

**(1999) 12 AHC CK 0063**

**Allahabad High Court**

**Case No:** C.M.W.P. No"s. 44366 with 46990 of 1999

Shanti Enterprises, Badaun

APPELLANT

Vs

Executive Engineer, Electricity  
Distribution and others

RESPONDENT

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**Date of Decision:** Dec. 16, 1999

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2000) 1 AWC 539

**Hon'ble Judges:** G.P. Mathur, J; Bhagwan Din, J

**Bench:** Division Bench

**Advocate:** A.B. Maurya and V. Singh, for the Appellant; S.C., S.P. Mehrotra and Anil Mehrotra, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

G.P. Mathur, J.

The facts involved in the two writ petitions are Identical and therefore, they are being disposed of by a common order.

2. The Executive Engineer. Electricity Distribution Division II. Badaun (respondent No. 1) issued notice on 13.8.1999 Inviting tenders in respect of certain works. The petitioner M/s. Shanti Enterprises, and some others submitted tenders for various items of work. The tender submitted by M/s. Durga Enterprises. Badaun (respondent no. 5) was accepted. The writ petition has been filed for quashing of the order dated 2.9.1999 by which tender of respondent No. 5 was accepted. A further prayer has been made that a writ of mandamus be Issued commanding the respondents to accept the petitioner"s tender.

3. The rates offered for different types of work by the petitioner and respondent No. 5 are as under :

Term Tender No. T-8/99-2000/Edd

IIInd Badaun

(In Rupees)

	11	T/FDP SDP	UT.
	K.V.Line		Line
M/s.	C-5000	1700	7600
Durga			
Enterprises	E-4950	1800	6500
(respondent			
No.5)			
M/s.	C-837	300	1660
Shanti			
Enter-prises	E-735	299	984
(petiti-oner)			

Term Tender No. T-9/99-2000/Edd.

II/Badaun

M/s.	C-5000	1700	7600
Durga			
prises	E-4900	1800	6500
(respondent			
No.5)			
M/s.	C-4200	1400	1100 7050
Shanti			
Enterprises	E-3760	1450	1100 4250
(petiti-oner)			

Term Tender No.6/99-2000/Edd.-

II/Badaun

M/S.	C-2597	1000	735	4785
Shanti				
Enterprises(petiti-oner)	E-2401	800	700	2835
M/3.DurgaEnter-pr	C-5000	1700		7600
(respondent				
No.5)	E-4950	1800		6500

Term Tender No. T-7/99-200/Edd.-

II/Badaun

M/S.	C-1639	605	435	2832
Shanti				
Enter-(petiti-oner)	E-1407	600	449	1678

M/3.Durgapris	C-5000	1700	7600
(respondent No.5)	E-4950	1800	6500

4. It is contended on behalf of the petitioner that so far as tender No. T-9 is concerned, the rates quoted by the petitioner with regard to 11 K. V. Line, L.T. line and T/FDP were lower than that of respondent No. 5, yet his tender was not accepted. With regard to T-6, it is urged that the rates offered by the petitioner were very much lower than that offered by respondent No. 5. Similarly with regard to T-7, it is urged that the rates offered by petitioner were almost one third of the rates offered by respondent No. 5. It is thus urged that the rates for various items of work offered by the petitioner being much lower than that of respondent No. 5, the Executive Engineer concerned committed gross illegality and showed undue favour in awarding contract to respondent No. 5.

5. In the counter-affidavit filed by Sri Vijay Kumar, Executive-Engineer, Electricity Distribution Division II, Badaun, (respondent No. 1), it has been stated that due to security reason, the tenders were opened on 2.9.1999 in the office of Superintending Engineer, Electricity Distribution Circle, Bareilly. At the time when the tenders were opened, the representatives of the petitioner firm and that of respondent No. 5 were personally present. The rates and cost schedule for different items of work are issued every year by the Chief Engineer, Rural Electrification and Secondary System Planning Organisation, Shakti Bhawan, Lucknow (hereinafter referred to as ORESSPO"). A copy of the letter of Chief Engineer dated 18.6.1998 along with rate schedule has been filed as Annexure-CA-4 to the counter- affidavit. After opening of the tenders, a comparative statement was prepared by Executive Engineer, Electricity Distribution Division II. Badaun. Thereafter the matter was placed before the Circle Works Committee, Electricity Distribution Circle, Bareilly headed by the Superintending Engineer. With regard to T-6, T-7. and T-9. the Superintending Engineer while agreeing with the report of the Executive Engineer sent the same to the Zonal Works Committee, Bareilly. The tender submitted by respondent No. 5 was finally accepted by the Circle Works Committee and Zonal Works Committee, it is further stated in the counter-affidavit that the rates submitted by the petitioner with regard to T-6, T-7. T-8 and T-9 were wholly illusory and it had been done with the object to frustrate the project and delay the execution of work.

