

M/s. Driplex Water Engineering Limited v. Punjab State Electricity Board and another (J. S. Sekhon, J.)

(8) It has been argued on behalf of the appellant that initially the petitioner was appointed by the Chief Justice of the Erstwhile State of PEPSU and the District and Sessions Judge was not competent to compulsorily retire him as he was not the appointing authority. This contention cannot be accepted. It is the appropriate authority as defined under rule 2 of the Rules which is competent to take action. Rule 2(1) reads as under:—

“appropriate authority” means the authority which has the power to make substantive appointments to the post or service from which the Government employee is required or wants to retire or any other authority to which it is subordinate.”

At the time of retirement, the appellant was working as a Record-Keeper in the Sessions Division. It is the District and Sessions Judge who has the authority to appoint ministerial staff of the District Court. It may be that initially the appellant might have been appointed by the Chief Justice but the relevant time for considering as to who is the appropriate authority is the time of retirement from the post then held i.e. the post of Record-Keeper in a Sessions Division. It was the District and Sessions Judge who could substantively appoint a person to the post of Record-Keeper and he was thus the appropriate authority to pass an order of his retirement.

(9) Finding no merit in the appeal, the same is dismissed with no order as to costs.

S.C.K.

Before : Gokal Chand Mital & Jai Singh Sekhon, JJ.

M/S. DRIPLEX WATER ENGINEERING LIMITED,—Petitioner.

versus

**PUNJAB STATE ELECTRICITY BOARD AND ANOTHER,
—Respondents.**

Civil Writ Petition No. 12252 of 1989.

7th May, 1990.

Constitution of India, 1950—Art. 14—Awarding of contract—Tender for water treatment plant—Acceptance of tender—Challenge

made on the ground that contract awarded to person not fulfilling requisite experience—Award of contract on grounds contrary to tender notice is invalid—Consideration of experience of a collaborator being outside the scope of notice cannot be considered in awarding contract.

Held, that the Punjab State Electricity Board being a corporate body, it had not strictly observed the condition of eligibility experience of two years in installation of plants of similar capacity by tenderer Gaco Systems India (Respondent No. 2), but on the other hand took into consideration the experience of its collaborator Gaco Systems, Canada without making any mention that the experience of a collaborator shall be given weightage while determining the experience of a tenderer. If at all, it wanted to consider the experience of a collaborator as experience of the tenderer it should have given notice of this fact in the notice inviting tenders in order to enable the other concerns or companies to file tenders on the basis of their collaboration with other concerns.

(Para 13)

Petition under Articles 226/227 of the Constitution of India, praying as under:—

- (i) the records of the case may kindly be called for;*
- (ii) that after perusal of the record and hearing upon the counsel for the parties, this Hon'ble Court may be pleased to grant the following reliefs:—*
 - (a) issue a writ of prohibition restraining Respondent No. 1 Punjab State Electricity Board from accepting the tender of respondent No. 2, and if accepted, not to implement the same and/or to give any money in pursuance thereof;*
 - (iii) that any other writ order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may kindly be issued;*
 - (iv) that any other relief to which the petitioner may be found entitled in the facts and circumstances of the case may kindly be issued;*
 - (v) that the requirement of filing the certified copies of annexure may kindly be dispensed with;*
 - (vi) that the requirement of serving the advance notices of this petition on the respondents herein may kindly be dispensed with in view of the urgency of the matter;*

M/s. Driplex Water Engineering Limited v. Punjab State Electricity Board and another (J. S. Sekhon, J.)

