

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) No.6155/2008 & CM 14328/2008

Reserved on: 4th December, 2008

Date of Decision: 13th February, 2009

IVECO MAGIRUS & ANR.

..... Petitioners

Through: Mr. Ashok Bhasin, Sr. Adv. with

Mr. Shantanu Rastogi and

Mr. A.K. Sham, Advocates.

Versus

UOI & ORS.

..... Respondents

Through: Mr. V.P. Singh, Sr. Adv. with

Ms. Anjana Gosain, Adv.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see
the judgment? No

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

MUKUL MUDGAL, J.

1. The present writ petition seeks the quashing of the letter dated 21st July, 2008 whereby the tender/bid of the petitioner was rejected and further for declaring the tender process adopted by the respondent No. 2 in respect of supply of air field crash fire tenders at various airports in India as illegal and void.

2. The brief facts of the case as per the averments of the petitioner are as follows:

(a) The petitioner No. 1/M/s IVECO Magirus, a foreign company situated in Germany is a leading manufacturer of the world class Turntable Ladder airport fire fighting vehicles and rescue vehicles based in Europe and manufacture of 1200 fire fighting vehicles per year which are made in its 6 plants in Europe (Germany, Italy, France, Austria) and also manufactures the Airfield Crash Tender Vehicles (ACFTs) in Italy. The petitioner No. 1 is also the manufacturer

of the model TH-DRAGON x 6 ARFF 12000 DP 150.

(b) The petitioner No. 2 M/s Brijbasi Hi-Tech Udyog Ltd. (BHTUL) is a company incorporated under the Company's Act with its registered office at Delhi and is in the business of indigenous development, manufacturer of the fire fighter and rescue vehicles including major ACFTS for last 35 years and is the leading Indian name in the business. The petitioner No. 2 has been associated with Petitioner No. 1 since 1976 and is in the business of manufacturing and developing of techniques and technology for the fire fighting operations and equipments.

(c) The respondent No. 2, the Airport Authority of India (AAI) under the control of the respondent No. 1, Government of India/Ministry of Civil Aviation (MOCA), is responsible for the maintenance and operation of the airplanes and airports and also responsible for making rules and regulations and also to enter into contracts through tenders for common items for the operation of its requirements.

(d) The respondent No. 3 is a foreign company having its registered office at Paschinger Strasse 90 4060 Leonding, Austria and is engaged in the same

business as of the petitioners and the respondent No. 4 is the Indian associate of respondent No. 3 for the purpose of the present global tender.

(e) The respondent No. 1 invited a global tender for supply of ACFTs quantity 40 Nos. at various airports across India vide tender No. EQ/Global/2007-08/01.

The last date and time of the receipt of duly filled tender document (both technical/price bid) was on 14th March 2008 up to 2.30 PM and the time of the opening of the technical bid of tender document was fixed on 14th March 2008 at 3.00 PM. The opening of the price bid of tender documents was to be intimated to technically qualified tenderers on a later date.

(f) The petitioner and many others bidders submitted their tender forms to the respondent No. 1 as per the tender guidelines and rules. The nature of tender was technical as well as commercial. The tender process had two stages, first stage involved technical evaluation and after that the technically accepted offers were to be considered for the commercial evaluation at the second stage before awarding the contract.

(g) Besides the petitioner and its Indian counterpart the tender floated by the

AAI to locate the right source of supply for ACFTs was responded by 4 other global manufacturers and suppliers. After scrutiny the respondent No. 2 shortlisted four (4) suppliers technically as eligible for tendering. The following were shortlisted:

- (i) M/s Iveco Magirus, Germany (Europe)
- (ii) M/s Oshkosh of USA
- (iii) M/s Rosenbauer of Austria (Europe)
- (iv) M/s Morita of Japan

(h) However, respondent No. 2 vide letter dated 21st July, 2008 rejected the tender of the petitioner No. 1 stating that the tender was not found in conformity to AAI tender requirements.

3. The letter dated 21st July, 2008 reads as under:-

“Please refer to your tender submitted on 14th March, 2008 in response to the subject Global Tender for Supply of 40 Nos. Airfield Crash Fire Tenders (ACFTs) having usable Water Tank Capacity of 10,000 litres or more at various airports.