6. We have heard Sri V. Singh for the petitioner, Sri S.P. Mehrotra for the respondents No. 1 to 4 at considerable length and have examined the record. There can be no doubt that tenders submitted by the petitioner were lower than those submitted by the respondent No. 5. However, it cannot be the sole ground to give a contract of a technical nature to the person who has given lowest tender. It is stressed in para 10 (h) of the counter-affidavit that under Rules, Circle Works

Committee has the power to accept the tender upto Rs. 2 lacs and the Committee consists of three members namely (i) Superintending Engineer of Circle (ii) Accounts Officer nominated by Deputy Chief Accounts Officer of the Zone ; and (iii) senior-most Executive Engineer of another circle of the Zone. The tenders above the value of Rs. 2 lacs are accepted by Zonal Works Committee which consists of (i) Chief Engineer (Distribution) of the Zone; (ii) Deputy Chief Accounts Officer and (iii) senior most Superintending Engineer. It is these Committees which took final decision in accepting tender of respondent No. 5. It is, therefore, clear that the Executive Engineer, Electricity Distribution Division (II), Badaun did not play any role in acceptance of the tender. The other important feature is that Chief Engineer, RESSPO has issued rates and cost schedule for different kind of works on 18.6.1999 and a copy of the said schedule is annexed as Annexure-CA-4 to the counter-affidavit. Paras 2 and 3 of the schedule which has a bearing on the controversy involved is being reproduced below :

"2. The schedules have been prepared on the basis of rates of centrally procured Items of materials as intimated by Stores Organisation and remaining items as supplied by field units/assumed by this office.

3. The cartage and erection charges have been assumed on estimated average basis and added to the cost of works. The cartage and erection charges may vary from area to area and the actual figure may be worked out for adoption."

7. These rates have been fixed by Chief Engineer at the head office of U.P. State Electricity Board at Lucknow. The rates offered by respondent No. 5 were comparative to that fixed by RESSPO. The rates quoted by the petitioner were grossly below the rates fixed by RESSPO. No underhand dealing could have taken place at the time when the rates were fixed for different items of work by RESSPO at the head office. This job was done much before the tenders in the present case were invited. It is also note-worthy that rates fixed by RESSPO are applicable for the whole of the State of U.P. It is, therefore, obvious that rates quoted by the petitioner were wholly Illusory as the same were grossly below the rates fixed by RESSPO which had been done by the experts of the departments and were applicable for whole of the State. In a work of technical nature, authorities would be fully justified in not awarding contract to the lowest tenderer if they come to a conclusion that the rates offered by him were wholly unworkable and had been given with some oblique motive. The department cannot take the risk of handing over expensive material and equipment to those contracts who are incapable of executing the work in the rates offered by them as sub-standard construction work may lead to damage to the material and equipment.

8. It is stated in para 10 (f) to the counter-affidavit that for similar kind of work done in the year 1998-99, the petitioner had offered much higher rates as will be evident from the chart given below :

(In Rupees)

	11	D,	L.
	K.	P.	T.
	V.	S.	Line
	Line	(DoublePole]	
Petitioner's	11.100	3,800	15.700
rate			
for			
1998-99			
RESSPO	11.896	4.510	15.550
rate			
for			
1999-2000			
Tender	9,950	3.500	14.100
accepted			

9. The chart given above shows that the petitioner himself had given tender quoting much higher rates in 1998-99 and the same were comparable to RESSPO rates. The rates given by him this year are grossly lower than the rates given by him in the previous year. This fact again shows that the rates quoted by the petitioner were illusory and the authorities rightly did not award the contract to him.

10. The mere fact that a contractor has given lower rate cannot be the sole criteria for awarding the contract to him. In *Raunaq International Ltd. v. I. V. R. Construction Ltd.* 1999 (1) SCC 493, it was observed as under in para 16 of the reports :--

"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 tenders, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all plays 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."

11. The petitioner has assailed the award of contract by means of present writ petition under Article 226 of the Constitution. The award of contract is purely administrative matter. The principles and the scope of enquiry in judicial review of an administrative action have been considered in [Tata Cellular Vs. Union of India](#),

and it has been observed that the modern trend points to Judicial restraint while reviewing administrative decisions relating to contractual power of Government.

12. The point urged in Writ Petition No. 46990 of 1999 is exactly identical and therefore we are not mentioning the facts of this case. Here also the rates offered by the petitioner were grossly lower than those of RESSPO and the rates offered by respondent No. 5 of the said writ petition were comparable to RESSPO rates.

13. Both the writ petitions lack merit and are hereby dismissed. Stay orders are vacated.