IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 576 OF 2013

1. Utsav Safety Systems Pvt. Ltd.,
A Company duly incorporated under
the Companies Act, 1956
having its Registered Office
at 6/7, D. B. Gupta Road,
Pahar Ganj, New Delhi – 11005573
through its authorised Signatory
Sh. Sachin Shinde,
Major of age,
married, Indian National,
r/o B-20, Vashvakiran Co-operative Society
Housing Society, Subhash Nagar,
Banda East, Mumbai – 51.

2. Rosemerta Autotech Pvt. Ltd.,
a Company duly incorporated under
the Companies Act, 1956
having its registered office at
Khasra No.19/28, Kapashera,
New Delhi 110055
Through its authorised signatory
Sh. Sachin Shinde,
Major of age,
married, Indian National,
r/o B-20, Vashvakiran Co-operative Society
Housing Society Subhash Nagar,
Banda East, Mumbai – 51.

V e r s u s

1. State of Goa,
through its Principal Secretary,
Transport Department,
Goa Legislature Secretariat,
Porvorim, Bardez Goa.

2. Commissioner & Secretary,
Transport Department, Goa, (HQ),
Junta House, Panaji Goa.

3. Director,
Directorate of Transport,
ADT(HQ), Junta House,
Panaji Goa.

4. Real Mazon India Ltd.,
   a Company incorporated under the
   Companies Act, 1956,
   having its Registered Office at 304,
   3rd Floor, Nirmal Tower 26,
   Barakhamba Road,
   New Delhi,
   through its Authorised Representative
   Shri Sushant Naik Volvoikar,
   major of age, Indian National,
   r/o CG-203/7,
   Central Government Housing Society,
   Peth, Carambolim, Old Goa 403 110. … Respondents

Mr. Kevic Setalvad, Senior Advocate with Mr. Dheeraj Nair and Mr. S. Taleigaonkar, Advocates for the petitioners.

Mr. A. N. S. Nadkarni, Advocate General with Mr. D. Lawande, Government Advocate for respondent nos. 1 to 3.

Mr. S. Fernandes with Mr. V. R. Tamba and Mr. D. Zaveri, Advocates for respondent no.4.

Coram:- F. M. REIS &
K. L. WADANE, JJ

Date : 16th July, 2015.

J U D G M E N T *(Per F. M. Reis, J)*

Heard Shri Kevic Setalvad, learned Senior Advocate appearing for the Petitioners, Mr. A. N. S. Nadkarni, learned Advocate General appearing for the Respondent nos. 1 to 3 and Shri Fernandes, learned Counsel appearing for the Respondent no. 4.

2. The above Writ Petition, inter alia, prays for a writ of mandamus Order or direction against the Respondents to comply with or take further action in pursuance to the Order/direction dated 05.03.2013 passed in Writ Petition no.

49/2013 and further Order directing the Respondents to take appropriate steps in execution of tender process of HSRP dated 03.04.2012, in the State of Goa, and issue a letter of intent in favour of the consortium of Petitioners in pursuance to a tender notice dated 03.04.2012 wherein the consortium of the first and the second Petitioner had been declared as lowest and the successful bidder. The Petitioners have also amended the reliefs and sought an appropriate writ quashing the notice issued on 16.09.2013 of the Respondent no. 3 and passed an appropriate writ quashing the fresh tender dated 15.05.2014 issued by the Respondent no. 3.

3. Briefly, the facts of the case as stated by the Petitioners are that the consortium of the Petitioner nos. 1 and 2 has been declared as the lowest bidder by the Respondent in the tender issued by the Department of Transport for a supply of High Security Registration Plates in the State of Goa. After being selected as the successful bidder by due process of law and after being found fully competent by the Tender Evaluation Committee, the consortium of Petitioner nos. 1 and 2 were even called for negotiations on 25.06.2012 and the prices were negotiated and re-negotiated and also reduced as per the directions of the officials of the Transport Department. Thus, according to the Petitioners, their consortium became the lowest price bidder in all aspects. It is further the case of the Petitioners that on 17.12.2012, without giving any reasons and in the most cryptic manner, the Directorate of Transport, Government of Goa by a letter informed the Petitioners that the E-tender dated 03.04.2012 floated by the Department of Transport, Goa, for High Security Registration Plates had been cancelled on 14.12.2012 as per the Government decision and the Department came with all together new tender.

