

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.476 of 2017

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1. Gorakh Prasad, Son of Sri Prahlad Prasad, Resident of Mohalla-Lodi katra, Patna City, Police Station-Khajekala in the District of Patna.
 2. Keshari Kumar, Son of Sri Krishna Murari Singh, Resident of Mohalla-Dasratha, Anishabad, Police Station-Beur in the district of Patna
 3. Upendra Kumar, Son of Late Dharmdeo Rai, Resident of Mohalla- Bishunpur Pakri, Police Station- Beur in the District of Patna
 4. Satya Narayan Rai @ Satnarayan, Son of Late Ram Sagar Rai, Resident of Mohalla-Bishunpur Pakri, Police Station -Beur in the district of Patna
 5. Samindra Singh, Son of Late Jitan Singh, Resident of Mohalla-Dasratha, Anishabad, Police Station-Beur in the district of Patna
 6. Rakesh Kumar, Son of Satya Narayan Rai Resident of Mohalla-New Eatwarpur, Police Station-Beur in the District of Patna
 7. Amit Kaushal, Son of Ashok Singh, Resident of Mohalla-Pargati Nagar, Sipara, Police Station-Beur in the district of Patna
 8. Rajesh Kumar Razak @ Rajesh Kumar Son of Sri Ram Lakhan Razak, Resident of Mohalla-Dasratha, Anishabad, Police Station-Beur in the district of Patna.
 9. Binod Kumar, Son of Babulal Yadav, Resident of Mohalla-Jaganpura, Police Station-Ram Krishana Nagar in the district of Patna
 10. Lilawati Razak @ Lilawati Wife of Late Ram Lakhan Razak, Resident of Mohalla-Dasratha, Police Station-Beur in the district of Patna
 11. Jitendra Kumar, Son of Sadhu Saran Rai Resident of Mohalla- Bishunpur Pakri, Police Station- Beur in the District of Patna
 12. Amrendra Kumar, Son of Sushila Nand Singh, Resident of Mohalla-Dasratha, Police Station-Beur in the district of Patna
 13. Amit Kumar, Son of Ram Bhagwan Singh Resident of Mohalla-Dasratha, Police Station-Beur in the district of Patna.
 14. Vishal Kumar, Son of Yogeshwar Prasad, Resident of Mohalla-Dasratha, Police Station-Beur in the district of Patna
 15. Sabita Kumari @ Saita Kumari, Wife of Niraj Kumar Singh, Resident of Mohalla-Dasratha, Police Station-Buer in the district of Patna
 16. Ranjeet Kumar Son of Jitlal Rai, Resident of Mohalla-Sipara, Police Station-Beur in the district of Patna.



.... Petitioners

Versus

1. The Indian Oil Corporation Ltd. through its General Manager, Bihar, Patna
2. The General Manager, Indian Oil Corporation Ltd., Bihar, Patna, Jai Prakash Bhawan, Dakbangla Chowk, Patna
3. The Deputy General Manager, Marketing Division, Indian Oil Corporation Ltd., Bihar, Patna
4. The Transport Manager, Indian Oil Corporation Ltd. Bihar, Patna

.... Respondents

With

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Civil Writ Jurisdiction Case No. 523 of 2017

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1. Bihar Petroleum Dealers Association, Registration No. 7 of 1971 - 72 under the Societies Registration Act, 1860 having its Office at A - 95, P.C. Colony, P.S. Kankarbagh, District Patna through its General Secretary Brijendra Kumar Sinha, S/o Late Ram Jeevan Singh, resident of A5, P.C. Colony, P.S. Kankarbagh, District Patna
2. M/s Mahesh Kumar Singh Trading Company Pvt. Ltd. having its Office at Khedra Rampur, P.S. Janipur, District Patna through its Managing Director Mahesh Kumar Singh, S/o Late Rajendra Prasad Singh, resident of 304 Pushpak Complex, P.S. Kotwali, District Patna
3. Ganesh Pd. Singh, Proprietor Swastik Services, S/o Late Ram Sogharat Singh, R/o Mohalla - Pokhra, P.S. Hajipur, District - Vaishali

