

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.02 OF 1996

BETWEEN:

NATIONAL CONTRACTORS LIMITED

Applicant/Plaintiff

and

NATIONAL DEVELOPMENT CORPORATION

Respondent/Defendant

Appearances:

Mr. Peter I. Foster and Ms. Claire Greene-Malaykhan for the Applicant/ Plaintiff.  
Mrs. Brenda Floissac-Fleming for the Respondent/ Defendant.

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1999: October 14,  
November 04, 22  
2000 April 19  
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JUDGMENT

- [1] HARIPRASHAD-CHARLES J. [Ag.] On 4<sup>th</sup> day of January 1996, the Applicant/ Plaintiff filed an application for leave to apply for Judicial Review in accordance with Order 44 of the Rules of the Supreme Court 1970.
- [2] On 15<sup>th</sup> day of January 1996, d'Auvergne J. granted leave to file and serve writs of certiorari and mandamus.

[3] By way of Originating Summons filed on 23rd day of May 1996, the Plaintiff applied for:

- (a) an order of Certiorari to remove into the High Court for the purpose of it being quashed a decision made by the National Development Corporation whereby it decided to accept the tender presented by Quarry Products Limited, and/or Leftco Limited in place of the Applicants' for the Construction of Access Roads and Drainage Facilities - La Tourney Phase IV Extension - Vieux Fort;
- (b) an order of Mandamus directed to the National Development Corporation, a statutory body, to require the said Corporation to hear and determine according to proper procedures, and in accordance with the rules of natural justice and in accordance with proper tender practices, that sufficient weight be given to the Applicant's tender presented to the said Corporation, the said tender being the best available to the Corporation under all the circumstances;
- (c) such further or other relief in the terms set out in the Notice of Application as amended served herewith; and
- (d) costs of and occasioned by this motion be awarded to the Applicant.

[4] Prior to the hearing of the Originating Motion, the Respondent/Defendant filed a Notice of Motion under Order 8 Rule 3 and Order 33 Rule 4 for an order that the following question or issue be tried separately as a preliminary issue before the trial of other questions or issues in this action namely:

"Whether the Defendant's acceptance or rejection of a tender for works and the Defendant's decision in regard thereto are private acts and matters governed by the private law of contract or are public acts and matters governed by public law and as such susceptible to judicial review capable of resulting in the remedies by way of the prerogative orders of certiorari and mandamus."

[5] Put a simpler way, the preliminary issue to be determined is whether the Defendant's acceptance or rejection of a tender for works and the Defendant's decision in regard thereto are private acts and are governed by private law or are public acts and are governed by public law.

## THE RESPONDENT/DEFENDANT'S SUBMISSIONS

- [6] Counsel for the Defendant, Mrs Brenda Floissac-Fleming commenced her arguments by stating that the remedies by way of judicial review (including the remedies by way of the prerogative orders of certiorari, mandamus and prohibition) are appropriate and available only in respect of decisions and administrative actions made or taken in the exercise of or pursuant to public powers and duties (i.e. constitutional, statutory, prerogative and common or civil law powers and duties derived from and governed by public law). According to her, these remedies are not appropriate or available in respect of decisions and administrative actions made or taken in the exercise of or pursuant to private powers and duties (i.e. contractual and other powers and duties derived from and governed by private law).
- [7] The order of mandamus is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty.
- [8] Lord Scarman in *IRC v National Federation of Self-Employed and Small Businesses Ltd.* [1981] All E R 93 at page 111 had this to say:
- "Mandamus is the most elusive of the prerogative writs and orders. The nature of the interest an applicant must show, the nature of the duty which is available to enforce, and the persons or bodies to whom it may issue have varied from time to time in its development. It is, of course, a judicial remedy; it is equally clear that it is a remedy to compel performance of a public legal duty, that it does not go to the Crown itself and that it is available only if the applicant shows a sufficient interest."
- [9] Counsel submitted that if, as in the instant case, the Applicant/ Plaintiff is applying for judicial review, the corollary is that the Respondent/ Defendant must be acting in the performance of a public legal duty. In this regard, Counsel alluded to the

case of *R. v Industrial Court, Ex parte A.S.S.E.T.* [1964] 3 All E.R. 130. At page 136, Lord Parker said thus:

"It has been urged on us that really this arbitral tribunal is not a private arbitral tribunal, but that, in effect, it is undertaking a public duty or a quasi-public duty and, as such, is amenable to an order of mandamus. For my part, I am unable to come to that conclusion. It is abundantly clear that they had no duty to undertake the reference. If they had refused to undertake the reference they could not be compelled to do so. I do not think that the position is in any way different once they have undertaken the reference. They are clearly doing something which they were not under any public duty to do, and in those circumstances, I see no jurisdiction in this court to issue an order of mandamus to the Industrial Court."

