

CASE NO.:
Appeal (civil) 5610 of 2006

PETITIONER:
Ramchandra Murarilal Bhattad & Ors.

RESPONDENT:
State of Maharashtra & Ors.

DATE OF JUDGMENT: 05/12/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U G D M E N T
(Arising out of S.L.P. (C) No.5900 of 2004)
WITH

CIVIL APPEAL NO. 5611/2006
(Arising out of S.L.P. (C) No.23665 of 2004)

S.B. Sinha, J.

Leave granted.

The Mumbai Metropolitan Region Development Authority (for short, 'the Authority') was created under the Mumbai Metropolitan Region Development Authority Act, 1974 ('the Act'). It conceptualized the idea of establishing a Convention and Exhibition Centre ('C&EC'). Pursuant thereto and in furtherance thereof it called for "Expression of Interest for development of C&EC" in Bandra Kurla Complex. An advertisement was issued inviting 'Expression of Interest for development of C&EC'. Appellant No.1, pursuant where to and in furtherance where of, entered into a Memorandum of Understanding (MoU) with M/s. Larsen & Toubro Ltd. (L&T) for setting up such a complex. It also conducted conference of investors therefor. It submitted its tender on 7.4.2003, highlighting :

- a) Entire ground of 75,000 sq.m. would be required for international standard C&EC.
- b) They have formed a consortium for bidding for the said project and giving the names of the members of the consortium as including L&T and IMAG (Germany).
- c) Letters of acceptance from L&T was also annexed to show its participation.
- d) The Authority was offered equity participation to the extent of 5% of the total equity base.

Several other companies also submitted their tenders.

The tenders were to be considered at three stages and thus, three different covers were to be submitted along with tenders. The first cover contained compliance with minimum eligibility criteria, the second cover contained financial bid and the third one contained technical and business proposals. The technical bid was opened on 7.5.2003. The financial bid was thereafter opened which was contained in second cover, on 8.5.2003. Appellant was the highest bidder having offered 91.514 crores. M/s. Reliance Capitals Ltd. was said to be the lowest bidder therein. The offer of the bidders thereof are as under :

1.	M/s. Shapurji Pallonji & Co. Ltd.	Rs.50.005 Crores.
2.	M/s. Reliance Capitals Ltd.	Rs.13.032 Crores.
3.	M/s. R.M. Bhuther & Co. Ltd. and its Associate companies in consor- tium with L&T Ltd.	Rs. 91.514 Crores.

3rd Cover thereof was opened thereafter and the Authority, on 26.6.2003 informed Appellants that it had decided to arrange a presentation on the business proposal by them on 3.7.2003. Pursuant thereto they made a presentation on 4.7.2003.

Appellants, by a letter dated 29.8.2003, informed the Authority that :

- a) reputed concerns like L&T and IMAG were associated in the project.
- b) A presentation was made on 4th July, 2003, a copy whereof was enclosed.
- c) Thereafter it did not receive any query from the Authority.
- d) List of business partners shown with details of Convention projects of L&T and business of IMAG.
- e) Role of IMAG was also set out.

The Authority, however, took a decision to reject all the bids on 1.9.2003, which was said to have been communicated to Appellants by a fax message on 22.10.2003.

Allegedly, the news item appeared in the 'Economic Times' on 2.10.2003, wherein, inter alia, it was reported that :

- a) The Authority is close to finalizing the much talked about Convention centre in Bandra Kurla Complex.
- b) An official of the Authority had stated that they were trying to get private participation and three bidders had been finalized and in a few days the plans for the Centre would be finalized in an area of 5.5 hectares.

Appellant issued a letter to the Chairman of the Authority, in terms whereof he was, inter alia, informed that the project would start getting yield only after 12 years from the date of commencement thereof. It was furthermore informed that its consortium members included L&T and IMAG.

It was contended :

i) The company has offered highest bid price for the land at BKC for a reserved plot for C&EC since the company is interested in bringing up an international standard Exhibition Centre, a long over-due infrastructure asset for a city like Mumbai inspite of reserved plot (restricted utility) area with high gestation period and longest break even which is almost about 7 years. In all, the project starts getting yield only after 12 years from date of commencement of construction.

(ii) It has also been the contention of the company to relocate the asset base of the company on account of core competency of the company in the field for more than 50 years and intending to continue to command on industry.

iii) As per the press release for a commercial block bidding invited by the Authority, it was awarded at Rs.25,000/- per square metre in spite of

having a total flexibility to exploit the commercial aspect vis-à-vis an offer given by the company for the reserved plot for convention centre at the rate of Rs.14,642/- per square metre.

iv) Company also expressed that the projects of such type are always being given land at very concessional rate. Statistics indicates that world over such exhibition centres are either funded by way of concessional land price or absolute government contribution by way of land to make the project to early break even.

