

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

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Date of Decision: 05.08.2013

+ W.P.(C) 4788/2013

M/S EXHIBITORS INSTRUMENTS AND OTHERS

..... Petitioners

Through: Ms Ruchi Munjal, Adv.

versus

UNION OF INDIA & OTHERS

..... Respondents

Through: Mr Amrit Pal Singh, CGSC for R-1

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. The respondent-NCERT invited Expression of Interest for supply of science and mathematics kits and as many as 26 firms were empanelled by it for supply of such kits. The petitioners before this Court are amongst the vendors who were empanelled by NCERT and they also gave their consent to the said empanelment. The sample of one of the empanelled vendors, namely, M/s Nirman, Ahmedabad also sent its sample to NCERT. The allegation of the petitioners is that the respondents are seeking favour to the aforesaid firm by obtaining the kits from it. It appears that the kits were to be procured by NCERT for the use of respondent No. 4-Rajasthan Council for Secondary Education. Vide communication dated

21.06.2013, NCERT informed the petitioners that a decision has been taken to cancel the order which it had received from respondent No-4 Rajasthan Council for Secondary Education and the money received from the said respondent was to be refunded to it. The offer of order made by NCERT to the empanelled vendors for supply of kits to respondent No. 4 was accordingly cancelled. A perusal of the said letter would show that a letter dated 14.06.2013 was received by it from Government of India, Ministry of Human Resource Development, requiring it to review the practice of the State Governments placing order with NCERT for science and mathematics kits and on review of its policy, the following decisions were taken:-

- “1. The State Government will be allowed to place orders directly with the firms empanelled by NCERT and a copy of the said order will also be sent to NCERT along with 5% of the total cost of order as the licence fee.
2. The State may empanel firms on their own too and place orders based on the technical specifications provided by NCERT as the Licence Fee.
3. The State Government will ensure through quality check so that Science and Mathematics kits are made as per the technical specifications of the NCERT.
4. The list of firms empanelled with NCERT approved rate list of the kits and technical specification of each kit will be uploaded on NCERT website.”

2. Admittedly, the kits which NCERT was seeking to purchase from the vendors empanelled for the purpose, were meant for respondent No. 4 and not for

NCERT. Admittedly, no firm order with any of the petitioners was placed by NCERT for supply of the aforesaid kits though it had obtained their consent to the empanelment and had also received an order from respondent No. 4 Rajasthan Council for Secondary Education for supply of such kits to it. In the absence of any firm order being placed upon the petitioners, for supply of kits, no vested right accrued to them, merely on account of their empanelment with NCERT. So long as no firm order was placed with the empanelled vendors for supply of such kits, NCERT was entitled in law to review its earlier policy and take a decision not to procure kits for the State Governments. The States being the ultimate purchaser of such kits, there was nothing illegal in NCERT deciding that the States would directly place orders either with the vendors empanelled by NCERTs or with the vendors whom the concerned State may empanel for placing such orders. In case, the State Governments decide to empanel their own vendors, nothing prevents the petitioner from seeking empanelment with the concerned State and if they are empanelled, they would also get an opportunity to obtain orders from that State. The list of firms empanelled with NCERT along with approved rate list of the kits and technical specifications of each kit are to be uploaded on the website of NCERT. The State Governments, if they so desire, can procure the kits either from the empanelled vendors at the rates approved by NCERT or they may first empanel their own vendors and then procure such kits from them. As far as the petitioners

are concerned, since no order has been placed by them with NCERT, they cannot have any grievance against the aforesaid decision.

3. It is by now well-settled proposition of law that the Court will not interfere in a matter of State policy unless it is show that the policy is contrary to a Statute or is wholly arbitrary and irrational or is actuated by mala fides. No such ground, however, has been made out in the present case.

4. In **Asif Hameed and Others v. State of Jammu and Kashmir and Ors.** AIR 1989 SC 1899, the Apex Court, inter alia, held as under:-

“When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike-down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

In **Ekta Shakti Foundation v. Govt. of NCT of Delhi** AIR 2006 SC 2609, the following view was taken by the Apex Court:-

“The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.”

5. The petitioner would get a level playing field if the State Government seeks to procure their own panel of suppliers since empanelment with NCERT does not come in the way of their seeking empanelment with the concerned State Government. In any case, the State Government also has an option to place orders directly with the vendors empanelled with NCERT.

For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed.

There shall be no order as to costs.

V.K. JAIN, J

AUGUST 05, 2013

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