

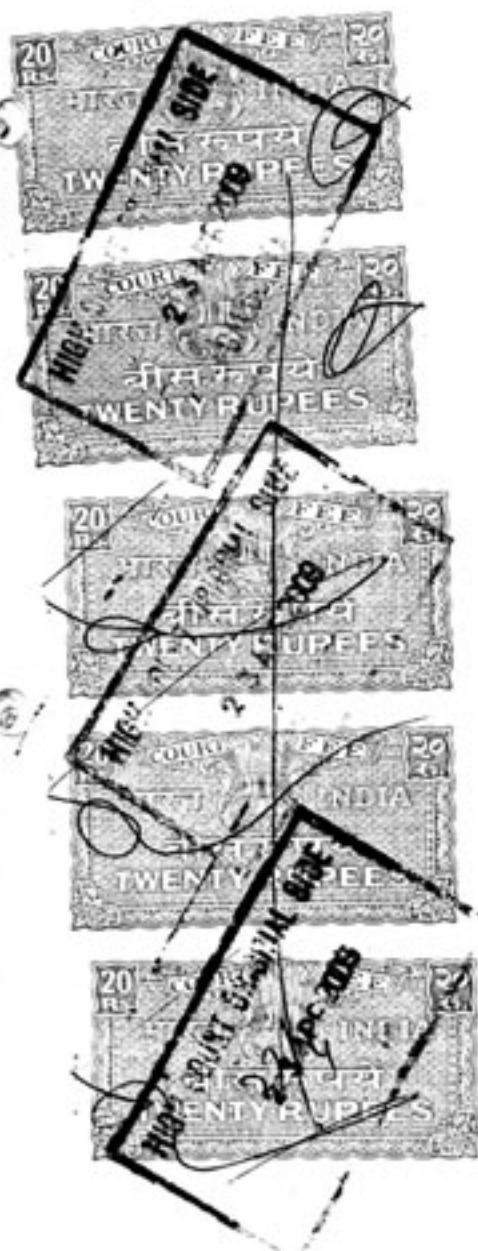
39-27<sup>4</sup>/<sub>2003</sub>

W.P. NO. 1919 OF 2005

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT APPLICATION

ORIGINAL SIDE

212



In the Matter of:

An application under Article 226 of the  
Constitution of India;

And

In the Matter of :

A Writ of and/or writs in the nature of  
Mandamus, Certiorari and Prohibition;

And

In the Matter of :

Tender Notice published in the daily news  
paper on 12<sup>th</sup> August, 2005 for sale of hard  
and soiled/damaged cloth of Central Cotton  
Mills (CCM) issued by National Textile  
Corporation (WBACO) Limited

And

In the Matter of :

Illegal, Wrongful and Arbitrary Act of the respondent Authorities in processing the tender for awarding contract for sale of land and soiled/damaged Cloth of Central Cotton Mills (CCM) issued by National Textile Corporation (WBABO) Limited.

And

In the Matter of :

Letter being reference No.NTC/ WBABO/LC/ 749/05-06 dated 21<sup>st</sup> September, 2005 communicating rejection of the offer of the writ petitioner No.1.

And

In the Matter of :

1. Keventer Projects Limited, a Company incorporated within the provision of the Companies Act, 1956 having its registered office at 2, Clive Ghat Street, Kolkata – 700 001.

2. Biraj Kumar Sen, Authorised Signatory of the Petitioner No.1 Company working for gain at 2, Clive Ghat Street, Kolkata - 700 001.

.....Petitioners

Versus

1. Union of India to be served through the Secretary, Ministry of Textiles, New Delhi.
2. National Textile Corporation (WBABO) Ltd. (A Govt. of India Undertaking), having its office at 7, Jawaharlal Nehru Road, Kolkata-700 013.
3. The Managing Director, National Textile Corporation (WBABO) Ltd. (A Govt. of India Undertaking), having its office at 7, Jawaharlal Nehru Road, Kolkata-700 013.
4. The Asset Sale Committee, National Textile Corporation (WBABO) Ltd. (A Govt. of India Undertaking), having its

office at 7, Jawaharlal Nehru Road,  
Kolkata-700 013.