[10] In similar vein, Counsel referred to the cases of *Law v National Greyhound Racing Club Ltd.* [1983] 3 All ER 300 and *Davy v Spelthorne Borough Council* [1983] 3 All ER 278. In the former case, it was held that since the stewards' authority to suspend the plaintiff's licence derived solely from a contract between him and the defendants there was no public element in their jurisdiction as such (although the public might be affected) and therefore their decision was reviewable by prerogative order. It followed that it was not open to the plaintiff to seek the relief by way of judicial review and, conversely, that it was open to him to seek a declaration in the ordinary way. At page 305, Fox L.J. said:

"Accordingly, in my view, the authority of the stewards to suspend the licence of the plaintiff derives wholly from a contract between him and the defendants. I see nothing to suggest that the defendants have rights or duties relating to members of the public as such. What the defendants do in relation to the control of greyhound racing may affect the public, or a section of it, but the defendants' powers in relation to the matters with which this case is concerned are contractual. Apart from the alteration of the Rules of the Supreme Court in 1978 and the provisions of the Supreme Court Act 1981 the prerogative orders would not, in my view, lie to the tribunal set up by the defendants because the powers of such a tribunal derive from contract only. I do not think that the authorities leave scope for any real doubt as to that. In *R v Criminal Injuries Compensation Board, ex p. Lain* [1967] 1 All ER 770 at page 778 Lord Parker CJ said:

"The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned."

- [11] In *Davy v Spelthorne Borough Council* [1983] 3 All ER 278 at page 283, Lord Wilberforce had this to say:

"The present proceedings, so far as they consist of a claim for damages for negligence, appear to me to be simply an ordinary action for tort. They do not raise any issue of public law as a live issue. I cannot improve on the words of Fox LJ in the Court of Appeal when he said:

'...I do not think that the negligence claim is concerned with "the infringement of rights to which [the plaintiff] was entitled to protection under public law", to use Lord Diplock's words in *O'Reilly v Mackman*. The claim, in my opinion, is concerned with the alleged infringement of the plaintiff's rights at common law. Those rights are not even peripheral to a public law claim. They are the essence of the entire claim (so far as negligence is concerned).'

- [12] Learned Counsel submitted that the line of authorities [supra] are establishing that the nature of the applicant's cause of action is the true test for determining whether an administrative decision or action is subject to or amenable to judicial review or not.

- [13] She stated that if the alleged cause of action is an illegal, irrational or procedurally improper administrative decision which does not amount to a tort or a breach of contract or any common law cause of action, the administrative decision can only be governed by Public law. But if the cause of action is an administrative decision which amounts to a tort or breach of contract, the administrative decision is governed by private law. In my opinion, this represents a fair pronouncement of the law.

[14] Counsel strenuously argued that in the instant matter, the Plaintiff's cause of action is in the realm of contract law as is evident in paragraph 9 of his application filed on 23<sup>rd</sup> day of May 1996 which reads as follows:

" By reason of the matters aforesaid NDC have wrongfully and in breach of all tender practices, decided to grant to Quarry Products Limited and or Leftco Limited the said contract, in place and instead of the Plaintiff."

[15] The Plaintiff is aggrieved by a decision of the Defendant to award the contract to other contractors and not to the Plaintiff. The Plaintiff's contention is based on the following particulars:

- (1) The Plaintiff presented the best tender in all the circumstances.
- (2) NDC failed and or refused to and or neglected to give the Plaintiff an opportunity to be heard and or to give them a fair hearing with regard to their tender, which was on the face of it, the best tender in all the circumstances.
- (3) NDC failed to notify the Plaintiffs of their decision not to accept their tender, and or failed to give reasons for their refusal so to, when the Plaintiffs' tender was in all the circumstances of this case, the best.
- (4) It is the duty of NDC to have regard to the best tender offered to them, in the interest of the Corporation, and in the overall interest of the economic development of St. Lucia.

