G.J. FERNANDEZ

v.

STATE OF KARNATAKA & ORS.

FEBRUARY 1, 1990

[S. RANGANATHAN AND K.N. SAIKIA, JJ.]

Constitution of India 1950: Articles 226 and 136—Award of contract by Karnataka Power Corporation to Mysore Construction Co.—Validity of—Eligibility of party to apply for State contracts—Supply of tender documents—Essentiality of—Comparative merits of parties—Not for Court to decide.

The petitioner aggrieved by the award of a contract by the respondent in favour of Mysore Construction Company (M.C.C.) filed a Writ Petition and a further Writ Appeal in the Karnataka High Court. Being unsuccessful there he came up in appeal before this Court by way of special leave.

The single judge of the High Court had taken the view that prerequisites for the supply of tender forms were contained in Para I of the Notification Inviting Tender (NIT) and the details called for in Para V could be supplied any time. The Division Bench on appeal did not express any opinion regarding the requirements set out in para V but was of the view that there was nothing unfair or arbitrary about the award of the contract to the MCC. In appeal before this Court the plea of the petitioner is that the Karnataka Power Corporation should not have accepted the tender of MCC, as the MCC did not fulfil certain preliminary requirements contained in Para I and V of the NIT which according to him have to be fulfilled before the forms of tender could be supplied to any intending contractor.

Dismissing the appeal of the petitioner, the Court,

HELD: Para V cannot but be read with para I. The supply of some of the documents referred to in para V is indispensable to assess whether the applicant fulfills the prequalifying requirements set out in para I. It will be too extreme to hold that the omission to supply every small detail referred to in para V would affect the eligibility under para I and disqualify the tenderer. [240E-F]

A **If a party has been consistently and *bona fide* interpreting the standards prescribed by it in a particular manner, this Court should not interfere though it may be inclined to read or construe the conditions differently. [241E]**

Assuming for purposes of argument that there has been a slight B **deviation from the terms of the NIT, it has not deprived the appellant of its right to be considered for the contract. On the other hand its tender has received due and full consideration. If, save for the delay in filing one of the relevant documents, MCC is also found to be qualified to tender for the contract, no injustice can be said to have been done to the appellant by the consideration of its tender side by side** C **with that of the MCC and in the KPC going in for a choice of the better on the merits. [242E-G]**

The comparative merits of the appellant vis-a-vis MCC are, however, a matter for the KPC to decide and not for the Courts.[243C-D]

D *Ram Gajadher Nishad* **v.** *State of U.P.*, **(C.A. 1819/89);** *Ramana Dayaram Shetty* **v.** *The International Airport Authority of India & Ors.*, [1979] (3) **SCR 1014, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1027 of 1990.

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From the Judgment and Order dated 27.10.1989 of the Karnataka High Court in Writ Appeal No. 2017 of 1989.

K. Parasaran, C.S. Vaidyanatha, S.R. Bhat, S.R. Setia, K.V. Mohan and Mrs. Sunitha B. Singh for the Petitioner.

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K.N. Bhatt, Rajinder Sachhar, Vineet Kumar, B. Mohan and K.G. Raghvan for the Respondents.

The Judgment of the Court was delivered by

G **RANGANATHAN, J.** The petitioner is aggrieved by the award of a contract by the Karnataka Power Corporation Ltd. (K.P.C.), an instrumentality of the State of Karnataka, in favour of the Mysore Construction Co. (M.C.C.). His writ petition and a further writ appeal in the Karnataka High Court having been unsuccessful, he has preferred this Special Leave Petition from the judgment of the High Court in H the writ appeal. We have heard counsel for both sides at length. We

grant Special leave and proceed to dispose of the appeal. A

Though, at an earlier stage of the proceedings there were some allegations of favouritism, the plea of the petitioner, as urged before us, is that the K.P.C. should not at all have entertained the tender of M.C.C. as the M.C.C. did not fulfill certain preliminary requirements which, under the Notification Inviting Tenders (N.I.T.), had to be B fulfilled even before the forms of tender could be supplied to any intending contractor.