The expertise of L&T and IMAG in setting up Exhibition Centres was again highlighted by a letter dated 20.10.2002, therein it was alleged :

a) The Authority had informed in the presence of other bidders that the consortium led by the appellants were the successful bidders.

(b) Some committee members informed that the matter had not been decided on 1.9.2003 and the matter was deferred till the next meeting to be held on 27.10.2003.

(c) The detailed history was set out including the fact that Reliance Capital had quoted Rs.13.032 crores against Rs.91.514 crores quoted by Appellants.

d) L&T and IMAG were the consortium members and the decision would have an international impact.

A writ petition was filed before the Bombay High Court by Appellants, inter alia, questioning :

a) the validity of clause 2.4 of the Request for Proposal in which the Authority reserved the right to reject at any stage all or any of the bids without assigning any reason.

b) the power of the Authority to cancel or reject the bids.

c) the cancellation of the bid by the decision purported to have been made on 1.9.2003.

The contentions of Respondents before the High Court were :

a) the decision to reject all bids is in pursuance of the power was conferred by the terms of the contract.

b) the authorities acted reasonably and fairly and have now reached a decision to set up the convention centre on their own without any private participation.

c) By virtue of sections 12(1)(b)(d) and (h) and the power to issue directions under S.14 of the Act, it could, at any stage, review any decision including the decision of the executive committee and direct either rejection of all bids or issuance of fresh bids.

The writ petition filed by Appellants was dismissed by the High Court holding :

A. the Executive Committee is not the sole judge in matters of approval or rejection of tenders for projects and schemes of the authorities.

B. In view of sections 12, 13, 14 and other provisions of the Chapter, the power of the Authority cannot be whittled down or restricted.

C. It being the authority entitled to acquire, hold and dispose of the property it cannot be said that its power in such matters will not include the power to reject a tender or bid which is invited for projects and schemes framed by it.

D. In exercise of the powers under Article 226 it could not act as

an Appellate Authority to review or supervise the functions of authorities like the Mumbai Metropolitan Region Development Authority.

E. Considering the material on record it cannot be held that the Authority acted unreasonably unfairly or in an unjust manner.

F. The Authority consisting of people possessing expertise and skill in the field its decision to develop the property as a C&EC by itself cannot be faulted with.

G. It is not a case where Article 14 can be said to have been infringed.

H. It cannot be said the facts which are pleaded are not based on evidence or materials which are not annexed to the counter affidavit.

I. Reasons in such matters can be gathered from files/records maintained by the authorities.

A review petition filed thereagainst was dismissed.

Appellants filed the special leave petition on 29.10.2004 against the order dated 20.1.2004 as also against the order dated 11.10.2004 dismissing the review petition.

In its counter affidavit filed before this Court the Authority, inter alia, disclosed that the rate of premium for the commercial properties was increased from Rs.25,000/- per square metre to Rs.42,500/- per square metre. It was further disclosed that the Authority called for fresh tenders for development of 5.5 hectares as C&EC and 2.0 hectares for a commercial complex, in terms whereof the bidders were required to quote separately for C&EC and Real Estate Components. Whereas the rate for C&EC was fixed at 130 crores (Rs.20,000/- per square metre); for the Real Estate Component the bidder was required to quote higher than 350 crores (i.e. higher than Rs.70,000/- per square metre). It was further stipulated that the successful bidder was required to pay 50% of the compensation amount within one month of acceptance thereof and the rest 50% within three months thereof. The other terms and conditions and procedure for evaluating bids, however, remained the same. A supplementary affidavit was filed by Respondents on 20th February, 2006, wherein it was brought to this Court's notice that in response to the tender floated in 2005, Reliance Industries Ltd. had bid Rs.974,00,00,111/- for the commercial portion and the fixed price of Rs.130 crores for the C&EC. Reliance Industries Limited thereafter was directed to be impleaded as a party by an order dated 24.4.2006, wherein this Court recorded :

"These matters pertain to the construction of a Convention-cum-Exhibition Centre and commercial complex at Bandra Kurla, Mumbai. The petitioner before us is the unsuccessful bidder who has challenged the action of the Mumbai Metropolitan Region Development Authority (MMRDA) cancelling all the bids at an earlier stage. Despite the application made by the petitioner, we declined to grant injunction in the matter. As a result, MMRDA re-tendered and we are informed that the highest bid was by Reliance Industries Limited, which is said to have been granted the contract and paid a sum of Rs.552 crores.

