Rana Construction and Engineers and Another Vs Food Corporation of India and Others

Court: Gauhati High Court (Shillong Bench)

Date of Decision: March 6, 2007

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (2008) 1 CTLJ 143 : (2007) 3 GLT 506

Hon'ble Judges: T. Vaiphei, J

Bench: Single Bench

Final Decision: Allowed

Judgement

T. Vaiphei, J.
These two writ petitions, arising out of the same facts and circumstances, were heard together and are being disposed of by

this common judgment. For the sake of convenience, I shall first set out the facts of WP(C) No. 220(SH) of 2006, decide the same and thereafter,

if necessary, apply the result thereto in WP(C) No. 229 (SH) of 2006.

2. In WP(C) No. 220 (SH) of 2006, the petitioner is questioning the legality of the letter dated 14.8.2006, issued by the respondent No. 2 settling

the contract for transportation of Food Grains from Ex-Rly Siding Changsari/CWC Amingaon/RH, FSD Guwahati to Godown Complex Agartala,

in connection with the NIT dated 12.5.2005 in favour of the respondent No. 5 for a period of one year and allowing the respondent Nos. 4 and 5

to continue with the contract settled till the year 2004 till finalization of the new contract.

3. The undisputed facts of the case as emerged from the pleadings of both the parties are that the petitioner is a proprietorial concern having its

place of business and office at 62, Rahman Mansion, South Sarania, Guwahati, is engaged in the business of transportation and other allied

activities and that the respondent No. 1 is a Government undertaking having its Headquarter at New Delhi, which is engaged in the distribution of

foodgrains throughout the country through its various Regional Offices located among others, in Shillong, for the purpose of regular supply of food

grains to various States through its Food Storage Depots located in various regions. The respondent No. 1 avails of the services of Railways to the

nearest Railhead and thereafter avails of the services of various transport contractors for the transportation of food grains from various Railway

Sidings to its Food Storage Depots by inviting Tenders by fixing the Schedule of Rates in advance. For the purpose of transportation of food

grains from Guwahati Changsari, Amingaon and FSD Khanapara to Agartala, the Schedule of rates for the year 2004 was fixed at Rs. 521.13 p,

Rs. 539.40p/Rs. 533.31p and Rs. 503.73p per MT respectively. For the settlement of such contract for 2004 for a period of one year, the

respondent No. 1 invited tenders from intending contractors vide NIT dated 8.10.03. for which the price bid was required to be quoted by the

tenderers above or below the schedule of rates on percentage basis. The FCI having found the tenders submitted by the respondents No. 4 and 5

to be valid, settled the said contract with the latter jointly in view of the fact that both of them quoted their rates at 265% above the aforesaid

schedule of rates and the contract was accordingly settled at Rs. 1902.12p, Rs. 1968.81 p, Rs. 1946.58p and Rs. 1838.61p per MT

respectively. As per the tender document power is conferred upon the respondent No. 2 to extend the term of the contract for a maximum period

of three months.

4. It would appear that the term of the aforesaid settlement was to expire in the month of February 2005 and, as such, the FCI was required to

take steps for inviting fresh tender before the expiry of the aforesaid term and that instead of doing so, the FCI through the respondent No. 3 vide

fax message dated 10.2.2005 had extended the period of contract of both the respondents No. 4 and 5 pending finalisation of the new contract at

the existing rate or at the rate which would be finalised in the new contract, which ever was lower. The respondent No. 2 ultimately issued the NIT

dated 12.5.2005 for transportation of food grains for the same destinations for a period of one year for the estimated value of the contract

approximately at Rs. 5,55,90,000/- by stipulating submission of such tenders on or before 8.6.2005 upto 1 P.M., which were to be opened at 2

P.M. on 8.6.2005 itself. It may be noted that the said NIT cover some other works, with which we are not concerned. As per the detail NIT, the

tender would remain open for acceptance upto 23.7.2005. It was further provided therein that the respondent No 2 might at his discretion extend

the aforesaid date by another thirty days, which would be binding upon the tenderers. The schedule of rates from Changsari, Amingaon and