4. Being aggrieved, the Petitioners approached this Court and filed the Writ Petition no. 49 of 2013 and prayed therein to quash the Order and the cancellation of the tender dated 03.04.2012 and also the new tender dated 14.01.2013 and to direct the Respondents to issue a Letter of Intent in favour of the Petitioners and sign the contract in view of being the lowest bidder in the previous tender. On 05.03.2013, the Division Bench of this Court, after hearing the matter, disposed of the Writ Petition based on the statement of the learned Advocate General that the impugned decision of the Minister of Transport is not a final decision and, as such, the said decision of the Government dated 14.12.2012 is withdrawn and that the issue would be placed before the Hon'ble Chief Minister for appropriate Orders. It is further their case that the Petitioners have been waiting for another communication from the Government but no such information was forth coming. It is further their case that they learnt through news paper reports that the State of Goa through Department of Transport is coming with a new tender whilst cancelling the previous one wherein the Petitioners were selected as the lowest bidder. It is further their case that no communication was given to the Petitioners which caused serious prejudice to the Petitioners. It is further the case of the Petitioners that as per the Order of this Court dated 05.03.2013, fresh tender issued on 15.01.2013 stands cancelled and that as this Court has held that the tender process shall continue from the stage prior to 27.09.2012 and the issue was to be placed before the Hon'ble Chief Minister for appropriate Orders, Petitioners' position is reverted back as selected lowest bidder for the supply and affixation of HSRP. It is further their case that though representations were made by the Petitioners, there was no reply but, ultimately, it had come to the notice of the Petitioners that new tenders were being called. As such, the Petitioners filed the

above Writ Petition for the aforesaid reliefs.

5. The Respondent no. 3 filed the affidavit in reply contending that the above Petition is completely misconceived and frivolous and the reliefs sought for in the present Petition, cannot be granted. It is further their case that the decision to cancel the tender by the impugned Notification is in the nature of a Policy Decision taken by the Government of Goa after considering the various factors involved and also based on the advice of a Committee of experts and high ranking Officers of the Government of Goa. It is further their case that the price offered by the Petitioners to the State of Goa are quite high compared to those offered by the Petitioners as well as other manufacturers across the other States. It is further their case that in the light of these facts, the GSWB was of the opinion that the tender dated 03.04.2012 be cancelled and a fresh tender be floated to achieve better price discovery as the same would benefit the citizens. It is further their case that the Government has decided that the bidders have to set up the factory in the State of Goa by changing the policy so that the cost of HSRP is reduced drastically. Apart from that, it is the contention of the said Respondent that the setting up of factory in Goa would also generate employment and contribute to the revenue of said Government in the form of taxes, cess, fees, etc. It is further their case that a vested right, if any, can only come into existence in a matter regarding tender only upon the issuance of a Letter of Intent. However, the same being subject to various other conditions being fulfilled. It is further their case that no Letter of Intent had been issued in favour of the Petitioners. It is also their case that unless a concluded contract is entered into in favour of a successful bidder, no right of any kind can be claimed by the present Petitioners. It is further their case that in

