soon as practicable preferably within a period of two months from today. Rule made absolute accordingly.

31. At this stage, the learned counsel appearing for respondent No. 6 request that suitable direction be given to respondents No. 1 to 5 not to execute contract with the petitioner or with any other person for some time so as to enable respondent No. 6 to challenge the legality and validity of the aforesaid judgment and order before the appropriate forum. The learned Senior Central Government Standing Counsel appearing for respondent Nos. 1 to 5 states that the department shall not execute contract with the petitioner or with any other person till September 30, 1992 inasmuch as the processing work pursuant to the judgment and order of this court will take some time. In view of this statement, it is directed that up to September 30, 1992, in respect of the construction work in question, respondents Nos. 1 to 5 shall not execute contract with any of the tenderers.

32. Petition allowed.