Guwahati to Agartala for 2005 were fixed at Rs. 1891 /-, Rs. 1869.65p and Rs. 1826.95p respectively per MT. The petitioner duly submitted its

tender and quoted its rate at 11% below the aforesaid schedule of rates, which were at Rs. l682.99p,Rs. 1663.99p and Rs. 1625.99p

respectively per MT respectively. There were altogether five tenderers responding to the said NIT including the respondents No. 4 and 5. The

respondent No. 5 quoted the rates at 6% above the aforesaid schedule of rates at Rs. 2004.46p, Rs. 1981.83p, and Rs. 1936.57p respectively

per MT.

5. It further appears that while the aforesaid tender process was going on, one Tapan Kumar Choudhury instituted TS ease No. 23 (T)2005 with

Misc. case No. 72(T)2005 before the learned Assistant to the Deputy Commissioner at Shillong, against the FCI challenging certain terms and

conditions incorporated in the aforesaid NIT dated 12.5.2005. It may be noted that this gentleman did not even participate in the NIT.

Nevertheless, the learned Assistant to the Deputy Commissioner by his order dated 7.6.2005 issued interim injunction restraining the FCI from

receiving, opening or finalising the NIT in question. Since the interim injunction order was not received in time, the FCI opened the technical bid of

all the participating tenderers on 8.6.2005. The learned Assistant to the Deputy Commissioner by his order dated 12.7.2005 made the interim

injunction absolute. Consequently, the FCI extended the validity period of the tender by another thirty days i.e. up to 23.8.2005. The appeal filed

by the FCI against the injunction order before the learned Deputy Commissioner, Shillong, was dismissed on 19.10.2005 as time barred. At the

request of the FCI, the petitioner extended the validity of its tender from time to time and the last extension whereof was granted upto 23.11.2005

vide its letter dated 27.10.2005. On the expiry of the extension period, the FCI once again requested all the tenderers including the petitioner to

again extend the validity of their tenders upto 13.12.2005 on mutual consent basis since the injunction order passed by the lower court was yet to

be vacated. The petitioner by its letter dated 7.2.2006 and 7.3.2006 informed the FCI in no uncertain terms that it was not going to extend the

validity of its tender beyond 23.11.2005 and requested the FCI to return the earnest money deposited by it at the time of submission of its tender.

The FCI, however, did not return the earnest money. Instead, the FCI once again vide telegram/fax dated 14.7.2006 requested the petitioner and

other tenderers to extend the validity of their tenders up to 15.5.2006 on mutual consent basis and at the same time intimated them that the

injunction order had been vacated by this Court. Finally, the petitioner by its letter dated 15.7.2006 addressed to the respondent No. 3 expressed

its inability to further extend the validity of its tender and once again requested him to return the earnest money deposited. This request was

apparently not acceded to by the FCI.

6. The petitioner by its letter dated 7.8.2006, however, informed the FCI that it was agreeable to extend the validity of its tender on mutual

consent basis subject to the condition that (1) the rates quoted by it would remain valid with effect from the date of submission of tender till the

NIT was finalized and (2) the rates quoted by it should be enhanced by 7% with effect from the date of finalization of the NIT till the expiry of the

contractual period, i.e. for the contractual period, the rates should be treated at 7% above the rate quoted by it. The petitioner also mentioned

therein that if the rates quoted by other tenderers were found on the higher side even after the aforesaid enhancement, then only the contract be

settled with it, otherwise, the same might be settled with the lowest tenderer. It transpires that by this time, the FCI by its letter dated 14.8.2006

informed the respondent No. 5 that the technical bid and the price bid had been opened on 8.6.2005 and 1.8.2006 respectively and that the

respondent No. 5 had already been intimated about the acceptance of its tender at 6% above the schedule of rates vide telegram dated 7.8.2006

and requested it to deposit the security money in the prescribed form. The respondent No. 5 accordingly deposited Rs. 2,78,000/- by Demand