5. The Acting Company Secretary, National Textile Corporation (West Bengal, Assam, Bihar and Orrisa) Ltd., 7, Jawaharlal Nehru Road, Kolkata – 700 013.
6. Sunsam Properties (P) Limited, a Private Limited incorporated under the provisions of the Companies Act, 1956 having its office at 4/1, Red Cross Place, Kolkata-700 001.

.....Respondents

W.P. No. 1919 of 2005.

**IN THE HIGH COURT AT CALCUTTA**

Constitutional Writ Jurisdiction

Original Side



**PARTY:**

**THE HON'BLE MR. JUSTICE**

Sadhan Kumar Gupta

Keventer Projects Ltd. and

Another  
Versus

The Union of India and Others

Judgment on : 16.04.2009.

.....

Mr. Sagaraditya Pal, Sr. Advocate  
Mr. Utpal Majumdar, Sr. Advocate  
Ms. Vineeta Meharia,  
Mr. Pushan Kar. ... For the Petitioner

Mr. Arijit Chowdhury, Sr. Advocate  
Mr. Soumya Majumdar,  
Ms. Bithika Mondal. ... For the Respondent  
Nos. 2-4

Mr. Anindya Mitra, Sr. Advocate  
Mr. Ashrajit Mitra,  
Mr. Aniruddha Roy ... For the Respondent  
No. 6.

**The Court:** Sadhan Kumar Gupta, J.

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Original Side**

Present :  
The Hon'ble  
**Mr. Justice Sadhan Kumar Gupta.**

**W.P. No. 1919 of 2005**  
**Keventer Projects Ltd. and Another**  
**-Vs-**  
**The Union of India and Others.**

Mr. Samaraditya Pal, Sr. Advocate,  
Mr. Utpal Majumdar, Sr. Advocate,  
Ms. Vineeta Meharria,  
Mr. Pushan Kar. .... For the Petitioner.

Mr. Arijit Chowdhury, Sr. Advocate  
Mr. Soumya Majumdar,  
Ms. Bithika Mondal ..... For the Respondent  
Nos. 2-4

Mr. Anindya Mitra, Sr. Advocate  
Mr. Abharajit Mitra,  
Mr. Aniruddha Roy .....For the Respondent  
No.6

*Judgment on :- 16.04.2005*

**Sadhan Kumar Gupta, J.**

The writ petition has been filed praying for cancellation of the decision of the respondent authority to award the tender in favour of the respondent No. 6 and for other consequential reliefs.

It is alleged in the writ petition that respondent No. 2, being one of the subsidiary company of National Textile Corporation floated a tender expressing its intention to sale land of its closed mills situated within the compound of Central Cotton Mills situated at Girish Ghosh Road, P.O. Belur, P.S. Bally. Said tender was published in the daily newspaper on 12<sup>th</sup> August, 2005. Pursuant to such advertisement, the petitioner obtained the tender document by paying Rs. 1,000/-. Thereafter the petitioner deposited the tender document along with a pay order of Rs. 1.8 crore being 10% of the reserved price.

Said tender was opened on 12<sup>th</sup> September, 2005 and at that time the petitioner along with representative of another company, namely, Sunsam Properties (P) Limited, being the respondent No. 6 herein who also submitted the tender and offered to purchase the properties mentioned in the tender documents were present. When the tender was opened, at that time it appeared that the bid of the petitioner was for Rs. 10.31 crores, whereas the bid of the respondent No. 6 was Rs. 13.27 crores. According to the petitioner the bids of both the parties were below the reserved price of Rs. 18 crores.

The petitioner has contended that in the tender it was mentioned that in case the bids of the tenderers were below the reserved price then the Authority will give opportunity to the tenderers to improve their offer within 15 days from the date of opening of the original tender. It is the case of the petitioner that the respondent Nos. 1 to 5 all along disclosed that the reserved price was fixed at Rs. 18 crores and as both the tenderers offered price below the reserved price, so both of them should be given opportunity to increase their offer. By letter dated 19<sup>th</sup> September, 2005, the petitioners informed the respondent No. 3 that in spite of the earlier promise, nothing was heard from the respondent Nos. 1 to 5 by the petitioners in this respect. As such, by the said letter the petitioners informed the respondent authorities that they were ready to increase the price to the satisfaction of the respondent authorities.