.... Petitioners

Versus

1. Indian Oil Corporation Limited through its Chairman, New Delhi
2. Chairman, Indian Oil Corporation Limited, New Delhi
3. Director, (Marketing) Indian Oil Corporation, New Delhi
4. General Manager (Marketing Division), Eastern Regional Office, Indian Oil Corporation Ltd., Kolkata
5. Deputy General Manager (Marketing Division), Bihar State Office, Indian Oil Corporation Ltd., Patna
6. General Manager, Contract Cell, Eastern Regional Office, Indian Oil Corporation Ltd., Kolkata
7. General Manager (Operations), Eastern Regional Office, Indian Oil Corporation Ltd., Kolkata



8. Dy. General Manager (Operations), Bihar State Office, Bihar State Office,
Indian Oil Corporation Ltd., Patna

.... Respondents

With

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Civil Writ Jurisdiction Case No. 3797 of 2017

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1. Bihar Petroleum Dealers Association (Affiliated to Federation to All India Petroleum Dealers Association and All India Petroleum Traders) through its President Prabhat Kumar Singh S/o Shri B.N. Singh R/o NH-28, at and P.O. Bhagwanpur Chowk, Near Ideal Service Station, P.S. Sadar, Muzaffarpur, District- Muzaffarpur.
2. M/S Om Namah Shivay Service Station, N.H. 28, Samastipur Road, Baghi, P.O. -Baghi, P.S.- Maiyari, Pin- 844112 through its Proprietor Shiv Narayan Jha S/o Shree Raman Jha Mohalla Miscot, Near Municipal Pump House, Muzaffarpur, P.O. -Ramna, P.S.- Mithanpura, Pin- 842002, Bihar.
3. M/s Shri Ram Petroleum, N.H. 57, Darbhanga Road, Wazidpur, Majhauri, P.O. Bochahan, P.S. Bochahan, District- Muzaffarpur- 843104 through its Proprietor Ram Babu Prasad S/o- Avadh Lal Rai New Zero Mile Chowk, Near Pandey Petrol Pump, Menika Market, Muzaffarpur, P.O.- Bhikhanpur, P.S. Ahiyapur, Pin Code- 842001, Bihar.
4. M/s Patiyasha Service Centre, N.H. 57, Darbhanga Road, Patiasa, Muzaffarpur, P.O.- Mirzapur, P.S. Ahiyapur, Pin- 843103, Bihar through its Proprietor Afshan Tabassum W/o late Feroz Azam New Professor's Colony, Gobersahi Chowk, Muzaffarpur, P.O. - Bhagwanpur, P.S. Sadar, Pin- 842001, Bihar.
5. M/s Gaurav Petroleum N.H. 28, Gobersahi Chowk, Muzaffarpur, P.O.- Bhagwanpur, P.S.- Sadra, Pin- 842001, Bihar through its Proprietor Gaurav Raj S/o - Kiran Shankar Yadav Race Course, Chakkar Maidan, Muzaffarpur, P.S.- Kaji Mohammadpur, P.O. Head Post, Pin- 842001, Bihar.
6. M/s Ashutosh Petroleum N.H. 77, Hajipur Road, Turki, Muzaffarpur, P.O. Turki, P.S. Kurhani, Pin- 844127, Bihar Through its Proprietor Ashok Kumar Jha S/o Bhuvaneshwar Jha Bhava Nagar, Bhagwanpur, Muzaffarpur, P.O.- Bhagwanpur, P.S. Sadar, Pin- 842001, Bihar.

.... Petitioners

Versus

1. The Indian Oil Corporation Ltd. having its Registered Office, At, 9, Ali Yavar Marg, Bandra (East) Mumbai through the Chairman Cum Managing Director.