Draft with a request to convert the earnest money of Rs. 11,12,000/- as security money. The net result of this is that the respondent No. 5 came to

be appointed as the transport contractor in question for a period of one year. The one year period of contract is to be reckoned from the date of

submission of joining report by the respondent No. 5 or from the seventh day of issuance of the aforesaid letter. On coming to learn of this

development, the petitioner by his letter dated 16.8.2006 addressed to the respondent No. 2 requested the latter to furnish it the copies of the

decisions and reasons thereof assigned by them for opening of the price bid of the respondent No. 5 on 1.8.2006 and also a copy of the telegram

dated 7.8.2006 sent by the FCI to the same. These documents were apparently never furnished to the petitioner.

7. Having set out the undisputed facts of the case, 1 shall now deal with the contentions made by the petitioner in the writ petition. The petitioner

contends that the title suit filed by the said Tapan Kumar Choudhury and the injunction obtained by him in connection therewith were done at the

behest of the respondents No. 4 and 5 in collusion with the FCI so as to facilitate further extension of the contract awarded to them in 2003 and

that the delay in inviting fresh tender after the expiry of the period of settlement of contract for 2004 was also a device invented by the FCI to

subserve the interest of the respondent No. 4 and 5. According to the petitioner, the FCI had no power to extend the validity period of the tender

beyond thirty days and if the tender process could not be completed within the extended period of thirty days, the FCI ought to have scrapped the

tender process and invited fresh tenders and having not done so, the entire tender process stands vitiated. It is also stated by the petitioner that the

price bid was never opened on 1.8.2006 and that it was only on receipt of its letter dated 7.8.2006 through fax message that the FCI became

panic-stricken and, in collusion with the respondent No. 5, hastily issued the telegram dated 7.8.2006 to the latter by making up a story of opening

the price bid on 1.8.2006 accepting the tender at 6% above the Schedule of rates. It is the allegation of the petitioner that the entire exercise was

done by the FCI with a view to give undue financial advantage to the respondent No. 5 inasmuch as no prior notice whatsoever was issued for

fixing the date of the opening of the price bid and if the price bid was to be opened on 1.8.2006, the FCI should have issued prior notice to all the

participating tenderers including the petitioner who had qualified in the technical bid and whose Earnest money deposits were lying with the FCI

and could have at least fixed the copy of the notice in the Notice Board of the FCI. It is also submitted by the petitioner that the impugned contract

having been settled at Rs. 1936.57p per MT, Rs. 2004.46p per MT above the rates offered by it and also more than Rs. 100 per MT offered by

it at the rate quoted by it in the tender. This, according to the petitioner, is also against public interest.

8. It is also contended by the petitioner the FCI refused to return the Earnest Money Deposit of the petitioner, who was found to be qualified in the

Technical Bid, it was incumbent on the part of the FCI to open its price bid so as to enable it to obtain the lowest price and had its price bid, which

quoted the rate at 11% below the Schedule of rates 2005, been opened, the FCI could have got a refund of Rs. 1,62,52,245/- from the private

respondents and, conversely, by settling the contract with the respondent No. 5, the FCI had conferred monetary advantage to the same to the

order of Rs. 1,20,36,000/-. In any case, according to the petitioner, the award of the contract to the private respondent would result in a loss of

Rs. 2,62,52,245/- to the FCI. It is further contended by the petitioner that if the tender process could not be completed immediately, the FCI

could have called for ad hoc tender and the failure on the part of the FCI to call for ad hoc tender was deliberately made to prolong the temporary

arrangement with the respondent Nos. 4 and 5 with a malafide intention to give them undue financial advantage. It is further contended that the

entire tender process thus suffers from illegality, arbitrariness and favoritism, which cannot be sustained in law and is liable to be quashed.