However, on 21<sup>st</sup> September, 2005, the petitioners came to know that without giving any opportunity to the petitioners to revise the bid the respondent authorities unilaterally negotiated with the other tenderer, the private respondent No. 6 and decided to handover the tender to it at a slightly higher price.

Under such circumstances, the petitioners filed the writ petition challenging the said act of the respondent authorities. The matter was considered by this Court on 23<sup>rd</sup> September, 2005 and direction was given that it would be taken up for further consideration on 28<sup>th</sup> September, 2005 and all steps as may be taken by the respondent authorities would be subject to the result of the writ petition. On 28 September, when the matter was taken up for consideration, at that time, the interim order, as passed on 23<sup>rd</sup> September, 2005, was extended till 4<sup>th</sup> October, 2005. In the mean time, the petitioners received a letter on 24<sup>th</sup> September, 2005 from the respondent No. 5 intimating that the tender, as submitted by the petitioners was rejected. From the envelope of the said letter it will appear that such rejection letter although was dated 21<sup>st</sup> September, 2005 but in fact it was posted on 23<sup>rd</sup> September, 2005 at 18.19 hours. According to the petitioners, those acts of the respondent authorities are illegal as well as arbitrary in nature and against the principles of natural justice. It is alleged by the petitioners that the respondent authorities granted the tender in favour of the respondent No. 6 due to extraneous consideration. According to the petitioners, the claim of the respondent authorities that the offer, as made by the petitioners was conditional one, have no basis at all. While considering the tender matter, the authorities are supposed to only consider the tender document and not to give undue importance to any covering letter. The petitioners have claimed that the offer, as made by them in the tender document, was unconditional and as such there was no justification on the part of the respondent authorities to reject the claim of the petitioners on the ground that it was a conditional offer.

The petitioners have further claimed that the decision, as taken by the respondent authorities in respect of the acceptance of the tender document was in fact taken in undue haste in order to give undue advantage to the respondent No. 6. Under such circumstances, the



ers have prayed that since the rejection order in respect of the order of the petitioner was illegal, so the decision of the respondent authorities in awarding the tender in favour of the respondent No. 6 should be cancelled.

The writ petition has been contested by the respondent No. 6 as well as by the respondent authorities. It is the specific case of the respondent No. 6 that there was no illegality on the part of the respondent authorities in awarding the tender in his favour. This respondent No. 6 has denied that there was any minimum fixed price in respect of the sale of the property in question at the time when the tender was invited. According to the respondent No. 6, there was no collusion in granting the tender in his favour, as alleged by the petitioners. He has claimed that he has already purchased the property and started the work and if at this stage the prayer of the petitioners is allowed, then the respondent No. 6 will suffer irreparable loss and injury for no fault on his part. He has prayed for dismissal of the writ petition.

The respondent authorities also contested the writ petition wherein they have denied the allegations as made in the writ petition in almost all the material points. They have clearly denied that there was any mention in the notice inviting tender that the minimum fixed price of the sale was fixed at Rs. 18 crores, as alleged in the writ petition. According to the respondent authorities the sale of the land in question was absolutely necessary for the revival of the company in question which became a sick industry and a scheme for its revival was framed by the B.I.F.R. Prior to this occasion, several attempts were made on other occasions by way of floating tenders for sale of the property in question so that from the amount that may be received by way of such sale, could be utilised for the revival of the company. However, all those attempts on earlier occasions failed as the price offered by the tenderer was far below the

stetation, and as such the deal could not be completed. As a matter of last resort when the respondent authorities floated this tender, then the respondent No. 6 offered the price of Rs. 13.27 crores. The petitioner company offered a sum of Rs. 10.31 crores which is far below the amount offered by the respondent No. 6. However, as the amount offered by the respondent No. 6 was also below the minimum fixed price, so negotiation was started with the respondent No. 6 for increasing the amount of offer. Ultimately, after much persuasion the respondent no.6 agreed to offer the amount of Rs. 13.35 crores. The matter was placed before the appropriate authority including the Assets Sales Committee, who took into consideration the entire circumstances and thereafter came to the finding that the price which was offered by the respondent No. 6 was the best one and the minimum fixed price, as was fixed by the respondent authorities could not be arrived at, same being fixed without any rational basis. Before coming to such conclusion, the Assets Sales Committee took into consideration the fate of the earlier tenders including the offer given by the West Bengal Housing Board and thereafter it came to the conclusion that the price, as offered by the respondent No. 6, was the best one and as such they granted the tender in favour of the respondent No. 6. There was nothing illegal on the part of the respondent authorities in this respect.