The petitioner desires to demonstrate to this Court

(a) that the bid was cancelled by the MMRDA, which had no jurisdiction to do so under the Act; and (b) that there was mala fides in cancelling all the bids as it was intended to engineer the re-tendering process to favour the party who has now succeeded. To demonstrate his bona fides, the petitioner's counsel states that the petitioner would not only match the bid of the presently successful party only for the Convention Centre, but that

he would also pay the amount at one go instead of paying it over a period of time.

We are informed that there is another party who is involved. Mr. R.F. Nariman, the learned senior counsel, states that the petitioner would move an application to implead that other party (Reliance Industries Limited)."

The Reliance Industries Limited was impleaded as a party to this appeal thereafter.

Mr. R.F. Nariman, learned Senior Counsel appearing on behalf of Appellant in support of this appeal would contend that \026

- i) the purported major shift in the policy by the Authority was impermissible in law;
- ii) rejection of the bid offered by the Authority was wholly illegal as the Executive Committee alone was the sole judge in relation thereto;
- iii) in accepting the bid of Reliance Industries Ltd., the offer of the appellants that they would pay @2=% per year from the annual turnover from the 21st year had not been considered;
- iv) in rejecting the tender of the appellant, the Executive Committee/Mumbai Metropolitan Region Development Authority was required to assign sufficient and valid reason; and the same having not been done, the order impugned in the writ petition was vitiated in law.

Mr. Harish N. Salve, learned Senior Counsel appearing on behalf of the Reliance Industries Ltd., on the other hand, would submit that \026

- i) the Executive Committee could not have taken a decision in regard to the change of policy;
- ii) when the second tender was floated, Appellant did not take part therein;
- iii) procedural lapses, if any, cannot be a ground for judicial review.

Contentions of Mr. Shekhar Naphade, learned Senior Counsel appearing on behalf of the Authority were \026

- i) judicial review is not maintainable as Appellant has not disclosed infringement of any constitutional or statutory right;
- ii) the Authority was entitled to reject the tender on appreciation of professional competence and capacity of Appellant to run the centre profitably, as well as the fact that prices offered by them were competitively low; and
- iii) the policy being in relation to a mega project and the judgment of the authority being objective criterion, no interference is called for by this Court.

The Act was enacted for forming Brihan Mumbai and certain areas round about into a Mumbai Metropolitan Region. Section 4 thereof deals with the composition of the Authority. Section 4A provides for powers and functions, inter alia, of its Chairman and Metropolitan Commissioner. Section 7 provides for constitution and powers of Executive Committee. Clause (iii) of Sub-Section (3) of Section 7 reads as under :

"7. (3)(iii) approval or rejection of tenders for projects and schemes of the Authority;"

Section 12 of the Act provides for powers and functions of the Authority. Clause (b) of Sub-Section (1) of Section 12 deals with the power of reviewing any project or scheme for development which may be proposed or may be in the course of execution or may be completed in the Metropolitan Region. Clause (d) thereof refers to execution of projects and schemes and Clause (h) provides for co-ordination in execution of the project or schemes for the development of the Metropolitan Region. Pursuant to or in furtherance of its regulation making power contained in Section 50 of the Act, regulations were framed by the Authority, known as the Mumbai Metropolitan Region Development Authority (Disposal of Land) Regulations, 1977 (Regulations). Regulations 7 and 9 of the Regulations are as under :

"7. Disposal of land by offers to Government, Local Authority or Public Sector Undertaking

Where the Authority determines to dispose of land by making offers to the Government, Local Authority or Public Sector Undertaking, the offers shall be made by the Metropolitan Commissioner in such form as he may decide, incorporating the terms and conditions of offers determined by the Authority which shall include the condition that the offer shall remain open and valid for acceptance for a period of 30 days and shall lapse if it remains unaccepted by the expiry of this period; provided that it shall be lawful for the Metropolitan Commissioner to renew any lapsed offer on an additional condition that the Government, Local Authority or Public Sector Undertaking, as the case may be, shall pay interest at the rate of 18% per annum over the premium specified in the lapsed offer with effect from the date on which the lapsed offer was made; provided further that nothing contained herein shall authorize the Metropolitan Commissioner to renew any lapsed offer after three months of its lapse."

Regulation 9 provides for the mode and manner of payment of premium.

Sub-Regulation (ii) of Regulation 9 reads as under :

"9(ii) Notwithstanding anything contained in the foregoing Clause to contrary, if there shall a scheme formulated and sanctioned by the Authority to erect or to finance erection of a building or buildings on land agreed to be leased to the Government, a Local Authority or a Public Sector Undertaking to subserve the development of the Metropolitan Region or any part thereof and to grant in lease such building or buildings to the concerned government, Local Authority or Public Sector Undertaking it shall be lawful to agree with the concerned Government local authority or Public Sector Undertaking to recover the premium agreed to be paid in consideration of the lease of such building or buildings in yearly installments, not exceeding ten in number."