9. The main contentions of the FCI respondents as projected in their counter affidavit are that the delay in floating of the NIT, was occasioned by

the switching over of the tender estimate to a new system and not with the intention of giving undue financial benefits to the respondents and that

the process of the NIT when it started, came to be stalled by the said temporary injunction issued by the learned Assistant to the Deputy

Commissioner, Shillong. It is also submitted by the FCI respondents that before finalization of the tender, due to the operation of the injunction

order, the petitioner by its letter dated 7.3.2006 had expressed that it was not interested in the bid and requested the release of the Earnest Money

deposited by it as soon as possible and that the petitioner by its letter dated 15.7.2006 again clearly stated that it was not interested to participate

in the bid and requested the release of the Earnest Money deposit as early as possible. It is the further contention of the petitioner that when it as

well as other tenderers except the respondent No. 5 expressed their unwillingness to extend the validity period of the tender, their price bids were

obviously not opened whereafter the Earnest Money deposits were refunded to them. The FCI respondents pointed out that the Corporation was

not in a position to invite fresh tenders as the NIT for the work was under challenge and the some of its terms disputed and further that the

Corporation could not uni laterally take any action on the request made by the petitioner for refund of the Earnest Money as the subject matter was

under challenge before the Court. As for the rates quoted by the petitioner in its tender, the FCI respondents stated that the calculation made by it

had no basis and are purely hypothetical especially when it had already intimated that it was not interested in the Bid.

10. On the question of counter offer made by the petitioner, it is pointed out by the FCI respondents that there was no provision for making

counter offer by the tenderers. According to the FCI respondents, non-finalization of the NIT in question would not be in the interest of the

Corporation and fresh tender would only delay the matter and would invite higher rates and that it was after taking overal1 view of the matter that it

was decided to complete the existing tender process by giving equal opportunity to all the participating tenderers by requesting them to extend the

validity of the tender. It is also pointed out by the FC1 respondents that the technical bid was opened as scheduled on 8.6.2005 at 2 P.M. in the

presence of all the tenderers/their representatives, including the petitioner. It is thus contended by the FCI respondents that there is no merit in the

writ petition, which is liable to be dismissed.

11. In the affidavit-in-opposition of the respondent No. 5, it is denied that the entire process of the opening of the Price Bid was done in a planned

manner and that the said Tapan Kumar Choudhury is just a front for the respondent Nos. 4 and 5. It is reiterated by the respondent No. 5 that the

Technical Bid was opened on 8.6.2005 in the presence of all the parties at 2 P.M. According to the answering respondents, when all the process

of the NIT in question was stopped by the FCI, it enquired about it and then came to know that the opening of the price bid was stalled by the

injunction order issued by the Civil Court which was the sole ground for delaying the tender process. The respondent No. 5 pointed out that the

petitioner itself agreed to the extension of the validity till 23.11.2005 at the request of the FCI and that if at all the petitioner was interested in

vacating the inj unction order it ought to have impleaded itself in the case and could have attempted to vacate the injunction order. According to the

answering respondent, when the petitioner had already expressed its disinterest in the Bid and requested for the release of the Earnest Money

deposited by it, it had no locus standi to question the validity of the extension of the tender period. It is maintained by the respondent No. 5 that the

period of contract commenced only w.e.f. 18.8.2006 and would come to end only on 18.8.2007 and, as such, the period of contract has never

expired. It is also averred by the respondent No. 5 that the price bid of the NIT was already opened on 1.8.2006 and it was after coming to know

of its price bid that the petitioner wrote the letter dated 7.8.2006 making a counter offer, which is an afterthought and that there was no question of

considering the price bid of the petitioner, or for that matter, the price bids of other tenderers since they had already withdrawn themselves from

the Bid by demanding refund of their Earnest Money deposits and by not extending the validity of their Bids. It is also stated by the answering

respondents that the enhanced rate of 7% proposed by the petitioner subsequently in its letter dated 7.8.2006 could not be legally conceivable in a

competitive Bid where the bidder who actually quoted the lowest rate is settled with the tender work. It is thus denied by the answering respondent

that the entire tender process is mala fide, manipulative or smacked of foul play on the part of the FCI. The answering respondent pointed out that

it had already commenced the execution of the work order by depositing security and by mobilizing resources to carry out the contract. It is thus

contended that the writ petition has no merit and is liable to be dismissed. In reply, the petitioner filed affidavit in reply, the contents whereof are

more or less repetition of the statements and contentions raised in the writ petition, which need not be reproduced herein for the sake of brevity.