The respondent authorities have further claimed that the tender document, as was submitted by the writ petitioner was invalid as the same was a conditional offer. According to them, there was clear mention in the tender form that the tender should be submitted without any conditions. However, along with the tender form, a letter was written by the writ petitioner mentioning some conditions. Since the tender was not unconditional, so the same was rejected outright by the respondent authorities. As such, question of further negotiation with the writ petitioner by the respondent authority, does not arise at all. Since the

Respondent No. 6 only submitted valid tender, so negotiation was taken up with him in order to make an attempt for increase of the amount in question.

It is the specific case of the respondent authorities that already huge amount has been spent for floating several tenders in respect of the sale of the asset of the company and in the process the revival of the sick industry suffered a lot and as such the Assets Sales Committee, after taking into consideration the entire aspects of the matter, decided to accept the offer, as submitted by the respondent No. 6 and according to them there is nothing illegal in it. They have prayed for dismissal of the writ petition.

On the basis of the statements as made in the writ petition as well as in the affidavits-in-opposition and reply thereto, learned advocates for the parties made their respective submission.

Mr. S. Pal, the learned Senior advocate submitted that the offer as made by the writ petitioner was unconditional. According to him the letter, in which allegedly conditions have been mentioned, cannot be considered to be a part of the tender document. He argued that while considering the tender proposal, the authority concerned is to look into the tender document only and not upon any other letter which was sent in a separate envelope and not by way of one annexing with the tender document. As such, he argued, that it was not proper on the part of the authorities, to consider the tender proposal, as submitted by the writ petitioner, as conditional and thereby rejecting the same.

Mr. Pal further argued that the conditions, as mentioned in the said letter were also irrelevant and redundant as those conditions are practically incorporated in the scheme for the revival of the company in

estion. Those conditions do not have any direct nexus with the proposal, as given in the tender document on behalf of the writ petitioner. According to him, the authorities were thoroughly unjustified in giving much importance to this letter and thereby holding that the offer, as given by the writ petitioner, was conditional.

Mr. Pal also drew the attention of this Court that on 19<sup>th</sup> September, 2005, the petitioner submitted a letter to the authorities expressing his intention to increase the amount, as was proposed in the tender document. According to him, this important letter was not considered by the Assets Sales Committee and there was no discussion in this respect in the Minutes of the said meeting. This invariably leads us to the conclusion that the Assets Sales Committee took the impugned decision without application of its mind. Mr. Pal further argued that when the petitioner was agreeable to increase the amount to the satisfaction of the respondent authorities by way of offering the minimum fixed price, so being the representative of the government, it was incumbent upon the Assets Sales Committee to consider such proposal in the interest of the company in question. Since all these steps were not taken by the Assets Sales Committee, so Mr. Pal argued that it should be presumed that the decision, as taken by the said Committee, is nothing but illegal and improper and was taken by way of violating the principles of natural justice and fair play.

Learned advocate for the respondent authorities countered this argument of Mr. Pal by saying that the letter which accompanied the tender proposal, as submitted by the writ petitioner, revealed palpably that the offer was conditional. According to him, as it was clearly mentioned in the notice inviting tender that the offer must be unconditional, so there was nothing illegal on the part of the appropriate

Authority in rejecting the tender proposal, as submitted by the writ petitioner.

He further argued that there was no mention in the tender notice regarding the amount of minimum fixed price, although the authorities decided internally that the target would be to achieve minimum fixed price at Rs. 18 crores, but it was never disclosed to the tenderer. It is submitted on behalf of the respondent authorities that several attempts were made by the authorities to achieve the said target without any result. Ultimately after taking into consideration the entire aspects of the matter, the Assets Sales Committee decided to accept the proposal of the respondent No. 6, which according to it was the best proposal that could be received.

Learned advocate for the respondent authorities also argued that since prima face it appeared to the respondent authority that the proposal of the writ petitioner was conditional, so it was rejected outright and there was nothing wrong in this respect. Since the said proposal of the writ petitioner was rejected, so question of further negotiation with the writ petitioner does not arise at all and accordingly the respondent authority did not initiate any further negotiation with the writ petitioner. There was nothing illegal in this respect.

