

(1991) 01 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 3185 of 1990

VXL India Limited and Another

APPELLANT

Vs

Maharashtra State Electricity Board and Others

RESPONDENT

Date of Decision : 15-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1991) 3 BomCR 184

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : Aspi Chinai, Kumar Desai and R.A. Dada, instructed by Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; D.R. Zaiwala, instructed by Little and Co. for respondent No. 1, B.R. Zaiwala, instructed by Zaiwala and Co. for respondent No. 3, S.M. Shah and D. Rajda for respondent No. 4, P.S. Patankar, for respondent No. 5, Divekar, instructed by Divekar and Co., for the Respondent

Final Decision : Dismissed

Judgement

D.R. Dhanuka, J.—The petitioners claim to be one of the largest electricity meter manufacturing company supplying electricity meters to various Electricity Board in the country, including the Maharashtra State Electricity Board, respondent No. 1 herein. Sometime in the month of May 1990, the respondent No. 1 floated a tender for purchase of large quantity of single phase and poly phase electricity meters as per details and specification set out in the tender notice and the documents forming part thereof. On 10th May, 1990, the petitioners submitted their offer to supply single phase as well as poly phase electricity meters as specified in the covering letter and the enclosures thereto. Respondents Nos. 3 to 8 also submitted their respective tenders to the respondent No. 1. The respondent No. 1 is undoubtedly the "The State" within the meaning of Article 12 of the Constitution of India. On 11th, October 1990, the respondent No. 1 passed its Board resolution rejecting the petitioners' tender, being Resolution No. 628, in the following terms:---

"Resolution 628: The Board considered in detail the proposal for purchase of single phase and 3 phase energy meters submitted by the C.P.A. and noted that-

a) M/s. VXL have offered two rates, one for a meter conforming to specifications laid down by the Board and the other for a meter generally in accordance with the Board's specifications. Their offer of two rates violates Clause V of the standard commercial terms of the tender which was read out. The offer of the firm was, therefore, found to have been rejected properly.

In the office note considered by the Board for evaluation of the various tenders, in respect of the petitioners tender dated 10th May, 1990, it was stated as under:---

"M/s. VXL Ltd. Joka, West Bengal.

They have quoted two rates for single phase meters viz. (A) single phase meters as per Tender specification- Rs. 235/-. (B) single phase meters generally in line with tender specifications and relevant clause of I.S.S.- Rs. 200/-.

They have not clearly indicated as to how their offer (B) differs from offer (A). Thus their offer is ambiguous. This in turn amounts to offering rebate for relaxing specification and thus their offer is liable for rejection as per clause V of Tender Form."

By the same resolution dated 11th October, 1990, the respondent No. 1 decided to award contracts to respondents Nos. 3 to 8 for purchase of various quantities of meters. Thus respondents Nos. 3 to 8 were the successful tenderers and the petitioners were declared as unsuccessful tenderer.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the decision of the respondent No. 1 as arbitrary and discriminatory in so far as the tender of the petitioners was rejected by the Board. By this petition, the petitioners have also challenged the award of the contracts by respondent No. 1 to respondents Nos. 3 to 8. At the hearing of the petition it was contended on behalf of the petitioners that the respondent No. 1 had relaxed several tender conditions in case of respondents Nos. 3 to 8 and permitted deviations in respect thereof while insisting on strict compliance of tender conditions by the petitioners and had thus indulged in discrimination and violation of guarantee of equality enshrined under Article 14 of Constitution of India. At the hearing, the learned Counsel for the petitioners restricted his challenge to the award of contract to respondents Nos. 3 to 8 in respect of supply of single phase electricity meters only.