12. The admitted position of the parties is that though the validity period of the tender in question was upto 23.7.2005, the FCI-respondents. in

exercise of their discretionary power in the NIT, extended the said period by another 30 days i.e. upto 23.8.2005, which was the maximum period

permissible for such extension and that thereafter at the request of the FCI-respondents, the petitioner from time to time extended such period upto

23.11.2005 and further that when the FCI-respondents again requested the petitioner and other tenderers to make further extension on mutual

consent basis, it by the two letters dated 7.2.2006 and 7.3.2006 intimated its unwillingness to such extension and requested the FC1 to return the

earnest money already deposited by it at the time of submission of the tender. After perusing the pleadings of the rival parties, which are

undoubtedly many, in my opinion judgment, the only point which really calls for consideration is whether the petitioner had the right to insist on

opening its bid after it expressly withdrawn its bid and demanded refund of the earnest money deposited by it? In this context, it will be apposite to

refer to the letters dated 7.2.2006 and 7.3.2006 of the petitioners, which are at Annexure-H and I to the writ petition, which and the same is

reproduced hereunder:

To

The General Manager

Food Corporation of India

NEF Region

Regional Office

Shillong-793003

Meghalaya

Ref.: Cont. 9/NEFR/TC/Changsari-Agartala/2005 dated 24.10.05

Sub: Release of EMD for the work of ""Ex-Rly siding CWC, Amingaon/Railhead. FSD. Ghy to Godown Complex Agartala Vide NIG No. Cont.

50/NEFR/TE/2005 dated 12-05-2005

Dear Sir,

Reference to the subject cited above, I would like to inform you that as per your request, we had extend the validity period of the aforesaid Tender

upto 23.1.1.2005 on mutual consent basis. But further we did not extend any validity period from our side.

So, we are requesting you to kindly release the Earnest Money Deposit as soon as possible.

Thanking you Sir, an anticipation for a favourable response at your end.

Yours Sincerely,

For Rana Construction & Engineers

S/d-

Date: 07.02.2006

Place: Guwahati

To

The General Manager

Food Corporation of India

Regional Office, NEF Region

Shillong-793003

Meghalaya

Ref: NIT No. Cont. 50/NEFR/TE/2005

dated 12.05.05

Transport contract ""Ex-Rly siding Changsari/CWC, Amingaon/Railhead, FSD, Guwahati to Godown complex, Agartala.

Sub: Release of Earnest Money Deposit

Respected Sir,

With reference to the subject cited above, I would like to inform you that, I had submitted the Tender for the aforesaid work along with the

Earnest Money of Rs. 11,12,000/- (Rupees Eleven lacs Twelve Thousand) only vide its D/D No. 233652. Dated 04.06.2005.

Due to court case, we are facing problem, because huge amount was blocked since a long period.

Further I would like to inform you that, as per your request we had extend the validity period of aforesaid tender till 23.11.2005. But after that we

did not extend any validity period from our side.

Sir, as we are not interested to bid in the aforesaid work, so we are again requesting you to release the Earnest Money Deposit at soon as

possible.

We had already sent a letter requesting to release Earnest money Deposit vide letter dated 07.02.2007.

Thanking you Sir, an anticipation for a favorable response at your end.

Yours Sincerely,

Sd/-

For Rana Construction & Engineers.

Date: 07.03.2006

Place: Guwahati

13. There is thus no difficulty in holding that by the aforesaid letters, the petitioner unambiguously indicated its intention to disassociate itself from

the bid and demanded return of the earnest money deposited by it. It is also an undisputed fact that the FCI respondents opened only the bid of

the private respondent on 1.8.2006 on the ground that the petitioner and other tenderers had already withdrawn the irrespective bids and ultimately

awarded the contract to the private respondent and that the earnest money of the petitioner was, however, refunded thereafter and not before. It is

strenuously urged by Mr. K.N. Choudhury, the learned senior counsel for the petitioner that the FC1 could not withhold the earnest money of the

petitioner and at the same time refused to open its price bid and that the FCI was under an obligation to open the price bid of the petitioner,

notwithstanding the withdrawal letters, as long as they refused to refund the earnest deposit money deposited by it. This necessarily takes me to

examine the nature of earnest money deposited by the petitioner in accordance with the NIT in question. Clause C.4. of General Information of the