respect of item nos. 1 to 4 of the tender, the consortium of the Petitioners emerged as L-1. It is further their case that further negotiations were held by the Tender Committee of the Directorate of Transport on 25.06.2012 and the amounts were accordingly reduced. It is also their case that the consortium who was L-1 in respect of item no. 5 were not interested with regard to the said single item. It is further their contention that the Evaluation Committee at the meeting on 28.06.2012 decided to submit the rates offered by the Petitioners for the approval of the State Government subject to the condition that the samples submitted would meet the required standards and it would be subject to the final outcome of SLP No. 13485 of 2011. It is further their case that a Technical Committee as well as Tender Evaluation committee had not finally accepted the bid of the Petitioners. It is further their case that when the matter was placed before State Government for decision, it was observed that the rate of individual items quoted by the lowest bidder were required to be compared with the prevailing rates with other States. It was also noted that there are various complaints received from the member of the public as well as certain NGO's stating that the costs of the High Security Registration Plates in the other States in India were far lesser than that quoted by the Petitioners. It was also noted that there were several agitations amongst the locals about the earlier tender works which were supposed to be executed and that though eight persons had applied for the tender documents, only two had submitted their bids. It was also noted that the proposal ought to have been submitted to the GSWB or the Finance Department for concurrence. It is further their case that the State Government decided to change the policy vis a vis the tendering process for HSRP and, accordingly, the State Government took a decision to have a factory in Goa so that the cost of HSRP is reduced drastically. It is further their case that considering the aforesaid changes in the policy and other connected matters, the State Government took a conscious and well considered reasonable decision to cancel the earlier tender notice and to issue a fresh tender notice in respect of the said works in a time bound manner. It is further stated that letter dated 17.12.2012 is only a letter of communication of the decision of the State Government which was addressed by the Directorate of Transport to the Petitioner no. 2 herein. It is further their case that the said decision was thereafter withdrawn and the matter was referred to the Hon'ble Chief Minister for appropriate Orders. It is further their case that there is no concluded contract whatsoever between the Petitioners and the Respondents. It is further their case that though in the financial bids, the Petitioner was the lowest bidder, nevertheless, a lowest and successful bidder cannot be declared pending the next stage i.e. the evaluation of the bids by the Tender Evaluation Committee, which considers both the technical bids and the financial bids. It is further their case that on the very day when this Court passed the Order dated 05.03.2013, the Director of Transport by his notings submitted the file to the State Government in view of the statement made by the learned Advocate General. The file was forwarded to the Hon'ble Minister of Transport and with his notings it was forwarded to the Honble Chief Minister. It was further found that the file had never gone to the Finance Department for consultation and concurrence as mandated and required to be followed compulsorily. It is further their case that negotiations were impermissible in law as the matter had not gone to the Finance Department. It is also their contention that the Hon'ble Chief Minister by his decision dated 10.03.2013 directed and observed that the notings in the file reflected a very sad and pathetic state of affairs in the Transport Department. The Hon'ble chief Minister thereafter referred to the discussion in the matter and it was decided to change the policy whereby the conditions precedent would be to have the factory located in the State of Goa to cut down the costs as has been done in the other States. With such observations, the matter was referred to the GSWB to examine and make their observations. It was also noted that the Finance Department concurrence was not obtained in respect of the tender process. The matter was thereafter referred to GSWB which on 15.04.2013 found at the meeting that the lowest quoted rate proposed for the State of Goa was by the Petitioners which were second highest in India. The price quoted for two wheelers and three wheelers in the State of Goa is nearly three times more than the rate in New Delhi and the rate proposed for light motor vehicles were nearly two times the rates in New Delhi. It was further noted that this would result in a huge burden on the citizens of the State of Goa and result in unjust enrichment for the Petitioners. They also noted that there was a discussion of change in policy to suit and serve the public interest of the people of Goa and to make the same more affordable. The Government decided that a factory should be located in the State of Goa and the same would carry revenue to the State of Goa. Further the Chief Minister noticed that the Department should proceed for re-tendering as recommended by the works advisory board principally on the ground that a condition be imposed as directed by the Chief Minister in his notings dated 10.03.2013. It is further their case that the process of tendering the tender for the procurement of HSRP was initiated on 18.11.2013 and the schedule of the tender is mentioned therein. It is denied that the State of Goa has acted contrary and in violation to the directions issued by the Hon'ble Supreme Court. It is accordingly submitted that the Petition be rejected.

6. Affidavit in rejoinder was filed by the Petitioners disputing the contentions in the affidavit in reply. It is their case that no reasons have been disclosed by the Respondents whilst coming up with a new tender and pleading that it is in public interest. It is further their case that the Government had re-negotiated the price and after having so re-negotiated the price and as the Petitioners had agreed, the cancellation of the entire process is certainly discriminating. The Petitioners have also pleaded the doctrine of legitimate expectation which imposes in essence a duty on public authority to act fairly by taking into consideration all relevant facts relating to such legitimate expectation. All the contentions which have been raised in the affidavit in reply have been disputed by the Petitioners in their rejoinder. It is further their case that the rates offered and negotiated in the tender are in respect of States having much larger number of vehicles which cannot be compared to a number of vehicles in the State of Goa.