3. On 25th October, 1990, the respondent No. 1 sent six telegrams to respondents Nos. 3 to 8 communicating acceptance of their offers for supply of single phase meters to the extent set out therein and the said telegrams were followed by usual confirmatory letters. Particulars of the orders placed by respondent No. 1 with respondents Nos. 3 to 8 are as under:---

Name of Company Item Single Phase Quantity Total Meter accepted Simco Engg. Ltd 2.5-10-A 1,00,000/- 1,35,000 (Respondent 3) 5-30-A 35,000/- Baroda Electric 2.5-10A 75,000/- 1,00,000 Meters Ltd 25,000/- (Respondent 4) Power & Transfor- 2.5-10A 25,000/- metres Pvt. Ltd. 5-20A 5,000/- 30,000 (Respondent 5) Jaipur Metals & 2.5-10A 3,50,000/- Electricals Ltd 5-20A 80,000/- 4,30,000/- (Respondent 6) Dass Hitachi Ltd 2.5-10A 25,000/- (Respondent 7) 5,000/- 30,000/- Vam Electro Devices Pvt Ltd 2.5-10A 10,000/- 10,000/- (Respondent 8)

The petitioners have impugned the above referred orders of respondent No. 1 accepting tenders of respondents Nos. 3 to 8. The petitioners have not advanced any specific submission in respect of order placed by the Board with respondent No. 8.

4. By this petition, the petitioners have contended that the rejection of their tender and the award of contracts by respondent No. 1 to respondents Nos. 3 to 8 was violative of guarantee of equality enshrined under Articles 14 and 16 of the Constitution of India. The petitioners have also contended that the impugned action of respondent No. 1 was arbitrary and was not in conformity with the tender conditions. The matter has been argued at considerable length and with thorough preparation by the learned Counsel for all the parties.

5. On 29th October, 1990, the present petition was filed when status quo order was passed by me for a few days pending ascertainment of basic facts. Ultimately on 20th November, 1990, I admitted this petition and vacated the status quo order passed by me earlier.

6. At the outset I must refer to a serious preliminary objection urged on behalf of the respondents in respect of maintainability of this petition. It was contended on behalf of the respondents by their respective learned Counsel that the petition involves disputed questions of fact which cannot be conveniently and reasonably adjudicated upon in this writ petition. I have heard the learned Counsel on either side on the said preliminary objection as well as in respect of all other contentions on merits. I shall deal with this preliminary objection along with the other contentions at their appropriate place in this judgment.

7. This petition involves consideration of following questions by the Court :-

(1) Whether the offer dated 10th May, 1990 submitted by the petitioners to respondent No. 1 was in conformity with the prescribed tender conditions and whether the said offer was a valid offer ?

(2) Whether the impugned decision of respondent No. 1 dated 11th October, 1990 rejecting the tender of the petitioners can be termed as arbitrary or discriminatory and whether respondent No. 1 violated guarantee of equality enshrined in Articles 14 and 16 of the Constitution of India and the well established rule of administrative law that a statutory authority or instrumentality of the State must apply and enforce the prescribed conditions of

tender to all the tenderers without any discrimination?

(3) Whether the respondent No. 1 relaxed some of the tender conditions in case of successful tenderers i.e., respondents Nos. 3 to 8? If so, whether such deviation was substantial deviation causing substantial prejudice to the petitioners and resulting in manifest arbitrariness and discrimination so as to vitiate the award of contracts to the said respondents ?

(4) Assuming that there was some infirmity in the procedure followed by the respondent No. 1 in award of the contracts, whether a case is made out for judicial intervention so as to set aside the award of contracts in favour of the successful tenderers, in view of the fact that the remedy of writ petition is a discretionary remedy ? Whether granting relief in this petition as sought would be injurious to public interest ?

8. The relevant principles of law were laid down by the Honourable Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . In this case our Supreme Court approved the rule enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* 1959 (359) US 535, where the learned Judge said :-

"An executive agency must be rigorously held to the standards by which it professes its action to be judged."