We may also notice some of the provisions of "Request for Proposal for Grant of Lease of Land for developing and operating a Convention and Exhibition Centre". Clause 3.15 defines "successful bidder" to mean the bidder selected according to the evaluation criteria as detailed in Section 7 for grant of lease of land. The concept of Convention and Exhibition Centre is contained in Clause 4.3 thereof. Clause 5 provides for specification of C&EC. Clause 5.1 reads as under :

"5.1 The C&EC facility for Phase I is estimated to require approximately 35,750 sq.m. of built up area

which will be reckoned as 44,525 sq.m. for computation of FSI after allowing for height in excess of 4.20 m. for exhibitions areas. In Phase II there is a provision of a further 10,650 sq.m. of built up area (which will be reckoned as 15,975 sq.m. for computation of FSI for Exhibition areas having height in excess of 4.20 m) that is to be used for further expansion of exhibition areas having at least 2 additional exhibition halls having an area of 5000 sq.m. each."

The total built-up area comes to about 60,500 sq.m.

Provision of Convention Auditorium was made in Clause 5.3. Clause 7 provides for submission and evaluation of bids stating that interested parties shall submit their bids in three separate sealed covers : (1) Cover 1 should contain compliance in regard to minimum eligibility criteria. Evaluation of minimum eligibility criteria is contained in clause 7.15 in the following terms :

"7.15 The objective of the minimum eligibility criteria is to short list Bidders who have :

? The financial strengths necessary to contribute and/or arrange the funds required to execute the Project in the desired time frame.

? The technical skills necessary to design, construct, operate and maintain the Facility as per the Principles of Good Industry Practice.

? The commercial skills necessary to market the Facility and successfully develop business.

Clause 7.17 provides for the eligibility criteria being :

? "Tangible Net worth not less than Rs. 750 Million as per the latest audited financial statement.

? Annual turnover not less than Rs.500 Million as per the latest audited financial statement.

? Net Profit not less than Rs. 50 Million as per the latest audited financial statement or Average annual net profit of the last three financial years not less than Rs.50 Million."

Category "I", related to field of activity defined as Convention & Exhibition Centres, Hotels, Restaurants and Banquet Halls.

Clause 7.22 provides for Category "II" to include an indirectly related field of activity defined as shopping centers, commercial complexes, housing or office complexes, retail stores, entertainment centres and amusement parks. Clause 7.23 provides for the eligibility criteria to show that the bidding company must have developed during last five years at least one Project having Capital Cost not less than Rs.1,000 Million. Clauses 7.24 and 7.25 thereof read as under :

"7.24 The turnover of the Bidding Company or the combined turnover of the Financially Significant Members of the Bidding Consortium from the directly related field of activities shall not be less than Rs.500 million.

7.25 Format for Cover I \026 compliance to minimum eligibility criteria

Bidders are required to organize "Cover I \026 Companies with Minimum Eligibility Criteria" according to the following checklist :

Cover 1

Compliance to Minimum Eligibility Criteria

Section 1

\005\005\005\005\005\005.

Section 2

a) \005\005\005\005

b) \005\005\005\005

c) Letters of Acceptance, as per the format specified in Exhibit 4, from each of the Consortium Members in case of a Bidding Consortium.

Section 3

a) \005\005\005\005..

b) Letters of Commitment as per the format specified in Exhibit 3, from each of the entities which are Financially Significant Consortium Member, the strengths of which is to be considered for the purpose of evaluation.

Clause 7.26 reads as under :

"7.26 MMRDA on demand will return unopened Financial Bids and Technical Bids (Covers 2 and 3) of the Bidders who do not comply with the minimum eligibility criteria."

Step 2 (Cover 2) provides for financial bid. Clause 7.30 provides for methodology for evaluation of bids.

Clause 7.30 deals with the manner in which the bids would be dealt with.

Clause 7.34 provides for technical and business proposal evaluation criteria. Clauses 7.38 and 7.39 are as under :

"7.38 In evaluating the Business Proposal, MMRDA reserves the right to seek clarifications from the Bidders. The Bidders shall be required to furnish such clarifications.

7.39 The Technical and Business Proposal of only the Rank 1 bidder will be opened. He may also be requested to make a presentation at his own cost, for clarifications and additional information on bidder's capability, concept plan and the business proposal in this regard to the evaluation committee appointed by the Metropolitan Commissioner, MMRDA. The Committee may seek further clarifications and make suggestions in respect of the proposal, within the permitted built-up area, which will not include any change in the premium or the manner in which it is to be paid. These suggestions will have to be incorporated by the bidder."

