IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2479 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S. SHAH. Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

HINDUSTAN DOOR OLIVER LTD

Versus

VADODARA MUNICIPAL CORPORATION

Appearance:

MR RD DAVE for Petitioner

MR PRANAV G DESAI for Respondent No. 1

MR JA ADESHRA for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of Judgment: 15/05/98

CAV JUDGMENT

In this petition under Article 226 of the Constitution, the petitioner-Company has prayed for a writ of mandamus and/or any other appropriate writ or order or direction quashing and setting aside Resolutions Nos. 4 and 5 dated 19.3.1998 passed by the Standing Committee of the Vadodara Municipal Corporation (hereinafter to be referred to as "the Corporation") and also to direct the Corporation to award and accept both the contracts in question to the petitioner in respect of Atladra and Gajarawadi Sewage Treatment Plants.

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#. The facts leading to filing of the present petition, as averred by the petitioner, are as under :-

2.1 The petitioner-Company is engaged in the business and activities of environmental and Solid-Liquid separation activities and DAP Fertilizers including giving treatment to Sewage-Water Treatment Plant etc. The petitioner-Company has collaboration with Dorr Oliver Inc. of U.S.A.

2.2 In July, 1997 the Corporation had issued a public notice inviting tenders for repairing works of mechanical parts of Sewage Treatment Plants at Atladra/Gajarawadi and to put the said plants into operational condition. Four parties submitted their tenders in response to the notice. However, two of them were rejected as they were not fulfilling the minimum requisite criteria for the technical bids. Hence, only the petitioner and respondent No. 2-Company (M/s Hydraulic General Engineers) remained in the fray. A Technical Committee of the Corporation sought for various technical clarifications and explanations from time to time in respect of the technical bids submitted by the parties. In view of the technical clarifications and explanations submitted by the parties, the Corporation required both the parties i.e. the petitioner-Company and respondent No. 2-Company to submit their revised price bids. The revised price bids of the parties were opened on 9.12.1997. On 12.12.1997, the petitioner-Company raised objections to the changes made by respondent No.2-Company in the tenders. On 16.1.1998, the petitioner submitted its final revised offer in respect of both the tenders. Hence, respondent No. 2 also submitted its final revised offer. The comparative final revised bids offered by the parties were as under :-

	Atladra Plant	Gajarawadi Plant
Petitioner	Rs.1,91,07,398	Rs.2,04,43,254
Resp. No. 2	Rs.1,94,51,250	Rs.2,02,25,025

2.3 The petitioner-Company has stated that the price offered by respondent No. 2 came to be known to the petitioner later on through newspaper report dated 17.3.1998 stating that the Municipal Commissioner of the Corporation had made recommendations to the Standing Committee for accepting the petitioner's tender for Atladra Plant and the tender of respondent No. 2 for Gajarawadi Plant. However, the Standing Committee of the Corporation at its meeting held on 19.3.1998 decided to award both the contracts i.e. for Atladra and Gajarawadi Plants in favour of respondent No. 2 as respondent No. 2 reduced its prices as is reflected in the impugned resolutions of the Standing Committee produced at Annexure "A" to the petition. It is averred, on the basis of the newspaper

report, that the Municipal Commissioner's recommendation for awarding contract to each party was to ensure that the work can be completed at the earliest and better quality of work can be obtained from two separate Companies. The petitioner raised objections against the aforesaid decision of the Standing Committee by letter dated 23.3.1998 sent to the Corporation (Annexure "F"). It is submitted that the representative of the petitioner-Company met the Municipal Commissioner and the City Engineer on 24.3.1998, but in view of their inability to do anything in the matter on account of the decision of the Standing Committee, the petitioner has no other alternative but to challenge the decision of the Standing Committee by filing the present petition.

#. The petitioner has challenged the decision dated 19.3.1998 of the Standing Committee on the following grounds:-

(a) On 16.1.1998 final offers were made by the petitioner as well as respondent No. 3 for both the treatment plants and thereafter no negotiations had taken place for further reduction of price and, therefore, the Municipal Commissioner had made recommendations on the basis of those offers. Since after 16.1.1998 there was no occasion for either the petitioner or respondent No. 2 to hold further negotiations with the Municipal Commissioner, the Standing Committee considered reduction in the price offerred by respondent No. 2 behind the back of the petitioner and without giving equal opportunity to the petitioner to further reduce its price bid.

(b) The petitioner is ready and willing to reduce its prices by 5% of its offer only if the petitioner is awarded contracts for both the plants and this offer is also subject to further negotiations.

