

ITEM NO.1(ii) :

MINUTES OF THE 165TH MEETING OF THE EXECUTIVE COMMITTEE

B.M.R.D.A.

DATE : 29th September, 1995 (Friday)

TIME : 3.30 P.M.

PLACE : Chief Secretary's Committee Room,  
5th Floor, Mantralaya.

MEMBERS PRESENT :

Shri Sharad Upasani Chief Secretary to Government	- Chairman
Shri Deepak Parekh	- Member
Shri D.T. Joseph Secretary (TPWSS) to Government Urban Development Department	- Member
Shri Ajit Warty Secretary to Government Housing and Special Assistance Department	- Member
Shri B.B.Sharma Managing Director C.I.D.C.O.	- Member
Shri D.Mehta Metropolitan Commissioner	- Member

SPECIAL INVITEES :

Shri S.G.Kale Additional Chief Secretary to Government Planning Department	
Shri Venkat Chary Principal Secretary to Government Finance Department	
Shri B.K.Agarwal Secretary (Marketing) to Government Co-operation and Textiles Department	
Shri R.K.Bhargava Secretary (Textiles) to the Government Co-operation and Textiles Department	

INVITEES :

Shri K.N.Patel  
Legal Advisor, B.M.R.D.A.

Shri V.K.Phatak  
Chief, Planning Division, B.M.R.D.A.

Shri K.R.Shanbhogue  
Chief Accounts Officer & Financial Adviser  
Finance & Accounts Division, BMRDA

Shri S.P.Pendharkar  
Chief, Town & Country Planning Division, BMRDA

Shri M.B.Salvi  
Lands Officer  
and  
Marketing Manager, BMRDA

Shri S.V.Asgaonkar, Secretary, Executive Committee, BMRDA

Item No.1 : Development of Convention Centre-cum-Hotel  
in the International Finance and Business Centre  
(IFBC) in Bandra-Kurla Complex.

1.1 While introducing the Item before the meeting the Metropolitan Commissioner stated that as approved by the Executive Committee and the Authority, tenders for disposal of plot of land for Hotel & Service Apartments and office-cum-Shopping Complex were invited in 2 Envelopes (i.e. Envelope No.1 - Technical Proposals and Envelope No.2-Financial Proposals). On the last day of receiving the tenders (i.e. 23rd April, 1995) in all 9 tenders were received, which were opened on the same day in the presence of the tenderers who remained present. As the Technical Proposals of all the 9 tenderers were found eligible, the Second Envelopes (Financial proposals) were opened on 25th May, 1995. On the opening of the Financial Proposals, it was found that there was variation upto 68.06% between the highest tender and the lowest tender. In view of the specialised nature of this tender, as the successful tenderer was required to develop, operate and maintain the Convention Centre on the land with permissible built-up area of 51,000 sq.mtrs. adjacent to hotel area within the stipulated period of 3 years as per the design and specifications approved by the BMRDA at the tenderer's cost, etc., the appraisal of the tenders was, with the approval of the Executive Committee, entrusted to professionals in finance & hotel consultancy business. For this purpose, quotations were invited from the short-listed

Consultants and the lowest quotation of M/s. Raiji & Horwath Consultancy Services Pvt. Ltd. was accepted. In view of wide variations as stated above between the highest and the rest of the tenders received, the Consultants were asked to evaluate only the first 3 highest tenders which were as under:-

Name of the Company	Rate per Sq. Mtr. (Rs. in crores)	Total amount (Rs. in crores)	Amount of down-payment (min. 25%) (Rs. in crores)	Contribution to up-gradation fund (Rs. in crores)	Variation from the highest
1.	2.	3.	4.	5.	6.
Hotel Leela Venture Ltd.	1,64,203	1,133.00	283.25 (25%)	15.00	-
Lawsoo Corpn, Ltd.	1,41,255	974.67	243.67 (25%)	10.00	13.97%
Asian Hotel	1,15,000	793.50	277.73 (35%)	11.00	29.96%

The Metropolitan Commissioner further stated that during the course of evaluation of such 3 highest tenders, the Consultants had asked for various clarifications, from time to time. Those were communicated by the BMRDA's office to the concerned tenderers and the information made available by them was submitted to the Consultants. In addition, the Metropolitan Commissioner, BMRDA from time to time called upon the representatives of bidders to furnish clarifications and elaborate on the proposals submitted by them and briefed the Consultants suitably.

