

STATE OF ORISSA AND ANR. A

v.

M/S. TATA IRON AND STEEL CO. LTD. AND ORS.
(Civil Appeal No. 653 of 2006)

FEBRUARY 4, 2008 B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Constitution of India, 1950 – Art. 226:

Government contracts – Tenders – Judicial review – Scope – Industrial Development Corporation of Orissa Ltd. (IDCOL) issued advertisement inviting technical bids – Bids of two out of three parties rejected at the threshold – Third party selected – Writ petitions by unsuccessful parties – Allowed by High Court which held that the bid of selected party was not evaluated in an impartial manner – On appeal, held: High Court relied upon extraneous materials and arrived at unfounded conclusions – Hence, matter ought to have been remitted back to High Court – But considering that the advertisement was issued 5 years back and on basis of materials on record, appeals disposed of with suitable directions – Directions issued that technical bids of all the three parties be treated as valid – Parties permitted to submit revised financial bids – Authorized Committee of IDCOL to consider the technical bids and the financial bids, keeping in view parameters of the advertisement, the NIT and best interests of the State – Observations and conclusions made by High Court about malafides of the officials and their alleged favoritism quashed. C D E F

The Industrial Development Corporation of Orissa Limited (IDCOL) issued advertisement inviting technical bids for development of a chromite deposit project in Joint Venture. The bids of two out of the three parties viz VISA and TISCO were rejected at the threshold. The third party, viz. Jindal was selected. VISA and TISCO filed writ petitions G

A before the High Court which allowed the same holding
that the bid of *Jindal* was not evaluated in an impartial
manner and that there was no attempt to find out as to
B which of the bids offered by the three parties gave
maximum advantage to the State in terms of public
interest and State exchequer. After making certain
observations questioning the bonafides of the officials
of the State and IDCOL, the Court in exercise of its power
of judicial review set aside the decision of IDCOL to select
Jindal.

C The contention of Appellants is that the High Court
took into account various irrelevant and extraneous
materials without even any pleading in that regard and
wrongly assumed collusion and loss of revenue if *Jindal's*
bid was to be accepted.

D Disposing of the appeals, the Court

HELD: 1. Certain conclusions of the High Court are
clearly indefensible. The observations relating to
favoritism, so far as *Jindal* is concerned, are clearly
E without any foundation. [Para 10] [368-C]

2. On the sole ground that the High Court had relied
upon extraneous materials and has arrived at unfounded
conclusions, in normal course this Court would have set
aside the order and asked the High Court to re-consider
F the matter. But considering the passage of time and more
particularly the fact that the advertisement was issued in
2002 and on the basis of materials on record, the appeals
are being disposed on the following terms:

- G a. It shall be treated that the technical bids of all
the three parties are valid;
- b. The financial bids were submitted about five
years back it would be appropriate to permit
the parties to submit revised financial bids within
H three weeks and;

c. The appropriate and authorized Committee of IDCOL shall consider the technical bids and the financial bids, keeping in view the parameters of the advertisement, the NIT and the best interest of the State. [Para 11] [368-D, E, F, G]

3. The observations and conclusions about malafides of the officials and their alleged favoritism stand quashed. [Para 13] [369-B, C]

CIVILAPPELLATE JURISDICITON : Civil Appeal No. 653 of 2006.

From the final Judgment and Order dated 18.11.2004 of the High Court of Orissa at Cuttack in W.P. (C) No. 6798/2004.

WITH

Civil Appeal Nos. 654, 655, 671, 672 and 673 of 2006.

G.E. Vahanvati, Solicitor General, B.K. Mohanti, Advocate General (Orissa), Arun Jaitley, K.K. Venugopal, Dr. A.M. Singhvi, Shyam Divan, Shanti Bhushan, Ashok Parija, T.R. Andhjarujina, R.F. Nariman, Rajat Rath, Suman Kukrety, Raj Kumar Mehta, Rishi Maheshwari, P.S. Sudheer, Aanne Mathew, Shally Bhasin Maheshwari, Sanjeev K. Kapoor, Vishal Gupta, Vikram Bajaj, Kumar Mihir, Avinash Menon (for M/S. Khaitan & Co.), R.N. Karanjawala, Gopal Jain, Akhil Sibal, Nandini Gore, Prachi Goel and Manik Karanjawala for the appearing parties.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the judgment of a Division Bench of the Orissa High Court allowing the Writ Petitions filed by Visa Industries Limited (in short the 'VISA') and Another (Writ Petition (C) No. 5128 of 2004) and M/s. Tata Iron and Steel Co. Ltd. (in short the 'TISCO') (Writ Petition (C) No. 6798 of 2004). By the impugned Judgment the High Court held that the technical bids of VISA and TISCO could not have been rejected at the threshold without proper evaluation in terms of the eligibility condition as set out in the

A concerned advertisement. It was also held that Jindal Strip
Limited (in short 'Jindal's') bids were never evaluated and
assessed in a dispassionate and impartial manner. There was
no attempt to find out as to which of the bids offered by the three
parties would give maximum advantage to the State in terms of
B public interest and state exchequer. Certain other observations
were made questioning bonafides of the officials of the State
and Industrial Development Corporation of Orissa Limited (in
short the 'IDCOL'). It was held that power of judicial review was
to be exercised as the selection of Jindal as a Joint Venture
C Partner for the project in question was not properly done.
Therefore the IDCOL's decision to select Jindal cannot be
maintained and was set aside.