Price Bid and Bank Guarantee (both in original) submitted on 14th March, 2008 in response to the subject Global Tender are herewith enclosed as your offer was not found in conformity to AAI tender requirement as per brief details given below:

- Against the requirement of NIT Para 4.3.1 for a mid-ship mounted pump driven by vehicle PTO, the pump is driven by hydrostatic drive.
- As per the drawing provided by the firm, the width of the vehicle is shown as 2800 mm in one drawing and 2720 mm in another. The company has not provided any chassis manufacturers

data sheet to support the drawing. As per the data sheet available in the chassis manufactures website, the width is only 2550 mm.

- The load calculation for determining the CG and static till angle of the truck shows the load of water / foam is taken as 11300 Kg. In order to ensure 11300 mm usable water / foam the tank shall contain at least 500 litres water and 100 litres foam extra. Hence the load is less by 600 Kg. This variation in load calculation will adversely affect the static till angle.
- The transmission used is of Allison normal Gearbox whereas Allison has a separate Emergency Vehicle Series Gear box for CFT applications.
- The expandable pay load available is less than the requirement.
- The model offered by the firm is TH-DRAGON 56 ARFF on Iveco Trakker chassis. However, the leaflet provided by the company does not show the Dragon on this type of chassis.
- A practical assessment of an exactly similar vehicle would be required to ascertain the technical capability of vehicle.”

4. In order to qualify the technical bid there were various conditions laid down as eligibility criteria which were to be fulfilled by the bidders as per the tender document which reads as follows:-

(1.1.1) The manufacturing funds (either chassis or super structures manufacturers) should have supplied at least 20 numbers of major Airfield Crash Fire Tenders (4,500 litres water capacity or more) in India or abroad in the last five years (1st January, 2003 to 31st December, 2007).

(1.1.2) The manufacturing funds should also have manufactured / delivered at least 22 numbers of heaving vehicles or fire vehicles with minimum water tank capacity of 2000 litres in a single year during about last five years.

(1.1.3) The major ACFTs manufactures as required under Para (1.1.1 of the tender notice) should include at least 8 similar ACFTs having fully loaded vehicle performance, as per Para 4.1.1(a) or better and pump, monitor and water capacity equal to or more than that specified in Para 4.1.1(a).

(1.1.4) The foreign supplier should have an association with an indigenous manufacturer / fabricated (having experience in the field of manufacturing / fabricating and delivered fire fighting vehicles for a minimum period of five years (1st January, 2003 to 31st December, 2007) and manufactured or

fabricated and delivered at least 22 Nos. of heavy vehicles with minimum water capacity of 2000 litres in a single year during above-mentioned five years. The foreign supplier has at a point only one Indian associate.

(1.1.5) The firm should have an average turnover of Rs. 43.50 crores or US\$ 10.756.677 or Euro 7,754,011 in a year during last three years.

Further besides the above, bidder has to submit the document as per clause 1.2 of the tender documents which are as follows:-

(1.2.1) Documentary proof for the eligibility criteria 1.1.1 to 1.1.3 above.

(1.2.2) Technical details of the ACFT manufactured and supplied as required under Para 1.1.3 of eligibility criteria and invoice copy in support.

(1.2.3) Details of the airport where the ACFT has been supplied as required under Para 1.1.3 of eligibility criteria.

(1.2.4) Two performance certificates from airports including one for where similar ACFTs as per Para 1.1.3 in use.

(1.2.5) Details of Indian associates and documentary proof for eligibility criteria (1.1.4 above).

5. The main grievance of the petitioner as articulated by Shri Ashok Bhasin, Senior Advocate, in the present writ petition is as follows:

(a) Among the four eligible tenderers, the critical specification requirements of Drive to the Pump (Pump Roll) is met only by M/s. Iveco Magirus since they are offering a Hydrostatic power divider, where as all the other three offers are with mechanical (through gears) drive to the pump, which has limitations at higher speeds. Offers as made by M/s. Rosenbauer, M/s. Oshkosh and M/s. Morita

have deviations in this regard. The petitioner while fulfilling the eligibility criteria has also submitted the requisite documents showing as to how the petitioner's case was eligible for qualifying the technical bid. The petitioner No. 1 has given a compliance statement clause by clause to all the technical parameters of AAI.