7. Mr. Kevic Setalvad, learned Senior Counsel appearing for the Petitioners, has basically raised three contentions in support of the above Petition. The learned Senior Counsel has pointed out that in terms of the Order passed by this Court whilst disposing of the earlier Writ Petition, there was no discretion left to the Petitioners to re-tender or cancel the tender process as the Petitioners were already declared as the lowest bidder and, as such, were entitled for a letter of intent. Learned Senior Counsel has taken us through the Judgment passed by this Court disposing of the earlier Writ Petition no. 49 of 2013 dated 05.03.2013 to point out that it was clearly understood that the Petitioners would be given the letter of intent in respect of the tender process. The learned Senior Counsel pointed out

that the contentions of the Respondents that there was a change of policy is totally farfetched as, according to him, it is not open to the Respondents to change the position of the goal post after the tender process had started. Learned Senior Counsel further submits that the contention of the Respondents that the factory had to be located in Goa was not even found in the tender process wherein the Petitioners were declared as the lowest bidder. Learned Senior Counsel has thereafter taken us through the Minutes of the GSWB as well as the reference to the notings of the Hon'ble Chief Minister to point out that the conduct of the Respondents is totally unjustified. The learned Senior Counsel further submits that the whole exercise of the Respondents is to contend that the rates submitted in the other States is much lower than the rates submitted by the Petitioners. But, however, according to him, the vehicles in the other States are atleast five to ten times more than the number of vehicles in the small and tiny State of Goa. Learned Senior Counsel further pointed out that this would naturally increase the cost of it and, as such, the prices submitted by the Petitioners are very reasonable. Learned Senior Counsel further pointed out that the Respondents themselves had negotiated the price and brought down the prices offered by the Petitioners and, as such, it was not open to the Respondents to rescile the stand and, accordingly, the tender process. Learned Senior Counsel further submits that the contention that financial concurrence is also required cannot be accepted as, according to him, even the financial security was one of the members of the Tendering Committee. As such, learned Senior Counsel submits that the decision of the Respondents to cancel the tender process is arbitrary and discriminatory and, as such, deserves to be quashed and set aside. Learned Senior Counsel has minutely taken us through the pleadings of the Petitioners and the replies as well as the documents and the

Minutes of the Tendering Committee to point out that the decision of the Respondents to cancel the tender process is totally erroneous. Learned Senior Counsel further pointed out that this Court had clearly noted that the new tender process would be subject to the result of the above Writ Petition and, consequently, the Respondent no. 4 who claims to have offered the lowest amount in the tender process cannot claim any rights to the detriment of the rights of the Petitioners. Learned Senior Counsel further pointed out that the Respondent no. 4 has also not been declared as the lowest bidder and, as such, no rights have accrued to the Respondent no. 4 based on the fresh tender process. Learned Senior Counsel as such submits that action of the Respondents to re-tender the process be quashed and set aside and the Respondents be directed to grant the letter of intent to the Petitioners.

8. On the other hand, Shri A. N. S. Nadkarni, learned Advocate General, appearing for the Respondents, has disputed the said contentions. Learned Advocate General has pointed out that on bare reading of the Judgment and the Order passed by this Court on 5th March, 2013, whilst disposing of the earlier Writ Petition, there is nothing to suggest that the Respondents were directed to grant a letter of intent to the Petitioners. Learned Advocate General further pointed out that in view of the change of policy of the State Government in public interest in order that the Citizens of Goa would get the HSRP at a more reasonable rate, it was decided that the factory has to be based in Goa. The learned Advocate General further submits that this policy would not only reduce the price of such security plates but also augment the revenue of the State Government by recovering taxes and other revenue besides provide employment to the Citizen of

Goa. The learned Advocate General further submits that the Hon'ble Chief Minister also noted that financial concurrence has not been obtained and as it was found that the tendering process itself was vitiated the State Government was very much within their rights to cancel the tender process. Learned Advocate General further submits that it is well settled that unless a letter of intent is given to a party no rights can accrue to a lowest bidder in the tender process. The learned Advocate General as such pointed out that the Petitioners are not entitled for any reliefs in the above Writ Petition. The learned Advocate General pointed out that the State Government found that the prices offered in the other States was much lesser as such a commercial decision was taken by the State Government to cancel the tender process based on the observations of the Tender Committee and the GSWB referred to in the reply. The learned Advocate General as such submits that in view of the change of policy, the Respondents were within their rights to issue a fresh tender process and, consequently, the question of directing the Petitioners to proceed with the earlier tender process is totally erroneous.