[16] Counsel for the Defendant, Mrs. Fleming asserted that an invitor's decision to invite tenders or to accept or reject a tenderer's tender or an invitor's invitation, acceptance or rejection of a tenderer's tender is not a decision or action made or taken in the exercise of or pursuant to a public power or duty derived from and governed by public law. It is a decision or action made in the exercise of or pursuant to a contractual power or duty derived from and governed by the private law of contract (offer and acceptance etc).

[17] She referred to Halsbury's Laws of England, 4<sup>th</sup> edition. At paragraph 1131 it is stated that letters asking contractors to tender for works are invitations to treat; it is generally unnecessary for a building owner or employer to state he does not bind himself to accept the lowest tender. Where such a letter states that the lowest tender will be accepted or where the parties have negotiated on that basis, the letter may amount to an offer. Paragraph 1132 reads thus: **ACCEPTANCE OF A TENDER:**

"The unconditional acceptance of a tender gives rise to a contract. An acceptance is effective when communicated to the tenderer, and if it is reasonable to accept the tender by post such acceptance is effective when posted."

[18] Counsel asserted that the tender of Quarry Products Limited and or Leftco Limited, another tenderer was accepted and such acceptance gives rise to a contract.

[19] The case of *Blackpool and Fylde Aero Club Ltd v Blackpool Borough Council* [1990] 3 All ER 25 is very illuminating in this regard. At page 30, Bingham LJ said:

"A tendering procedure of this kind is, in many respects, heavily weighted in favour of the invitor. He can invite tenders from as many or as few parties as he chooses. He need not tell any of them who else, or how many others, he has invited. The invitee may often, although not here, be put to considerable labour and expense in preparing a tender, ordinarily without recompense if he is unsuccessful. The invitation to tender may itself, in a complex case, although again, not here, involve time and expense to prepare, but the invitor does not commit himself to proceed with the project, whatever it is, he need not accept the highest tender; he need not accept any tender; he need not give reasons to justify his acceptance or rejection of any tender received. The risk to which the tenderer is exposed does not end with the risk that his tender may not be the highest (or, as the case may be, lowest). But where, as here, tenders are solicited from selected parties all of them known to the invitor, and where a local authority's invitation prescribes a clear, orderly and familiar procedure (draft contract conditions available for inspection and plainly not open to negotiation, a prescribed common form of tender, the supply of envelopes designed to preserve the absolute anonymity of tenderers and

clearly to identify the tender in question and an absolute deadline) the invitee is in my judgment protected at least to this extent: if he submits a conforming tender before the deadline he is entitled, not as a matter of mere expectation but of contractual right, to be sure that his tender will after the deadline be opened and considered in conjunction with all other conforming tenders or at least that his tender will be considered if others are."

[20] Counsel submitted that in the present case, the Defendant was under no specific statutory or public duty to invite tenders for works. If the Defendant had refused to invite such tenders, the Defendant could not have been compelled under public law to do so. In inviting such tenders, the Defendant performed a voluntary act and thereby entered the field of private law.

[21] She reiterated that the Defendant was under no specific statutory or public duty to accept or reject tenders for works as for which the Plaintiff contends. She declared that if the Defendant accepted or rejected such tenders, the Defendant did so under private law. Accordingly, the Defendant's decision to acceptance or rejection of such tenders and their powers, duties and rights in relation to such decision, acceptance and rejection could not have been public acts and matters derived from or governed by public law. They were and remained private acts and matters derived from and governed by the private law of contract.

[22] Counsel for the Defendant also submitted that the application of the Plaintiff appears to allege that the *audi alteram partem* rule of natural justice and fairness has been contravened. Counsel argued that this rule is inapplicable in this matter as the Defendant is exercising a private right to award contracts and not a constitutional, statutory or prerogative right. She referred to the case of *Chief Immigration Officer v Roger Burnett* (1995) 50 WIR 153. At page 161, Sir Vincent Floissac, Chief Justice, in delivering the judgment of the Court said:

"According to the *audi alteram partem* rule, where any authority (person or body of persons) intends to exercise a constitutional, statutory or prerogative power and thereby to make or take a judicial, quasi-judicial or administrative decision or action which will adversely affect the status,



rights, interest or legitimate expectations of any other person, the authority\* is under a common law duty\*\* (and may also have a correlative constitutional or statutory right) to the observance of those formalities before such a decision or action is made or taken. Those formalities may include notice to the complainant of the specific allegations made against him and a fair and reasonable opportunity for the complainant to answer or rebut those allegations and to make representations in regard to the intended decision or action."