(b) In response to the clause No. 1.1.4, related to the Indian associates, he submitted that M/s. BHTUL has been associated with the principal company M/s. Iveco Magirus for the last 35 years and this arrangement and engagement is not a device only to meet out the eligibility condition laid in the relevant clause. M/s. BHTUL has been one of the leading Indian names in the Indigenous development, manufacture and supply of fire fighting and rescue vehicles including major ACFTs for the last 35 years and also exceeds the average turnover clause No. 1.1.5 of the tender document.

(c) In the present bid technical evaluations has been done by the technical team without involving the petitioners for clarifying on any doubts or explanations needed or by technical presentations highlighting various unique aspects of the technical offer. Consequently, the technical offer of the petitioner

has been rejected without informing the petitioner or even seeking clarifications where further clarifications are needed.

(d) The petitioner has offered specially designed hydrostatic Pump Drive System which alone meets the criteria in terms of clause 4.12.5.1. This kind of system is working in hundreds of Magirus CFTs all over the world meeting ICAO and NFPA requirement successfully.

(e) The same system, which the petitioner has now offered in the technical bid, was first offered to Airport Authority of India in their tender for 43 Nos. CFT which was floated in the year 2001 vide Tender Enquiry No. 2/6/2000-AT.II (EQ) dated 18/3/2001 and it was technically accepted by the Airport Authority of India though the financial bid of the petitioner was not the lowest.

(f) The reference to clause 4.3.1 is misplaced and erroneous and against requirement of NIT Para 4.3.1. This clause does not refer to PTO and has been wrongly quoted by the AAI Technical Committee. M/s. Iveco Magirus has offered a mid ship mounted pump driven by Power Take Off through a Hydrostatic drive as required in Para 4.12.5.1 and explained in Para 4.1.5. No fire fighting vehicle in the world can drive a Fire Pump when using Power of the chassis engine

without a PTO.

(g) The drawing submitted alongwith the offer was a layout drawing, which are very clear. The maximum width of the fire fighting vehicle shows in the layout drawing No. 50058 3612 DC 884912 that the width is 2.8 Mtr., which is a layout drawing of the proposed CFT alongwith the chassis. The width mentioned in drawing No. 50058 3612 DC 884912 of the chassis cabin and not of the full CFT is 2.72 i.e. total width of 2.8 Mtr. of the whole vehicle. There is no such parameter in the tender specification that what should be the chassis width and the chassis wheelbase. For different application and designs, the chassis width and the chassis wheel base are changed by the chassis manufacturer to suit the requirement of the tender specification. The width 2.55 Mtr. has been taken from M/s. Iveco Magirus website of their basic commercial vehicles.

Reference can be made on Clause 4.1.3.10 which states and prescribes that the unit shall be designed to be “as compact as possible, complete with the case of accessibility to all subsystems for maintenance and repairs”. Further, reference can be made to clause 4.2 of the tender document which refers to the weight and dimensions of the vehicle. In short the clause 4.2 prescribes that the

“actual gross vehicle weight shall not exceed the max permissible limit weight of chassis and the weight should be distributed equally over the axles”. The same has also been referred to in the letter dated 23.06.2008.

(h) The load calculation for determining the Centre of Gravity (CG) given by Iveco Magirus in their Drawing No. 50058 3412 DC 00-0000 is 100% correct and meets the requirement of the specification. No-where in the specification has this calculation been sought. This has been provided as additional information just to confirm that the offered CFT met the CF requirement and had enough margins for overloading if required. As mentioned in clause 4.1.1(b)-1 Water Tank and b-(5) for Foam Tank says as Water Tank capacity of 10000 Ltr. and Point No.

1(a) On level ground 100%,

1(b) On 20 percent side slope 75% and

1(c) 30 percent ascending / descending grade 75%.

And Point No. 5 Foam Tank usable capacity (Litre) 13000 Ltr.

Nowhere it has been mentioned that it should be at least 500 Ltr. Water and 100 Ltr. Foam Extra. Further in general design of the entire fire fighting

vehicle, only usable capacity is mentioned in the specification but while designing the weight distribution extra margin are left for foam and water in the tank and it is always taken in the calculation. The extra load of 600 Kg. as mentioned in the rejection letter is part of the design, engineering calculation and it is mentioned nowhere in the specification.