9. We have given out thoughtful considerations to the rival contentions and with the assistance of the learned Counsel, we have also gone through the records. On perusal of the Order passed by this Court disposing off the earlier Writ Petition, the learned Advocate General is justified to contend that there was no direction therein to issue the letter of Intent to the Respondents. The State Government was in fact directed to take a fresh decision with regard to the tender process in accordance with law leaving all the contentions of the parties open. As such, the contention of Mr. Kevic Setalvad, learned Senior Counsel appearing for the Petitioners that there was nothing left for the Respondents to refuse the

issuance of the letter of intent to the Petitioners based on the Order passed by this Court disposing of the earlier Writ Petition cannot be accepted.

10. With regard to the next contention of Mr. Kevic Setalvad, learned Senior Counsel appearing for the Petitioners, we find that on perusal of the Minutes of the Meeting held on 25.06.2012, there were negotiations in the price and consequently the consortium of the Petitioners had become L-1 in all respects. On going through the Minutes of the GSWB meeting held on 15.04.2013, it is also noted therein that eight bidders purchased the tender documents and when pre-qualification bids were opened, it was found that only two bidders had submitted the bids and the same were placed before the Tender Evaluation Committee. The Committee in the meeting held on 17.05.2012, decided that both the bidders have qualified the pre-qualification bid. Technical bids were opened on 21.05.2012 and the same were placed before the Tender Evaluation Committee and it was found that the documents were in Order and the financial bids could be obtained. The financial bids were thereafter opened on 12.06.2012 and the Petitioners' Consortium were found the lowest for item nos. 1 to 4 and M/s. Celex Technology Pvt. Ltd., was lowest for item no. 5. It was also recommended that the consortium of the Petitioners could be accepted in respect of serial nos. 1 to 4 and as far as serial no. 5 is concerned, the bid of M/s. Celex Technology Pvt. Ltd. be accepted. Thereafter, the negotiations meeting was held on 28.06.2012 and the Committee decided to submit the same before the Government for approval subject to the condition stated therein. It is further noted that in view of the Order passed by this Court in Writ Petition no. 49 of 2013, the matter was submitted to the Goa State Works Board for its consideration. It was observed by the said Board that the

lowest quoted rates proposed for the State of Goa were found to be second highest. Rates of West Bengal were the highest and in New Delhi the lowest. The rates proposed for two wheelers and three wheelers in the State of Goa, are nearly three times more than the rates in New Delhi and the rates proposed for light motor vehicles and heavy motor vehicles in the State of Goa are nearly two times the rates in New Delhi. It is also noted that even considering the economic of the State vis a vis the number of vehicles are concerned, the unit rates are definitely on the higher side. The GSWB as such recommended that the requirements of manufacture and supply of HSRB should be re-tendered with better exposure to the market so that competitive bidding may take place and better price discovered.

11. On going through the said noting, we find that the Board has taken note of the different aspects specially the commercial aspects to recommend re-tendering of the tender process. The contention of the learned Senior Counsel appearing for the Petitioner that the vehicles in Goa are lesser than the vehicles in New Delhi and other States, has also been taken note of whilst arriving at such decision. Considering the rates noted in the said Minutes, we find that the prices which was offered by the Petitioners were much higher than the prices offered in the other States in the Country. Apart from that, the fact that there was a change in policy of the State Government has not been disputed by the Petitioners. There is no challenge to such policy of the State Government in the present Petition. There are no malafides attributed to the State Government for changing the policy at the time when the tender process was in progress. In such circumstances, we have to accept that there was a change in policy by the State Government to, inter alia, put a term that the factory of such security plates has to be based in the State of Goa

12. With regard to the contention of Mr. Kevic Setalvad, learned Senior Counsel appearing for the Petitioners, that the policy cannot be changed after the tender process had begun, we find that in the Judgment reported in ***2010(6) SCC 303*** in the case of ***Shimnit Utsch India (P) Ltd. v. W.B. Transport Infrastructure Development Corpn. Ltd.,*** the Apex Court has observed at Paras 49, 50, 51 and 52 thus :