The learned advocate for the respondent authorities further contended that question of giving consideration to the letter dated 19<sup>th</sup> September, 2005 whereby the writ petitioner expressed his desire to enhance the price, does not arise at all since that will be illegal per se. After the tender proposal was opened in presence of the writ petitioner and the respondent No. 6, both of them came to know about the respective proposals. If the proposals are known to each of them, it would be unfair to allow one of the party to change its proposal to the

advantage of the other tenderer. Since the tender, as submitted by the petitioner was rejected outright, so question of consideration of this proposal, as contended in the letter dated 19<sup>th</sup> September, 2005, by the Assets Sales Committee, does not arise at all. According to him, the decision, as arrived at by the Assets Sales Committee, being perfectly legal as well as rational and as it was taken in the interest of the company in question, so there is no necessity for this Court to interfere into the matter.

Mr. Mitra, the learned Senior advocate appearing on behalf of the respondent No. 6 argued that his client is a bona fide purchaser and he has already invested huge amount of money after the tender proposal was accepted by the respondent authority. According to him, there was no foul play in granting the tender in favour of his client and as such if any order is passed by way of cancelling such tender, then that will be unfair and in that event, his client will necessarily be put into trouble for no fault on his part. He has prayed for dismissal of the writ petition.

I have taken into consideration the submissions of the learned advocates for all the sides. It appears that the main question that is to be considered so far as this writ petition is concerned, is, whether the tender, as submitted by the writ petitioner was valid or not. In other words, whether the letter which accompanied the tender proposal, as submitted by the writ petitioner, should be considered to be a conditional offer thereby allowing the respondent authorities to reject such proposal outright.

It is the admitted position that a tender was floated by the National Textile Corporation inviting offer for the sale of land situated within the compound of Central Cotton Mills at Belur. There is no dispute that the petitioner along with the respondent No. 6 submitted the offer in



that the price as offered by the petitioner was Rs.10.31 crores where as the respondent No. 6 offered the price to the extend of Rs.13.27 crores. Naturally, it appears that the offer, as given by the respondent No. 6, being higher than that of the petitioner, should be accepted. However, the respondent authority did not consider the offer, as submitted by the petitioner in response to the tender on the ground that it was conditional. There is no dispute that in the tender document there was a clause wherein it was mentioned that if the offer was conditional, then same would be liable to be rejected outright. Learned Advocate for the respondent authority pointed out that along with the tender document the petitioner annexed one letter wherein two conditions were mentioned. In this respect he has drawn my attention to the said letter wherein it was mentioned that:-

“This offer is subjected to –

- (i) You shall acquire the land for residential housing complex and urban land ceiling before sale deed is concluded.
- (ii) Plan shows no water body, however, there is marshy land/water body which shall be permitted for filling (if possible).”

By pointing out those two conditions the learned advocate for the respondent argued that there cannot be any doubt that the petitioner mentioned two conditions which was condition precedent in respect of his offer, given pursuant to the tender document. According to him, the tender submitted by the writ petitioner, being conditional one cannot be accepted and as such, the authority concerned was justified in rejecting such tender outright.

On the other hand, the learned advocate for the petitioner argued that this letter dated 12.9.2005 was not a part of the tender document, as

it was given separately. According to him, said letter has got no bearing with the matter in question and in fact since all those alleged conditions were also in the B.I.F.R. scheme, so those should be treated as redundant and it would have been proper for the authority to ignore the same and thereby to consider the offer as submitted by his client. Even, if, this argument of the learned advocate for the petitioner is that the letter was not part of the tender document, is accepted, then also I think that it cannot be said that the petitioner did not put any condition in respect of the offer, as submitted by him against the tender in question. It may be pointed out that in the tender document it was clearly mentioned that the land to be sold was on the basis of 'AS IS WHERE IS BASIS AND AS IS WHAT IS BASIS'. It clearly means that an intending purchaser is to purchase the property as it stood at the time of floating of the tender. The intending purchaser cannot have any right to put condition before offering to purchase the property. If that is allowed then in that event it must be said that the offer, so made, was conditional and it is up to the proposer either to accept or to reject such proposal, as given by the petitioner in his letter. I have already pointed out that the respondent authority clearly considered this position and was of the opinion that the offer being conditional could not be accepted and as such said proposal was rejected. I find no illegality in this respect.