(i) As required in clause 4.4 Vehicle Drive, the transmission system offered by M/s. Iveco Magirus is Allison Automatic Gear Box with torque converter having six forward speed and reserve speed as required for the above clause. This is a special transmission used by M/s. Iveco Magirus for their Airfield Crash Fire Tenders and they have built hundreds of CFTs on this Allison transmission is far superior to the transmission system being used by M/s. Rosenbauer of twin disc make, which has got hundreds of failure in old and new vehicles in India. This is frivolous as none of the technical parameters are mentioned.

(j) M/s. Iveco has offered a 30 ton GVW vehicle only with 27 Ton GVW total weight hence there is enough room for expanded payload.

(k) M/s. Iveco Magirus have offered Dragon series CFT and only named it TH Dragon to meet a special requirement of AAI 40 Nos. CFTs. The name does

not imply any technical specification. It is just a new model number which belongs to a Dragon Series of CFT of which Iveco Magirus has made hundreds of CFTs. Even the Dragon CFTs are using the same engine, same Allison transmission, same pump, same monitor etc. which are used in the offered TH Dragon.

(I) The petitioners had been apprehending their rejection from the beginning which is clearly reflected in the letters dated 17.05.2008, 30.05.2008 and 14.07.2008. Thus, despite the full compliance by the petitioners, the offer of the petitioners has been arbitrarily rejected on frivolous grounds without seeking any clarification from the tenderers on technical suitability or informing the petitioner with the objective to award the tender to respondent no. 3 who otherwise does not fulfill the technical eligibility conditions.

6. The learned senior counsel for the respondent submitted that:-

(a) There is no irrational arbitrary or malafide in the selection process of the tender in question or for that matter the rejection of the bid of the petitioner, as alleged. The tender of the petitioner is technically rejected and the reasons for rejection have been conveyed in the letter dated 21/25.07.2008. These reasons

are not flimsy or irrelevant but based on the evaluation as per the tender requirement. No undue advantage is given to any bids received in the tender. The Earnest Money Deposit has been returned as per the NIT conditions. The Price Bid has been returned as per the CVC guidelines Office Order No. 72/12/04 dated 10.12.2004. The evaluation based on eligibility requirements and technical requirements are entirely different parameters. As such meeting the eligibility conditions does not make any bidder eligible in the technical requirement. The selection is based on meeting all eligibility and technical requirement as per the tender. It is not that the case of the petitioner is different, the petitioner has been ousted because of not fulfilling the technical conditions.

(b) The petitioner has not offered any Power Divider. The offer is Hydrostatic drive and not hydrostatic Power Divider as required in the Tender. The Hydrostatic Drive is a replacement of the mechanical shaft drive, using complex components to achieve the drive transmission. This arrangement is not dividing the power but it only transmits the power through hydraulic system. Hence, it is a false statement to call it a Hydrostatic Power Divider. The other 3 bidders have offered mechanical Power Divider which fully meets the tender

requirements. The pump and roll requirement needs to be demonstrated between 0 to 16.1 km/h, whereas the Power Divider offered by other bidders have a capability to demonstrate the Pump and roll between 0 to more than 16.1 km/h.

(c) The reasons stated in the rejection letter date 21/25/07.2008 have bearing on the operational performance of the vehicle. The typographical error was notified to the tenderer through the letter dated 08.08.2008. Against the requirement of NIT para 4.1.3, for a mid-ship mounted pump driven by PTO, the pump is driven by Hydrostatic drive. As per NIT para 4.1.3.1 pump should be driven of the vehicle PTO. The firm is offering pump driven by hydrostatic drive using a hydraulic pump on the vehicle PTO. Hence, the pump is not driven of the vehicle PTO but through hydrostatic drive for which the PTO is only used to drive a hydraulic pump.

(d) The pump operation is extremely critical in case of ACFTs application and any hindrance or failure in its operation will render the ACFT completely unusable. In case of driving such a critical component through hydraulic drive has an adverse impact on account of following:-

i. The system comprises of too many components such as pump, hoses, valves, cooling system, filters, motor etc. Any failure in any of these components will result in malfunctioning of pump.

ii. The hydraulic drive is comparatively inefficient as compared to a mechanical drive. The mechanical drive is simpler and with minimum components requiring minimum maintenance thereby resulting in higher reliability.

iii. The efficiency of a hydraulic drive also depends on the temperature and quality of oil. Continuous operation causes temperature rise which is likely to affect the performance.

iv. The Hydraulic drive will also require high degree of maintenance to ensure optimum performance and to avoid failures. This makes it less reliable. This requirement is also linked to the performance as per NIT para 4.12.5.1. As per this requirement the design of the drive system shall prevent damage and minimize lurching of vehicle during simultaneous operation and shall be

capable of absorbing maximum torque delivered by engine to the pump under all speeds of engine and vehicle.