The contract pertained to the construction of a Main Station Building of a Power House at the Raichur Thermal Power Plant at an estimated cost of about Rs.1.8 crores. The N.I.T. dated 27.12.1988 C invited tenders from registered contractors of appropriate class. Paragraph I of the notification listed three "Minimum qualifying requirements" viz., that the intending tenderer:

(1) should have executed civil and architectural works including insulation in a power plant/industrial complex, preferably in D power plant;

(2) should have executed atleast 1000 cubic metres per month of concrete pouring and atleast 300 cubic metres per month of brick work at one site; and

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(3) should have had an annual turnover of atleast 1 crore for each of the preceding three years.

Para V required the intending tenderers to furnish the following information "along with the application for issue of blank tender books", namely: F

(a) Audited Balance Sheet/Certificate from Chartered Accountant for preceding three years;

(b) Latest income-tax clearance Certificate;

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(c) Copy of the Registration Certificate

(d) Annual output of the works of all the above nature at any site accompanied by a certificate from the organisation for whom the tenderer had carried out the works furnishing details such as rate of pouring of concrete. manufacturing of hollow concrete H

block, precast concrete block, ... etc., and period of completion scheduled/envisaged, equipments and their deployment i.e., man months etc.

The N.I.T. specified January 17, 1989, as the last date for receipt of application forms for issue of blank tender books. The issue of blank tender books was to be between 23rd January to 27th January, 1989 and the completed tender books had to be submitted by 3.00 p.m. on 6.2.89. It is common ground, however, that subsequently this time frame was altered. The last date for receipt of application form for issue of blank tender books remained as 17th January, 1989 but the other items were altered to read as follows:

"1. Last date for receipt of clarification: 10.2.89

2. Period to issue blank tender books: 10-2-89 to 16.2.89

3. Last date and time for receipt of completed tender books: 27-2-89 upto 3 P.M.

It appears that six parties applied for tender books. These were scrutinised with reference to the pre-qualifying requirements and data on experience, work done etc. as furnished by each of the applicants. Four of the firms were found to be pre-qualified by the Chief Engineer and tender books were issued to them. Only three of them, however, submitted completed tender books by February 27, 1989. These tenders were examined by the Chief Engineer as well as an independent firm of Engineering Consultants, namely, Tata Consulting Engineers (T.C.E.). Both the Chief Engineer as well as T.C.E. recommended acceptance of the tender of M.C.C. (which was the lowest tender) in view of the fact that M.C.C. had adequate experience in the construction of R.C.C. works and they were capable of mobilising the work-force required for the work. It may be mentioned that after making necessary adjustments it was found that the tender of M.C.C. was Rs. 15 lakhs less than the tender of the petitioner.

The principal argument advanced on behalf of the petitioner is that paragraphs I and V of the N.I.T. specified certain pre-qualifying requirements. Unless these requirements were fulfilled, the contractor was not even entitled to be supplied with a set of tender documents. It is submitted that M.C.C. did not comply with these requirements and

hence its application for tender forms should have been rejected at the outset. A

The learned single Judge in the High Court went into the matter in great detail and came to the conclusion that the petitioner's contentions were not well founded. He took the view that the pre-requisites for supply of tender forms were only the three conditions set out in B para I of the N.I.T. and that the details called for in para V could be supplied at any time. He, therefore, rejected the petitioner's contention that the extensions of time given to M.C.C. to submit the tender with requisite clarifications were not warranted. The Division Bench, on appeal, did not express any clear opinion as to the nature of the requirements set out in Para V but was satisfied, on an overall view, C that there was nothing unfair or arbitrary about the award of the contract to the M.C.C. It observed:

> "We have carefully considered these contentions. We are of the view that while exercising jurisdiction under Article 226 of the Constitution, it is not for us to reappraise the D facts on merits and come to one conclusion or other with regard to these aspects of the matter. Why we are obliged to say this is if the Court is satisfied there is nothing arbitrary or unfair in the award of the contract, it cannot convert itself into a super technical Committee and find out whether the requirements have been fulfilled or not. While E saying so, we are conscious of the fact that what is argued before the learned single Judge is with reference to prequalifications or in other words the eligibility. Nevertheless where the person who is incharge of award of contract was satisfied about the eligibility and that too after consultancy through an independent agency like Tata's, we cannot F come to a contrary conclusion and then say a particular certificate does not in terms meet the requirement laid down under clause V(d). That we consider is no function of the Court. After all the object of tender in most matters like this is to satisfy the authority that the person who undertakes to execute the work or the person who offers G the tender would be really worth and then he would perform to the best of his ability and to the requirement of the person who wants to have the contract. If these basic principles are kept in mind, we do not think we can introduce nuances of law to enter into the realm of contract which we consider should be kept out of the purview of writ H

jurisdiction. From this point of view, we are unable to find out any justification to interfere with the order of the learned single Judge."