(c) Before considering any offer for further reduction in prices made by respondent No. 2 before the Standing Committee, the petitioner ought to have been given an opportunity to reduce its offer to the benefit of the Corporation and the public at large.

(d) The impugned decision of the Standing Committee is patently illegal, arbitrary, suffers from malafide and nepotism and an unilateral decision is taken behind the back of the petitioner.

(e) The Standing Committee has illegally and erroneously rejected recommendations of the Technical Committee as well of the Municipal Commissioner. These recommendations were given considering various aspects

that the work will be expedited, financially the Corporation would be benefited and it will be in the interest of public at large to award contracts separately to two parties.

(f) The petitioner is deprived of equal opportunity to reduce its prices offered for both the plants, but the Standing Committee allowed respondent No. 2 to reduce its prices behind the back of the petitioner.

(g) The impugned decision is taken only to favour respondent No. 2.

(h) The petitioner has wide experience in the area of the concerned work and it is considered number one Company in the country for the said activities. The petitioner has technical know how in view of its foreign collaboration and trained personnel having wide experience with the petitioner.

The petitioner also prayed for amendment which was granted on 27.3.1998. As per the said amendment, the petitioner made averments to the effect that during the course of discussion with the Municipal Corporation as well as City Engineer of the Corporation, the representative of the petitioner-Company made offer to give discount of 5% in total price offered if both the tenders in respect of Atladra and Gajarawadi were accepted. However, the petitioner was informed by the said officers that both the tenders are different and distinct and they cannot be clubbed together and, therefore, the petitioner was prevented by the City Engineer and the Municipal Commissioner from putting such conditional offer in giving discount in the final offer if both the contracts are given to the petitioner, whereas the Corporation allowed respondent No. 2 to put such conditional offer of discount and the Standing Committee relied on such discount. It was the Standing Committee which thus took into account an extraneous condition and material which was not part of the public notice and tender and was never considered before the Technical Committee or Municipal Commissioner at any point of time.

#. While issuing notice on the petition on 27.3.1998, this Court also granted ad-interim relief restraining the Corporation from awarding the contracts to respondent No. 2 for the aforesaid two plants and to maintain status quo in respect of both the contracts and tenders.

#. In response to the notice issued by this Court, respondent No. 1-Vadodara Municipal Corporation as well as respondent No. 2-M/s Hydraulic & General Engineers have appeared through

their respective counsel and have also filed separate detailed affidavits in reply. Besides filing an additional affidavit dated 7.4.1998, the petitioner has also filed affidavits in rejoinder to the reply affidavits of the respondents. Repondent No. 2 has also filed affidavit in surrejoinder.

#. On behalf of the Municipal Corporation affidavit dated 15.4.1998 is filed by Mr M.P. Sutaria, Assistant Municipal Commissioner and also by Mr S.D. Shah, Executive Engineer (Elect. & Mech.) on the same day making the following averments :-

6.1 Based on the prices quoted for both the plants and in view of the Gujarat Pollution Control Board notice and Suo Motu proceedings being Special Civil Application No. 2795 of 1997 pending before this Court, the Municipal Commissioner and the Tender Committee of the Corporation felt that both the petitioner as well as respondent No. 2 be awarded contract for one plant each and accordingly proposals were sent to the Standing Committee for approval. After considering all the relevant aspets and facts and circumstances the Standing Committeee by its resolution dated 19.3.1998 awarded the work to respondent No. 2 who had offered further discount if both the jobs were awarded to them vide their final offer. Respondent No. 2 was informed by the Corporation vide its letter dated 24.3.1998 about the awarding of the work and the work orders have been issued on 27.3.1998 vide CE/Outward No. 823 and 824. The said orders were duly accepted by respondent No. 2 vide their letter dated 27.3.1998. It is necessary to immediately commission the plants and to complete the project in view of the requirements of the Gujarat Pollution Control Board and considering the direction issued by this Court in the Suo Motu pollution matters.

6.2 Both the petitioner and respondent No. 2 had offered their revised offers dated 8.12.1997, received and opened by the Corporation on 9.12.1997. Respondent No. 2 had offered discount if the contracts for both the plants were awarded to respondent No. 2, but no such discount was offered by the petitioner on 8/9.12.1997 or even while offering its further revised price bid on 16.1.1998. On 16.1.1998, the petitioner revised its bid for .....J

Gajarawadi plant at Rs. 2,04,43,254/-.