(e) In case of hydrostatic pump driven by PTO the design will not permit this requirement. This is a normal PTO arrangement with a difference that the mechanical drive is replaced by hydrostatic drive. The drive is designed to deliver the maximum torque and power always to the Gearbox for vehicle motion and not for PTO. As such the PTO will not be having the maximum torque or power from the engine in such an arrangement, at all engine and vehicle speeds. The maximum power and torque delivery requirement is achieved either by providing a power divider or a separate engine. In case of separate engine the entire power and torque of the engine is directly available to the pump. In case of power divider during the 'pump and roll' mode the power and torque is delivered directly to the pump. The Gear Box will receive power only when it is required to move the vehicle by providing additional throttle resulting in additional power which is required for the vehicle movement. This arrangement ensures that the pump is always receiving maximum torque and power without getting affected by the movement of the vehicle. The offered

arrangement of the petitioner can only ensure engaging of pump at any engine and vehicle speed but the design cannot ensure absorbing maximum torque delivered by engine to the pump under all speeds of the engine and the vehicle.

(f) As per the drawings provided by the petitioner firm, the width of the vehicle is shown as 2800 mm in one drawing and 2720 mm in another. The company has not provided any chassis manufacturers data sheet to support the drawing. The model offered is Trakker AT 380 which is a standard chassis of Iveco and the chassis width remains the same in various models on this chassis. As per the data sheet available in the chassis manufacturer's website, the width is only 2550 mm. The variation within the different drawing and variation with respect to the chassis data are clean. The dimension of the chassis, especially the overall width, is in variance with the data sheet of the chassis manufacturer. It is observed that they are using the tyre size of 395/85-R20 whereas the maximum size as per the above data sheet is 385/65-R-22.5.

(g) As per the NIT requirement table 4.1.1b the water tank capacity of 10000 Ltr. is minimum usable capacity which should be available 100% on level ground and 75% on 30% grade and 20% on side slope. In order to ensure this delivery

the tank should have at least 5% more water. Similarly the foam tank should also have extra capacity. Considering this, the actual weight of the water and foam together cannot be the minimum specified of 11300 but should be at least 500-600 Ltr. more. This additional weight should have been included while calculating the load centre in the drawing. The increased water capacity has impact on Centre of Gravity of the vehicle. In the absence of a similar vehicle manufactured and tested, the impact of shift in Centre of Gravity cannot be ascertained. Moreover, the tilt angle demonstration based on calculation does not take into account the behavior of suspension during the tilt, the shifting of water towards the tilted side etc. Hence, the tilt angle requires a practical demonstration. In case of IVECO, similar vehicle is not available to vouch or assess the actual tilt angle. As per the questionnaire of NIT S. No. 30, the firm has to give the details of major ACFTs equivalent to above specifications supplied in the past. In response to this firm has referred to the list enclosed for eligibility documents.

(h) As per the eligibility condition 1.1.3 the list of ACFTs should include at least 8 similar ACFTs having fully loaded vehicle performance as per para

4.1.1a or better and pump, monitor and water capacity equal to or more than that specified in 4.1.1b. The list provided by the firm does not include a single ACFT having the specifications of the model they are offering i.e. TH-DRAGON X6 12000 DP 150.

(i) The firm has enclosed the product brochure for Dragon X6. Whereas, the specification offered to AAI is totally different from this brochure i.e. the deviations are 100%. The name may not indicate the technical specifications as stated by the petitioner. Whereas the technical descriptions printed in the leaflet are in total variance with the offer. Here, the company not only failed to comply with the tender requirement but also submitted false information by giving one set of specifications in the printed brochure and giving completely different specifications in the detailed offer.