2. The Chairman Cum Managing Director, The Indian Oil Corporation Ltd. having its Registered Office at, 9, Ali Yavar Marg, Bandra(East) Mumbai.
3. The Director(Marketing) The Indian Oil Corporation Ltd. having its Registered Office At, 9, Ali Yavar marg, Bandra (East) Mumbai.
4. The General Manager, Indian Oil Corporation, Bihar State Office, Lok Nayak Bhawan 5th Floor, Dakbunglow Road, Patna.
5. The Deputy General Manager(Operations), Indian Oil Corporation, Bihar State Office, Lok Nayak Bhawan 5th Floor, Dakbunglow Road, Patna.
6. The Union of India through the Secretary, Ministry of Petroleum and Natural Gas, Govt. of India, 201-A, Shastri Bhawan, New Delhi- 110001

.... Respondents

Appearance:

(In CWJC No.476 of 2017)

For the Petitioner/s : Mr. Sunil Kumar, Adv.
Mr. Mohit Agrawal, Adv.
For the Respondent/s : Mr. K.D. Chatterji, Sr. Adv.
Mr. Anil Kumar Sinha, Adv.
Mr. Amlesh Kumar Verma, Adv.
Mr. Abhimanyu Deo, Adv.
Mr. Ashish Sinha, Adv.

(In CWJC No.523 of 2017)

For the Petitioner/s : Mr. Jitendra Singh, Senior Adv.
Mr. Harsh Singh, Adv.
Mr. Ravi Shankar Chaudhary, Adv.
Mr. Yash Singh, Adv.
For the Respondent/s : Mr. K.D. Chatterji, Sr. Adv.
Mr. Anil Kumar Sinha, Adv.
Mr. Amlesh Kumar Verma, Adv.
Mr. Abhimanyu Deo, Adv.
Mr. Ashish Sinha, Adv.

(In CWJC No.3797 of 2017)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.
Mr. Mohit Agarwal, Adv.
For the Respondent/s : Mr. K.D. Chatterji, Sr. Adv.
Mr. Anil Kumar Sinha, Adv.
Mr. Amlesh Kumar Verma, Adv.
Mr. Abhimanyu Deo, Adv.
Mr. Ashish Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

C.A.V. JUDGMENT

Date: 12 / 09 / 2017

1. This group of writ petitions have been filed, primarily issue involved in all the writ petitions is same as, in all the writ



petitions, the fixation of rate of transportation of bulk petroleum products is under challenge. These group of writ petitions can be separated in two categories; first, is of the group of tank lorry owners, who do have their own retail outlet (for convenience, it will be mentioned as “R.O.”). Another category of tank lorry transporters, who are the free lancer tank lorry owners primarily attached with the business of transportation of bulk petroleum products for different Companies such as, Indian Oil Corporation, Hindustan Petroleum and Bharat Petroleum at the rate fixed during negotiation.

2. Except some variance, majority of the grounds in two groups are common. For convenience, this Court will first prefer to deal with the facts and the area of challenge with respect to the free lancer transporters having no retail outlet i.e. the fact of C.W.J.C. No.476 of 2017 (Transporters). In this case, the groups of transporters have challenged the notice, inviting tender No.RCC/ERO/37/2016-17/PT-102 for award of contract for road transportation of bulk petroleum products with effect from 01.03.2017 or at the date to be decided at the discretion of the Company for a period of three years. The tenders were invited from the eligible persons under “Two-Bid System” from the Tank Truck



owners through e-tenders.

3. An interlocutory Application vide Interlocutory Application No.949 of 2017 has been filed, whereby prayer has been made for quashing the Tender No. RCC/ERO/37/2016-17/ PT-113, by which fresh tender was invited from the eligible and interested Tank Truck Owners under “Two-Bid System” through internet for award of contracts for transportation of bulk petroleum products as no one had applied against this first advertisement for appointment of transporter, which led to issuance of fresh tender notice. The tanker lorry owners are challenging schedule rate of transportation mentioned in the tender notice as has been claimed that the price which has been mentioned in the tender notice are oppressive in nature, claiming that if the they would accept the rate mentioned in the NIT, it will lead to zero saving and in some cases it will generate loss. The rate of transportation has been fixed in the following manner:-

Rs.2.22 per KL (Kilo Liter) per Kilo meter for 12 KL (Kilo Liter) TT (Tank Truck) and Rs.1.71 per KL (Kilo Liter) per Kilometer for 18/20 KL (Kilo Liter) TT (Tank Truck) for the distance of more than 39 Kilometers. For local transportation within the range of 39 Kilometers, the rate has been quoted in the price



schedule at Rs.106.92 Per KL (Kilo Liter) for 12 KL TT (Tank Truck) and Rs.80.66 per KL for 18/20 KL TT (Tank Truck).