NIT, a specimen copy whereof is placed before me by the learned Counsel for the petitioner, deals with earnest money, which are as follows:

Earnest Money:

Each tender must be accompanied by an Earnest Money of Rs. 5,86,000/- (Rupees Five lakh Eighty six thousand) only in form of a Demand

Draft/Pay Order issued by a Scheduled Bank in favour of the Senior Regional Manager, Food Corporation of India, Shillong and payable at

Shillong. Tenders not accompanied by earnest money in the form prescribed above shall be summarily rejected.

The earnest money shall be liable to forfeiture if the tenderer after submitting his tender resiles from or modifies his offer and or the terms and

conditions thereof in any manner, it being understood that the tender documents have been made available to him and he is being permitted to

tender in consideration of his agreement to this stipulation. The earnest money is also liable to be forfeited in the event of the tenderers failure, after

the acceptance of his tender, to furnish the requisite security deposit by the due date without prejudice to any other rights and remedies of

Corporation under the contract and law. The earnest money will be returned of all unsuccessful tenderers, as soon as practicable after decision on

tenders and to a successful tenderer, after he has furnished a security deposit, if the successful tenderer does not desire the same to be adjusted

towards the security deposit. No interest shall be payable on the amount of earnest money, in any case.

14. It is thus obvious from the clause extracted above that the earnest money deposited by the petitioner is rather to be forfeited if it withdraws

from the bid after submitting the bid. The position is explained in Clause 25.13 of Chapter 25 of Part II of Storage and Contract Manual of the

FCl, which reads thus:

Withdrawal/modification of offer before acceptance.

Although the tender forms contain an undertaking that the offer shall hold good for a specified period the legal position with regard to such offers is

that notwithstanding such an undertaking the proposal may, at any time before acceptance, be withdrawn or modified. But in such cases.

Corporation shall forfeit the earnest money as provided in the tender terms. The sanctity of the tender system can be maintained only if the parties

are made to realize that any modification of the offer (which includes rates, terms and other conditions) will entail forfeiture of earnest money

deposit. Whether such modifications will result in a favourable situation to the Corporation (or not) is neither relevant nor foreseeable at the time

the modification is effected by the party.

15. The aforesaid provision abundantly makes it clear that though liberty is given to the petitioner to withdraw its bid after submission of the tender,

the FCI-respondents are also required to forfeit its earnest money. As noted earlier, the earnest money was subsequently refunded to the petitioner

i.e. only after awarding the contract to the private respondent. Thus, instead of penalizing the petitioner for resilling from its bid, the FCI chose to

reward it by returning the earnest money. Earnest money is given to ensure that a contract can come into existence and that the tenderers shall not

abandon their bids before the tender process is completed. The FCI-respondents ought not to have allowed the withdrawal of the bid by the

petitioner and if they so allowed, they ought to have forfeited its earnest money. As long as the earnest money was not refunded, the petitioner

continued to be in the fray and its price bid ought to have been opened to facilitate competitive bidding, which is. after all, the raison de deter of

deposit of earnest money. The petitioner, once it submitted its tender, is not permitted to resile from the bid and at the same time claim refund of

the earnest money. Neither had the FCI the power to allow the petitioner to withdraw from the bid without forfeiting its earnest money. It would be

quite an anomaly to say that a person, who, by its own conducts, precludes the opening of its tender and is yet allowed to take advantage of its

own wrong by avoiding forfeiture of its earnest money deposit. The FCI-respondents have completely overlooked Clause C.4. of General

Information of the NIT as well as Clause 25.13 of Chapter 25 of Part II of Storage and Contract Manual in not opening the bid of the petitioner

and then refunding the earnest money deposited by it. The FCI should have forfeited the earnest money of the petitioner if it chose to resile from its

bid or should have opened its bid if the earnest money was not being forfeited. The petitioner should not have been allowed to withdraw its bid.