The Bidding Companies/Bidding Consortium of Appellants included :

1. M/s. R.M. Bhuther & Co. Ltd.
2. M/s. Larsen & Toubro Ltd.
3. M/s. R.M. Bhuther & Co.
4. M/s. M.B. Development Corporation
5. M/s. M.B. Constructions
6. M/s. Bhattad Bros.
7. M/s. Alusett System (India) Pvt. Ltd.

The principal question which arises for consideration is as to whether the Authority had any jurisdiction to cancel the bid.

The Executive Committee is a statutory functionary. The powers and functions of the authority and the respective committees concededly are governed by the provisions of the statute, but, then the jurisdiction of the Executive Committee is limited. It was confined to rejection or acceptance of the tender. The Authority exercises a larger power. For the said purpose we would assume that the Authority had no incidental or ancillary power, but there cannot be any doubt or dispute that the Executive Committee could not cancel the entire tender. It could not have caused any change in the entire scheme or policy. It could not make alterations in the methodology of tender. It could not have gone into the working of the project. It also could not have gone into the question as to whether the project would be financially viable if the method of calculation is changed.

Strong reliance has been placed by Mr. Nariman on Marathwada University v. Seshrao Balwant Rao Chavan [(1989) 3 SCC 132 : AIR 1989 SC 1582] to contend that as therein the power of the Vice Chancellor and the Executive Council was different, the former's power could not have been exercised by the latter.

We do not dispute the proposition of law laid down therein.

We would assume that the power of the Executive Committee and the Authority under the Act are different and the latter for all intent and purport could not usurp the functions of the former. But in this case, it has not been so done.

Jurisdiction of the Authority being larger, and the power to cancel the tender being not vested in the Executive Committee, the action on the part of the former was neither illegal nor without jurisdiction. This Court rejected the contention that the power of the Vice Chancellor to regulate work also included the power to initiate disciplinary action, stating :

"This takes us to the second contention urged for the appellants. The contention relates to the legal effect of ratification done by the Executive Council in its meeting held on December 26/27, 1985. The decision taken by the Executive Council is in the form of a resolution and it reads as follows :

"Considering the issues, the Executive Council resolved as follows :

1. The Executive Council at its meeting held on 22-3-1979, had by a resolution given full authority to the Vice-Chancellor for taking further proceedings and decision in both the cases of the defaulting officers.
2. In exercise of above authority, the Vice-Chancellor appointed an Inquiry Officer and as suggested by the Inquiry Officer issued show-cause

notices, obtained replies from the officers and lastly issued orders for terminating their services;

It was further resolved that\027

- (i) There has been no inadequacy in the proceedings against both the officers;
- (ii) The punishment ordered against both the officers is commensurate with the defaults and allegations proved against both the officers; and
- (iii) The Executive Council, therefore, wholly, endorses the actions taken by the then Vice-Chancellor against both the officers."

By this resolution, we are told that the Executive Council has ratified the action taken by the Vice-Chancellor. Ratification is generally an act of principal with regard to a contract or an act done by his agent. In Friedman's Law of Agency (5th edn.) Chapter 5 at p. 73, the principle of ratification has been explained :

"What the 'agent' does on behalf of the 'principal' is done at a time when the relation of principal and agent does not exist: (hence the use in this sentence, but not in subsequent ones, of inverted commas). The agent, in fact, has no authority to do what he does at the time he does it. Subsequently, however, the principal, on whose behalf, though without whose authority, the agent has acted, accepts the agent's act, and adopts it, just as if there had been a prior authorisation by the principal to do exactly what the agent has done."

As noticed hereinbefore, we have proceeded on the basis that the powers of the Executive Committee and the Authority are separate and distinct and we have pointed out that the powers vested in the Executive Committee being limited, the decision taken by the Authority cannot be said to be illegal.

It was furthermore contended that the Executive Committee had a special power which would prevail over general power vested in the Authority. In J.K. Cotton Spinning & Weaving Mills Co., Ltd. vs. The State of Uttar Pradesh & Ors. [(1961) 3 SCR 185], this Court applied the rule of construction that general provisions yield to special provisions, but, the said rule has no application in the facts and circumstances of the present case. Executive Committee does not exercise any special power. The jurisdictions of both the authorities are separate and distinct.

Dr. A.M. Singhvi, learned Senior Counsel appearing for Appellants in the connected appeal relied upon Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. & Ors. [(2003) 2 SCC 111], wherein it was held :

"It is the basic principle of construction of statute that the same should be read as a whole then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant."

We fail to understand as to how the principle laid down therein can be said to have been violated.