4. It has been mentioned in the writ petition earlier tender notice was published in the year 2014-17 for transportation of bulk petroleum products vide Tender No. BSO /PLO/BULK/1/2014-17 wherein high rate was fixed as follows:-

Rs.2.52 per kilometer for transportation of the areas situated at the distance of more than 39 Kilometers, whereas for the local transportation of the bulk petroleum products within the area of 39 Kilometers rate was quoted Rs.131 per KL which is the higher rate than the rate mentioned in the present tender notice. The different elements involved in transportation, have been increased, too much, such as under the heading of salary of the drivers and cleaners, having been increased 10 to 20%. The price of fuel i.e. diesel has increased from Rs.58.65 to Rs.61.58 per liter, rate of insurance of the Tank Truck has increased from Rs.30,000/- to Rs.60,000/- and the road tax has increased from Rs.12,500/- to Rs.14,100/- per annum, rate of permit has also increased from Rs.18,000/- to Rs.19,500/- per annum as well as maintenance cost of the vehicle has increased from Rs.48,000/- to Rs.1,20,000/- per annum.



5. It has been submitted that the rate which has been provided in the tender notice published in the year 2014-17 is much higher than the rate mentioned in the present tender notice, fixing the rate is nothing but is an oppressive in nature, leaving the person without any profit. The citizen run their business with the prime motive to a fair return on the investment, but in the present case, the investment is very high but return is completely oppressive in nature. As no tender was received, the Indian Oil Corporation has again advertised a NIT vide Tender Notice No. RCC/ERO/37/2016-17/PT-113 again invited tender from the interested lorry owners.

6. The challenge is also made in placing reliance on the rate of transportation is in higher side in different States whereas the rate mentioned in N.I.T. for the State of Bihar is on lower side. In support of their claim example has been given of the State of West Bengal, where the Indian Oil Corporation has fixed the transportation rate for the owners of Tank Truck at Rs.204.96 for the local transportation (within 39 Km. area for 12 KL Tank Truck), Rs.196.39 Per KL for 20 KL Tank Truck for local transportation and for the distance more than 39 Km. the transportation rate of petroleum product is at the rate of Rs.3.1617 per KL/ KM for 12 KL Tank Truck and at the rate of Rs.2. 9969 per KL/ KM for 20 KL



Tank Truck for contract period of 01.04.2015 to 21.03.2018. Other example has been given of State of Uttar Pradesh, providing higher transportation rate to the Tank Truck owner and it has been submitted that the rate of transportation of petroleum products in other States have been fixed at the higher side, whereas in the State of Bihar rate has been fixed at the lower side.

7. The facts of C.W.J.C. No. 523 of 2017 and C.W.J.C. No. 3797 of 2017 are by and large identical as they fall in the same category and as such this Court will prefer to deal with the facts mentioned in C.W.J.C. No. 523 of 2017. In the present case, the petitioners are retail outlet dealers (hereinafter mentioned as “*R.O. dealers*”). The petitioner No.1 is claiming to be the registered society, representing through its General Secretary, petitioner No.2 is Managing Director of a private Limited Company and Petitioner No.3 is individual, owns the proprietorship firm, running Retail Outlet.

8. It has been submitted that for fixing the rate of transportation of bulk petroleum products, before introduction of new system general transporters as well as the tank lorry owner of R.O. were enlisted, the Indian Oil Corporation used to float the tender for selection of tanker lorry owners for transportation of the



bulk petroleum products, in which the general transporter and R.O. dealers used to participate and the tanker/trucks were required to carry the bulk petroleum products at the lowest rate of transportation (L-1 rate) fixed in rupees per Kilo Liter per Kilo meter (RS/KL/KM)

9. In the advertisement, the Indian Oil Corporation Limited used to mention an “Estimated Offer Rate” i.e. base rate plus (+/-10%). While fixing the base rate, the Indian Oil Corporation used to take different elements into consideration. General transporters and the R.O. owners used to participate simultaneously therein, in this process, they were not in any way discriminated. L-1 rate was applicable for both the classes of tank lorry owners uniformly. It was a fair exercise, never felt any grievance against the fixing the rate of transportation. In the year 2014-16, L-1 rate for truck tankers of 12 KL capacity was fixed at Rs.2.52 per KL per KM without exception, to all tanker truck capacities.