(vii) *that the costs of this petition may kindly be awarded in favour of the petitioner and against the respondents herein;*

(viii) *It is further prayed that during the pendency of the petition in this Hon'ble Court, respondent No. 1 may be restrained from placing the order on the respondent No. 2 and if already placed, be not implemented; and further no money be paid in pursuance thereof.*

H. L. Sibal, Sr. Advocate with P. S. Pathwalia, Advocate, for the Petitioner.

J. L. Gupta, Sr. Advocate with Maninder Kaur, Advocate, for the Respondents.

JUDGMENT

J. S. Sekhon, J.

(1) Through this writ petition, the petitioner challenges the proposal/decision of the Punjab State Electricity Board to accept tender of M/s. Gaco Systems (India) Private Limited (Respondent No. 2) for awarding contract for the design/erection etc. of water treatment plant having two streams each of net rated capacity of 90 tonnes per hour and maximum capacity of 100 tonnes per hour at Phase 3 of Thermal Plant, Ropar, on the ground of ineligibility of Respondent No. 2 to obtain tender documents to file tender due to lack of requisite experience in the commissioning of water treatment plants of the similar capacity.

(2) The brief resume of facts relevant for understanding the controversy is that the Punjab State Electricity Board, hereinafter referred to as the Board (Respondent No. 1) floated a tender (Annexure P-1) for the design manufacture, supply, delivery, handling and storage at site, erection testing and commissioning on turnkey basis as per specification No. 425/PNRTP of water treatment plant having two streams, each of net rated capacity of 90 tonnes per hour and maximum capacity of 100 tonnes per hour. The tender notice was published in various papers all over the country. The tender notice, *inter alia*, contained certain mandatory stipulations, the material being that the tender documents will be

issued only to those firms who have already supplied, erected and commissioned water treatment plants of similar capacity and produce certificate of satisfactory service and performance for a period of two years from at least two clients/utilities and that these certificates must be enclosed with the request for purchase of tender documents. It is also stipulated that the set of tender documents containing specification, general instructions and terms and conditions for the submission of tender can be obtained from the office of the Board on payment of cost of tender specification along with certificate of experience. In response to the said notice, the petitioner company submitted tender for the above-referred water treatment plant after producing the requisite certificates of experience and purchasing the set of tender documents. Gaco Systems India Private Ltd. (Respondent No. 2) as well as three other concerns (including the petitioner) also submitted tenders.

(3) The tenders were opened on 31st March, 1989 by Respondent No. 1 in the presence of the representatives of the petitioner as well as other tenderers viz. Respondent No. 2, M/s. Termax Private Ltd. and M/s. Watco Technics Bombay. The tender of Respondent No. 2 was then seen by the petitioner's representative and it was found that it did not have the certificates of two clients regarding the supply of water treatment plants of similar capacity, what to say of satisfactory functioning of such plants for a period of more than two years. The tender of M/s. Watco Technics was not opened because it had not deposited the earnest money as required in the tender notice. Thus, only three parties were left in the field. It is further averred by the petitioner that Respondent No. 2 had never supplied the water treatment plants of the above-referred capacity and in fact while submitting the tender, Respondent No. 2 had not appended any such certificate. In the year 1986, the Board had also floated a tender for the supply of water treatment plant and Respondent No. 2 had submitted a tender for getting that contract, but it was not accepted as Respondent No. 2 had not the requisite experience certificates for the supply for water treatment plants. Therefore, its tender was rejected, although lower in price. On that occasion, the tender filed by the petitioner-company was also rejected due to quoting of higher price while that of M/s. Termax Private Ltd. was accepted. The petitioner further maintains that Gaco Systems (India) (Respondent No. 2) was not even eligible to purchase the tender documents as it had not the requisite experience of commissioning water treatment plants of similar capacity. The Board had decided on 12th September, 1989 to accept the tender of

M/s. Driplex Water Engineering Limited v. Punjab State Electricity Board and another (J. S. Sekhon, J.)

Respondent No. 2 arbitrarily, *mala fide* and on some extraneous considerations. It was further elaborated that usually the Board used to advance 10 per cent of the total cost of the plant to the contractor, but in the case of Respondent No. 2 the Board had agreed to advance 20 per cent of the total cost of tender work which roughly amounted to rupees seventy lacs. This favour to Respondent No. 2 by the Board was also termed as motivated resulting in huge loss to the public exchequer. Thus, the above-referred action of the Board was contended to be contrary to the mandate of Article 14 of the Constitution of India as it had resulted in treating the petitioner and Respondent No. 2 not equally. It is noteworthy that this writ petition was filed on 23rd September, 1989 while the Board had issued the letter of intent accepting the tender of Respondent No. 2 on 27th September, 1989.