[23] Mrs. Fleming stressed that the Plaintiff's arguments based on his legitimate expectations are wholly irrelevant to the circumstances of this case. According to Counsel, it cannot be said that the Plaintiff had a legitimate expectation that he would be awarded the contract because he was the lowest bidder and that he equaled the shortest time to complete the contract. She drew attention to the letter for the tender from the Executive Director of the National Development Corporation which expressly notified the Plaintiff that the Corporation does not bind itself to accept the lowest, or any tender. Counsel succinctly submitted that in this context, there could be no such expectation (legitimate or otherwise).

[24] It cannot be disputed that the National Development Act of 1971 (No.9) confers a statutory duty on the Corporation to develop lands in Saint Lucia economically but

**OMISSION FROM QUOTATION: PARA.22:**

\* ( the complainant)

\*\* ( and may also be under a constitutional or statutory duty) to observe certain formalities and the complainant has a correlative common law right she emphasized that the Act does not confer any statutory power on the said Corporation as to how to develop lands. According to Counsel, the form of development is left to the Corporation. The Corporation is given the liberty to enter into contracts and into the realm of private law to achieve such development.

[25] In all the circumstances of the case, the Defendant submitted that in order for the court to grant the remedies by way of Judicial Review, the authority in question must be exercising a constitutional, statutory or prerogative power. The Defendant,

according to Counsel, was not exercising such a power but was merely exercising a contractual power to award contracts.

[26] Counsel urged the Court to find that the Defendant's rejection of the Plaintiff's tender and the Defendant's decision thereto are matters of a private nature and as such, fall within the realm of private law and are not public acts and matters governed by public law. It is also the contention of the Defendant that the remedies by way of judicial review (and in particular, the remedies by way of the prerogative orders of certiorari, mandamus or prohibition) are not available to the Plaintiff where an alternative remedy exists in private law or under statute. The cases of *R v Disciplinary Committee of the Jockey Club, ex parte Aga Khan* (1993) 2 All ER 853 and *Harley Development Inc. v Commissioner of Inland Revenue* (1996) 1 W.L.R. 727 (P.C.) was cited to support this contention. In the latter case, Lord Jauncey of Tullichettle at page 735 stated:

" My fourth proposition is that a remedy by way of judicial review is not to be made available where an alternative remedy exists...Judicial review is a collateral challenge: it is not an appeal. Where Parliament has provided for statute appeal procedures, as in taxing statutes, it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision."

[27] Counsel concluded her arguments by stating that applying the principles enunciated in these two cases, the Applicant/ Plaintiff will suffer no hardship if he is denied Judicial review. His remedy (if any) is by way of an ordinary action to vindicate and enforce a private or contractual right (if any).

#### THE APPLICANT/ PLAINTIFF'S SUBMISSIONS

[28] Counsel for the Applicant/ Plaintiff, Mr. Peter Foster argued that the Defendant failed to address the nature of the parties concerned in this transaction and failed to identify properly the nature of the complaint against the Defendant. According to Counsel, the Defendant is not a private person but rather a Statutory Corporation,

given life by an Act of Parliament. The works in question were not private rights but rather, designed to benefit the people of La Tourney in the Town of Vieux Fort.

[29] Mr. Foster submitted that none of these facts have been addressed by the Defendant and in this regard, he referred to the National Development Act of 1971 (No.9) and specifically to Sections 4, 15, 16 and 17, 26, 28 and 30. Counsel interpreted these sections as conferring public duties on the Defendant for the benefit of the people of Saint Lucia. In his comprehensive submissions, Counsel asserted that the National Development Corporation is charged with administering public funds and that when a citizen of Saint Lucia is affected in any manner in which public funds are disbursed; the procedure involved is subject to judicial review.

[30] Counsel further submitted that the Defendant is a public body governed by public duties and sanctions and is subject to the approval of the Prime Minister on all contracts. According to him, what transpired was a development by the Defendant to facilitate the Government to build roads and drains for the benefit of the people of La Tourney. The lands at La Tourney are now vested in the Government, Mr. Foster pronounced. Mrs. Fleming has timely dismissed this as an irrelevant consideration as at the opportune time, the lands were vested in the Defendant. I cannot disagree with Mrs. Fleming.