The petitioners have also relied upon the judgment of the Hon'ble Supreme Court in the case of *Prestress India Corporation Vs. U.P. State Electricity Board and Others*, , in support of their case. The learned Counsel for respondent No. 1 has relied upon the judgment of the Hon'ble Supreme Court in the case of *M/s. G. J. Fernandez Vs. State of Karnataka and others*, , in support of his contention that the award of tender could not be set aside merely because of minor deviations by the authority inviting the tenders and the petitioners could obtain the relief sought only if they proved that such deviation had caused substantial prejudice or injustice to the petitioners or to public interest. It will have also to be borne in mind while deciding this petition that in the case of *Ramana Dayaram Shetty v. International Airport Authority of India* (supra), the Apex Court refused to grant relief to the appellant in exercise of its discretion under Article 226 of the Constitution of India on the ground that the case was not a fit one for interference and exercise of discretion by the writ Court although the International Airport Authority of India had awarded the contract to the party who did not satisfy the prescribed conditions of eligibility and a positive finding was recorded by the Court to the effect that the acceptance of tender of 4th respondent in that case was invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhibiting arbitrary action.

9. The facts and circumstances leading to the filing of this petition emerging from the record of the case are as under :-

(a) Sometime in the month of May 1990, respondent No. 1 Board invited tenders for supply of materials specified in Annexure "B" to the Tender Notice. Items 1 and 2 of the Schedule annexed to the tender notice specifying the material to be purchased by respondent No. 1 read as under :-

"1. A.C. Single Phase Energy Meter as per MSEB specification (Annexure "D") enclosed of rating 2.5-10 Amps.

2. do-but of rating 5-20 Amps."

By the said tender notice, tenderers were required to quote their lowest rates for destination for the supply of materials specified in Annexure "B" to the tender notice. It was prescribed in the tender notice that the tender documents duly signed stating the delivery period as per Clause 16 of Questionnaire (Annexure "C" thereto) must be submitted by the tenderers before due time and date of submission of tenders. Clause V of the said tender notice reads as under:-

"V. OFFERING THE MATERIAL ON SLAB BASIS:

Tenderers are requested to quote only single price/rate for the quantity offered by them. The offers with prices of the materials quoted in slab basis and or with any conditional discount on any account viz. payment, quantity etc. shall be rejected. The tenderers shall quote the delivery only in the unit of the item specified in Annexure "B" i.e. if the quantity is in sets or in tonnes or in Nos. or in Kmtrs. or in coils, rate of delivery shall only be in the same unit. Similarly, if the tenderer quotes combined delivery in assorted sizes for all the items, he would be required to supply all the items ordered on him in fair proportion or particular item/items as may be required by the purchaser at its option."

Clause IX of the said tender notice provided that in case of tender being ambiguous, the tender shall be rejected. Clause XII of the tender notice provided that the tenderers shall not make any additions, alterations or changes in the tender form and the conditions of tender and supply including the description of the materials mentioned in Annexure "B" to the tender notice. Clause XVII of the said tender notice provided that the Board reserved its right to reject any tender which did not conform to any of the conditions/ instructions etc. Clause XVIII of the said tender notice reads as under :-

"Tender containing any deviations/additions/alterations/changes in the conditions of tender and supply as stated in Annexure "A", "B", "D", "E", "G" shall not be acceptable."

Clause XXI of the tender notice provided that the Board did not bind itself to accept the lowest or any tender or assign any reasons for rejection thereof. Clause XXII of the said tender notice provided that the Board reserved the right to order out/procure any quantity in excess to the extent of 50% or any less quantity of the quantities offered by the tenderers.

(b) Annexure "D" to the tender notice listed the prescribed specifications of

meters to be supplied both of single phase and three phase. Clause 2 of Annexure "D" to the tender notice provided that the meters shall comply with Indian Standard Specifications IS : 722 (Part-I) 1986 and IS : 722 (Part-II)/(Part-III) 1977 and CT operated meter shall comply with IS : 722 (Part-IV) 1972 or the latest versions thereof. Clause 21-A of Annexure "D" to the tender notice provided that meters shall pass all type, acceptance and routine test as laid down in IS : 722. Clause 21-B of the said Annexure provided that the following additional tests shall be carried out in addition to the type tests specified in Table-9 of IS : 722 (Part-I) 1986:-

- 1) Test of material used in the dial
- 2) Repeatability of error test
- 3) Shock and Vibration test
- 4) Impulse Voltage test
- 5) Driving torque measurement test