(4) The Board resisted this writ petition by questioning its maintainability contending that no fundamental right of the petitioner has been infringed. It was further averred that the tender notice (Annexure P. 2) specifically referred to the manufacture, supply etc. of the plant as per Specification No. 425/PNRTTP. Paragraph 14.901 of Section A of this specification specifically stipulates that collaborator's experience is also weighed in ascertaining the experience of the party for commissioning water treatment plants of similar capacity. Thus, it was maintained that Respondent No. 2 had furnished the due certificate of such experience as Gaco Systems, Canada Ltd. was its collaborator and held 40 per cent equity shares with Respondent No. 2. It was further maintained that the Board had consulted Desein Engineers, a reputed concern of Consultant Engineers, before awarding the contract to Respondent No. 2. The factum that Respondent No. 2 had quoted lower price than the petitioner and other tenderers was also stressed. It was further clarified that the Board had ensured its interest by obtaining due guarantee from Gaco Systems Canada to ensure the proper commissioning of the water treatment plant etc. It was also stressed that in the year 1986 the tender of Respondent No. 2 was not accepted as M/s Thermax (Private) Ltd. had quoted the lowest rate. The assertion of the petitioner that in the year 1986, Respondent No. 2 was found ineligible for commissioning a water treatment plant was refuted. It was however admitted that the conditions in the tender notice are mandatory but asserted that Respondent No. 2 had fulfilled all those conditions.

(5) Respondent No. 2 in the counter affidavit filed by its Managing Director supported the above-referred stand of the Punjab Electricity Board by maintaining that the answering respondent is an Indo-Canadian joint venture company and is engaged in the field of water treatment plants for thermal power stations. M/s. Gaco Systems, Canada were contended to be the principals of Respondent No. 2 and that Gaco Systems, Canada was the largest company dealing in installation of water treatment plants. It was also stressed that Gaco Systems Canada holds 40 per cent equity shares in the answering respondent Company with the permission of the Reserve Bank of India and the Government of India. It was further stressed that the answering respondent had executed similar works at Trombay Power Station of 500 MW capacity which is being run by Tata Electricity Company. Another instance of having installed water treatment plant at Sanjay Gandhi Thermal Plant of the Madhya Pradesh Electricity Board was also stressed. It was further maintained that in the year 1986, the tender submitted by the answering respondent was not rejected by the Board on account of its ineligibility but on the ground of quoting higher rates.

(6) Mr. H. L. Sibal, the learned Senior Advocate for the petitioner, contended by referring to paragraphs 3 and 10 of the tender notice (Annexure P. 1) that Respondent No. 2 was not even eligible to purchase the tender documents, what to say of submitting the tender. It was also contended that reference in the tender notice to Specification No. 425/PNRTP only relates to the design manufacture, supply, delivery handling and storage at site, erection testing and commissioning of the water treatment plant as well as the scope of this plant including clarifier, chlorination plant, filtration plant, chemical feed system and demineralising plant etc. and that there is no indication available from the tender notice that clause 14.901 of Section A of the above-referred specification regarding the treating of experience of a collaborator as experience of tenderer would fulfil the requisite experience of installing and commissioning of plant of similar capacity. Mr. J. L. Gupta, the learned Senior Advocate for Respondents Nos. 1 and 2, on the other hand, maintained that the very factum of mentioning of commissioning etc. of plant as per above-referred specification would imply that the condition of two years' experience shall be as per this specification and that all the details of the specification being contained in a huge document running into 800 pages could not be published in the tender notice. Thus, he stressed that the reference to this specification in the tender notice is eloquent enough that the eligibility

M/s. Driplex Water Engineering Limited v. Punjab State Electricity Board and another (J. S. Sekhon, J.)

of the tenderer shall be determined by these specifications. The furnishing of requisite guarantee by the Gaco Systems' Canada undertaking to provide all the technical and financial assistance in the installation of the water treatment plant was also stressed in order to prove that the Board had taken all the possible precautions before electing to accept the tender of Respondent No. 2. The technical advice of Design Consultant Engineers was also stressed in order to show that the petitioner had submitted the tender couched in vague language which can be interpreted in its favour and that the past experience shows that the petitioner is hard to deal with towards the completion of the contract.