On the contrary it should have been forced to carry out its undertaking to participate in the bid on the pain of forfeiture of its earnest money if it

refused to do so. Therefore, the decision making process of the FCI in allowing the petitioner to withdraw from the bid and in refunding its earnest

money suffers from the vice of non-application of mind. But then, the question to be determined is whether something has gone wrong of such a

nature and degree which requires the intervention of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India?

16. It is a settled law that principles of juidicial review would apply to the exercise of contractual power by the State, its Corporations,

instrumentalities and agencies in order to prevent arbitrariness, illegalities and favouritism. The leading authority on the power of judicial review in a

contractual matter undoubtedly, is Tata Cellular v. Union of India (1994) 6 SCO 651. After an exhaustive consideration of a large number of

decisions and standard books on administrative, the Apex Court held:

77. The duly of the court is thus to confine itself 10 the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers ?

2. Committed an error of law.

3. Committed a breach of the rules of natural justice.

4. Reached a decision which no reasonable Tribunal would have leached or,

5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy of particular decision taken in the fulfillment of that policy is fair. It is only

concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put,

the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

ii) Irrationality, namely, Wednesbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral

standards that no sensible person who had applied his mind to the question to be decided could have arrived at. The decision is such that no

authority properly directing itself on the relevant law and acting reasonably could have reached it.

iii) Procedural impropriety:

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. Another development is that referred to

by Lord Diplock in R.V. Secretary of state for the Home Deptt. Ex. Blind, viz. the possible recognition of the principle of proportionality. Two

other facets of irrationality may be mentioned: (1) It is open to the court to review the decision-maker''s evaluation of the facts. The court will

intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one

course of action is overwhelming, then a decision the other way cannot be upheld. (2) A decision would be regarded as unreasonable if it is

impartial and unequal in its operation as between different classes.

In all these cases the test to be adopted is that the court should, ""consider whether something has gone wrong of a nature and degree which

requires its intervention.

17. It is also a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have

been eschewed from consideration and that no relevant aspects have been ignored and the administrative decisions have nexus with the facts on

record, the same cannot be attacked on merits. Judicial review is concerned with reviewing not the merits of the decision in support of which the

application for judicial review is made, but the decision-making process itself. But the State, Corporations instrumentalities and agencies are bound

to adhere to the norms, standards and procedures laid down by them and cannot depart therefrom arbitrarily. The need for giving ""fair play in the

joint"" to the public authorities is once again reiterated by the Apex Court in Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, , when it

observed:

Ã¯Â¿Â½Even when some defect is found in the decision-making process, the court must exercise its discretionary power under Article 226 with great

caution and should exercise it in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the

larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming

public interest requires inreference, the court should intervene.

18. Having set out the correct legal positions, I shall now examine whether the larger public interest is involved in this case warranting the

interference of this Court. As noted earlier, the private respondent was awarded the contract for transporting the foodgrain from Guwahati (Meter

Gauge) to Agartala, from Changsari to Agartala and Central Warehouse Corporation, from Amingaon to Agartala at the rates of Rs. 1.936.57 per

metric ton, Rs. 2,004.46 per metric ton and Rs. 1,981.83 per metric ton respectively. The specific case of the petitioner is that its corresponding

quotation for the same are Rs. 1,625.99 per metric ton, Rs. 1,682.99 per metric ton and Rs. 1,663.99 per metric ton respectively, which are 11%

below the Schedule of Rates and that the impugned contract awarded to the private respondent is at Rs. 316.63 per metric ton above the rates

offered by it. It is also the further case of the petitioner that had its price bid been opened, it having quoted its rate at 11% below the Schedule of