So far as respondent No. 2 is concerned, respondent No. 2 offered on 23.1.1998 the final bids - for Atladra plant at Rs.1,94,51,250/- and for Gajarawadi plant at Rs. 2,02,25,025 and further indicated that if both the jobs are to be awarded to respondent No. 2, the bid for Atladra plant would be at Rs. 1,89,52,500/- and for Gajarawadi plant Rs.

2,00,12,130/-. The said bids of both the parties including discount from respondent No. 2 were received before the proposal was put up before the Standing Committee. Annexure 3 is a copy of summary showing comparison of price bids of the parties.

6.3 Annexure 3 referred to above and produced before the Court is also set out verbatim as under :-

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 |   2 | Prices as   |                |                |                |
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 |     | per revised |                |                |                |
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 |     | Price Bid   | Rs.258,24,380  | Rs.199,50,000  | Rs.224,14,790  | Rs.
12,89,500  |      |
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2.50%    |      |
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 |   3 | Prices after|                |                |                |
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 |     | Negotiation | Rs.191,07,398  |  Rs.194,51,250 | Rs.204,43,254  | Rs.
02,25,025  |      |
 |     | VMC with the|                |                |                |
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12,89,500) |      |
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4	Final Prices				
	when the jobs awarded	Rs.191,07,398	Rs.189,52,500	Rs.204,43,254	Rs. 00,12,130

NOTE: By awarding both the jobs to M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE (Hydraulic & Ge eral Engineehe jobs to M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE Hydraulic & General Engineehe jobs to M/s.HGE (Hydraulic & General Engineehe j bs to M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE (Hydraulic & Gene al Engineehe jobs to M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE (H draulic & General Engineehe jobs to M/s.HGE (Hydraulic & General Engineehe job to M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE (Hydraulic & Genera Engineehe jobs to M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE (Hyd aulic & General Engineehe jobs to M/s.HGE (Hydraulic & General Engineehe jobs o M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE (Hydraulic & General ngineehe jobs to M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE (Hydra lic & General Engineehe jobs to M/s.HGE (Hydraulic & General Engineehe jobs to M/s.HGE (Hydraulic & GenerJJJJJJJJJJJJJ

savings to the Corporation is Rs.3,67,793/-

6.4 The Assistant Commissioner has further denied the allegations made in para 13(AA) of the petition that the representative of the petitioner had met the Municipal Commissioner and the City Engineer and had made offers to give discount of 5% in total price offered if both the tenders of the petitioner in respect of Atladra and Gajarawadi plants were accepted. The other allegations made in para 13(AA) of the petition are denied as false and untrue and its is further stated that the petitioner was aware when the revised price bids were opened on 9.12.1997 that respondent No. 2 had offered joint discount for both the plants. It is stated that the revised price bid given by respondent No. 2 indicating the discount for both the plants and giving further discount during negotiation by respondent No. 2 was on their own volition and that the

petitioner chose to give its own offer without giving any discount and the petitioner was not prevented in any manner whatsoever from giving revised price bids and final bid indicating any further reduction by way of discount if they so chose. However, the petitioner did not submit the price bids showing the discounts and it was petitioner's own decision. It is further stated that during the Standing Committee meeting respondent No. 2 was not called for further reduction in prices as alleged or otherwise. The The Standing Committee took the decision in its discretion and competence keeping in mind the offer of respondent No. 2 regarding further discount if both the works are given to respondent No. 2. The allegation that respondent No. 2 was allowed to reduce the price behind the back of the petitioner is denied.

6.5 In his affidavit of even date, the Executive Engineer (Elect. & Mech.) of the Corporation has stated that on 9.12.1997 in presence of both the parties, the revised price bids were opened and, therefore, both the parties were given full opportunity in negotiation to submit their final revised price bids. The averments made by the petitioner about the technology and methodology are denied. It is also stated that the petitioner knew about the discount offered by respondent No. 2 in their revised price bid on 9.12.1997 and the petitioner has never desired nor quoted any such discount even after 9.12.1997. The allegation that the petitioner was prevented from giving joint offer for the two tenders is denied. There was nothing to prevent the petitioner from giving such discount while submitting its final revised price bid on 16.1.1998.