The first question that falls to be considered is as to whether there is any difference between the requirements in paras I and V and whether only para I and not para V—sets out the pre-conditions of eligibility to submit a tender for the contract. In our opinion, it is difficult to accept the view of the learned single Judge of the High Court that it is only para I that stipulates the pre-conditions and that all the documents referred to in the other paras can be supplied at any time before the final award of the contract. It is seen that paras I to XIII set out various terms and conditions some of which relate to the pre-tender stage and some to later stage. For instance, paras X and XI come into operation only after the tenders are received and para XII makes it clear that the K.P.C.'s decision regarding the fulfilment of para IV may remain open right till the actual award of the contract. However, on the contrary, the condition set out in para VI has clearly to be fulfilled even before asking for tender forms. Para V seems to stand somewhere in between. If one reads paras I and V together, it will be seen that a common thread runs through them and that they are really meant to supplement each other. It is in order to satisfy itself that the requirements of para I(1) and (2) are fulfilled that the K.P.C. calls for the certificates mentioned in para V and the fulfilment of the requirement in para I(3) has obviously to be verified by reference to the audited balance sheets called for under clause (a) of para V. The reference in clause (d) of para V to the "annual output of the works of the above nature" is also obviously a reference to the works of the nature described in para I. It is clear that at least some, if not all, of the documents referred to in para V, are intended to verify the fulfilment of the three prequalifying requirements of para I. The stipulation of the time element within which the information asked for in para V should be supplied is also of some significance; it specifically requires the information to be supplied along with the application for tender forms. As pointed out by this Court in its judgment dated 3.3.1989 in *Ram Gajadher Nishad* v. *State of U.P.*, C.A. 1819/89, an intending tenderer can be perhaps letigimately excluded from consideration for a contract, if the certificates such as the ones under clauses (b) and (c) of para V are not furnished. It may not, therefore, be correct to read para I in isolation and treat it as the only condition precedent for the supply of forms of tender. The more harmonious and practical way of construing the N.I.T. is by saying that, before the tender books can be supplied, an intending tenderer should satisfy the K.P.C, by supplying such of the documents called for in para V as are material in assessing the fulfilment of the condition in para I, that he fulfills the three

conditions set out in para I. It seems clear to us that, apart from para I, there are some other requirements in the N.I.T. which have to be complied with before the applicant can be eligible for supply of tender forms. These include, if not all, at least such of those documents referred to in para V(d) as have a direct bearing on the three conditions outlined in para I.

Bearing this approach in mind, let us examine to what extent, according to the appellants, the M.C.C. failed to fulfil the N.I.T. requirements:

So far as para I is concerned, two defects were pointed out. The first was that, as against the requirement that the applicant "should have executed ..... works including insulation", the certificate of 25.1.1989 produced by the M.C.C. was only to the effect that it "*is constructing*" a building in Hyderabad for the National Geophysical Research Institute "in which they have done wall insulation and roof insulation for airconditioning work". The second was that, as against the second requirement of para I that the applicant should have executed "at least 300 cubic metres *per month* of brick work at one site, the certificate from Vasavadatta Cements produced by the M.C.C. on 1.2.89 only stated that it had "constructed over 300 cubic meter of brick masonry for the packing plant and D.G. building totalling to 327.29 cubic metre *during the month* of June 1985". These certificates, it is submitted, do not come up to the requirements of Para I. We think that this criticism, based on the differences in wording as between the language of para I and the certificates produced by the M.C.C., is too weak to be accepted. It was for the K.P.C. to consider the sufficiency of these certificates. The conditions only required that the applicant should supply information to show that he had experienced in insulation work and that he could carry out brick work in a month to the extent indicated. It was for the K.P.C. to assess the value of the certificates furnished in this regard and if the K.P.C. considered them sufficient to warrant the issue of a tender form to the applicant, we do not think we should interfere with their decision.