(7) In order to settle the above-referred controversy between the parties, it would be useful to reproduce tender notice (Annexure P. 1) . It reads as under:—

"PUNJAB STATE ELECTRICITY BOARD
ROPAR THERMAL PROJECT

"2 — × 210 MW UNITS 5£ 10
TENDER NOTICE

*Sealed tenders are invited in sixuplicate for the design manufacture, supply, delivery handing and storage at site erection testing and commissioning for the following on turnkey basis as per specification No. 425/PNRTP.

- | | |
|---|---|
| (a) Description of material ... | Water treatment plant having two streams each of net rated capacity of 90 T/hr. and maximum capacity of 100 T/Jr. |
| (b) Last date and time of receipt of tenders. ... | Up to 11.00 A.M. on 20th March, 1989. |
| (c) Date and time of opening of tenders. ... | 11.00 A.M. on 20th March, 1989. |
| (d) Cost of specification ... | Rs. 500. |
| (e) Last date for sale of specification ... | 10th March, 1989. |

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2. The scope shall include clarifier, chlorination plant, filtration plant, chemical feed system and demineralising plant including connected civil works as per specification.
 3. A set of tender documents containing technical specification, general instruction and terms and condition for submission of tender can be obtained from this office on payment of cost tender specification along with certificate of experience. The payment should be made either in cash or by demand draft drawn in favour of Accounts Officer/Thermal RTP, PSEB, Patiala. Tenders of the firms which do not purchase the tender documents in advance shall not be opened.
 4. All tenders must be accompanied by earnest money at the rate specified in tender documents except those exempted for the same specifically as per terms of specification.
 5. Tenders received without earnest money shall be rejected
 6. Tenders shall be received upto 11.00 A.M. on 20th March, 1989 and shall be opened immediately thereafter. If due date happens to be a holiday, the tenders shall be received and opened on the next working day at the same time.
 7. The tenders must be valid for 180 days.
 8. Delivery Schedule... First steam is required to be commissioned by end April 90 and complete water treatment plant including civil works Oct. 90.
 9. Telegraphic quotation shall not be accepted.
 10. Tender documents will be issued to only those firms who have already supplied, erected and commissioned water treatment plants of similar capacity and produce certificates of satisfactory service and performance for a period of two years from at least two clients/utilities. These certificates must be enclosed with the request for purchase of tender documents."

(8) The perusal of the tender notice as a whole leaves no doubt that Specification No. 425/PNRTP figuring in first portion of the

M/s. Driplex Water Engineering Limited v. Punjab State Electricity Board and another (J. S. Sekhon, J.)

