

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) Nos. 7121/2008, 7448/2008 & 7456/2008**

RESERVED ON : November 20th, 2008

% DATE OF DECISION : December 16th, 2008

DLF-GAYATRI-LOR JOINT
VENTURE AND ORS.

Through:

.....Appellant
Mr. Arun Kathpalia with
Mr. Virender Singh
Thakur, Advocates

Versus

NATIONAL HIGHWAY AUTHORITY
OF INDIA and ANR.

Through:

.....Respondents
Mr. Dushyant Dave and
Mr. Ramji Srinivasan,
Senior Advocates with
Mr. Ravi Kini, Mr. Kishan
Kumar, Mr. Sumit Gupta,
Mr. Mukesh Kumar,
Ms. Madhuri Diwan,
Ms. Padma Priya,
Advocates for R/NHAI.

Mr. Gopal Subramaniam,
ASG with Mr. Gaurav
Duggal and Mr. Chetan
Chawla, Advocates for
Respondent No. 1/UOI.

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the digest? Yes.

J U D G M E N T

MANMOHAN, J:

1. This batch of writ petitions has been filed under Article 226 of the Constitution of India seeking quashing of letters issued by

National Highway Authority of India, hereinafter referred to as NHAI, whereby the Petitioners have been held to be ineligible to participate at the second stage of the bidding process for three projects, namely, Hyderabad – Vijayabad section, Pimpal Gaon – Nasik – Gonde section and M.P./Maharashtra border – Dhule Section. The Petitioners have also prayed for a direction to the Respondents to issue Requests For Proposal documents so that the Petitioners can participate at the second stage of the bidding process in the aforesaid three projects, namely, the price bid.

2. It is pertinent to mention that in this batch of three writ petitions, the Petitioners have also challenged the legality and validity of Clause 3.5.2. by virtue of which only the six highest technical scorers can advance to the second stage of the tender i.e. price bid, but we have already upheld the constitutionality, legality and validity of the said Clause in our judgment and order dated November 3rd, 2008 delivered in WP(C) No. 566/2008, and reported as **National Highways Builders Federation Vs. The National Highways Authority of India & Ors.** Consequently, the said challenge no longer survives.

3. The learned Counsel for the Petitioners was of the view that the issues raised in other two petitions, namely, WP(C) Nos. 7448/2008 and 7456/2008 were identical to the issues raised in WP(C) No. 7221/2008 and, therefore, he made a statement before this Court on November, 25th, 2008 that the judgment rendered in WP(C) No. 7221/2008 would govern the decision in the other two writ petitions. Consequently, we are first taking up the WP(C) No. 7121/2008 for final disposal.

WP(C) No. 7121/2008

4. The Petitioners by this writ petition have challenged their non shortlisting for the price bid stage on the ground that the Petitioners conformed to the eligibility criteria and in accordance with the evaluation criteria prescribed by the Request For Qualification, hereinafter referred to as RFQ, would rank amongst the top five bidders. The Petitioners further submitted that the Respondents while considering the Petitioners experience have arbitrarily and deliberately failed to include the Jaipur – Reengus, Walayar – Vadakkancherry and Vadakkancherry – Thrissur projects, while including the same experience for other road tenders.

5. The Respondent in counter-affidavit have pointed out that in terms of the RFQ, the Petitioners had not submitted the documents certified by their statutory auditor to establish their experience or associate relationship and, therefore, in the first evaluation they had not been shortlisted amongst the six best technically qualified tenderers.