#. Affidavit in reply is also filed by Mr J.S. Doshi, Commercial Manager of respondent No. 2-Company on 7.4.1998 stating that after quoting its revised price of Rs. 1,99,50,000/- for Atladra STP and Rs. 2,12,89,500/for Gajarawadi STP, respondent No. 2 had offered to give discount of 2.5% on the quoted prices in case orders for both the plants were awarded to respondent No. 2. It is further averred that the petitioner-Company was aware about such additional discount offered by respondent No. 2 in the revised price bid and the petitioner-Company did not object to the consideration of the said additional discount in the revised price bid. Hence, the petitioner-Company is estopped from challenging the consideration of the said discount offered by respondent No. 2. It is submitted that respondent No. 2 had offered the aforesaid discount if both the projects were given to them, because getting both the projects would save them the additional cost of drawing, engineering, design and project management cost, the benefit of which they wanted to pass on to respondent No. 1

Corporation. It is a common practice to offer additional discount, and the petitioner-Company could have availed of the opportunity to offer such additional discount, but chose not to do so, even at the time of price negotiation on 16.1.1998. Respondent No. 2-Company has undertaken several Digester Dome replacement work which is the most critical and time consuming job in both these tender works. Respondent No. 2-Company have carried out 10 such replacement of Digester Dome at Municipal Corporation at Delhi, whereas the petitioner-Company has not carried out the work of replacement of Digester Dome and have no experience in the said regard which is basic and fundamental thing required for carrying out and in completing the revamping work of Atladra STP and Gajarawadi STP. The details of works of complete digesters constructed by respondent No. 2 and replacement of digester domes carried out by respondent No. 2 are produced at Annexure "V" to the reply affidavit.

In the reply affidavit on behalf of respondent No. 2, it is further submitted that when the revised price bids were opened on 9.12.1997, the price offered by respondent No. 2 was lower than that offered by the petitioner by a substantial margin for both the plants, but surprisingly on 16.1.1998, the petitioner-Company had some price negotiations without the knowledge of respondent No. 2-Company and suprisingly, without any change in the speifications and scope of work, the petitioner reduced the price for Atladra by Rs. 67 lacs (approx.) and Gajrawadi STP by Rs. 19 lacs (approx.). It was because of the knowledge of the offer of respondent No. 2 opened on 9.12.1997 that the petitioner had further reduced its bids on 16.1.1998. When the Corporation permitted the petitioner-Company to negotiate and revise the price on 16.1.1998, and that since respondent No. 2 was earlier lowest, on 23.1.1998 the Corporation called upon respondent No. 2 to negotiate and make the final offer. Accordingly respondent No. 2 further reduced the prices for the two plants with a further discount if both the contracts were awarded to respondent No. 2. The details of the offer are already given as per schedule reproduced in this judgment.

#. Affidavits in rejoinder are filed by Mr P.D. Nathani, Manager of the petitioner-Company on 30.4.1998 making the following averments and submissions :-

8.1 It was on account of the suggestion of the petitioner that digester dome should be constructed of RCC instead of Mild Steel dome suggested by respondent No. 2 that the Corporation decided to go for RCC Dome and called for submitting revised price bids as per their letters dated

8.12.1997. After having come to know the offer of the petitioner made on 16.1.1998, respondent No. 2 reduced its offers for Atladra and Gajarawadi plants and, therefore, it

was expected from the respondent-Corporation to discuss and finalize the price bids in presence of both the parties after receiving the final offers in sealed cover and to accept the lowest price by holding open discussions which may avoid any allegation of arbitrariness, mala fides and favouritism. However, the respondent-Corporation did not accept such well-known procedure.

8.2 Respondent No.2 while giving revised offer on 23.1.1998 had given further discount but had not given the discount if both the plants were to be given to them and that such offer was subsequently created so as to obtain such contracts in collusion with the respondent-Corporation.

8.3 The price offered by the parties was required to be compared taking into account the operation and maintenance costs which was also required to be mentioned in the tender documents and that comparing the same, it is clear that the petitioner's offer is lower for both the plants even without any additional discount to be offered by the petitioner if both the contracts are awarded to the petitioner. The following figures are given to support that contention :-

	Price offered by petitioner	Price offered by Respondent No.2
For Atladra Project :		
i) Price quoted	1,91,07,398	1,89,52,500
ii) O&M cost for two years at the rate of Rs. 7.14 lacs in case of petitioner and Rs.10.83 lacs in case of Resp.No.2	14,28,000	21,66,000
	2,05,35,398	2,11,18,500
iii) Less: Scrap value	50,000	65,000