The learned advocate for the petitioner further argued that it is the admitted position that the minimum reserve price for the sale in question was fixed at Rs.18 crores. As both the tenderers did not give offer to that extent, so as per the tender condition it was obligatory on the part of the respondent authority to call both the tenderers for discussion in order to make an attempt to increase the price, as has been quoted in the respective tender. According to him, although such opportunity was given to the respondent No. 6, no such favour was shown to the petitioner. Such being the position, Mr. Pal argued that it must be held that it was clear violation of natural justice. According to him, the



respondent authorities being the representative of the State should make all out effort for increasing the price for the sale by way of negotiation with all the parties. In this respect he has cited decision~~s~~ reported in **A.I.R. 1985 SC page 1147 (Ram and Shyam Company -vs-State of Haryana and Others)**

He has also pointed out to the clause as mentioned in the tender document wherein it was provided that in case the minimum fix price is not achieved, then in that event all the tenderers should be called for discussion by way of allowing them to further increase the price, as quoted in their respective tender. In this case, according to the learned advocate for the petitioner, no such opportunity was given to his client and only the respondent No. 6 was favoured with such opportunity. Under these circumstances, he argued that it is a glaring example of violation of natural justice. On the other hand, the learned advocate for the respondent authority argued that question of giving further opportunity to the petitioner does not arise at all since his tender was rejected, same being invalid due to the conditions, as mentioned above. I fully agree with this submission of the learned advocate for the respondent authority. When the offer of the petitioner was rejected by the authority, so question of discussing the matter further with him in order to make an attempt to increase the minimum price, does not arise at all. I find no illegality in this respect.

It is further argued that on 19<sup>th</sup> September, 2005 the petitioner sent a letter to the respondent authority expressing his desire to offer the sum of Rs.18 Crores, as was fixed as minimum price. The respondent authority, being the representative of the State, was not at all justified in not considering such proposal and on this ground the decision of the Authority should be declared to be invalid. I have taken into consideration this submission as made by the learned advocate for the petitioner. It may however be pointed out that this alleged proposal was

en after the petitioner came to know about the minimum fixed price when the tender was opened in presence of both the sides. If, at that stage the subsequent offer of the petitioner was accepted by the respondent authority, then that will certainly cause prejudice to the respondent No. 6. No such proposal could be accepted by the respondent authority to the prejudice of the other tenderer.

Learned advocate for the petitioner submitted that before the Assets Sales Committee this letter dated 19.9.2005 was not at all placed and there is no discussion in the minutes of the said committee in this respect and as such, according to him it clearly shows that the decision, as arrived at by the Assets Sales Committee, is the result of total non-application of mind. I have already pointed out that the offer of the petitioner was rejected outright as the same was conditional. Learned advocate for the petitioner argued that this fact was not brought to the notice of the ASC while taking the decision and as such, according to him, said decision was affected due to the suppression of material fact. I have looked into the minutes of the ASC and it appears that there is clear mention about the rejection of the offer of the petitioner same being conditional. So question of suppression of the material fact, as alleged, does not arise at all. It is clear that the ASC was appraised about the entire fact in respect of the rejection of the offer of the petitioner, so far as the tender is concerned and we can safely presume that since the tender of the petitioner was rightly rejected, so the subsequent offer dated 19.9.2005 was not at all taken into consideration by the authority. I find no illegality in this respect. If the said subsequent offer, as made by the petitioner was accepted by the respondent authority, then certainly it would have caused immense prejudice to the respondent No. 6 and thereby leading to further litigation. Question of accepting such subsequent modified offer by the respondent authority also was not possible since the conditions were mentioned in respect of the offer. Supposing for argument sake, the offer of the petitioner was accepted

along with those conditions and if afterwards those conditions could not be fulfilled, then there was every possibility of further complications arising in respect of this tender. To my mind, ASC, was perfectly justified in not taking into consideration of these factors and I do not find any fault in this respect, as alleged by the learned advocate for the petitioner.