[31] The complaint of the Applicant/ Plaintiff in this matter is not about the acceptance or rejection of the tender in isolation, but the manner in which the Defendant arrived at its decision and Counsel emphatically declared that this is subject to judicial review. He argued that as in the instant matter, where there is a fixed contract; the only two variables were the price and the time to carry out the work. On the face of the record, the Plaintiff was the lowest bidder and that he equaled the shortest time to complete the works. Mr. Foster questioned " why did he not win the tender?" He contended that it begs the question to review the decision-making process of the Corporation and this is subject to judicial review.

[32] Counsel for the Applicant/ Plaintiff urged the Court to reject the proposition expounded by the Defendant in paragraph 1 of her skeletal arguments as it is not a correct interpretation of the law as supported by their authorities. He contended that it is distinguishable from the facts of the instant case and referred to Halsbury's Laws of England (4<sup>th</sup> edition) and particularly to paragraph 60 which reads:

" Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties."

[33] Counsel submitted that the action for judicial review is therefore an application to this Court to exercise its supervisory jurisdiction over the proceedings of the Defendant Corporation of its decision making process to ensure that the Plaintiff was given a fair treatment by the Defendant Corporation (a statutory body which is a Governmental agency - which is financed inter alia by subvention from the Government) to which it had been subjected. It is in the public interest that the Defendant in carrying out its functions does so fairly and or has not abused its powers.

[34] The Applicant/ Plaintiff contended that on the face of the record, it could be properly argued that the Applicant/ Plaintiff was the lowest bidder and that he equaled the shortest time of completion of the works and as a consequence, ought to have won the tender. His legitimate expectation was to be treated fairly and that his application would be considered justly. The Applicant/ Plaintiff maintained that it is the procedure in arriving at its decision that is being challenged and which is susceptible to Judicial review; not to grant the Applicant/ Plaintiff the contract because any reasonable Authority faced with this decision-making process would have granted the contract to the Applicant/ Plaintiff.

[35] Counsel then embarked on an in depth analysis of the authorities referred to by Counsel for the Defendant and declared that none of these authorities are

applicable to the instant case. Counsel submitted that the case of *Law v National Greyhound Racing Club* [supra] dealt with the construction of Section 31 of the Supreme Court Act 1981 and that in the present matter, there is no alternative remedy to appeal to the Minister.

[36] Mr. Foster stated that the issue in this matter is the impropriety of the Defendant Corporation to award the contract to someone other than the Plaintiff. He asserted that there was a public element: that the tender was to get the best deal for the people of La Tourney which in turn will benefit the people of Saint Lucia. Counsel quoted extensively from the treatises: *de Smith on Judicial Review of Administrative Action (1995)* and *Judicial Review Handbook (2<sup>nd</sup> Edition)* by Michael Fordham. Learned Counsel for the Defendant urged the Court not to place any importance to these treatises as they are the views of academic writers of not what the law is but what it should be. I support the submission of Counsel for the Defendant.

[37] The Applicant/ Plaintiff relied on the cases of *R v Wear Valley District Council, ex parte Binks (1985) 2 All ER 699* and *R v Panel on Take-overs and Merges, ex parte Datafin [1987] 2 W.L.R. 699*. In the former case, Taylor J. at page 703 had this to say:

"It seems to me that following that decision the question whether the council are regulating a public market or an informal market is irrelevant to the application of the rules of natural justice. Moreover, in the present case the Market Place at Crook is conceded to be a place to which the public has a right of resort at all times. It is not a highway, but it is nevertheless a place to which the public has a right of access and on which the council have a discretion whether to allow street traders or not. During the day, the Market Place is in fact used for a market. When it is not being so used between prescribed hours it is used as a public car park for which no charge is made. It therefore seems to me that the local authority in granting or revoking licences to street vendors to operate in the Market Place are in exactly the same situation as that envisaged in the *Basildon* case by all three of the members of the Court of Appeal. It seems to me that there is a public element in the decisions of the council with regard to whom they license and whom they do not license to trade in the Market Place."

[38] In the case of *R v Panel on Take-overs and Merges, ex parte Datafin* [supra], it was held that the supervisory jurisdiction of the High Court was adaptable and could be extended to any body which performed or operated as an integral part of a system which performed public law duties, which was supported by public law sanctions and which was under an obligation to act judicially, but whose source of power was not simply the consent of those over whom it exercised that power; that although the panel purported to be part of a system of self-regulation and to derive its power solely from the consent of those whom its decision affected, it was in fact operating as an integral part of a governmental framework for the regulation of financial activity in the City of London, was supported by a periphery of statutory powers and penalties, and was under a duty in exercising what amounted to public powers to act judicially; that, therefore, the court had jurisdiction to review the panel's decision to dismiss the applicants' complaint..."