Reliance has also been placed on State of Uttar Pradesh vs. Singhara singh & Ors. [AIR 1964 SC 358 : (1964) 4 SCR 485], wherein

this Court quoted with approval the decision in Taylor v. Taylor [[[1875] 1 Ch. D. 426, 431] for the proposition that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. There is again no quarrel over the aforementioned proposition of law. Here the Authority has not exercised any power forbidden by law. The Authority has also not exercised its power in the manner which is not in accordance with law.

On merit of the matter, Mr. Nariman has pointed out, the distinction between 2002 and 2005 tenders to show that such a policy decision as laid down in the 2005 tender was not in pari materia with 2002 tender. The comparison of methodology for evaluation of bids is as under :

2005 TENDER

2002 TENDER

METHODOLOGY FOR EVALUATION OF BIDS

7.30 The bidder will have to quote separately for the Convention & Exhibition Centre and the Commercial Complex. The built-up area (considered for FSI computation) of the Convention & Exhibition Centre shall be considered as 65,000 sq.m. irrespective of the reduction that may be possible on finalization of detailed architectural designs. Similarly the floor space considered for FSI computation for the commercial Complex will be 50,000 sq.m. The bidder will have to quote a fixed rate of Rs.20,000 per sq.m. of built up area for total built-up area 65,000 sq.m. for Convention & Exhibition Centre. The amount will be Rs.130 crores. The bidder will also have to quote a rate of premium higher than Rs.70,000 per sq.m. of built-up area for 50,000 sq.m. of total built-up area for Commercial Complex. The premium amount will be higher than Rs.350 crores. The total minimum amount of lease premium to be quoted by the bidder will be higher than Rs.480 crores of the total amount of lease premium that will be payable to MMRDA 50% will have to be paid within one month and the balance will have to be paid within two months i.e. within three months from the time the bid is accepted. The lease period is of 80 years as is indicated in the MMRDA (Disposal of land) Regulation 1977.

METHODOLOGY FOR EVALUATION OF BIDS

7.30 The bidder will have to quote separately for the C&EC and the Real Estate component. The built-up area (considered for FSI computation) of C&EC shall be

considered as 60,500 sq.m. (Phase I and II) irrespective of the reduction that may be possible on finalization of detailed architectural designs. Similarly the floor space considered in FSI computation for the Real Estate component shall be 15,000 sq.m. The bidder has the option of bidding only for the C&EC without the Real Estate component. The bidder has to quote a rate of premium in terms of Rs. per sq.m. of FSI and the total premium, separately for the C&EC and the Real Estate component subject to the condition that the rate quoted for the Real Estate component shall be greater than that quoted for the C&EC.

The Authority is a statutory authority. It consists of not only politicians but also various other responsible officers. It, while exercising its power under the Act, must necessarily take policy decisions. Whereas under the 2002 tender the bidder had to quote the rate of premium in terms of rupees per square meter of FSI and the total premium separately for C&EC and the Real Estate component subject to the condition that the rate quoted for the Real Estate component should be greater than that quoted for the C&EC, upon having come to know that the value of the land would be much more, the Authority in the 2005 tender decided that the bidders should be required to quote a fixed rate of 20,000 per sq.m. of built-up area for total built-up area 65,000 sq.m. for Convention & Exhibition Centre. Economic viability of the entire project component, taking into consideration two different components for C&EC and the Commercial Complex, could have been taken differently. The premium amount was to be quoted higher than Rs. 350 crores for the Commercial Complex. While exercising its jurisdiction of judicial review, the Court is required to decide the cases before it, keeping the well known principles therefor in mind and having regard to the fact situation obtaining therein. No hard and fast rule can be laid down therefor. Recently, in *Noble Resources Ltd. vs. State of Orissa and Anr.* [2006 (9) SCALE 181] this Court has noticed the power of judicial review vis-à-vis contractual disputes, opining : "Although terms of the invitation to tender may not be open to judicial scrutiny, but the courts can scrutinize the award of contract by the Government or its agencies in exercise of their power of judicial review to prevent arbitrariness or favouritism. [See *Directorate of Education and Ors. v. Educomp Datamatics Ltd. and Ors.* 2004 (4) SCC 19]. However, the court may refuse to exercise its jurisdiction, if it does not involve any public interest.

Although the scope of judicial review or the development of law in this field has been noticed hereinbefore particularly in the light of the decision of this Court in *ABL International Ltd. (supra)*, each case, however, must be decided on its own facts. Public interest as noticed hereinbefore, may be one of the factors to exercise power of judicial review. In a case where a public law element is involved, judicial review may be permissible."

Noticing some of the areas where judicial review would be permissible, this Court opined that ordinarily, this Court would not enforce specific performance of contract where damages would be adequate remedy. It was also held that conduct of the parties would also play an important role. The expansive role of Courts in exercising its power of judicial review

is not in dispute. But as indicated hereinbefore, each case must be decided on its own facts.

