CASE NO.:
Appeal (civil) 2515 of 2006

PETITIONER:
Reliance Airport Developers Pvt. Ltd

RESPONDENT:
Airport Authority of India and ors

DATE OF JUDGMENT: 07/11/2006

BENCH:
S.H. KAPADIA

JUDGMENT:

JUDGMENT

KAPADIA, J.

Although, I respectfully agree with the conclusion contained in the opinion of brother, Arijit Pasayat, the importance of the scoring system in the tender process has impelled me to elucidate and clarify certain crucial aspects. Hence, this separate opinion.

The basic controversy in the present case is: whether the E.C. had exceeded its authority in the assessment of technical pre-qualification.

In the scoring system objectivity has an important role to play (Clause 5.4). In the scoring system the identification of factors (including sub-factors), allocation of marks to each of these factors (including sub-factors) and giving of marks are three distinct and different stages. Clause 5.4 dealt with assessment of technical pre-qualifications. Under that clause a scoring system was to be applied based on the assessment of the Terms of the Offer against the Technical Pre-qualification criteria. It further stipulated that assessment shall be on absolute basis and not relative as between the offers. Under the said system, each factor had to be allocated certain marks. Objectivity had to be provided in the allocation of marks (and not in giving of marks) to each factor (including sub-factors). This was not done. For example, RFP required certain marks to be allocated for absorption of existing staff. Greater the absorption, higher the marks to be given. In the present case, the E.C. changed the factor, namely, "absorption of employees" to the overall approach. This led to change in priority. Similarly, in the RFP, the factor earmarked was "property development" which E.C. compared to "infrastructure development". Experience in property development is different from experience in infrastructure development. Similarly, RFP had given weightage to aeronautical revenue whereas in allocation of marks, E.C. obliterated the difference between aeronautical and non-aeronautical revenues. The above examples are given only to show that objectivity which was the underlying principle underlying clause 5.4 is completely lost either by expanding the enumerated factors like aeronautical revenue, overall capability vis-‘-vis capacity to absorb existing work-force and comparison of property development with infrastructure development or by allocating un-even marks to sub-factors. In my view, E.C. had no business to expand or narrow down the scope of any of the above factors as it was beyond its authority and contrary to the scoring system.

With these words, I agree with the conclusion contained in the opinion of brother, Arijit Pasayat.