Clauses 21.3 and 21.4 of the said Annexure "D" prescribed details in respect of vibration and shock tests and impulse voltage test to be carried out. Clause 30 of the said annexure provided that tenderers must manufacture 12 meters of each of the rating as per Board's specifications and keep them at their works for the purpose of sample inspection and testing. The said Clause also provided that a team of engineers from the Board will visit the factory of the tenderer and test the meters of each rating and the report of the test results will be taken into consideration for evaluation of the offers. Clause 31 of the said Annexure "D" to the tender notice provided for free despatch and inspection of the goods to be supplied. Clause 35 of the said tender notice provided for visit of the testing team by the experts of the Board. Clause 36 of the said annexure provided that the tenderers must have the necessary minimum testing facilities for carrying out the 12 tests as specified therein. The said 12 tests forming part of Clause 36 need not be enumerated in this judgment.

(c) On 10th May, 1990, the petitioners submitted their offer, in so far as it pertains to supply of single phase meters is concerned, reads as under:-

Description of material F.O.R. Destination price perunit. A. "UE" Make Single phase) meters as described in) your Tender Specification) (enclosed, duly signed by) ----- us) as per the following) rating : 2.5-10 Amps.) 5-20 Amps.) Rs. 235.00 ALTERNATIVELY : B. "UE" Make Single Phase) Meters Generally in line) with your tender specific-) cation and relevant Clause) of Indian Standard Speci-) fication :) Rs. 200.00 2.5-10 Amps.) 5-20 Amps.) The petitioners quoted two prices for supply of single phase meters i.e. Rs. 235 per unit and Rs. 200 per unit, the second price being an alternative price. The terminology used in the schedule appended to the petitioners' tender indicates that meters described at Serial No. A were supposed to be in accordance with the tender specifications and meters described at Serial No. B (alternatively) were

supposed to be generally in line with the tender specifications, which obviously means "not exactly in accordance with the tender specifications" but some what inferior. The petitioners have now contended that the petitioners had quoted different prices for two models of the same commodity and not two prices for the same model. The petitioners have contended that both the models of single phase meters offered by the petitioners complied with prescribed specifications in toto. The petitioners have now stated that the meter referred to at Serial No. B pertained to Standard Model and the meter referred to at Serial No. A was improved model. In the covering letter dated 10th May, 1990 forwarding the said tender for supply of single phase and poly phase meters, to be opened on 19th June, 1990, nothing whatsoever was stated as to why the petitioners were quoting prices with the caption "alternatively" or that the said prices were for two different models of the same goods. Nothing is stated in the said covering letter to the effect that the petitioners were quoting for two models of single phase meters as sought to be explained by the petitioners later on during the course of correspondence much after the tenders were opened. It was not explained in the said covering letter dated 10th May, 1990 as to what was the difference between the meters specified at Serial No. B when compared to meter at Serial No. A. In Form "B" forming part of tender submitted by the petitioners, deviation from the tender specification or the points of difference between the quality of alleged two models of single phase meters was not explained. The tender notice did not permit submission of two different quotation even for two different models.

(d) Along with the said tender dated 10th May, 1990, the petitioners forwarded (1) set of test certificates and (2) guaranteed technical particulars in Form "A". The petitioners forwarded only one test certificate in respect of single phase meter after carrying out impulse voltage test for which the petitioners have installed facility in their factory. Alongwith the said offer, the petitioners also forwarded a test certificate from Rourkee University in respect of shock and vibration test carried out by the said University. Two models of single phase meters were produced before the Court. Both the so-called models had separate numbers with the following words engraved thereon:-

"(1) MEBC - HS

(2) MESC - HL"

It was conceded at the Bar that the petitioners had not produced a single test certificate for MEBC-HS now described as improved model. The petitioners had described the said item as tender goods in its tender dated 10th May, 1990 as contrasted with goods generally in line referred to at serial No. B.

(e) On 19th June, 1990, the tenders were opened by the Board.