Rates for2005, the FCI could have got a refund of Rs. 1,42,16,245/- from the private respondent during the period of the extended contract so

settled. Similarly, by awarding the contract to the private respondent at 6% above the Schedule of rates for 2005, the average rate so arrived at

being Rs. 1974.29 per metric ton, monetary benefits to the order of Rs. 1,20,36,000/- per year in a quantity of 60,000/- metric ton are being

conferred upon it. This, according to the petitioner, is ex-facie against public interest. It is also specifically pleaded by the petitioner that by not

opening its price bid and by settling the contract in favour of the private respondent, the FCI will sustain a total loss of Rs. 2,62,52,245/-. These

allegations of the petitioner have been dealt with by the FCI-respondents in paragraphs No. 25, 26 and 27 of their counter, albeit in a most casual

manner. All that was indicated therein is that the petitioner was not interested in the bid or that the calculation made by the petitioner had no basis

and was hypothetical. Obviously, it is not the case of the FCI-respondents that the rates quoted by the petitioner in its bid, at any rate, in his

original bid were not correct. This inevitably led me to conclude that the FCI-respondents did not apply their mind properly to the materials on

record or had deliberately ignored the relevant aspects of the matter. In my opinion, non-consideration of these relevant questions including their

omission to open the tender of the petitioner by the FCI-respondents in the circumstances noted above, resulted in a loss of public money to the

order of over rupees two crores. In fairness, it may, however, be argued in favour of the FCI-respondents that since the bid of the petitioner was

never opened, it was not possible for them to know the rates offered by it in the original bid. However, this contention need not detain us inasmuch

this resulted from their own omission, deliberate or otherwise, to open the tender of the petitioner, that too, but without forfeiting the earnest money

deposited by it. Competitive bidding was thus given a go by to the great detriment of public interest. Consequently, the decision-making process of

the FCI-respondents in awarding the contract to the respondent No. 5 stands vitiated. In my judgment, something has gone wrong in the impugned

tender process, which is of such a nature and degree calling for the interference of this Court.

19. The net result of the foregoing discussion is that this writ petition be and is hereby allowed. The impugned tender process is accordingly set

aside. Consequently, the letter dated 14.8.2006 issued by the respondent No. 2 in favour of the respondent No. 5 is quashed. The FCI-

respondents shall invite fresh tenders for settlement of the said contract and complete the entire tender process in accordance with law and keeping

in mind the observations made by me elsewhere in this judgment within a period of two months from the date of receipt of this judgment. It is made

clear that if for reasonable and genuine reasons, the tender process cannot be completed within a period of two months, the FCI-respondents shall

instead of extending the contract with the private respondents, take recourse to the provisions of Clause 25.22.4 of Chapter-24 of Storage &

Contract Manual. Subject to the aforesaid directions, to prevent disruption of food grains distribution, liberty is given to the FCI-respondents to

continue the existing arrangement made with the private respondents with similar terms and conditions. The FCI-respondents shall pay the costs of

the writ petition throughout.

W.P. (C) No. 229 (SH) of 2006

In this writ petition also, the petitioner, who is the respondent No. 4 in W.P. (C) No. 220 (SH) of 2006, is questioning the validity of the settlement

of the said transport contract in favour of the respondent No. 5 M/s Saikia Trade & Transport Co., Saikia Complex, Sreenagar, G.S. Road,

Guwahati, Assam) in connection with the NIT dated 12.5.2006. Like the petitioner in W.P. (C) No. 220 (SH) 2006, he was earlier awarded the

transport contract for carrying food grains in 2004. He also participated in the tender process of the NIT dated 12.5.2005, but was not awarded

the contract as the contract settlement was made with the respondent No. 5 as already noted earlier. At the outset, I am constrained to observe

that the pleadings of the petitioner are sketchy and far from satisfactory. It is just not easy to understand on what basis the settlement of the

contract with the respondent No. 5 has been challenged. Nevertheless, in view of my decision in W.P. (C) No. 220 (SH) 2006 setting aside the

settlement of transport contract made in favour of the respondent No. 5 and directing the FCI-respondents to invite fresh tender in connection

therewith, this writ petition does not really survive for independent consideration and is accordingly disposed of by directing the parties to bear

their own costs.