Total Cost	2,04,85,398	2,10,53,000

For Gajarawadi Project :

i)	Price quoted	2,04,43,254	2,00,12,130
ii)	O&M cost for two years at the rate of Rs. 7.14 lacs in case of petitioner and Rs.10.83 lacs in case of Resp.No.2	14,28,000	21,66,000
		2,18,71,254	2,21,78,130
iii)	Less: Scrap value	50,000	65,000
Total Cost		2,18,21,254	2,21,13,130

Project at:	Petitioner offer	Resp.No. offer	Difference in offier
Atladra	Rs.2,04,85,398	Rs.2,10,53,500	Rs.5,68,102
Gajarawadi	Rs.2,18,21,254	Rs.2,21,13,130	Rs.2,91,876
			Rs.8,59,978

It is submitted on the basis of the aforesaid calculations that the price offered by the petitioner-Company for both the contracts, without any additional discount, is lower than the price offered by respondent No. 2 by Rs. 8,59,978/- and that the petitioner-Company is further prepared to offer 5% discount if both the contracts are awarded to it which work out to Rs. 19,72,532-60 making it a final price of Rs. 3,74,78,119-40 as against the total cost of Rs. 4,31,66,630/- offered by respondent No. 2 and that the Corporation stood to benefit to the tune of Rs.28,32,150-60 when both the contracts are awarded to the petitioner.

8.5 It is further averred in the rejoinder affidavit as under :-

"The respondent-Corporation ought to have inquired into the details and datas regarding working of respondent No. 2, its experience and knowledge in the area of such highly skilled technical contracts, which the respondent-Corporation has failed to do so. I say that respondent No. 2 has failed to satisfactorily complete its project in respect of digester domes and the workmanship of respondent no. 2 has proved a total failure, which is crystal clear from the fact that respondent No. 2 was given contract by Municipal Corporation of Delhi for its Sewerage Treatment Plant at Okhla for digester dome replacement work. In the year 1984-85 respondent No. 2 was to replace 10 nos. of digester domes. 6 new digesters with 27 diameters and 3 gas holders of 25 diameters were to be installed as per the contract. It is pertinent to mention that both the said projects are not yet completed. Even penumatic testing og domes to check porosity is not yet over. Cables and electric panels are yet to be installed. This speaks volumes about the workmanship of respondent No. 2. Whereas, against that the petitioner has wide experience and having foreign collaboration, and as a result of that the petitioner has high tech know how and expert technology in this field. The petitioner-Company is in operation since 1951 and the petitioner has wide experience in the area of construction/replacement of digester domes, installation of new digester domes etc. For ready reference, a catalogue containing customers for whom the petitioner has worked is annexed hereto and marked Annexure P2 to this affidavit in rejoinder."

#. On behalf of respondent No. 2 affidavit in surrejoinder is filed and the allegations made about the knowledge, performance of respondent No. 2 in the rejoinder affidavit are denied. It is submitted that various factors have been considered by respondent -Corporation while accepting the technical bid of respondent No. 2-Company. It is also submitted that the respondent-Corporation had made it clear that the operation and maintenance cost of the plants for one year will be included and accordingly in the price offered the operation and maintenance costs of both the plants for one year is included. It is also stated that the respondent-Corporation had not asked either of the parties to quote their prices by including operation and maintenance costs for the period exceeding one year. It is submitted that the operation and maintenance cost for additional two years was not a condition of tender. The figures mentioned

in the rejoinder affidavit are contested as not correct and absolutely irrelavent.

##. At the hearing of the petition, the learned counsel for the petitioner took the Court through the pleadings and submitted that the opportunity given to respondent No. 2 to reduce its price after 16.1.1998 was behind the back of the petitioner and, therefore, the entire process was vitiated as respondent No. 2 could reduce its offer after having come to know about the offer made by the petitioner. Further detailed submissions are referred to hereinafter.

##. On the other hand, Mr P.G. Desai, learned counsel for respondent No. 1 - Corporation and Mr S.N. Shelat with Mr Adesara for respondent No. 2-Company submitted that in view of the decisions of the Apex Court in the case of Tata Cellulor vs. Union of India, AIR 1996 SC 11, Sterling Computers vs. M/s. M & N Publications Ltd. AIR 1996 SC 51, and the decision of this Court in the case of Degremont (I) Ltd. vs. Municipal Corporation, Surat, 37(2) GLR 23, this Court would not act as an appellate authority and that limited scope is merely to see whether the decision making process is fair or not. It is submitted that once the petitioner missed the bus by not quoting addditional discount if both the contracts were awarded to the petitioner, it is not open to the petitioner to make any grievance against such additional discount already offered by respondent No. 2-Company being taken into account by the Standing Committee. It is submitted by the learned counsel for the respondents that once the Corporation found both the petitioner and respondent No. 2 to be competent from the technical point of view, the Corporation considered the price factor and found that the price bids offered by respondent No. 2 were the lowest in view of the additional discount if both the contracts were to be awarded to respondent No. 2 and that such practice of giving additional discount if both the contracts are awarded to that particular party is very well-known and that such additional discount cannot be said to be a conditional offer as held by this Court in the order dated 30.12.1993 in Special Civil Application No. 10614 of 1993 which order was confirmed by order dated 7.3.1994 in Letters Patent Appeal No. 85 of 1994.