> "49. In the light of the aforenoticed legal position, we shall now examine whether judicial intervention is called for in NIT issued by the State of West Bengal and the State of Orissa for manufacture and supply of HSRP. Insofar as the State of West Bengal is concerned, the first NIT was issued in the month of July 2003 fixing 6-8-2003 as the last date for submission of tender papers. Pursuant thereto, four bidders participated. The finalisation of the tender process could not take place because of interim order passed by this Court in *Assn. of Registration Plates* and other connected cases. These cases were decided by this Court on 30-11-2004.
>
> 50. Of the four bidders, who initially participated in the tender process, one withdrew and as regards Promuk, an objection was raised by Shimnit about their eligibility. Shimnit approached the Calcutta High Court and obtained an interim order from the Single Judge that tender process shall not be finalised. As a matter of fact, due to litigation no substantial progress took place for two years in finalisation of process for which

NIT was issued in July 2003 and practically two bidders in the entire tender process remained in fray. In interregnum, considerable number of indigenous manufacturers obtained the requisite TAC from the approved institutions as per the provisions of the 1988 Act and thereby acquired capacity and ability to manufacture HSRP.

51. In the backdrop of these reasons, the State Government seemed to have formed an opinion that by increasing competition, greater public interest could be achieved and, accordingly, decided to cancel first NIT and issued second NIT doing away with conditions like experience in foreign countries and prescribed minimum turnover from that business. Whether the State Government could have changed terms of NIT despite the judgment of this Court in *Assn. of Registration Plates* Once a particular matter relating to conditions in NIT has been finally decided by the highest court, the State Government, which was party to the litigation, ought to have proceeded accordingly but, <u>in a case such as the present one, where the circumstances changed in some material respects as aforenoticed, departure from the earlier policy cannot be held to be legally flawed, particularly when there is no challenge to the changed policy reflected in second NIT on the ground of *Wednesbury* reasonableness or principle of legitimate expectation or arbitrariness or irrationality</u>. In considering whether there has been a

> change of circumstances sufficient to justify departure from the previous stance, the Division Bench of the Calcutta High Court recorded a finding that reasons stated by the State Government for departure from the conditions in the first NIT did exist and accepted the contention of the State Government that by increasing the area of competition, greater public interest would be subserved because of financial implications.
>
> 52. We have no justifiable reason to take a view different from the High Court insofar as correctness of these reasons is concerned. The courts have repeatedly held that the government policy can be changed with changing circumstances and only on the ground of change, such policy will not be vitiated. The Government has a discretion to adopt a different policy or alter or change its policy calculated to serve public interest and make it more effective. Choice in the balancing of the pros and cons relevant to the change in policy lies with the authority. But like any discretion exercisable by the Government or public authority, change in policy must be in conformity with *Wednesbury.* reasonableness and free from arbitrariness, irrationality, bias and malice.

13. Taking note of the observations of the Apex Court, we find that the decision of the State government to cancel the tender process based on the change of policy cannot be faulted. The grounds pointed out by the Respondents which force the change of policy cannot be said to be unreasonable as it is stated

that the price of such security plates would be much less in case the factory of such security plates is based in the State of Goa as it would also provide employment and generate to the State Revenue, etc. The Respondent no. 1 has a discretion to adopt a different policy or change its policy which is calculated to serve public interest and make it more effective. It was also pointed out by learned Advocate General that whilst changing such policy, the security plates would be more affordable and the vehicle owners and the members of the public who own vehicles would be benefited as they could obtain such plates at a more competitive and reasonable price.

14. But, however, it is to be noted that the Petitioners were kept totally in the dark about the final decision being taken in respect of the tender process after the Orders passed by this Court on 05.03.2013 whilst disposing of the earlier Writ Petition. There is also correspondence to point out that the Petitioners had even offered to further negotiate the price in case the Respondents so desires. The Petitioners were also not given an opportunity to put forth their say on the observations of the HSWB in the decision to examine the comparable prices in other States in the Country. Nevertheless, the legitimate decision taken by the Respondent no. 1 based on the change of policy as well as the rates submitted by the Petitioners were found to be on the higher side, which is a commercial decision which would not call for interference by this Court on that count.