10. A new system has been introduced on 12th October, 2016, all the R.O. dealers of Indian Oil Corporation were called for a close door meeting at the Bihar State Office, where all the R.O. dealers were asked to put their signature on “Expression of Interest” (hereinafter referred to as the “EOI”) by the Deputy General Manager (Operations) and submit the same for the purposes of



allowing their tanker trucks to be engaged for transportation of petroleum products to their outlets. It was made clear to the R.O. dealers that if they refused to fill up and sign the E.O.I., their tanker trucks would not be inducted for transportation of the petroleum products of the Company. If R.O. dealers were interested to engage their tanker trucks in the new transportation system for the years 2017-2020, they would submit the E.O.I. by 21.10.2016. At that time, the R.O. dealers were not knowing the L-1 rate as the rate fixed for general transporters adopting the process of the N.I.T. would be applicable to them. The association raised objection about the manner they were treated, but they were coerced to put their signature on the dotted line without any deviation to the terms conditions of the E.O.I. Later on, on 20.12.2016, the Indian Oil Corporation published the notice, inviting tender vide Tender No.RCC/ERO/37/2016-17/PT-102, calling upon the general transporters to participate for carrying the bulk petroleum products.

11. It has been alleged that the R.O. dealers has been treated differently than to the general transporters as clauses- 6 to 8 stipulate that L-1 rate arrived at during the finalization of the rate for the general transporters category through N.I.T., would be made applicable to the R.O. dealers. The R.O. dealers shall not have right



and choice to question the L-1 rate arrived in the general transporter tender. Clause-7 postulates, in the event R.O. dealers withdraw the E.O.I during or after finalization of tender or refuse to accept L-1 rates arrived in general tender, E.M.D. shall be forfeited and will be disqualified from participating in the existing tender. In view of aforesaid narrations of facts, no bargaining power is available to the R.O. dealers, whereas in the case of general transporters, if L-1 candidates are not sufficiently available to carry the load of bulk petroleum products, in that circumstance, the Oil Corporation will negotiate with L-2 and L-3 transporters and so on and so forth. However, this privilege has not been given to the R.O. dealers. Further grievance is that the benefit of RTKM upto 4000 Km. has not been made available to the R.O. dealers, thereby they have been deprived to use the vehicle up to the limit which has been made available to the general transporters.

12. It has further been stated that the base rate which were provided during 2014-2016 were much higher side than the base rate which has been prescribed for the current period. So, fixation of the base rate is completely arbitrary, rather the same is oppressive in nature as in certain events instead of giving profit it will generate loss.



13. An Interlocutory Application No.937 of 2017 has been filed, thereby certain subsequent facts which have taken place later on, sought to be added in the main writ application, which has been allowed by this Court and the statements made in paragraph Nos. 21A to 21G including the prayer which has been made in paragraph No.11 of the Interlocutory Application were treated to have been incorporated in the writ petition, became part of the main writ application.

14. In the Interlocutory Application, it has been mentioned that when no tanker lorry owner came forward to participate in the tender, the Indian Oil Corporation has subsequently in the dotted line published the fresh tender dated 17.02.2017. In the body of the Interlocutory Application, depiction has been made that in different States the rate of transportation is very high whereas, in the State of Bihar the rate has been fixed at the lower side, which is completely illegal action in fixing the base rate.

15. Learned counsel for the petitioners of C.W.J.C. No.476 of 2017 has raised the following points:-

The Indian Oil Corporation has committed illegality and acted discriminately in fixing the rate of transportation as in the State of Bihar lower rate has been fixed than that of the other States



like West Bengal and Uttar Pradesh. Second point has been taken that earlier for the period 2014-17 the rate of transportation was higher, but the same has been reduced for the tender period 2017-2020 i.e. for three years. Third point has been taken that the fixation of rate of transportation is completely arbitrary and discriminately exercised the power in fixation of rate of transportation in view of the fact that the rate of diesel in the State of Bihar is higher than that the rate of diesel fixed in other States, the cost of transportation has increased, in view of upside revision of salary of driver and cleaners, premium of insurance has gone high, fee of road permit has been enhanced.