notice pertains to design, manufacture, supply, delivery etc. of the water treatment plant. Again, reference to this specification figures in paragraph 2 of the notice in relation to the scope of the plant that it would include clarifier, chlorination plant, filtration plant, chemical feed system and demineralising plant including connected civil works. By no stretch of imagination, it can be said that the above-referred specification would govern the eligibility of a person/concern for filing tenders. The mere mention in paragraph 3 of the notice that a set of tender documents containing technical specification, general instruction and terms and conditions for submission of tender can be obtained from the concerned office on payment of cost, is of no consequence to infer that the eligibility of a person on the basis of satisfactory commission of at least two plants of similar capacity and their satisfactory running for two years figuring in paragraph 10 of the notice had been dispensed with. No doubt, paragraph 14.901 of Section A of this specification stipulates that collaborator's experience is also weighed, but all the same, there being no specific stipulation in this notice that the collaborator's experience would also be considered or that the two years' experience in commissioning at least two such plants of similar capacity would be guided by the concerned specification, there is no option but to conclude that the eligibility of a person to submit tender is governed by paragraph 10 of the tender notice. The Board had admitted in its written reply that the conditions of the tender notice are mandatory. The perusal of paragraph 10 of this notice absolutely leaves no doubt that the tender documents will be issued only to those firms which had already supplied, erected and commissioned plants of similar capacity and produce certificates of satisfactory service and performance for a period of two years from at least two clients/utilities and that these certificates must be enclosed with the request for purchase of tender documents. This conclusion is further supported from the factum that paragraph 2 of this notice also makes it obligatory for the firm applying for issuing tender documents to pay the cost of tender specification along with certificates of experience. Thus, there is no force in the contention of Mr. J. L. Gupta, the learned counsel for the respondents that eligibility shall be governed by the above-referred specification, especially when the tender notice disentitles a firm even to purchase tender documents unless certificates of two clients for satisfactory performance of plants of similar capacity for a period of two years are furnished.

(9) The question then arises whether Gaco Systems (India) Respondent No. 2 had the necessary experience of installing two water treatment plants of similar capacity or had furnished the certificates of two clients for satisfactory commissioning and running of such plants for a period of two years prior to applying for the issuance of tender documents. In this regard, it is noteworthy that the assertion of Respondent No. 2 about the Gaco Systems, Canada being the principal or collaborator of Respondent No. 2 had already been found to be of no consequence because the consideration of collaborator's experience does not figure in the tender notice and Gaco Systems, Canada had not applied for the acceptance of its tender for the treatment plant. The perusal of the application (Annexur R. 1/1) submitted by Gaco Systems (India) (Respondent No. 2) for the purchase of above-referred tender documents including the specification reveals that therein stress is laid on the collaboration with Gaco Systems Canada besides maintaining that in India also Respondent No. 2 had already executed a number of water treatment plants. It is noteworthy that along with application Gaco Systems (India) had not furnished the requisite certificates of two concerns. The brochure attached with this application simply highlights the technical expertise of Gaco Systems, Canada and contains the list of works completed or plants installed by Gaco Systems, Canada in different parts of the world. Gaco Systems (India) had appended the list of works completed or undertaken by it, but admittedly the above-referred certificates of two years satisfactory service and completion of the plant were not appended which resulted in writing of letter Annexure R. 1/2 by the Chief Engineer of Punjab State Electricity Board to Gaco Systems (India) conveying that the specification is being sold with the condition of furnishing following documents and that the tender will be opened only after the production of these documents, namely:—

- (i) Certificate from Trombay Thermal Authority indicating that M/s Gaco Systems, India have completed the job of Water Treatment/DM Plant for their satisfaction.
- (ii) A letter from M/s Gaco Canada that they will fully back M/s Gaco Systems, India Limited technically.
- (iii) Proof of the fact that M/s Gaco Canada hold 40 per cent equity share in the Indian Company.

M/s. Driplex Water Engineering Limited v. Punjab State Electricity Board and another (J. S. Sekhon, J.)

Thereafter,—*vide* letter dated 21st March, 1989 (Annexure R. 1/3) Gaco Systems (India) supplied the following documents:—

1. Letter from Tata's 500 MW Thermal Power Station, Bombay.
2. Copy of collaboration agreement.
3. Letter from GACO Principals.
4. Proof of GACO Canada's Equity share holding.