Dr. Singhvi placed reliance upon *Star Enterprises & Ors. vs. City and Industrial Development Corporation of Maharashtra & Ors.* [(1990) 3 SCC 280], wherein Ranganath Misra, J., as His Lordship then was, opined :

"In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves long stakes and availability of reasons for action on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr. Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so."

In this case, highest offer has not been rejected. A new policy decision has been taken. Question as noticed herein is not as to whether the offer of the Appellants should have been rejected but is as to whether the Authority in law could have altered its policy in regard to disposal of its properties. 'Public Trust Doctrine' was also sought to be invoked by Mr. Nariman against the Authority and in this behalf reliance has been placed on *Bangalore Medical Trust Vs. B.S. Muddappa & Ors.* [(1991) 4 SCC 54]. This Court therein was dealing with a master plan in the light of justifiability of exercise of discretionary jurisdiction under the Town Planning Act. Having regard to the provisions contained in Sub-Section (4) of Section 19 of the Bangalore Development Authority Act, 1976 as also the fact that the discretionary jurisdiction had been arbitrarily exercised, this Court invoked the 'public trust doctrine' saying that although the State is required to keep a vigil on the local body, but, thereby the power thereunder cannot be stretched so as to entitle the Government to alter any scheme and convert any site or power specifically reserved in the statute in the Authority. By floating a tender in furtherance of a public project, the Authority was not truly concerned with the enforcement of its master plan. No such argument was advanced before the High Court. Such an argument has been advanced for the first time before us. We would consider the efficacy of said contention a little later.

The next question which arises for consideration is as to whether any reason was required to be assigned. A power to deal with a contractual matter and a power of a statutory authority to exercise its statutory power in determining the rights and liabilities of the parties are distinct and different. Whereas reasons are required to be assigned in a case where civil or evil consequences may ensue, the same may not be necessary where it is contractual in nature, save and except in some cases, e.g., *Star Enterprises* (supra).

Whether assignment of reasons forms third pillar of principle of natural justice, is not free from doubt. There is a diversity of opinion as has been noticed by this Court in *Rajesh Kumar & Ors. vs. D.C.I.T. & Ors.* [2006 (11) SCALE 409].

Reliance has also been placed by Mr. Nariman on *Commissioner of Police, Bombay vs. Gordhardas Bhanji* [1952 (1) SCR 135] and *Union of India & Ors. vs. Dinesh Engineering Corporation & Anr. etc.* [(2001) 8 SCC 491]. In *Commissioner of Police (supra)* the Court was concerned with a situation where a statutory authority had acted on dictation of an Appellate Authority, which was found to be illegal. In *Dinesh Engineering (supra)*, this Court opined that the Railways have no arbitrary power to reject the bid offered by a party merely because it has that power, particularly, when the same can be exercised only on the existence of certain conditions which in the opinion of the Railways are not in the interest of the Railways to accept the offer.

We have noticed hereinbefore that power has not been exercised by the Executive Committee in rejecting the tender. The power has been exercised by the Authority in canceling the tenders so as to enable it to have a re-look of the entire project.

Some reasons may be required to be assigned for rejecting the bid, but in the instant case, in our opinion, no reason was required to be assigned as there has been a change in the policy decision. The news item appearing in the *Economic Times* is not of much significance. No affidavit has been affirmed as regards the correctness or otherwise of the said news item.

It may be true that the Authorities at one point of time, as was disclosed in the Counter Affidavit, had thought of setting up a Convention Centre of their own and without any private participation, but only because there has been a deviation from the said stand would not, in our considered opinion, render the entire policy decision vitiated in law.

It had set up its Evaluation Committee. The decision presumably has been reached by experts.

The reasons as regards purported unsatisfactory performance of Appellants, take a back seat once having a re-look to the entire situation was thought of.

It is not a case where the Court is called upon to exercise its equity jurisdiction. It is also not a case where *ex facie* the policy decision can be held to be contrary to any statute or against a public policy. A policy decision may be subjected to change from time to time. Only because a change is effected, the same by itself does not render a policy decision to be illegal or otherwise vitiated in law.

In *Harminster Singh Arora vs. Union of India & Ors.* [(1986) 3 SCC 247], whereupon Dr. Singhvi relied upon, the tender was arbitrarily rejected. Therein the writ petition was dismissed in limine only on the premise that the question involved therein related to contractual obligations and the policy decision could not be termed as unfair or arbitrary. It was opined that therein no question of policy decision arose and as such contract was to be given to the lowest bidder in terms of the tender notice and the contract should have been awarded to the appellant therein, especially when he had been doing the job for many years. As to how the said decision is applicable to the facts of the present case, we fail to understand. For the self-same reasons we are unable to appreciate the contention that only because a change has been effected in computation of total price under the new tender, the same was invalid in law.