15. It may not be over emphasized to note that the Court does not sit as a Court of Appeal but merely review the manner in which the decision was made. The Court does not have expertise to correct the administrative decisions as

otherwise it will amount to substituting its own decision without the necessary expertise which itself may be fallacious. Normally speaking, the decision to accept the tender or award the contract is relished by the process of negotiations through safe tiers which decisions are normally made collectively by experts. As such, judicial review on administrative decisions of administrative actions is intended to prevent arbitrariness irrationality, unreasonableness and malafides and to ensure that the choice of decision made is lawful and not whether the choice of such decision is sound. One of the aspects which the Court has to bear in mind in the facts of the present case is also that the contract is a commercial transaction and evaluating terms and awarding contracts are essentially commercial conscious. Principles of equity and natural justice stay at a distance when a decision taken with regard to awarding of a contract is in public interest and bonafide. The Courts will not exercise power of judicial review even if the procedural error is committed and prejudice that would occasion to the tenderer is made out. Private interest cannot be protected while exercising such judicial review on such administrative decisions. In such circumstances, the interference of this Court in a Writ Petition would depend in cases in which the decisions taken by the State Government is unreasonable, arbitrary and malafide. Merely because the Petitioners are L-1 by itself, would not give them an indefeasible right to claim that they should only be awarded the contract. Even otherwise, the Petitioners have a remedy to file Civil Suit for loss of the contract if they are so advised in accordance with law.

16. The Apex Court in a Judgment reported in (2014) 3 S.C.C. 760 in the case of Maa Binda Express Carrier & anr. vs. North-East Frontier Railway & Ors., has observed at Paras 8, 10 and 11 thus :

"8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

9. ...

10. The scope of judicial review in contractual matters was further examined by this Court in *Tata Cellular* v. *Union of India*, *Raunaq International Ltd. case* and in *Jagdish Mandal* v. *State of Orissa* besides several other decisions to which we need not refer.

11. In *Michigan Rubber (India) Ltd.* v. *State of Karnataka*[8] the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words: (SCC p. 229, paras 23-24)

> "*23*. From the above decisions, the following principles emerge:
>
> (*a*) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
>
> (*b*) *fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable*. If the Government acts in conformity with certain healthy standards and norms such as awarding

of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(*c*) in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(*d*) certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(*e*) if the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

20. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached'? And

(*ii*) *Whether the public interest is affected*?

If the answers to the above questions are in the negative, then there should be no interference under Article 226."

(emphasis supplied)"

Taking note of the said observations of the Apex Court and the facts in the present case as pointed out herein above, we find that the decision of the State Government cannot be said to be unreasonable or discriminated in view of the change in policy though the Petitioner was otherwise eligible and had complied with all the terms of the tender process and even fixed the rates after negotiations as pointed out herein above.

17. It has to be noted that during the course of the hearing of the above Writ Petition, the rates quoted by the Respondent no. 4 were brought to out notice by the learned Advocate General to contend that the rates offered were much lower than the rates submitted by the Petitioners. The fresh tender process was for the same security plates with the condition that the factory has to be based in the State of Goa. When the prices were disclosed to the learned Senior Counsel appearing for the Petitioner which showed that the comparative prices now offered were much low than the prices submitted by the Petitioners, the learned Senior Counsel, upon instructions from the Petitioners, submitted that the Petitioners are also prepared to match the said prices and comply with all the requirements of the fresh tender process including that the factory would be based in the State of Goa.

18. In view of the above, the only aspect to be examined in such circumstances is the effect of the affidavit filed by the Petitioners to the effect that the Petitioners are also prepared to meet all the terms and conditions of eligibility provided in the fresh tender process. The affidavit further pointed out that the Petitioners are prepared to negotiate with the State Government in respect of the

subject matter of such tender. The learned Advocate General has also filed an affidavit and stated that the intention of the State Government is to ensure that the citizens get the said HSRP plates at the minimum rates,. With that in mind, it is pointed out by the learned Advocate General that the State Government is prepared to take a decision on that aspect after examining the eligibility or otherwise in term of the tender process.