In view of the above, it is submitted that the petition deserves to be dismissed. It is also stated that the contracts were already awarded by the respondent-Corporation to respondent No. 2 on 27.3.1998 and work orders are also given but in view of the order of status quo, no work is being carried out and, therefore, in view of urgency of the projects, the ad-interim injunction

may be vacated.

12. Before dealing with the rival contentions on facts, it is necessary to set out the principles on the touch-stone of which this Court is required to examine the rival contentions. In the case of Tata Cellular v. Union of India, AIR 1996 SC 11, the Hon'ble Supreme Court has laid down the following broad principles which the Court should bear in mind while examining the challenge to selection of a party for awarding contracts :-

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness but must be free from arbitrariness not affected by bias or actuated by malafides.

(6) Quashing decisions may impse heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Since the duty of the Court is to confine itself to the question of legality, within the frame work of the aforesaid broad principles, the Court is required to ask the following questions :-

(1) Whether a decision-making authority exceeded its powers ?
(2) committed an error of law.
(3) committed a breach of the rules of natural justice.
(4) reached a decision which no reasonable Tribunal would have reached or.
(5) abused its powers.

Thereafter, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of th duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :-

(i) Illegality : This means the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.
(ii) Irrationality, namely, Wednesbury unreasonableness.
(iii) Procedural impropriety.

In all these cases the test to be adopted is that the Court should, `consider whether something has gone wrong of a nature and degree which requires its intervention..."

What is this charming principle of wednesbury unreasonableness ?"

Lord Greene M.R in R. Vs. Tower Hamlets London Borough Council, ex Chetnik Development Ltd., (1988) AC 858 at page 873 has summarised the principle as follows :-

"The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or conversely, have refused to take in account or neglected to take in account, matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to the conclusion so unreasonable that no reasonable authority could ever have come to it.. In such a case, again, I think the Court can interfere. The power of the Court to interfere in each case is not as an appellate authority to override a decision of

> the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confined in them..."

The modern statement of the principle is found in the speech of Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (1985 (1) AC 374).

> "By "irrationally" I mean what can now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses v. Wednesbury Corporation (1948) 1 KB 223 (233). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at."

13. Keeping the aforesaid broad framework of principles in mind, for applying the aforesaid standards for testing the legality of the impugned resolutions passed by the Standing Committee of the respondent Corporation on 19-3-1998, the following factual aspects are required to be cleared.

The learned counsel for the petitioner has urged that the offer of special discount by respondent No. 2 was not made known to the petitioner and that in any case, the petitioner was prevented from making such an order.

Since the revised price bids were opened on 9.12.1997 in presence of the representatives of the respective parties, on the basis of the material on the record of these proceedings it would be reasonable to assume that both the parties i.e., petitioner as well as respondent No. 2 were aware of the offers made by each other. It is true that the offer made by respondent No. 2 in its letter dated 8.12.1997 (which was opened on 9.12.1997) contained the revised price bid in the Annexures to the letter, while the offer of additional or special discount of 2.5%, if both the contracts were awarded to the respondent No. 2, was contained in the body of the letter but not in the annexures to the letter. In this petition under Article 226 of the Constitution, however, it is not possible to give a finding that only the revised offer incorporated in the annexures to the letter dated 8.12.1997 of Respondent No. 2 was disclosed to the petitioner and not the contents of the said letter dated 8/12/1997. The Court must, therefore, proceed

on the footing that the entire revised price bid of respondent No. 2, including the offer of 2.5% discount if both the contracts were awarded to the respondent No. 2, was known to the petitioner. Even then the petitioner did not offer any additional or special discount, if both the contracts were to be awarded to the petitioner. In fact, there is no letter from the petitioner to the respondent Corporation of any date prior to or on the date of meeting of the Standing Committee making the grievance that its representative was prevented from giving such an additional or special discount by the Municipal Commissioner and the City Engineer. Such a grievance is made for the first time before this Court, through an amendment which was of course given on 27th March, 1998, before issuance of the notice by this Court. Hence, there is no substance in any of the aforesaid grievances.