6. However, subsequently in view of the recommendations by the two Member Committee and the directives issued by the Ministry of Shipping, Road Transport and Highways, hereinafter referred to as the Ministry, NHAI decided to seek clarification from all bidders and reevaluate their scores. The clarifications sought by NHAI from Petitioners reads as follows :-

“1. Furnish clarification for the below mentioned Project Codes :

<i>Project Codes</i>	<i>Clarification Required</i>
<i>1a to 1q (DLF)</i>	<i>1. To clarify whether the</i>

<i>Infra Holdings Limited)</i>	<i>experience certificates are from Statutory Auditor (Please indicate the precise location/page number) 2. Project experience has been claimed under category 1/2. Please clarify how these projects were undertaken under BOT/PPP basis. (Please indicate the precise location/page number) 3. To clarify details/specific documents in the application which establishes associate relationship between the project company and DLF Infra Holdings Ltd. by Statutory Auditor. (Please indicate the precise location/page number).</i>
<i>3a, 3b, 3c, 3e, 3i, 3j, 3k, 3l (Laing 'O' Rourke PLC)</i>	<i>To clarify details/specific document in the application which establishes associate relationship and to clarify that experience certificate is from the statutory auditor. (Please indicate the precise location/page number)</i>

2. *As the Associate's experience has been taken for computation of Technical Capacity and Net Worth, you are requested to indicate where the specific document/details in your submitted application is located to establish the Associate relationship. (Please indicate the precise location/page number)."*

7. The Petitioners replied by their letter dated August 12th, 2008 which reads as under :-

"Replies to Clarifications :

1. (i) DLF Infra Holdings Ltd – Project codes 1a to 1q

For all the projects of DLF group with project codes 1a to 1q, for which experience is being claimed, the experience certificates have been issued by the statutory auditors of the SPV (the project company) under which these projects have been executed.

For project codes 1a to 1c, 1h to 1u, the experience certificates have been issued by Walker, Chandiok & Co., who are the statutory auditors of the project companies as defined in the certificates as well as DLF Ltd. Walker, Chandiok & Co are the statutory auditors of DLF Ltd. as provided in the annual reports enclosed with the application. (Kindly refer

page nos 44, 46, 48, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76 in application)

For project codes 1d, 1e the experience certificates have been issued by Vandana Gupta & Co, who are the statutory auditors of the project companies as defined in the certificates. (Kindly refer page no. 50, 51 in application)

For project codes 1f, 1g the experience certificates have been issued by Ajay Om & Associates, who are the statutory auditors of the project companies as defined in the certificates. (Kindly refer page no. 53, 56 in application)

(ii) DLF Infra Holding Ltd – Project experience under category 2 and on BOT/PPP basis

The projects executed by DLF group are the real estate projects, which are under the definition of core sector projects as per clause 3.2.1 of RFQ and hence have been taken under category 2. (Kindly refer to Annexure IV – page nos 43 to 76 in application)

We hereby clarify that DLF group's projects have been implemented either on BOT or BOO basis under agreement/license from various state government/development authorities.

Project code 1h, 1i, 1k, 1m, 1p, 1q Haryana Government has enacted Haryana Urban Areas Development Act to attract private participation in the development process. DLF has developed its prestigious township 'DLF City' by obtaining license from Haryana Government under this act to partner in development with Haryana Government. As a part of this township, all the DLF group's projects in Gurgaon have been developed under license from Haryana Government under Haryana Urban Areas Development Act for private participation in development process.

Similar DLF has been allotted land from various state government authorities for development of infrastructure facilities, which respective state governments/development authorities had proposed to be developed on private partnership basis.

Project code 1o – The IT Park at Kolkata has been developed under agreement with West Bengal Electronics Industry Development Corporation Ltd.

Project Code 1j – IT Park at Hyderabad is being developed in collaboration with Andhra Pradesh Housing Board.

Project code 1b – Town Square at Noida is under allotment from New Okhla Industrial Development Authority.

Project code 1a, 1c, 1d, 1e, 1f, The masterplan of Delhi calls for private participation in urban infrastructure development. The projects at Delhi are being developed under allotment from Delhi Development Authority to partner private development for urban infrastructure.

(iii) DLF Infra Holding Ltd – Associate relationship Between Project Company and DLF Infra Holdings Ltd

We have submitted our application through DLF Infra Holdings Ltd. and for computation of technical capacity and net-worth, DLF Ltd's experience has been claimed being an associate company of DLF Infra Holdings Ltd. A certificate from the statutory auditors of DLF Ltd. has been enclosed in our application at page no. 11.