(f) The petitioners have averred, in paragraph 3 of the petition that "the second respondents raised "some oral queries" with regard to the two rates quoted by the petitioners for the said two different models. The petitioners have stated in

paragraph 3 of the petition that in pursuance of the said queries the petitioners clarified the matter by their letter dated 20th July, 1990, which was obviously after opening of the tender of 19th June, 1990. In the said letter dated 20th July, 1990, the petitioners stated that the petitioners had quoted two prices for two different models currently in production. No reference to the alleged queries is to be found in the said letter. The petitioners also stated in the said letter dated 20th July, 1990 that guaranteed technical particulars for both the models for single phase meters were the same and both the models of single phase meters offered by them met with the tender specifications of the Board in toto. The respondent No. 1 has contended that it does not carry on correspondence or negotiations in respect of these basic and fundamental matters and the tender submitted by the petitioners was liable to be rejected as it was ambiguous on the face of it and as the petitioner had quoted two different prices in alternative in breach of Clause V of the tender conditions, the same being one of the fundamental conditions of the tender.

(g) On 7th August, 1990, the respondent No. 1 sent a telegram to the petitioners stating therein that a team of engineers of respondent No. 1 shall be visiting the works of the petitioners from 13th August, 1990 onwards in accordance with Clause 30 of the specification appended to the tender notice. On 8th August, 1990, the respondent No. 1 sent a letter to the petitioners confirming the said telegrams. It is common ground that the team of engineers of respondent No. 1 did not visit the factory of the petitioners and did not test any samples. It is the case of respondent No. 1 that telegrams were sent to various tenderers, including the petitioners, in routine course, but the factory of the petitioners and respondents Nos. 3, 7 and 8 were not inspected by the team of engineers of respondent No. 1 this year as their factory had already been visited by the team of engineers of respondent No. 1 in the previous year and respondent No. 1 had necessary knowledge and information in respect of their manufacturing capacity etc.

(h) On 14th September 1990, the petitioners addressed a letter to respondent No. 1 in connection with the same tender. The learned Counsel for the petitioners has tendered a copy of the said letter across the bar. The said letter does not throw much light on the real issues arising in this case but forms part of the chain of correspondence and is, therefore, referred to hereinabove.

(i) On 1st October, 1990, the petitioners addressed another letter to the respondent No. 1 stating therein that the petitioners had offered two distinct models of meters both complying with the tender specifications. The petitioners also stated in the said letter that the petitioners were the only manufacturers who had submitted shock and vibration test certificate as well as impulse voltage test certificate and no other tenderer had done so. The petitioners also stated in the said letter that the petitioners were the only manufacturer who had installed facility to carry out impulse voltage test, which facility was not available with other manufacturers of meters.

(j) On 11th October, 1990, the respondent No. 1 Board, after considering all the relevant papers and record, passed a resolution rejecting the offer of the petitioners. The relevant portion of the resolution passed by the Board of respondent No. 1 rejecting the tender of the petitioners is already extracted in the opening part of this judgment.

(k) On or about 25th October, 1990, the respondent No. 1 Board decided to place its orders with respondents Nos. 3 to 8, the successful tenderers. The respondent No. 1 Board forwarded its telegraphic orders to respondents No. 3 to 8. Particulars of the orders placed by respondent No. 1 with respondents Nos. 3 to 8 are already set out in the earlier part of this judgement.

10. One of the principal questions arising for consideration in this writ petition is as to whether the tender dated 10th May, 1990 submitted by the petitioners did not comply with fundamental conditions of invitation for tenders and whether the same was rightly rejected on the ground of non-compliance with Clause V of the tender conditions. It shall have to be considered by the Court as to whether the tender of the petitioners was rejected arbitrarily and in breach of constitutional obligation of respondent No. 1 to comply with guarantee of equality enshrined in Articles 14 and 16 of the Constitution of India. One of the connected aspects having bearing on the same question which arises for consideration of the Court is as to whether the petition involves disputed questions of fact and, if so, whether such questions of fact can be conveniently and easily adjudicated upon in this writ petition under Article 226 of the Constitution of India. The petitioners have contended that the rejection of their tender by the respondent No. 1. Board was unfair, arbitrary and discriminatory and not in public interest.