So far as para V is concerned, the criticism is that two items of information concerning the requirements of clause (d) of Para V were not supplied along with the request for application of tender forms but were supplied much later. It was only on 21.6.89 that M.C.C. furnished a certificate that they had executed "hollow cement blocks work" for the Indian Telephone Industries Ltd. but even that certificate gave no details. It vaguely stated that "the item had been executed as per our bill of quantities". Again, it was only on 18.8.89 that M.C.C. produced a certificate from Vasvadatta Cements regarding the work of concreting done by it. It is pointed out incidentally that

this is also a part of the specific requirements in para I and, as such, the M.C.C. cannot be said to have satisfied the preliminary conditions rendering it eligible to tender for the contract. The second of these does not really cause much difficulty. For, even as early as 11.1.89 (along with its application for tender dated 3.1.89) M.C.C. had produced a certificate from the K.P.C. itself that it had done 35,000 cubic metres of concreting during 7 months and this was apparently considered sufficient for the K.P.C. subsequently called for a certificate only regarding brick work. This leaves only the first of the criticisms that the details regarding hollow cement block works done by the M.C.C. was furnished only on 21.5.89.

Should the M.C.C. have been denied altogether the right to tender for the contract consequent on the delay in submitting this document is the second question that arises for consideration. Sri Parasaran, for the appellant would have us answer this question in the affirmative on the principle enunciated by Frankfurter, J. and approved by this Court in *Raman Dayaram Shetty* v. *The International Airport Authority of India & Ors.*, [1979] 3 S.C.R. 1014. Bhagwati, J. (as his Lordship then was) formulated in the following words a principle which has since been applied by this Court in a number of cases:

> "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. This rule was enunciated by Mr. Justice Frankfurter in *Viteralli* v. *Seton*, 359 U.S. 535: 3 Law. Ed. (Second series) 1012, where the learned Judge said:
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> An executive agency must be regorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now add, rightly so. He that takes the procedural sword shall perish with the sword."
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> "This Court accepted the rule as valid and applicable in India in *A.S. Ahluwalia* v. *Punjab*, [1975] 3 SCR 82 and in subsequent decision given in *Sukhdev* v. *Bhagatram*, [1975] 3 SCR 619. Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanation

from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade's Administrative Law 4th edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law.

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It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law, the Ist respondent was not entitled to act arbitrarily in accepting the tender of the 4th respondents, but was bound to conform to the standard or norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by the Ist respondent was discriminatory having no just or reasonable relation to the object of inviting tenders namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running a IInd Class restaurant should be awarded was laid down, the Ist respondent was not entitled to depart from it and to award the contract to the 4th respondents who did not satisfy the condition of eligibility prescribed by the standard or norm. If there was no acceptable tender from a person who satisfied the condition of eligibility, the Ist respondent could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norm, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of the 4th respondents. When the Ist respondent entertained the tender of the 4th respondents even though they did not have 5 years' expe-

rience of running a IInd Class restaurant or hotel, denied equality of opportunity to others similarly situate in the matter of tendering for the contract. There might have been many other persons, in fact the appellant himself claimed to be one such person, who did not have 5 years' experience of running a IInd Class restaurant, but who were otherwise competent to run such a restaurant and they might also have competed with the 4th respondents for obtaining the contract, but they were precluded from doing so by the condition of eligibility requiring five years' experience. The action of the Ist respondent in accepting the tender of the 4th respondents, even though they did not satisfy the prescribed condition of eligibility, was clearly discriminatory, since it excluded other person similarly situate from tendering for the contract and it was plainly arbitrary and without reason. The acceptance of the tender of the 4th respondents was, in the circumstances invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhibiting arbitrary action."

Shri Vaidyanathan, who supplemented the arguments for the petitioner, contended that this rule has been demonstrably infringed in the present case, even on the K.P.C.'s own showing. He cited two documents filed by the K.P.C. to substantiate this contention. The first is "A note on the tendering system in K.P.C." which, *inter alia*, reads:

"2.00 Brief tender notification containing description of the work, estimated cost of the work, period of completion and the minimum prequalifying/eligibility conditions required and other general requirements such as the value/ fashion of C.M.D. to be furnished, latest certificates works, and furnishing of audited balance sheet etc., duly indicating the dates for issuing and receipt of tenders is widely circulated and also advertised in leading newspapers for the information of the intending tenderers. Where prequalifying conditions are notified in the notification, the applications for the issue of tenders is carefully scrutinised with reference to these requirements and the tenders will be issued to those who comply with all the prequalifying/ eligibility requirements. Apart from the prequalifying conditions contained in the brief tender notification, certain general requirements as described above will also be looked into. any deficiency in the general requirements

will, however, not disqualify the tenderers from receiving the tender books as these conditions could be satisfied prior to acceptance of the successful tender. Any clarifications required on the prequalifying requirements/general requirements will also be obtained before issue of tender documents from the intending tenderers. The tenders will be issued to those tenderers who comply with the prequalifying conditions.