We are again enclosing the copy of certificate from statutory auditors of DLF Ltd. As per the certificate, DLF Ltd. owns directly or indirectly 100% of the total paid up share capital of DLF Infra Holdings Ltd., which makes DLF Ltd an associate company of DLF Infra Holdings Ltd as per clause 2.2.9 of RFQ.

The equity holding details of DLF Ltd into project companies have been provided into the statutory auditor certificates enclosed in the application in Annexure IV DLF Ltd is the holding company into DLF Infra Holdings Ltd and project companies and hence project companies qualify as 'associate' of DLF Infra Holdings Ltd as per the definition of 'Associate'.

(iv) Laing O'Rourke Plc – 3a, 3b, 3c, 3e, 3i, 3j, 3k, 3l

We request you to refer to pages 76/77 of our balance sheet/annual review 2007 submitted along with the RFQ wherein the details of the associates of LOR PLC are given. It is an audited balance sheet duly audited by PWC our statutory auditor hence we feel there is no requirement of a separate certificate from statutory auditor. However if NHA still feels a certificate authenticating the same needs to be submitted we shall arrange for the same.

We once again enclose the relevant pages 76/77 of the balance sheet/annual review for our referral.

The certificates enclosed in the application have been issued by the clients. (kindly refer to page nos 109, 111, 114-115, 121)

2. We have submitted our application through DLF Infra Holdings Ltd. and for computation of technical capacity and net-worth, DLF Ltd.'s experience has been claimed being an associate company of DLF Infra Holdings Ltd. A certificate from the statutory

auditors of DLF Ltd. has been enclosed in our application at page no. 11.

We are again enclosing the copy of certificate from statutory auditors of DLF Ltd. As per the certificate, DLF Ltd. owns directly or indirectly 100% of the total paid up share capital of DLF Infra Holdings Ltd., which makes DLF Ltd. an associate company of DLF Infra Holdings Ltd. as per clause 2.2.9 of RFQ.

The equity holding details of DLF Ltd. into project companies have been provided into the statutory auditor certificates enclosed in the application in Annexure IV DLF Ltd. is the holding company into DLF Infra Holdings Ltd. and project companies and hence project companies qualify as 'associate' of DLF Infra Holdings Ltd. as per the definition of 'Associate'."

8. However, NHAI in its counter-affidavit stated that the Petitioners without quoting location/page number of the RFQ merely stated that the auditors certificate was in fact that of a statutory auditor. NHAI further pointed out that in response to the work experience query, the Petitioners merely stated that the projects referred by it were BOT (Built Operate Transfer) projects without referring to any statutory auditor's certificate or supporting document. NHAI also pointed out that even the certificates placed on record by the Chartered Accountants of the Petitioners did not provide relevant details such as capital expenditure incurred or revenue collected. It was further stated in the counter-affidavit that to substantiate its associate relationship, Petitioners had referred to certain new documents which had not been initially placed along with the RFQ. The relevant portion of NHAI's counter affidavit is reproduced hereinbelow for ready reference :-

“(Xii) In terms of the RFQ, the applicants were required to submit documents certified by their Statutory Auditor to establish Associate relationship as clarified in the pre-bid meeting held on 05.11.2007. A copy of the clarifications

issued doing the pre-Bid meeting is annexed herewith marked as **Annexure-R/9**. Similarly, in support of claimed Technical Capacity of the Applicant, Certificates are to be submitted either from the Statutory Auditor or the Client as per respective formats prescribed for two different types of experience claimed viz. under BOT Projects (Instruction-13) and Construction Works (Instruction-14) respectively of Annexure-IV of the RFQ document.

During the First evaluation, if Statutory Auditor was not mentioned anywhere in the Certificate, the project was not taken into consideration while awarding the score. However, subsequently, it was recommended by the Two Member Committee that in order to ensure equity and natural justice, NHAI may re-look into the qualification exercise and seek clarifications from the Applicants such as, whether the Chartered Accountant furnishing certificates is actually the Statutory Auditor or not and to Re-evaluate taking into consideration the reply submitted by the Applicants, without accepting submission of any fresh document which could result in increase of the Quoted Experience Score. Re-Evaluation was done keeping the above in mind and after seeking clarifications from all the 19 applicants.