11. The petitioners did not quote "single price" for supply of single phase meters but quoted two prices in alternative. It was not permissible to do so. The petitioners quoted lower price of Rs. 200 per unit for "meters generally in line with tender specification" and thus offered conditional discount. The petitioners did not set out in the covering letter dated 10th May, 1990 that the petitioners were quoting for two different models of the same goods and both the said models satisfied the tender conditions in toto. The terminology used in the tender of the petitioners indicates that the tender at Serial No. B was not in accordance with the tender specification. It was described to be generally in line with tender specification. The petitioner's tender was in breach of Condition V of the tender conditions. The said tender was in any event ambiguous, vague and misleading. The petitioners did not set out the points of differentiation or deviation in Form B. The respondent No. 1 acted bona fide in rejecting the said tender. The impugned action of respondent No. 1 was in accordance with the tender conditions and cannot be termed as illegal or violative of applicable norms or in breach of Articles 14 and/or 16 of the Constitution of India.

12. The petitioners have averred in paragraph 3 of the petition that the petitioners addressed clarificatory letters dated 20th July, 1990 and 1st October, 1990 in pursuance of "oral queries" with regard to the two rates quoted by the

petitioners, and the first respondent was bound to consider the said letters as clarifying the petitioners tender dated 10th May, 1990. The petitioners are not in a position to state as to who raised the oral query. No reference is made to the alleged query in the correspondence. The allegation is denied on part of the first respondent. Neither the approximate date of the alleged query is set out nor the names of any of the officers of respondent No. 1. The tenders were opened on 19th June, 1990 in presence of the parties. The allegation of alleged oral query appears to be false. The petitioners have made similar allegations about alleged oral assurances and alleged oral queries in paragraph 7 and paragraph 11(a) of the petition without even disclosing the name of the officer concerned. None of the said allegation inspires confidence.

13. The respondent No. 1 has explained that the respondent No. 1 did not think it necessary to visit the factory of the petitioners and respondents Nos. 3, 6 and 7 as the respondent No. 1 had visited their factories previous year and awarded contracts to them. It appears that the telegrams and letters intimating about the intended visit of experts of team of respondent No. 1 were sent to various tenderers as a matter of routine, but ultimately the visit was restricted to some of the factories. The respondent No. 1 says that it examined the tenders as submitted and not with reference to subsequent correspondence. It is not possible to draw any adverse inference against the 1st respondent for not visiting the petitioners' factory or testing its so-called two models or drawing samples or refusing to consider the so-called clarificatory letters forwarded by the petitioners unilaterally much after the tenders were opened.

14. In paragraph 2(b)(i) of his affidavit-in-rejoinder dated 12th November, 1990, Shri Anjanikumar Agrawal has tried to explain the patent ambiguity in his alternative offers by contending that any technical person in the field of meter designs would have come to the conclusion on bare perusal of the "guaranteed particulars in Form "A" submitted along with the tender that the petitioners had quoted for two different models of the same commodity and not for one model". Mr. S.R. Ahmed, Technical Director (Stores) of the respondent No. 1 Board is a highly qualified Electrical Engineer of the Board. Mr. Ahmed has completely repudiated the above referred assertion of Mr. Anjanikumar Agrawal of the petitioners in paragraphs 3 and 10 of his affidavit dated 16th November, 1990. Mr. Ahmed has also pointed out various material discrepancies in the tender of the petitioners and its accompaniment. In paragraph 7 of his affidavit dated 6th November, 1990, Mr. Ahmed has pointed out that if the offer of the petitioners was for two different models of the same commodity, the petitioners could have sent separate test certificate for each of the alleged model, separate brochure and write-up etc. Instead the petitioners submitted two copies of the same write-up. Now the petitioners say that the model at Serial No. A was improved delux model specially prepared by the petitioners to meet the demand of respondent No. 1. It is obvious to me that the petitioners did not submit a clear unambiguous definite offer to respondent No. 1 as required by the tender notice and the petitioners now want to foist the entire blame on respondent No. 1. The

above-referred difference of opinion expressed emphatically on both sides leaves no doubt in my mind that the petition raises disputed question of fact on vital matters affecting validity of the tender and the said questions cannot be easily and conveniently adjudicated in this writ petition. Having held that the petition is not maintainable in the above view of the matter and the rejection of the petitioners' tender is valid and bona fide in view of its non-conformity with tender condition, nothing much survives for further consideration. It would not be in public interest to set aside the transactions concluded between respondents Nos. 3 to 8 and the respondent No. 1 at the instance of the petitioners. In exercise of my discretion as a writ Court, I decline to entertain this writ petition as it is not likely to advance cause of justice and public interest.