(j) As per the eligibility condition 1.1.3 the list of ACFTs should include at least 8 similar ACFTs having fully loaded vehicle performance as per para 4.1.1a or better and pump, monitor and water capacity equal to or more than that specified in 4.1.1b. The list provided by the firm does not include a single ACFT having the specifications of the model they are offering i.e. TH-DRAGON

X6 12000 DP 150. The firm has failed to provide the past supply details of major ACFTs equivalent to the specifications offered to AAI.

(k) Further the firm has also shown the photograph of a CFT with a caption 'similar vehicle'. As per this photograph, the CFT is having twin tyres at the rear axle, whereas the requirement is single wheel configuration. This also shows that similar vehicle is neither as per the specifications nor as per the brochure submitted by them.

(l) The committee during evaluation in its meeting held on 27/3/2008 had analyzed and observed that the discrepancies require a detailed study with relevant data sheets and technical clarifications from the manufacturer. In order to assess the technical capability of the ACFT with given specifications, it would require practical assessment of an exactly similar vehicle manufactured and supplied by the company to an airport. Since the pump drive is not complying with the requirement of NIT 4.3.1, seeking technical clarifications and conducting a practical assessment of an exactly similar vehicle would be a futile exercise in terms of time and money.

(m) The letters dated 17.05.2008, 30.06.2008 and 14.07.2008 are not issued

by the tenderer but by M/s. BHTUL who is neither the tenderer nor have any authorization from the tenderer for issuing such letters. These letters are issued with a motive of misleading and influencing the tender process by sending copies to various authorities not connected with tender. The bids not meeting the tender requirements including that of the petitioner were rejected citing the reasons and only the technically qualified bids were opened.

7. While considering the pleas of the petitioner about the universal acceptability, user and the superiority of the technology utilized by them, we have to keep in mind only what were the tender requirements. In our view, the plea of the respondent that the petitioner had not offered any power divider and offered only a hydrostatic drive as opposed to the hydrostatic power divider required in the tender, has not been controverted. Whether or not the hydrostatic drive is superior or better than the hydrostatic power divider is not within the domain of a writ court. The writ court is only concerned in evaluating the challenge to the tender, to take into account whether or not the tender requirements have been met and if not whether the rejection is on a flimsy and arbitrary ground. As contrasted to the petitioner's offer, all the three bidders

who were technically found qualified had offered mechanical power divider which fully met the tender requirements.

8. It has also been highlighted by the rejection letter dated 25th May, 2008 that against the requirements of the tender, paragraph 4.1.3.1 for a midship mounted pump, the petitioner's tendered pump was driven by hydrostatic drive. In our view, the respondents cannot be faulted for weighing this factor against the petitioner.

9. The requirement of the respondents was for Airfield Crash Fire Tender and as it is evident that the pump requirement was extremely critical and the respondents had insisted on a mechanical drive instead of a hydraulic drive owing to the complexity of the hydraulic drive, the rising temperature and the higher levels of maintenance, in our view, this is an extremely relevant consideration and accordingly, the respondents were right in rejecting the petitioner's claim on this ground also. What drive the tenderer chooses is entirely his choice and a bidder can have no say in the said choice. A bidder in a challenge to the rejection of a tender may only show the arbitrariness of the rejection by demonstrating that it had met the tender requirements at least on

material terms. In our view, the petitioner has failed to demonstrate that the departures from the tender terms pointed out by the respondents were not material in nature.

10. The hydraulic drive has also been rightly faulted for lacking the torque or power required for efficient functioning of the fire tender. There have been other grounds mentioned for rejection by the respondents such as the width of the vehicle, the water tank capacity and eight fully loaded vehicle performance and the variants in printed leaflets and the offer, but in our view, the other circumstances pointed out are of a minor nature and the circumstances enumerated by us above, in our view, are sufficient for us to hold that the respondent had rightly rejected the petitioner's tender for non-fulfilling the technical requirements. Sitting as a writ court, it is not for us to determine whether the technical requirements given by the petitioner were better than those sought by the respondent. This Court, in its writ jurisdiction, cannot do so unless the grounds for rejection are extremely flimsy and arbitrary and do not have bearing on the essential features of the tender document. Accordingly, we see no reason to interfere in the writ jurisdiction in the impugned order dated

21st July, 2008 and the writ petition is dismissed with no order as to costs.

11. The writ petition is accordingly dismissed along with all pending applications.

(MUKUL MUDGAL)

JUDGE

(MANMOHAN)

JUDGE

February 13, 2009

sk/dr/s