The perusal of certificate dated 16th March, 1989 issued by Tata Hydro-Electric Power Supply Company Ltd. reveals that a contract for 90 cum/hr Demineralising Plant was awarded on 17th January, 1986 to Gaco Systems, Canada with parts supplied by Gaco Systems, India and that the equipment has been delivered satisfactorily and commissioning is in progress. It appears that there is some clerical mistake in describing the capacity of this plant as 90 cum/hr as at Item No. 1 of the list of the works undertaken by Gaco Systems, India, the capacity of the plant undertaken to be supplied to Tata Hydro-Electric Supply Company is mentioned as 2 streams each with normal flow of 45 m³/hr and the Board (Respondent No. 1) while evaluating the bids of different bidders in the light of the advice given by De sein Consultant Engineers had described the capacity of this plant as 45 m³/hr. This report further shows Gaco Systems, India had only supplied the materials for the above-referred plant having two streams each of the capacity of 45 m³/hr. Thus, it cannot be said that plant of similar capacity as the one in hand and its satisfactory running for a period of two years before the date of applying for tender documents in this case.

(10) Faced with this difficulty, Mr. J. L. Gupta, the learned counsel for the respondents tried to contend that M/s Driplex Water Engineerings Ltd. i.e., the petitioner had also no such experience at that time. Respondent No. 2 Gaco Systems India or the Board in their respective written statements had not taken any such objection and on the other hand the Board had admitted the eligibility of the petitioner to file such tenders. Thus, no decision is called for regarding the eligibility of the petitioner to file the tender as this controversy is not directly in issue before this Court.

(11) Moreover, the guarantee given by Gaco Systems, Canada to the Board for completion of the works in the extreme event of Gaco Systems, India being unable to complete the project due to financial difficulties or any reason is altogether illusory as Gaco Systems, Canada had only 40 per cent equity participation in the share capital of Gaco Systems, India whereas paid-up share capital of Gaco Systems, India is only Rupees ten lacs and the average turnover for the last five years had not been more than Rupees Sixty lacs. These facts are specifically contended by the petitioner in the replication to the written statement of the Board (Respondent No. 1) which were not even controverted by Respondent No. 2 although it was in a position to do so by producing the relevant documents. Keeping in view the huge cost of construction of the water treatment plant running into more than Rupees three crores and sixty lacs as quoted by Respondent No. 2 in its tender, the furnishing of guarantee by Gaco Systems, Canada even if taken to the extent of its financial participation in the share capital would hardly be about a little over Rupees three lacs, which is only minimal fraction of the total cost of the construction of this plant. Thus, under these circumstances, the collaboration or the guarantee offered by Gaco Systems, Canada to Gaco Systems, India is not of much consequence.

(12) Regarding the ineligibility of Respondent No. 2 for the tender submitted in the year 1986 the petitioner alleges that in the year 1986 also, Gaco Systems, India had not the sufficient experience of installing water treatment plant of lesser capacity than the present one and that this contract was given by the Board to M/s Thermax Private Limited, it being the lowest in price. Although this controversy has no material bearing on the controversy in hand as that plant was admittedly of lesser capacity than the water treatment plant in the case in hand, yet all the same a perusal of Memorandum No. 353/PNRTH/M-V/891 dated 11th July, 1986 of the proceedings of the Punjab State Electricity Board pertaining to the purchase of water treatment plant against Specification No. 248/PNRTP in the year 1986 reveals that only three firms genuinely qualified conditions mentioned in the notice inviting tenders regarding experience and performance. The names of these firms are : M/s Thermax Pvt. Ltd., M/s Bharat Process and Mechanical Engineerings, Ltd. and M/s Driplex Water Engg. Pvt. Ltd. It is further mentioned that the tender of the following three firms were not opened on 28th December, 1985, as these were not satisfying the condition of experience and performance stipulated in the

M/s. Driplex Water Engineering Limited v. Punjab State Electricity Board and another (J. S. Sekhon, J.)

notice inviting tenders. These firms are : M/s Candy Filters (India) Ltd., M/s Gaco Systems, India Pvt. Ltd. and M/s Wateo Technics Pvt. Ltd. Thereafter, it is mentioned that the tender of the latter three firms were opened on 26th February, 1986 and as per orders of the Chairman/M.F.A., P.S.E.B. that all tenders even though they do not fulfil the conditions of notice inviting tenders regarding experience etc. may be opened and issue of performance may be considered at the time of evaluation. There is no indication in this memorandum whether the performance of Gaco Systems, India (Respondent No. 2) in the present case was satisfactory in commissioning such plants although ultimately the tender filed by M/s Gaco Systems, India was rejected being more cost-loaded than the other concerns. Thus, it appears that Gaco Systems, India was not even qualified in the matter of installation of demineralisation water treatment plant of the capacity of having one channel of 60 m³/hr. to a maximum capacity of 75 m³/hr. in the year 1986.