15. The petitioners have, however, submitted that the respondent No. 1 has deviated from prescribed norms in case of respondents Nos. 3 to 8 and thus favoured these respondents. The petitioners have submitted that the respondent No. 1 cannot apply the norms strictly and exactly only in respect of one tenderer i.e. the petitioners and relax these norms in case of other tenderers. In other words, the petitioners have charged the respondent No. 1 with having applied double standards and indulged in arbitrariness and discrimination. There is no merit in this contention of the petitioners as would be obvious from discussion of various facets of deviation urged by the learned Counsel for the petitioners in subsequent paragraphs of this judgment.

16. In its tender, the respondent No. 3 stated that it would supply 20,000 single phase meters and 5,000 three phase meters per month or 20% per month of the ordered quantity, whichever was less. Clause V of the tender conditions stipulated that the schedule of delivery shall be only in the units mentioned in Annexure "B". Clause XXVIII read with Clause 16 of Annexure "C" required the tenderer to state the delivery schedule in units. The learned Counsel for the petitioners has submitted that the respondent No. 1 could not have accepted the tender of respondent No. 3 as it prescribed delivery schedule in terms of percentage of the quantity ordered. The learned Counsel for the petitioners submits that the tender of respondent No. 3 was thus in contravention of Clause V of the tender conditions and Clause 16 of Annexure "C" thereto. With respect, it is an argument of desperation and there is no merit. In making of bona fide reasonable business decisions, the respondent No. 1 Board is not expected to be hyper-technical, if the petitioners view is to be accepted, the Board will have to reject all tenders. Such an approach is not permissible and would be most inequitable. The fact that the price quoted by respondent No. 3 was higher than the price quoted by the petitioner is of no consequence as the petitioners' offer was misleading and ambiguous. The petitioners want me to compare the guaranteed particulars of the goods tendered with the particulars submitted in the goods tendered with the particulars submitted in the past and draw an inference to the effect that read in this manner the offer could not be treated as ambiguous. No such exercise can be undertaken by the writ Court.

17. In its tender, the respondent No. 4 stated that it was not possible for the said respondent to carry out certain tests referred to in Clause 21.4 of Annexure "D" and the said tests could be carried out at extra cost of the Board. Ultimately the respondent No. 4 agreed to bear the cost of test. The costs, charges and expenses of such test would be almost negligible having regard to the magnitude of the tender and orders placed. The petitioners complain that the respondent No. 1 ought to have held similar negotiations with the petitioners and proper business deal could have been finalised as a result of these negotiations. The case of the petitioners and respondent No. 4 is not at all similar and both are not similarly situated in any sense of the term in the above respect. Hence, there is no merit in the plea of discrimination on this count also.

18. The respondent No. 1 placed its tender with the respondent No. 6 for supply of single phase meters to the extent of 4,30,000 units as the price quoted by it was the lowest and its performance in the past was satisfactory. The petitioners had quoted the two prices of Rs. 235 and Rs. 200 per unit for supply of single phase meter in alternative while the respondent No. 6 had quoted the price of Rs. 189 per unit only. The respondent No. 6 has capacity to produce 30,000 meters per month. According to the office note relating to evaluation of tenders, the Board should place orders to the extent of 2 lac meters with the respondent No. 6. It has been explained on behalf of the Board that the supply can continue beyond the period of 12 months and the Board can requisition supply of meters in excess of provision in tender notice to the extent of 50%. I do not find any arbitrariness or discrimination in award of contract to respondent No. 6.