In *New Horizons Ltd. & Anr. vs. Union of India & Ors.* [(1995) 1 SCC 478], this Court opined that in the matter of grant of tender the State

cannot act as a private person having regard to Article 14 of the Constitution of India. It was categorically opined that departing from the narrow legalistic view the Courts have taken note of the realities of the situation which, by no stretch of imagination, would mean that the Court would substitute itself in the place of a statutory authority. The Court in a case of this nature must exercise judicial restraint. It may be one thing to say that having regard to the public interest, the Court may itself invite bids so as to verify the justification of accepting a palpably lower bid as was done in Ram and Shyam Company vs. State of Haryana and Ors. [(1985) 3 SCC 267], but it is another thing to say the Court would under all circumstances not allow a play in joint in favour of the employer.

However, if the Court in a given situation is not in a position to allow a bid to take place before, it may not still venture to strike down an Act in the name of public interest, although, no such public interest exists.

Appellant stated before us that he is ready and willing to take a part of the contract, viz., construction of the C&EC and pay the same amount as has been done by Reliance Industries Ltd. and in addition it would pay 2.5% of its annual turnover from the Convention Centre from the 21st year, as was initially offered.

Appellant did not participate in the second bid. The tender process is complete. Before us only a higher bid has been given. We do not intend to enter into the intricacies of the question. Appellants could have submitted its bids pursuant to the new tender and new conditions, even without prejudice to its rights and contentions in this appeal. The stipulations made in 2002 tender could have been repeated by it so as to demonstrate before the experts comprising members of the Executive Committee that its bid was the highest. If, in view of the change in the policy decision, the Authority does not intend to become a partner in the profit making and opt for having the entire bid amount at one go instead of waiting for 20 years, we do not find any fault therewith.

Before us comparative bids of the bidders have been placed on the second tender, which are as follows :

SR.No.	Name of the Bidder	Bid Amount	Rs.
		Rate per sq.	m.
		(approx.)	Rs.
1.	Reliance Industries Ltd.	11,04,00,00,111	96000
2.	DLF	1050 crores	91304
3.	Reliance Communications & Infrastructure Ltd.	1011.12 crores	87913
4.	Gammon India	1011 crores	87913
5.	EMAR	911.07 crores	

79217

The comparative statistics reads as under :

1.

Rate offered by the Petitioners Rs.
91.514 crores (divided by)
75,500 sq.mtrs.

Rs.12,121 per sq.
mtrs.

2.

Rate expected by MMRDA
Rs. 25,000 per
sq.mtrs.

3.

Amount for 75,500 sq. mtrs @ Rs.25,000/-
per sq.mtrs. (This should have been the
minimum bid in 2003)

Rs.188.75 crores

4.

Amount for 1,15,000 sq.mtrs @ Rs.25,000/-
per sq.mtrs. (This would have been the
reserve price at old rate in 2005)
Rs.287.50 crores

5.

Reserve Bid of MMRDA in 2005
(Minimum price revised as below)

Rs.480 crores

6.

Rate per sq. mtrs in the Reserve bid
Rs.480 crores (divided by)
1,15,000 sq.mtrs.

Rs.41,739/- per sq.
mtrs.

7.

Bid by Reliance Industries Ltd.
Rs.1104,00,00,111/-

8.

Rate per sq.mtrs of RIL Bid
Rs.11,04,00,00,111/- (divided by)
1,15,000 sq. mtrs.

Rs.96,000/- per sq.
mtrs.

Appellant complains that whereas the bid of Sister concern of Reliance Industries Ltd. was very low, now it has offered a bid of Rs.1104,00,00,111/- . From the chart placed before us it would appear that there had been a stiff computation. The Reliance Industries Ltd. has become the highest bidder. Its competitors had taken part in the earlier contracts. No mala fide in accepting the tender has been alleged nor do we find any.

We, therefore, in the facts and circumstances of this case and having regard to the subsequent events, are of the opinion that it is not a case where we should interfere with the judgment of the High Court.

It, however, would not mean that the Authority or the Executive Committee would not be entitled to take note of the offer of Appellant. It may do so. It would not further mean that if the terms of new tender are violative of the provisions of the master plan, the same would not be suitably dealt with. We merely place on record that we have not gone into the said

questions, although raised before us by the learned counsel for the appellant, simply on the ground that no such plea had been taken before the High Court. In the absence of any plea that the policy decision adopted by the Authority would be violative of the provisions of the Act or any master plan, the same cannot be entertained. The question, however, is left open. For the reasons aforementioned, there is no merit in these appeals, which are accordingly dismissed. There shall, however, be no order as to costs.

JUDIS