(13) Regarding the legal controversy about the maintainability of this petition on the ground of ineligibility alone, it transpires that the apex Court in *Ramana Dayaram Shetty v. The International Airport Authority of India and others* (1), had settled the point by observing in paragraph 6 of the judgment that the stipulation regarding experience for eligibility in the notice inviting tender must be satisfied by every person submitting the tender and in case the condition was not satisfied, the tender was ineligible for being considered. The relevant observations read as under:—

“The 1st respondent, being State within the meaning of Article 12 of the Constitution or in any event a public authority, was bound to give effect to the condition of eligibility set up by it and was not entitled to depart from it as its own sweet will without rational justification. The 4th respondent had experience of catering only in canteens and did not have 5 years experience of running a Hind class hotel or restaurant and hence they did not satisfy the condition of eligibility and yet the 1st respondent accepted the tender submitted by them. This was clearly in violation of the standard or norm of eligibility set up by the 1st respondent and the action of the 1st respondent

(1) A.I.R. 1979 S.C. 1628.

in accepting the tender of the 4th respondents was clearly invalid. Such a departure from the standard or norm of eligibility had the effect of denying equal opportunity to the appellant and others of submitting their tenders and being considered for entering into contract for putting up and running the restaurant and two snack bars.”

In paragraph 10 of the judgment in the above-referred case by relying upon the rule enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (2), it was observed by the apex Court as under: —

“Now there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered 2nd Class hotel or restaurant and he must have at least 5 years’ experience as such and if he did not satisfy this condition of eligibility his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondents did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondent. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.”

In Paragraph 20, it was emphasized that the Airport Authority being a corporation it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. In the case in hand also, as already observed, the Punjab State Electricity Board being a corporate body, it had not strictly observed the condition of eligibility experience of two years in installation of plants of similar capacity by tenderer Gaco Systems, India (Respondent No. 2), but on the other hand took into consideration the experience of its collaborator Gaco Systems, Canada without making any mention that the experience of a collaborator

M/s. Driplex Water Engineering Limited v. Punjab State Electricity Board and another (J. S. Sekhon, J.)

shall be given weightage while determining the experience of a tenderer. If at all, it wanted to consider the experience of a collaborator as experience of the tenderer it should have given notice of this fact in the notice inviting tenders in order to enable the other concerns or companies to file tenders on the basis of their collaboration with other concerns. Normally such like technical matters of determining the requisite experience of a tenderer are left to the concerned branch of the Board but in the present case due to lack of requisite experience, not only the huge amount running into about 4 crores of rupees of the public exchequer is at stake but also the running of the plant itself because if due to lack of experience any defect crops up in the water treatment plant it would result in sedimenting of some salts on the blades of the turbine and ultimately result in having adverse effect on the generating capacity of the electric power plant. Thus, it being a matter of immense public importance, there is no option for this Court but to interfere at this stage as at the most it will cause a delay of a few months in the installation of the water treatment plant.

(14) Mr. J. L. Gupta, the learned counsel for the respondents relying upon the ratio of the decision of the apex Court in *C. K. Achutan v. The State of Kerala and others*, (3) contended that the present petition is not maintainable as the provisions of Article 14 of the Constitution are not attracted. We fail to agree with him as in the above-referred authority, the controversy was somewhat different. It related to the cancellation of the contract for supply of milk and giving it to a cooperative society. Under these circumstances, it was held that no fundamental right was involved and at the best it was a case of civil nature for claiming damages for breach of the contract.