19. The respondent No. 1 did not insist on production of all the certificates set out in the tender notice at the stage of acceptance of tenders in view of the practical difficulties experienced by all the tenderers. Even the petitioners did not submit all the certificates required to be submitted along with the tender. Even tender of the petitioners has not been rejected on this ground. Some of the testing facilities are generally not available in India. The respondent No. 1 submits that it has not waived the above referred requirement, but it shall insist on production of necessary certificates before accepting the supply. Moreover the visiting team of respondent No. 1 has already visited factories of tenderers concerned. Almost all the successful tenderers have been suppliers of the meters to the Board in the earlier years. Merely because the Board has not insisted on prior production of test certificates, the Board cannot be faulted with rejecting a totally ambiguous offer like that of the petitioners. The petitioners should have been more careful and clear in their expressions while submitting the tender.

20. The learned Counsel for the petitioners has pointed out that almost in similar situations the Board had rejected tenders of M/s EEC Industries of Hyderabad. It is not permissible to this Court to take a general survey of all the tenders and travel beyond the pleadings. I believe that I have said enough and it is now time to conclude this judgment.

21. In M/s. G. J. Fernandez Vs. State of Karnataka and others, , the Apex Court

has held that the deviation from the tender could be complained of only if such deviation had caused substantial prejudice or injustice to the petitioner. The said ingredient is non-existent in this case. In paragraph 16 of the above referred judgment, the Hon"ble Supreme Court has observed as under:---

"...If a party does not strictly comply with the requirements of paras III, V or VI of the NIT (meaning thereby - Notice Inviting Tenders,) it is open to the KPC to decline to consider the party for the contract and if a party comes to Court saying that the KPC should be stopped from doing so, the Court will decline relief. The second consequence, indicated by this Court in earlier decisions, is not that the KPC cannot deviate from these guidelines at all in any situation but that any deviation, if made should not result in arbitrariness or discrimination. It comes in for application where the non-conformity with, or relaxation from, the prescribed standards results in some substantial prejudice or injustice to any of the parties involved or to public interest in general."

(Underlining is done to supply emphasis)

The petitioners have no case to warrant judicial intervention under Article 226 of the Constitution. Even if there is some infirmity in the procedure followed by respondent No. 1 or some relaxation or deviation in case of respondents Nos. 3 to 8, I am not prepared to set aside the contracts already entered into or the tender itself. No such case is made out.

22. In the result, I answer the questions formulated by me in paragraph 7 of this judgment as under :---

(1) I hold that the offer dated 10th May, 1990 submitted by the petitioners to respondent No. 1 was not in conformity with the prescribed tender conditions and the said offer was no offer at all as it was vague and ambiguous. I hold that in any event the said offer was not a valid offer and the respondent No. 1 was not bound to consider the said offer in light of the letters received by it from the petitioners after the tenders were already opened.

(2) I hold that the impugned decision of respondent No. 1 dated 11th October, 1990 rejecting the tender of the petitioners was bona fide business decision and was a valid decision. I hold that the respondent No. 1 has not violated guarantee of equality enshrined in Articles 14 & 16 of the Constitution of India or any rule of administrative law.

(3) I hold that the respondent No. 1 relaxed some of the tender conditions in case of all tenderers, including the petitioners, like not insisting on accompaniment of all test certificates along with the tender and the respondent No. 1 had relaxed some other minor conditions in case of the successful tenderers i.e. respondents Nos. 3 to 8, as discussed in the earlier part of this judgment. I hold that such deviation did not cause any prejudice to the petitioners and did not result in arbitrariness or discrimination so as to vitiate the award of contracts to the respondents Nos. 3 to 8 or otherwise.

(4) Assuming that there is some infirmity in the action of respondent No. 1 by relaxing some of the tender conditions in case of respondents Nos. 3 to 8, no case is made out for judicial intervention to grant any relief to the petitioners. It is in public interest and in the interest of justice that this petition ought to be dismissed. If any relief is granted to the petitioners as sought, it would cause public inconvenience and injury to public interest.

(5) The above conclusions are in addition to my finding that the petition is liable to be dismissed also on the ground that it involves disputed questions of facts.

23. In view of my above findings, rule is discharged with no order as to costs.