2. It was noted that the matter could have been remitted to
IDCOL for fresh evaluation and formation of merits on the bids
D of the respective parties, but it was not thought proper. It was
also noted that Jindal proposed to set up stainless Steel Industry
which could not have been considered as a relevant factor while
deciding the question of Joint Venture Partner. However, IDCOL
was given the opportunity to issue a fresh advertisement for the
E purpose of setting out in clear terms whether it wants stainless
industries to be set up in the State or other industry where chrome
could be used as an ingredient.

3. The technical bids offered by the various parties are on
record. By the last date for receipt of offers, four parties had
F submitted their offers but later on Jindal Steel Power Ltd. did
not want to continue.

4. The present appeals arise out of Special Leave Petitions
filed by the State of Orissa, IDCOL and Jindal.

G 5. Primary stand of Mr. G.E. Vahanvati, Learned Solicitor
General is that the High Court's approach is clearly erroneous.
It has taken into account various irrelevant and extraneous
materials without even any pleading in that regard. It has
assumed collusion, loss of revenue if Jindal's bid was to be
H accepted. It is not fathomable as to on what basis the

conclusions were arrived at, that too without any material foundation. The similar effect is the submission of Jindal. It is to be noted that Jindal Steels Limited is presently known as Jindal Stainless Steel Limited. However for the sake of convenience it shall be described as 'Jindal' in this judgment. A

6. To similar effect is the submission of learned counsel for IDCOL. B

7. Learned counsel for TISCO and VISA submitted that the conclusions of the High Court are in order. Considering the parameters of judicial review it is clear that the Government granted approval in the most mechanical manner without application of mind to the facts of the case. It was submitted that as has been rightly held by the High Court Jindal did not satisfy the required parameters and, therefore, its bid could not have been accepted. C D

8. One of the factors highlighted by learned counsel for TISCO is that the information brochure and the NJT referred to certain vague expressions like "Value addition". In view of such an indefinite condition the bids submitted by TISCO and VISA could not have been rejected at the threshold and therefore the High Court has rightly interfered in the matter. E

9. At this juncture, it would be relevant to quote the Recommendations of the Technical Committee constituted for evaluation of the offers received for development of Tangarpada Chromite Deposit in Joint Venture, which reads as follows: F

"RECOMMENDATIONS OF THE TECHNICAL
COMMITTEE CONSTITUTED FOR EVALUATING THE
OFFERS RECEIVED FOR DEVELOPMENT OF
TANGARPADA CHROMITE DEPOSIT IN JOINT
VENTURE G

Offers for development of Tangarpada Chromite Deposit in Joint Venture were received from four parties namely:

1. Tata Iron and Steel Co. Ltd.; H

- A 2. Jindal Strips Limited;
 3. Jindal Steel and Power Ltd.; and
 4. VISA Industries Limited

B Before opening of the sealed offers, Jindal Steel and Power (one of the offer) withdrew its offer. The technical bid of the other three parties were opened by the committee in presence of the respective parties on 9th December, 2002. Each party presented their case before the Technical Committee on the same day.”

C 10. It may be stated here that certain conclusions of the High Court are clearly indefensible. The observations relating to favoritism, so far as Jindal is concerned, are clearly without any foundation.

D 11. On the sole ground that the High Court had relied upon extraneous materials and has arrived at unfounded conclusions, in normal course we would have set aside the order and asked the High Court to re-consider the matter. But considering the passage of time and more particularly the fact that the advertisement was issued in 2002 and on the basis of materials on record, we dispose of the appeals on the following terms:

- E 1. It shall be treated that the technical bids of all the three parties are valid.
- F 2. The financial bids were submitted about five years back it would be appropriate to permit the parties to submit revised financial bids within three weeks.
- G 3. The appropriate and authorized Committee of IDCOL shall consider the technical bids and the financial bids, keeping in view the parameters of the advertisement, the NIT and the best interest of the State.

H 12. It is needless to say the Committee examining the bids shall take note of all relevant factors. In case it is considered

appropriate and in the interest of the State, it shall be open to the State Government to negotiate with the parties so that the best interest of the State including generation of the revenue of the State and overall development of the State in the relevant fields could be achieved. A

13. Since the matter is pending since long it would be desirable for the State Government to ensure that the technical bids and the revised financial bids to be submitted within three weeks as directed earlier, be evaluated and informed decision taken by end of June, 2008. The observations and conclusions about malafides of the officials and their alleged favoritism stand quashed. B C

14. The appeals are allowed to the aforesaid extent without any order as to costs.

B.B.B.

Appeals disposed of. D