The second is the record of minutes showing what they actually did:

"57.01 There was extended discussion on the issue. C.M.D. also informed that one of the tenderers had sent a representation objecting to the consideration of the tender of M/s M.C.C. on the ground that they had not fulfilled the prequalifying requirements. There was a discussion as to whether the stipulations mentioned in the N.I.T. other than those stipulated under prequalifying conditions have to be mandatorily fulfilled before the tenders were filed. It was clarified that only three prequalifying conditions were prescribed in the N.I.T. and other details called for vide para 5(c) of N.I.T., were only for information and are such they could be met before consideration of the tenders. It was clarified that while tenders which did not meet minimum prequalifying conditions were not eligible to be considered at all, any shortcoming in furnishing the details at the time of tendering would not disqualify the tenderer from bidding for the work, so long as the conditions could be met before finalisation of the award. It was further clarified that the word 'shall' used in the N.I.T. has been the normal practice in all tenders and agreement clauses and the decision of the K.P.C. and the application other than the minimum qualifying requirement should be prerogative of K.P.C. only. It was informed that the practice in K.P.C. so far has been to go by the minimum qualifying requirements as stated in the N.I.T. and the rest of the information were only for assessing the capabilities of the tenderers as well as their eligibility and simply because Mr. G.J. Fernandez has made a complaint it would not be proper to deviate from this established procedure. As per clause-11, the Corporation reserves the right to reject or accept the tender without assigning any reasons. In this particular case, the lacuna in furnishing the information has been set right subsequently by the tenderer before opening of the price documents, the Chief Engineer had

come to the conclusion that the firm had fulfilled all the prequalifying requirements and as such the tender of M/s M.C.C. had been found to be in order. It was also clarified by GM(T) that the use of cement hollow block masonry may not be required at all and instead the brick masonry may be used as this item of work was essentially for a filler wall and the walls would be non-load bearing. It was clarified that those who were prequalified had satisfied the condition with regard to quantity of brick masonry work.

57.02 Under the circumstances, the Committee recommended entrustment of work to M/s M.C.C. at their quoted rates amounting to Rs.209.39 lakhs together with their stipulation regarding release of security deposit against furnishing bank guarantee.

57.03 However, it was decided that in future it should be made clear that only prequalifying conditions would be mandatory."

These two documents, particularly the last sentence of the second one, clearly show, Shri Vaidyanathan urged, that the K.P.C. had relaxed its N.I.T. standards in favour of the M.C.C.

Interesting as this argument is, we do not see much force in it. In the first place, although, as we have explained above, para V cannot but be read with para I and that the supply of some of the documents referred to in para V is indispensable to assess whether the applicant fulfills the prequalifying requirements set out in para I, it will be too extreme to hold that the omission to supply every small detail referred to in para V would affect the eligibility under para I and disqualify the tenderer. The question how far the delayed supply, or omission to supply, any one or more of the details referred to therein will affect any of the prequalifying conditions is a matter which it is for the K.P.C. to assess. We have seen that the documents having a direct bearing on para I viz. regarding output of concrete and brick work had been supplied in time. The delay was only in supplying the details regarding "hollow cement blocks" and to what extent this lacuna affected the conditions in para I was for the K.P.C. to assess. The minutes relied upon show that, after getting a clarification from the General Manager (Technical), the conclusion was reached that "the use of cement hollow block masonry may not be required at all and instead the brick masonry may be used". In other words, the contract was unlikely to need any work in hollow cement blocks and so the documents in question was considered to be of no importance in judging the pre-qualifying requirements. There is nothing wrong with this,

particularly as this document was eventually supplied.