(15) The observations of the apex Court in *State of Orissa and others v. Harinarayan Jaiswal and others*, (4) to the effect that the rejection by the Government of the highest bid in auction for sale of country liquor shops is not violative of Articles 14 and 19(1)(g) of Constitution and is not subject to judicial review, are of no help to the respondents in the present case, as therein the Government had reserved its right to reject the highest bid if it thinks that the price offered was inadequate.

(3) A.I.R. 1959 S.C. 490.

(4) A.I.R. 1972 S.C. 1816.

(16) On the other hand, in *Harminder Singh Arora v. Union of India and others*, (5), the apex Court had directed the awarding of contract of supply of milk to the petitioner by holding that the concerned authority had not stuck to the condition of notice of tender regarding supply of fresh milk and accepted the tender of the other party for the supply of pasteurised milk. In paragraph 27 of the judgment, it was observed:—

“In the instant case, the instrumentalities of the State invited tenders for the supply of fresh buffaloes and cows milk and, therefore, this case has to be decided on the basis of bid by the tenderers. There was no question of any policy in this case. It is open to the State to adopt a policy different from the one in question. But if the authority or the State Government chooses to invite tenders then it must abide by the result of the tender and cannot arbitrarily and capriciously accept the bid of respondent No 4 although it was much higher and to the detriment of the State. The High Court, in our opinion, was not justified in dismissing the writ petition in limine by saying that the question relates to the contractual obligation and the policy decision cannot be termed as unfair or arbitrary. There was no question of any policy decision in the instant case. The contract of supply of milk was to be given to the lowest bidder under the terms of the tender notice and the appellant being the lowest bidder he should have been granted the contract to supply, especially when he has been doing so for the last so many years.”

(17) No doubt, the bid of Respondent No. 2 was the lowest from the petitioner as well from M/s Thermax Pvt. Ltd. yet all the same in view of the factum that Respondent No. 2 was not eligible due to lack of requisite experience for being considered for awarding this contract, this circumstance is not of much consequence especially when a saving of minimal amount as compared to the entire cost of the plant would amount to taking grave risk of bogging down the entire plant.

(18) In view of the above referred circumstance, the proposal to accept or acceptance of tender of Respondent No. 2 by the Board is

Avtar Singh Sahi and others *v.* State of Haryana and another
(S. S. Sodhi, J.)

quashed by accepting this writ petition. The Board shall be at liberty to boat fresh tenders prescribing technical eligibility conditions for the tenders. It is further clarified that the Board shall also have option to consider the tender of any of the present tenderers except Respondent No. 2 provided they fulfil the eligibility test of experience and the cost of installation of the plant are considered reasonable. In view of the peculiar circumstances of the case, there will be no order as to costs.

R.N.R.

Before : S. S. Sodhi, M. R. Agnihotri and J. B. Garg, JJ.

AVTAR SINGH SAHI AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 8122 of 1987.

15th May, 1990.

Punjab Town Improvement Act (IV of 1922)—Panipat Improvement Trust Land Disposal Rules, 1976—R. 24—Indian Contract Act, 1872—S. 23—Sale or allotment of residential plots acquired by Improvement Trust for Scheme—Demand for enhanced price due to increase in compensation awarded under the Land Acquisition Act—Offer of plots at tentative price subject to revision and enhancement of compensation etc.—Relationship between vendor and vendee is contractual and governed by terms of contract—Improvement Trust entitled to recover compensation enhanced by courts.

Held, that once the Improvement Trust enters into the field of contract by making allotments on terms and conditions set forth in the application for allotment, sale-deed and other documents, it acts purely in its executive capacity, and, constitutional provisions thus no longer govern its relations with those to whom it has allotted or sold plots.

(Para 6 & 7)

Held, that rule 24 requires the agreement for sale to be in Form 'D' & 'F'. Form 'F' being specifically for agreement for sale of residential plots, it is this Form in terms of which the agreement for sale was required to be executed. There is ample reference there also