14. Before proceeding further, it is also required to be made clear that giving of such additional or special discount, if both the contracts are awarded to the party, cannot be said to be a conditional offer as already held by this Court in Special Civil Application No. 10614 of 1993 decided on 30.12.1993 which decision was confirmed by the Letters Patent Bench in L.P.A No. 85 of 1994 decided on 7.3.1994. Hence, the contention urged on behalf of the petitioner that such special or additional discount offered by the respondent No. 2 ought not to have been considered, cannot be accepted.

15. The first legal challenge made on behalf of the petitioner is that the petitioner and respondent No. 2 were not called for negotiations or submitting final revised price bids on the same date and at the same time but respondent No. 2 was called upon to submit the final price bid on 23.1.1998, after coming to know the final price bid offered by the petitioner on 16.1.1998, and therefore, the petitioner was at a disadvantage, and thus, the respondent-Corporation had acted arbitrarily in considering the offer made by respondent No. 2 behind the back of the petitioner.

The stand of the Corporation in its Affidavit-in-Reply appears to be that the offer made by the petitioner on 16.1.1998 was not disclosed to respondent No. 2. That statement prima facie appears to be true because if offer made by the petitioner on 16.1.1998 were disclosed to respondent No. 2, in all probability respondent No. 2 would have reduced its offers so as to bring them below the offers made by the petitioner - both for the Atladra plant as well as for the Gajarawadi plant, but as a matter of fact, the offer of respondent No. 2 turned out to be lower

only for the Gajarawadi Plant, whereas its offer for the Atladra Plant remained higher. It, therefore, appears to the Court that while the conduct of the respondent-Corporation cannot be stigmatised as arbitrary, the respondent-Corporation acting through the Standing Committee or the Municipal Commissioner did not act in a prudent manner, in not requiring the petitioner as well as respondent No. 2 to submit their final bids on the same date and at the same time.

There may be difference of opinion on the question as to which is the best method - Whether to call the parties for open negotiations in presence of each other or whether the parties should be required to submit their respective final bids in sealed envelopes on the same date and at the same time or whether a technically more competent party should be first confronted with the final offers of the other less competent parties so as to persuade the more competent party to reduce its bid. It would all depend on the facts and circumstances of each case and nature of the project and the contract and the competence of parties.

In view of the stand of the respondent-Corporation that both the parties (petitioner-Company and respondent No.2-Company) are equally competent, it must be held that the procedure followed by the respondent-Corporation is not calling upon the parties to submit their final bids on the same date was not the best possible procedure. However, the Court would not interfere with the decision of an authority merely because the best possible procedure was not followed.

16. The next major grievance urged on behalf of the petitioner relates to the date when the additional or special discount was offered by respondent No. 2. The averments made in the petition created an impression as if after the Municipal Commissioner sent recommendations to the Standing Committee to award contract for the Atladra Plant to the petitioner and the contract for Gajarawadi plant to respondent No. 2 (on 16-3-1998), the Standing Committee gave an opportunity to respondent No. 2 to offer such additional or special discount, and therefore, the Standing Committee acted arbitrarily in giving such an opportunity to respondent No. 2, without giving a similar opportunity to the petitioner.

However, in the affidavit filed on behalf of respondent No. 2 as well as in the affidavit filed on behalf of the respondent-Corporation, it is stated that first such additional discount at the rate of 2.50% offered by respondent No. 2 was contained in its revised price bid opened on 9.12.1997 in presence of the petitioner i.e.

2.50% on Rs. 1,99,50,000/= for the Atladra Plant and 2.50% on Rs. 2,12,89,500/= for Gajarawadi plant; and again on 23.1.1998, while reducing its separate price bids for the two plants to Rs. 1,94,51,250/= and Rs. 2,02,25,025/= respectively, respondent No. 2 reiterated its offer for special discount with the modification that it offered 5% discount on the above price of Rs. 1,99,50,000/= for the Atladra plant and 6% discount on Rs. 2,12,89,500/= for the Gajarawadi plant.