19. Learned Advocate appearing for the Respondent no. 4, however, strongly opposes the said contentions of the Petitioners. Learned Counsel has further pointed out that the Petitioners have not applied for the fresh tender process and, as such, according to him, introducing the Petitioners in the tender process would severely jeopardize the rights of the Respondent no. 4. Learned Counsel further pointed out that this exercise is not permissible in law and, as such, according to him, as the Respondent no. 4 is the lowest tenderer in the fresh tender process, considering the view taken by this Court in the above Petition filed by the Petitioners, there is no other option to the State Government other than granting the Letter of Intent to the Respondent no. 4. The learned Counsel in support of his submissions has relied upon the Judgment o the Apex Court reported in ***(2006) 13 SCC 284*** in the case of ***Pseb & Ors. vs. Bhatia International Ltd.,*** and ***(2009) 11 SCC 9*** in the case of ***Sorath Builders vs. Shreejikrupa Buildcon Limited & anr.***

20. On the other hand, Shri Nadkarni, learned Advocate General, appearing for the Respondent nos.1 to 3, has disputed the said contention. Learned Counsel has taken us through the advertisement of the fresh tender process to point out that the fresh tender process was initiated subject to any

Orders which may be passed in the present Writ Petition. Learned Advocate General further pointed out that even when the tender applications were delivered, it was clearly pointed out to the Respondent no. 4 and other participants of the tender process that the process was being worked out subject to any Orders which may be passed in the Writ Petition. Learned Advocate General further pointed out that it is well settled that to get a better rate to the State Government, it is always the endeavourt of the Court to ensure that the best price is quoted to the public exchequer. Learned Advocate General has relied upon an unreported Judgment in ***Writ Petition (Civil) No. 510 of 2005*** in the case of ***Maninderjit Singh Bitta vs. Union of India & Ors.***

21. On perusal of the advertisement, we find that there is a specific reference therein to suggest that the tender process initiated was subject to any Orders that may be passed in the above Writ Petition. The records also suggest that this Court had permitted the second tender process subject to any Orders that may be passed in the Writ Petition. In such circumstances, the contention of Respondent no. 4 that the Petitioners cannot be permitted to raise such stand at this stage would not be justified. After all tenders are invited on the basis of competitive bidding for execution of the work of a particular nature and it serves dual purpose as on one hand it offers fair opportunity in all those who are interested in competing for the contract relating to the execution of the work and on other hand it affords to the State Government a choice to select the best of the competitors for a competitive price without prejudice to the quality of the work. The contract is therefore awarded normally to the lowest. In such circumstances, in contracts having commercial elements, some more discretion is to be considered

to the authorities giving them liberty to assess overall situation for the purpose of taking a decision as to whom the contract is to be awarded and on what terms so that they may enter into a contract with a person keeping an eye in the augmentation of revenue. It is not open to the Court to evaluate and adjudicate every decision taken by such authorities. Such contracts are also based on negotiations between the authorities and the eligible tenderers. With this in mind, we have examined the said contention of the parties. We have also taken note of the directions of the Apex court to implement the fixation of HSRP expeditiously and taking note of the averments in the additional affidavit and the contentions of the learned Advocate General as stated in the affidavit filed by the Respondent no. 1.

22. In the present case, considering the averments made by the Petitioners in the additional affidavit dated 11.02.2014 and as the Respondent no. 1 in their affidavit has showed willingness to consider the eligibility of the petitioners and take a decision with that regard, we find it appropriate to call upon the Respondent no. 1 to examine the claims of the Petitioner in the said affidavit and examine the eligibility, if any, and take a decision whether the Petitioners can be called for negotiations with the Respondent no. 4 in respect of the tender process. No doubt, the rights of the Respondent no. 4, if any, are left open to be examined on its own merits in accordance with law. The above view has been taken as the Respondents in their affidavit have shown their willingness to examine the correctness and eligibility of the Petitioners on the basis of the averments in the said affidavit and as such it is not disputed that the Petitioners were already declared L-1 in the earlier tender process and had in fact satisfied all the earlier

tender conditions. The Respondent no. 1 shall as such taken a decision with that regard in accordance with law and consider whether the Petitioners should be given an opportunity for negotiations with the Respondent no. 4 and/or decide whether a fresh tender process would have to be initiated or not with regard to the subject tender in the circumstances of the case.

23. With the aforesaid observations and directions, the Petition stands disposed of. Rule stands disposed of accordingly.

K. L. WADANE, J. **F. M. REIS, J.**

arp/*