In case of the Petitioners, the consortium was, inter-alia, asked to clarify that the experience certificates submitted by it in respect of the Projects against which score has been claimed were from Statutory Auditor and supporting documents certified by Statutory Auditor establishing associate relationship between the Petitioners and the Company whose experience has been relied upon. The Consortium was advised to clarify whether the experience certificates are from Statutory Auditor in respect of projects 1a to 1q.

However, the Consortium without quoting location/page number of its application has merely stated that the certificates are from the Statutory Auditors of Companies implementing the projects. Accordingly, from the information made available it could not be ascertained that the certificates were from the Statutory Auditor and as such the Projects were not taken into consideration. Further, the details regarding the project as per requirement of the format is not fulfilled. Accordingly, and in view of the non compliance with the requirement of the RFQ Document, the said Projects were not taken into consideration. It is reiterated that under Clause 3.3.3, it is mandatory that the Certificates submitted by an applicant should have been issued by its Statutory Auditors in the prescribed format.

Further, the Consortium was advised to clarify as to how the projects for which experience has been claimed are BOT Projects. The Consortium instead of referring to any supporting documents/ information in its application, merely submitted that the projects are BOT projects as the same have been developed on the land provided by State Governments etc. Even the certificates by the Chartered Accountants do not provide the relevant details such as Capital Expenditure incurred, Revenue Collected or whether the projects are Commissioned, etc. From the reply submitted, it could not be concluded that the quoted projects are BOT projects. In view of the matter, the experience was not considered for evaluation purposes.

The Consortium was also requested to clarify the position, as certificate to substantiate Associates relationship was not available in the RFQ document in respect of projects 3a to 3m. The Consortium, in its reply referred to pages 76/77 of the Balance Sheet in support of the Associates Status and has enclosed copy of the said pages. However, the information given on the said pages is about the holding of the "Group or the company either directly or through other Group Companies" and did not substantiate that the experience relied upon by the Consortium members was of their Associate Companies as defined in the RFQ Document. Since, the case was not covered by the definition of Associates as per RFQ Document, the same was not taken into consideration. Further, the said pages 76/77 as referred to by the Petitioners are not submitted along with their RFQ application/document during the initial submission.

(Xiii) That even after the said re-evaluation, the Petitioner was found ineligible inasmuch as the Petitioners were placed at Sl. No. 14 and having regard to the provisions of para 3.5.2, only the first six Applicants could be declared as pre-qualified....."

9. Mr. Arun Kathpalia, learned Counsel for the Petitioners submitted that for taking into account the experience of its associates it was not mandatory for Petitioners to file statutory auditor's certificate. In this connection, Mr. Kathpalia referred to the Clauses 2.2.4 and 2.2.9 of the RFQ which are reproduced hereinbelow for ready reference :-

“2.2.4. *The Applicants shall enclosed with its application, to be submitted as per the format at Appendix-I, complete with its Annexures, the following :*

- (i) Certificate(s) from its statutory auditors or the concerned client(s) stating the payments received for works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2(A) above. In case a particular job/contract has been jointly executed by the Applicant (as part of a consortium), he should further support his claim for the share in work done for that particular job/contract by producing a certificate from its statutory auditor or the client; and*
- (ii) Certificate(s) from its statutory auditors specifying the net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.2(ii). For the purposes of this RFQ, net worth (the “Net Worth”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and accrued liabilities.....*

2.2.9. *In computing the Technical Capacity and Net Worth of the Applicant/ Consortium members under Clauses 2.2.2. and 2.2.3, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.*

For purposes hereof, Associate means, in relation to the Applicant/Consortium member, a person who controls, is controlled by, or is under the common control with such Applicant/ Consortium member. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.”