Mr. Pal, the learned senior advocate further contended that the Company being a Government undertaking and the members of the ASC, all are Government officials, so it was their duty to see that the highest price is available in respect of the sale of the property of the Company in question. By making such submission, he argued that when the petitioner was ready to enhance the price to the extent of Rs.18 crores, then in the fiscal interest of the Company, it would have been proper for the committee to accept such proposal, particularly when the Company was badly in need of money for its revival. The learned advocate for the respondent authority countered this submission by arguing that the ASC considered the entire matter and thereafter took such decision and while taking such decision, the committee, being a statutory body, could not do any illegal act only because an enhanced amount has been proposed by one of the tenderer subsequently. If that proposal was considered by the committee, then it would have led to many more complications and irregularities also. According to him, the committee, as being formed with the high officials by the Government of India, should be given liberty to take appropriate decision in this respect. In order to substantiate this argument he has cited decisions reported in **AIR 1996 SC page 11 (Tata Cellular -vs- Union of India )**.

I have carefully considered the submissions of the learned advocates for both the parties in this respect. It appears from the minutes of the ASC that thread bare discussion was made by it while coming to the conclusion regarding the acceptance of the offer, as given by the respondent No. 6. It appears from the said minute that on three other earlier occasions attempts were made by the said committee for sale

the land in question, but those attempts failed as the price offered by the parties was too low. The Assets Sales Committee considered this position and also considered the fact that even the price, as was offered by the West Bengal Housing Board was far below the minimum fixed price. It appears from the said minute that opinion of the independent valuers were also obtained wherefrom it appeared that that experts opined that the value of the property to be sold could be around Rs.13 crores approximately. The ASC after taking into consideration all these aspects was of the opinion that the fixation of the minimum price of the land in question at Rs.18 crores was too high and optimistic and practically such target could not be reached inspite of best efforts. The committee was of the opinion that the matter was pending for a long time and the land could not be sold as the minimum price as fixed was not reached. Under such circumstances, the ASC decided to accept the proposal of the respondent No. 6 in this respect, same being the best available under the circumstances, in the market. I have already pointed out that the committee consisted of the members occupying high officials under the Government and they are the best judge to look into the interest of the Company which has become a sick industry. In the decision reported in **AIR 1996 SC page 11 (Supra)** it has been clearly observed that such decision of the committee comprising of the government officials in respect of a government Company should not unnecessarily be disturbed by the Court when it appears that the said decision was arrived at by way of taking into consideration the entire aspects of the matter.

Learned advocate for the petitioner argued that since the decision of the committee was not at all justified being arbitrary in nature and was arrived at by way of violating the principles of natural justice, so there is no bar for the High Court to interfere into the matter in exercise of its writ jurisdiction. In support of his contention he has cited decisions reported

AIR 1979 SC page 1628 ( Ramana Dayaram Shetty -vs- The International Airport Authority of India & Ors); 1993 (1) SCC page 71 ( Food Corporation of India -vs- M/s.Kamdhenu Cattle Feed Industries); (2005) 5 SCC page 181 (State of NCT of Delhi and another-vs-Sanjib @ Bittoo) and AIR 1996 Cal page 424 D.Wren International Limited and another -vs-Engineers India Limited and Others).

On the other hand the learned advocate for the respondent authority relied upon the decision reported in AIR 1996 SC 11 (Tata Cellular Vs. Union of India). In para 85 of the said decision the Apex Court observed (three Judges bench) that :-

**"It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the government. But, the principles laid down in Article 14 of the Constitution of India have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down."**

So far as the present matter is concerned, I have already pointed out that the decision as arrived by the ASC was the result of the consideration of the entire aspect including the beneficial interest of the Company in question. In rejecting the tender, as submitted by the petitioner, there was no infringement of Article 14 of the Constitution of



India, as claimed by the learned advocate for the petitioner. Equal opportunity was given to both the tenderers and the petitioner himself is to be blamed for rejection of his offer as he put conditions in respect of the offer in question. Learned advocate for the petitioner tried his best to impress upon this Court that in the letter two clauses which were mentioned cannot be treated as conditional. However, on bare perusal of those two clauses, there cannot be any doubt that those are conditions which were connected with the offer in question. If there was no necessity for putting those conditions, then I fail to understand as to what prompted the petitioner to put the same along with the tender document, may be in a separate cover. When it appeared to the committee that conditions were put in respect of the particular offer, then it was certainly obligatory on the part of the authority to reject the same in order to maintain transparency and fairness. The decision of the committee in this respect, as discussed above, cannot under any circumstances be said to be violative of the principles of natural justice and it also cannot be said that it was taken by way of depriving the petitioner of the right to equality, as envisaged under Article 14 of the Constitution of India. As such, I reject this contention of the learned Advocate for the petitioner.