[39] However, Counsel for the Defendant argued that the case of *R v Panel on Take-overs and Merges, ex parte Datafin* [supra] is distinguishable from the instant matter in that there were two important public features in the Panel's powers and functions namely:

- (1) Firstly, the Panel's powers were supported and sustained by certain statutory powers and penalties introduced after the Panel came into existence;
- (2) Secondly, in accepting and rejecting take-over bids, the Panel was performing a public function which affected the rights of a wide range of citizens.

[40] Mrs. Fleming submitted that in the instant matter:

- (1) The source of the Defendant's power to invite and accept and reject tender is derived solely from the private law of contract;
- (2) The Defendant's power to invite and accept and reject tenders is not supported by any statutory power;

- (3) In inviting and accepting or rejecting tenders, the Defendant was not performing any public duty or function;
- (4) The rejection of a tender affected only three other bidders. It had no public law consequences on a wide range of citizens.

[41] Accordingly, I agree with Counsel for the Defendant that there is a clear distinction between the case of *R v Panel on Take-overs and Merges, ex parte Datafin* [supra].

[42] Learned Counsel for the Applicant/ Plaintiff stated that the Defendant Corporation in the instant matter did not give the Applicant/ Plaintiff an opportunity to be heard and to date, has not given any reason for the decision reached. Counsel stated that the affidavit of the Executive Director threw no light to the reasons for refusing to award the contract to the Plaintiff. He urged the Court to find that the proper forum for this case is a Judicial Review.

## CONCLUSION

[43] The central issue in this matter is whether the Defendant's refusal or failure to accept a tender for works is subject to judicial review. The National Development Corporation Act of 1971 does not confer any such powers on the Defendant Corporation. It seems to me quite clear that when the Defendant invites tenders for work, it is exercising a private function governed by private law of contract.

[44] The law is lucid on invitations to tender. Letters asking contractors to tender for works are invitations to treat; and no contract of any kind would come into existence unless and until, if ever, the Corporation chose to accept any tender or other offer. It is generally unnecessary for a building owner or employer to state he does not bind himself to accept the lowest tender. Where such a letter states that the lowest tender will be accepted or where the parties have negotiated on that basis, the letter may amount to an offer. In the instant case, the Defendant went a

further step to expressly state in a letter to the Applicant/ Plaintiff that " *the Corporation does not bind itself to accept the lowest, or any tender* "[my emphasis].

[45] While I found great force in the submissions made on behalf of the Applicant/ Plaintiff, I am however persuaded by the arguments advanced by Learned Counsel for the Defendant. In my view, the applicant's grievance is that his tender was not considered is a contractual right and it is irrelevant that it is a public authority that is issuing the tender. See: *Blackpool and Fylde Aero Club Ltd v Blackpool Borough Council*. In passing, I am rather surprised that Learned Counsel for the Applicant/ Plaintiff did not allude to this case which in my opinion, is on all fours with the present matter.

[46] It is imperative to look not only at the general powers of the Defendant Corporation but also, its specific powers. The specific power which is being challenged is the power of the Defendant to reject tenders. This power is a contractual power and the Defendant reserves the right to award contracts to the lowest bidder. The Applicant/ Plaintiff has not convinced me that an invitation to tender and its acceptance and or rejection is governed by public law.

[47] I accordingly agree that the Defendant's rejection of the Applicant/ Plaintiff's tender and the Defendant's decision thereto are matters of a private nature and as such, fall within the realm of private law and are not public acts and matters governed by public law subject to judicial review and I so hold.

[48] As Learned Counsel for the Defendant alluded to in her closing remarks, the Applicant/ Plaintiff will suffer no hardship if he is denied Judicial review. I opined that his remedy (if any) is by way of an ordinary action to vindicate and enforce a private or contractual right (if any).



[49] In the premises, the Notice of Application for leave to apply for Judicial Review filed by the Applicant/ Plaintiff on 23<sup>rd</sup> day of May 1996 is hereby dismissed. Costs to the Defendant to be taxed if not agreed.

[49] Lastly, I would like to commend both lawyers for their sterling presentation and immeasurable assistance to this Court. For this, I am indeed grateful.

Indra Hariprashad-Charles  
High Court Judge [ag.]