10. Mr. Kathpalia further submitted that the rejection of the Petitioners' bid in the initial evaluation on the ground that its net worth certificate was not supported by a statutory auditor's certificate is untenable in law as though the certificate did not use the said phrase, it was in fact issued by a statutory auditor of the Petitioners, as would be apparent from the balance sheets placed on record along with the RFQ documents. Mr. Kathpalia referred to the following two judgments which are referred to hereinbelow along with their relevant paragraphs :-

(i) ***M/s. Poddar Steel Corporation Vs. Ganesh Engineering Vs. Ganesh Engineering Works and Others reported in (1991) 3 SCC 273*** wherein it has been as under :-

"6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank the Clause No. 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories- those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in GJ Fernandez v. State of Karnataka and Ors. a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the impugned decision, relied upon Ramana Dayaram Shetty v. International Airport Authority of India and Ors. but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed

a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the Court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs.”

(ii) **Agrawal Roadlines Pvt. Ltd. Vs. Indian Oil Corporation**

Ltd. and Others reported in 2003(1) Arb. LR 600 (Bombay)

(DB) wherein it has been held as under :-

“7. The aforesaid law laid down by the Apex Court in Poddar Steel Corporation is squarely and fully applicable to the facts and circumstances of the present case. The only mistake committed by the petitioners was that they annexed the demand draft issued in favour of other Corporation. That was only a technical irregularity and did not in the facts of the case could be said to violate the essential conditions of the tender notice. It was only because of inadvertence that the demand drafts purchased by the petitioners got interchanged. Under the terms and conditions of the tender notice, inter alia, for the satisfaction of financial credibility of the bidder, the condition is that earnest money of Rs. 12000/- by way of crossed demand draft/pay order from the scheduled bank in favour of concerned corporation is deposited with the bid. The Corporations, viz. IOC, HPCL and BPCL ought not to have given strict construction to Clause 7 of the tender which provided that the earnest money deposit as provided in Clauses 5 and 6 by crossed Demand Draft/Pay Order drawn on any Scheduled Bank, be in favour of concerned Corporation like Indian Oil Corporation Ltd. (MD), Bharat Petroleum Corporation Ltd. (MD) and Hindustan Petroleum Corporation (MD). The essential clause concerning an interest free earnest money deposit of Rs. 12000/- finds place in Clause 6 which, of course, was required to be construed strictly, but Clause 7 could not have been given effect in meticulous detail as has been sought to be given when the petitioners did purchase demand draft in favour of concerned corporation in the required sum from scheduled bank - the only mistake, these drafts got interchanged at the time of submission of tenders and this mistake reflected at all necessarily places in the tender form. The contention of Mr. Siodia that this Court should not interfere in administrative decision when admittedly there was some mistake by the petitioners in the facts of the present case does not deserve to be accepted. If an administrative decision is based on hyper technical approach by treating a non-essential condition of the tender notice as essential condition, such administrative decision shall be ceased to be fair and lack reasonableness warranting

interference in suitable and deserving cases under Article 226."

11. We have already held in the accompanying judgment rendered by us in **WP(C) No. 6638/2008** titled as **Reliance Infrastructure Ltd. & Ors. vs. National Highway Authority of India & Anr.** that furnishing a net worth certificate by a statutory auditor was an essential condition of eligibility which was to be enforced rigidly and not treated merely as an ancillary or subsidiary condition which could be deviated from. In our view, an Auditor's net worth certificate without specifying that it was being issued by a Statutory Auditor could not be considered to be responsive and conforming to the mandatory eligibility criteria as, firstly, the said certificate was of crucial, critical importance and interlinked with various other tender terms. The Statutory Auditor's certificate had to be absolutely transparent and self-speaking. It was not the Respondents responsibility to conclude that an auditor's certificate was a statutory auditors certificate either by way of a process of derivation or by way of search through a maze of papers. Secondly, the RFQ had cast a heavy duty on a responsible authority like a Statutory Auditor to vouch for facts and figures and any ambiguity or relaxation could, in our opinion, lead to disastrous consequences. It is pertinent to mention that most of the bidders were consortiums comprising of foreign companies and NHAI was in no position to verify their net worth or the value of the projects executed by them or the revenues generated by them from their projects. Thirdly, the project in question is an infrastructure project having huge financial stakes in which the bidders would have surely created a large professional team to prepare, scrutinize and submit their

bids. Consequently, in our view, neither in law nor in equity, the Petitioners are entitled to any relaxation or waiver of the mandatory term of the tender.