Mr. Mitra, the learned senior advocate appearing on behalf of the respondent No. 6 argued that his client purchased the property in the year 2005 on the basis of the offer given to the concerned authority and since then invested much money in the project and if at this stage any order regarding cancellation of the tender is passed, then it will certainly cause great injustice to the respondent No. 6. According to him, the respondent No. 6 is a bona fide purchaser for value and he invested huge money in respect of the project in question and under such circumstances the Court should not interfere into the matter, as prayed by the petitioner. Mr. Mitra further argued that the authority concerned

dated 12.9.2005 which accompanied the offer and so such interpretation cannot be questioned in a Court of law, as done by the petitioner in this writ petition. In this respect he has cited decision reported in **2008(1) CHN 567 (Nicco Corporation Ltd. Vs. Zcabel Corporation of India Ltd. and others)** wherein the Division Bench of this Court observed:

**"It is now the settled law that when two interpretations of a clause of a notice of tender are possible and the tendering authority has adopted one of those, which is not an absurd view, a writ Court should not interfere with the decision of the authority."**

So far as the present matter is concerned, I have already discussed above that the interpretation of those clauses as mentioned in the letter of the petitioner was done correctly by the respondent authority and they were justified in holding that those clauses were nothing but conditions connected with the offer given by the petitioner in respect of the tender in question. On perusal of the said letter as well as the conditions mentioned in the tender document itself, I have got no hesitation to hold that the interpretation as given by the respondent authority in this respect, is absolutely correct and as such I think it is not permissible for this Court to interfere with the said interpretation of the respondent authority.

After considering the submissions of the learned advocates for all the sides and on perusal of the documents, as filed in connection with this writ petition, and also taking into consideration the ratio as decided in the decisions quoted above, I am of opinion, that the respondent authorities were perfectly justified in allowing the tender in favour of the respondent No. 6 by way of rejecting the tender, as submitted by the petitioner. To my mind, in order to take a decision in this respect, so far as the acceptance of the tender is concerned, entire surrounding circumstances are to be taken into consideration in order to make a decision as to whether the decision of the

Under in favour of a particular party was justified or not. There cannot be any straight jacket formula in this respect, rather it should be held that entire surrounding circumstances as was prevailing at the time of taking such decision should be taken into consideration. I have already pointed out that the Assets Sales Committee considered the entire matter and thereafter they were of the opinion that it would be in the best interest of the company in question to grant the tender in favour of the respondent No. 6 and accordingly they accepted the offer of the respondent No. 6 who thereafter has started the work on the land itself. I find no illegality in this respect, as alleged by the writ petitioner. To my mind, there is no scope for interference into the decision, as arrived at by the Assets Sales Committee and accordingly the writ petition being devoid of merit should be rejected.

In the result, the writ petition is dismissed on contest but without cost.

Let a Xerox certified copy of this judgment be handed over to the parties on urgent basis, if applied for.

sd/- Sadhan Kumar Gupta, J.  
(SADHAN KUMAR GUPTA, J.)

**CERTIFIED TO BE A TRUE COPY**

Authorised Under Section 76 of the  
Indian Evidence Act, 1972 (Act-I of 1972)

Encl.  
JKR  
P-20  
27-04-2009



7/4/09

(2)

W.P. No. 1919 of 2005  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ.....Jurisdiction  
Original Side

8/1/09

Keventer Projects Ltd. and Another

versus

The Union of India and Others

16.4.09  
29.4.09  
23.4.09  
27.4.09  
27.4.09

4

27/04/2009  
Copyists' ...  
High Court, O.S.  
27.4.09

Judgment delivered by the Hon'ble Mr.  
Justice Sachan Kumar Gupta this 16th  
day of April, 2009. \*20

Filed this 22nd day of April 2009.

Assistant Registrar.

S. Bose