Secondly, whatever may be the interpretation that a court may place on the N.I.T, the way in which the tender documents issued by it has been understood and implemented by the K.P.C. is explained in its "note", which sets out the general procedure which the K.P.C. was following in regard to N.I.T.s issued by it from time to time. Para 2.00 of the "note" makes it clear that the K.P.C. took the view that para I alone incorporated the "minimum prequalifying/eligibility conditions" and the data called for under para V was in the nature "general requirements". It further clarifies that while tenders will be issued only to those who comply with the prequalifying conditions, any deficiency in the general requirements will not disqualify the applicant from receiving tender documents and that data regarding these requirements could be supplied later. Right or wrong, this was the way they had understood the standard stipulations and on the basis of which it had processed the applications for contracts all along. The minutes show that they did not deviate or want to deviate from this established procedure in regard to this contract, but, on the contrary, decided to adhere to it even in regard to this contract. They only decided, in view of the contentions raised by the appellant that para V should also be treated as part of the prequalifying conditions, that they would make it specific and clear in their future N.I.T.s that only the fulfilment of prequalifying conditions would be mandatory. If a party has been consistently and *bona fide* interpreting the standards prescribed by it in a particular manner, we do not think this Court should interfere though it may be inclined to read or construe the conditions differently. We are, therefore, of opinion that the High Court was right in declining to interfere.

Thirdly, the conditions and stipulations in a tender notice like this have two types of consequences. The first is that the party issuing the tender has the right to punctiliously and rigidly enforce them. Thus, if a party does not strictly comply with the requirements of paras III, V or VI of the N.I.T., it is open to the K.P.C. to decline to consider the party for the contract and if a party comes to Court saying that the K.P.C. should be stopped from doing so, the Court will decline relief. The second consequence, indicated by this Court in earlier decisions, is not that the K.P.C. cannot deviate from these guidelines at all in any situation but that any deviation, if made, should not result in arbitrariness or discrimination. It comes in for application where the non-conformity with, or relaxation from, the prescribed standards results in some substantial prejudice or injustice to any of the parties involved or to public interest in general. For example, in this very case, the K.P.C. made some changes in the time frame origi-

A nally prescribed. These changes affected all intending applicants alike and were not objectionable. In the same way, changes or relaxations in other directions would be unobjectionable unless the benefit of those changes or relaxations were extended to some but denied to others. The fact that a document was belatedly entertained from one of the applicants will cause substantial prejudice to another party who B wanted, likewise, an extension of time for filing a similar certificate or document but was declined the benefit. It may perhaps be said to cause prejudice also to a party which can show that it had refrained from applying for the tender documents only because it thought it would not be able to produce the document by the time stipulated but would have applied had it known that the rule was likely to be relaxed. But neither of these situations is present here. Sri Vaidhyanathan says that in this C case one of the applicants was excluded at the preliminary stage. But it is not known on what grounds that application was rejected nor has that party come to Court with any such grievance. The question, then, is whether the course adopted by the K.P.C. has caused any real prejudice to the appellant and other parties who had already supplied D all the documents in time and sought no extension at all? It is true that the relaxations of the time schedule in the case of one party does affect even such a person in the sense that he would otherwise have had one competitor less. But, we are inclined to agree with the respondent's contention that while the rule in *Ramana's* case (supra) will be readily applied by Courts to a case where a person complains that a E departure from the qualifications has kept him out of the race, injustice is less apparent where the attempt of the applicant before Court is only to gain immunity from competition. Assuming for purposes of argument that there has been a slight deviation from the terms of the NIT, it has not deprived the appellant of its right to be considered for the contract; on the other hand, its tender has received F due and full consideration. If, save for the delay in filing one of the relevant documents, M.C.C. is also found to be qualified to tender for the contract, no injustice can be said to have been done to the appellant by the consideration of its tender side by side with that of the M.C.C. and in the K.P.C. going in for a choice of the better on the merits. The appellant had no doubt also urged that the M.C.C. had no G experience in this line of work and that the appellant was much better qualified for the contract. The comparative merits of the appellant vis-a-vis M.C.C. are, however, a matter for the K.P.C. (counselled by the T.C.E.) to decide and not for the Courts. We were, therefore, rightly not called upon to go into this question.

For the reasons discussed above, this appeal fails and is dismis- H sed. But we make no order as to costs.

R.N.J. Appeal dismissed.