12. Moreover, we also do not agree with the submission that to confirm association, a Statutory Auditor's Certificate was not required. NHAI has drawn our attention to the clarification issued by it during a pre-bid meeting held on 5th November, 2007. In the said clarification, it was specifically stated that to establish an associate relationship, a Statutory Auditor's Certificate had to be provided.

13. The clarification is reproduced hereinbelow :-

"CLARIFICATIONS TO THE QUERIES RECEIVED FROM APPLICANTS WITH REGARD TO RFQ

Sub: Design, Engineering, Finance, Construction, Operation and Maintenance for 4/6 laning of selected stretches on different National Highways under NHDP Phase III. – Pre-Application Conference for 6 Sub-projects in the States of Andhra Pradesh, Orissa & Rajasthan approved by PPPAC vide minutes of meeting dt. 5.11.2007 – Clarification Queries concerning RFQ.

S. No.	Reference clause in RFQ	Queries/Request	Reply from NHAI
14.		<u>Regarding the definition of Associates provided in Clause 2.2.9, we would need further clarifications of the documentation to be provided to evidence the condition of associate of any member of the Consortium.</u>	<u>Supporting Statements certified by Statutory Auditor should be provided.</u>

(emphasis supplied)

14. In our opinion, in view of the clarification provided by NHAI in its pre-bid meeting, it was mandatory on the part of the Petitioners to furnish a Statutory Auditor's Certificate to establish its association.

15. However, we find substance in the Petitioners' plea that its experience score in different projects was not uniform. NHAI has sought to explain the difference in evaluation score on the fact that the evaluation exercises were conducted by separate evaluation committees for separate projects and further that the documents submitted by the same bidder in different projects may not be uniform. We may mention that the grievance with regard to lack of uniformity in marking was raised even by the Writ Petitioners in **GMR Infrastructure Ltd. and Madhucon Projects Pvt. Ltd.** (bearing WP(C) No. 6792/2008 and WP(C) No. 6419/2008 respectively). Though, in our view, this grievance would make no difference to the conclusion that we have reached in the present case, we think it appropriate to direct NHAI to issue appropriate guidelines to its Evaluation Committee so that the same bidder is awarded similar experience score in different projects. This direction should be implemented by NHAI for all projects in which the RFQ bids are yet to be opened.

16. But we accept NHAI's plea that the Petitioners' averment that its projects are BOT projects cannot be accepted without reference to any supporting document and without reference to detail like capital expenditure incurred or revenue collected. Petitioners reliance on new documents while submitting its clarification is not only contrary to NHAI's right to seek clarification

to the tender conditions but also goes against the concept of fairness as acceptance of Petitioners new documents at this stage would cause prejudice and adversely affect rights of other bidders. In ***Reliance Airport Developers (P) Ltd. Vs. Airports Authority of India & Ors. reported in (2006) 10 SCC*** where in response to newspaper reports a bidder kept on supplying fresh documents for consideration to the Tender Committee, the Apex Court held that not only the said bidder's conduct constituted a breach of tender terms but it went against the very concept of fairness in the process of evaluation of bids.

17. In any event, the present petition being devoid of merits is dismissed but with no order as to costs.

WP(C) Nos. 7448/2008 and 7456/2008

18. Admittedly, since similar interpretation of Clause 2.2.9. of the RFQ arises in the other two petitions, the said two petitions being WP(C) Nos. 7448/2008 and 7456/2008 are also dismissed but with no order as to costs.

MANMOHAN, J

MUKUL MUDGAL, J

DECEMBER 16th, 2008
rn/sb