Unfortunately, the letter on behalf of respondent No. 2 containing the aforesaid offer of joint discount or reduction in the price even for individual contracts said to have been made on 23.1.1998 is not produced alongwith any of the affidavits filed on behalf of the respondents. This reference to absence of a copy of the said letter on record of the present proceedings is required to be made because serious grievance has been made on behalf of the petitioner that if such an offer (for addition or special discount of 5% and 6% if both the contracts were to be awarded to respondent No. 2) were on the record of the Corporation, a senior IAS Officer like the Municipal Commissioner, would not have missed the same while making recommendations to the Standing Committee on 16.3.1998 i.e., 7 weeks after the offer was made by respondent No. 2 on 23.1.1998. Although the two separate recommendations dated 16.3.1998 of the Municipal Commissioner are produced at the hearing of the petition, no affidavit is filed by the Municipal Commissioner but affidavits are filed by the Asstt. Municipal Commissioner and the Executive Engineer of the Corporation. It is , therefore, submitted that if (as averred on behalf of the respondents) such an offer was made on 23.1.1998, and if the Standing Committee could notice the additional or special discount, it would be too much to believe that the Municipal Commissioner and the City Engineer would not have noticed such an important additional or special discount, especially because the discount stated to have been offered at the time of opening of the revised price bids on 9.12.1997, was only 2.5%, whereas the offer for such additional or special discount said to have been made on 23.1.1998 was 5% for Atladra Plant and 6% for Gajarawadi Plant, on the respective prices offered on 9.12.1997.

17. The objections raised by the learned counsel for the petitioner are indeed formidable. The two affidavits filed on behalf of the respondent-Corporation are delightfully vague on the question as to whether the Municipal Commissioner had noticed the special discount offered either in the revised price bid of respondent No. 2 opened on 9.12.1997 or in the final price bid offered by respondent

No. 2 on 23.1.1998. Indeed the Municipal Commissioner's recommendations dated 16.3.1998 also do not contain even a whisper about such offer. However, the learned counsel for the petitioner submitted at the hearing that the Municipal Commissioner was of the view that in order to get both the projects completed in time, the Atladra Plant contract should be awarded to the petitioner and the Gajarawadi Plant contract should be awarded to Respondent No. 2 and that since more importance was given to the time factor in view of the notice of the GPCB and pendency of suo-moto proceedings before this Court, the special discount aspect, if both contracts were to be awarded to respondent No. 2, was not at all referred to in the recommendations.

Even if that was the view of the Municipal Commissioner, the Municipal Commissioner was expected to bring this important aspect to the notice of the Standing Committee while making the recommendations. So also, a prudent man acting in place of the Standing Committee, inclined to give due weightage to the special discount offered by Respondent No. 2 might have required both the parties to indicate such special discount, before taking the final decision, especially because both the parties are considered by the Corporation to be equally competent. However, since imprudence is not necessarily arbitrariness, this Court would not like to interefere with the decision of the Standing Committee at this stage in view of the following considerations :-

(i) The constraints of judicial review require that the Court should not sit in appeal over the decision of a statutory authority.

(ii) Replacement/installation of the sewage treatment plants is required to be done on an urgent priority basis, and therefore, any intervention by this Court at this stage, would mean that the projects of replacement/ installation of the sewage treatment plants and actual commencement of their operation would further be delayed for quite sometime.

(iii) As quoted with approval by the Apex Court in case of Tata Cellular Limited (Supra), Clive Lewis has observed in his Judicial Remedies in Public Law 1992 Edition at page 294-5 as under :-

"The Courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burden on the administration, divert resources towards reopening

> decision, and lead to increase in unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The Courts nowadays recognise that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the Courts' remedial discretion and may prove decisive. This is particularly the case when the challenge is procedural, rather than substantive, or if the Courts can be certain that the administrator would not reach a different decision even if the original decisions were quashed. Judges may differ in the importance they attach to the disruption that quashing a decision will cause. They may also be influenced by the extent to which the illegality arises from the conduct of the administrative body itself, and their view of that conduct.

After all, offering special discount, if both the contracts are to be awarded to the same party, is a well known trade practice which the petitioner could have offered on its own. If this Court were to intervene at this stage, there will be further delay in the commencement of the two projects and in the intervening period there may be cost escalation which may further complicate the issue.

19. In view of the above discussion, the petition is dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated.

Sd/-

May 15, 1998 (M.S. Shah, J.)

At this stage, the learned counsel for the petitioner prays that the ad-interim relief granted earlier may be continued for four weeks in order to enable the petitioner to have further recourse in accordance with law. In view of the facts and circumstances of the case, it is directed that the ad-interim relief granted earlier shall continue till May 29, 1998.

Sd/-

May 15, 1998 (M.S. Shah, J.)

Prakash*