1.2 Copies of the report submitted by the Consultants were made available to the Members of the Executive Committee in advance.

1.3 Shri Vijay P. Thacker, Director of the Consulting Company who was present at the meeting then highlighted some of their observations in the report and inter alia stated that according to them all the 3 highest tenders were financially unviable and that there was every possibility of these tenderers defaulting in making future lease payments as also other dues to the BMRDA. He also expressed doubt whether the Convention Centre would come up in time and would be operated in the manner envisaged by the BMRDA in view of the serious financial and management problems.

However he pointed out that the concept offered by Leela Group is first rate and is of an international standard of Convention Centre. Shri Thacker also restated 3 options for the consideration of the Committee,

viz. :-

- (1) To reject all the tenders and issue fresh tenders; or
- (2) Highest 3 tenders should be rejected and the next 3 tenders viz. of Taj, Oberoi and ITC Group of Hotels with more experience in hotel line in India and which appear more viable may be considered; or
- (3) To encash the highest financial offer given by Leela Venture which has proposed a high quality product by giving them the project under very stringent and comprehensive safeguards.

Shri Thacker made it clear that order of the options do not suggest their ranking for acceptance.

1.4 The safeguards recommended by the Consultants were incorporated in Annexure-E to the Item Note circulated to the Members of the Executive Committee.

1.5 The Legal Adviser, BMRDA who was present at the meeting then informed the meeting that, the office of the BMRDA, after the evaluation of the Technical Proposals of the tenderers found all the tenderers eligible and thereafter opened the second envelopes which contained the Financial Proposals. Having thus found the highest tenderer eligible, the Authority which is the instrumentality of the State is bound by the law laid down by the Supreme Court in this respect under Article 141 of the Constitution. Pointing out that in *M/s.G.J.Fernandez V/s.State of Karnataka* (AIR 1990 SC 964), the Supreme Court reaffirmed the rule of administrative law settled by it in *Ramana Shetty V/s. International Airport Authority* (AIR 1979 SC 1635). As per this judgement 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. The L.A. further pointed out that in *Food Corporation of India V/s. Kamdhenu Cattle Feed Industries* (AIR 1993 SC 1604), the Supreme Court expounded the doctrine of legitimate expectations articulated in anglo-saxon jurisprudence. The doctrine of legitimate and reasonable expectations flows from the representations held out by the State or its instrumentality in the course of inviting tenders from the public or a limited class of the community.

The Supreme Court held as follows :-

"In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Art. 14 of the Constitution of which non-arbitrariness is significant fact. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities."

The Legal Adviser further pointed out that the Supreme Court in Union of India V/s. Hindustan Development Corporation (1993 SC 537) held that the legitimate expectations arise from the representation made by the Authorities in the course of inviting tenders or implied representation or from a consistent past practice.

The Legal Adviser further pointed out in Neelima Misra V/s. Harinder Kaur Paintal (AIR 1990 SC 1409), the Supreme Court held as follows :-

"An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim audi alteram partem. It means that the decision maker should afford to any party to a dispute and opportunity to present the case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken."

Summing of his observations, the Legal Adviser informed the Committee that the BMRDA having found Hotel Leela Venture Ltd. eligible cannot disqualify them or reject their tender without giving them opportunity to state the basis of their tender and its viability.

....6/-

1.6 After prolonged discussion, the consensus was that out of the 3 option suggested by the Consultants, the option which suggested that the highest offer of Hotel Leela Venture Ltd. be accepted by imposing stringent and comprehensive safeguards as envisaged in the tender documents was most appropriate. It was desired to hear the views of the Solicitors M/s.Kanga & Co. who were entrusted the work of preparing legal documents viz. Agreement to Lease, Lease Deed and other necessary legal papers.

The Committee also desired that it should be examined whether the proposed safeguards are germane to the conditions mentioned in the booklet published by the BMRDA and or the provisions of BMRDA (Disposal of Land) Regulations, 1977.

1.7 Accordingly, further consideration of the Item was deferred.

The meeting then terminated with a vote of thanks to the Chair.