16. In C.W.J.C. No.523 of 2017 and C.W.J.C. No.3979 of 2017 primarily grievance has been raised that creation of two class i.e. of R.O. dealers as well as the general transporters is arbitrary, discriminately and having no rational/nexus for creating two class of transporters, two classes having been created with no object sought to be achieved, as primary and singular object of transporters, is to transport the petroleum products to the retail outlet centre. It has further been stated that E.O.I. does not mention about giving right to negotiate for L-2, L-3 and L-4 rate, whereas the general transporters in certain events have advantage to negotiate the rate of



transportation for L-2, L-3 and L-4 and thereby the higher rate which will be available to the general transporters should also be made applicable to the R.O. dealers. It has further been submitted that the tank lorry owners, R.O. dealers will have to transport the bulk petroleum products confining at the L-1 rate, whereas the general transporters have been given the benefit of 4000 km. RTKM, but this benefit has not been extended to the R.O. dealers, thereby acted discriminately and arbitrarily.

17. It has further been stated that the rate of transportation in Hazaribagh is higher than the present rate made available to them and the grievance has been raised that while taking their signature on E.O.I. they were kept in blank and dark with respect to base rate of transportation as after lapse of two to three months, the Indian Oil Corporation has come forward and provided the base rate mentioned in the N.I.T. It has further been stated that it is an artificial classification having no basis, no rationality and no object is sought to be achieved. It has further been argued that the manner in which the R.O. dealers have been treated completely creates the sense of discrimination and insecurity among them.

18. It has further been submitted that the component involved in fixation of rate has not been disclosed and they were/are



not knowing the essential element, which was required to be taken into consideration, has been left out and certain redundant element which was to be left out, has been taken into consideration by the Oil Company. It has been submitted that the rate of transportation has artificially been fixed, which creates a sense of fragility and insecurity and regressive in nature, fixation of base rate of transportation is so lower side; no prudent person would approve the rate.

19. It has further been stated that in the case of *Union Of India & Anr vs. Cynamide India Ltd. & Anr* reported in 1987(2) S.C.C. 720, it has been held that there should not be any hostile discrimination while fixing the rate and the Court will examine only to that extent whether relevant factors have been taken into considerations and irrelevant considerations kept out of the determination of the price.

20. It has further been argued that in the case of *Shree Meenakshi Mills Ltd. vs. Union of India* reported in 1974 (1) S.C.C. page 468, it has been held that the investment is made with the motto to have reasonable return to the investors.

21. It has further been submitted that in the present case,



the manner the price of transportation has been fixed, instead of giving profit would cause loss to the business in certain circumstances and events.

22. Learned counsel for the petitioners has placed reliance on the following judgments on the principle of judicial review in such matter and area of interference by this Court:-

(i) *Tata Cellular vs. Union Of India*, reported in **1994(6) SCC 651**.

(ii) *Ramana Dayaram Shetty vs. International Airport Authority of India and Others*, reported in **(1979) 3 SCC 489 = 1979 S.C. 1628**

(ii) *Natural Source allocation In Re. Special Reference No.1 of 2012* reported in **2012 (10) S.C.C. page 1**.

23. On the principle of primarily and secondary review, it has been argued that in the present case the action of the Oil Corporation does not satisfy the ingredients of primary as well as secondary review enunciated by the Hon'ble Supreme Court in *Om Kumar and Others vs. Union of India*, reported in **2001(2) S.C.C. page 386**.

24. Learned counsel for the petitioners further argued that if



the rate of transportation is minus 10% of L-1, rate of the transportation of bulk petroleum products, will cause loss, which is apparently clear from paragraph Nos. 11 to 23 of the counter affidavit. The purpose of investment of money is not that they should be deprived of the profit.

25. Learned counsel for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court in ***Veer Pal Singh vs. Secretary, Ministry of Defence*** reported in ***2013(8) S.C.C. 83*** and submitted that in view of artificial lowest rate of fixation of rate of transportation, this Court should interfere and give direction to constitute a fresh Committee for fixation of fresh rate of transportation, comprising R.O. dealers as member of the Committee.

26. Learned counsel for the Indian Oil Corporation has taken dig of submission of the petitioners, submitting that the scope of judicial review in fixation rate of transportation is very narrow and limited as the Court should refrain to interfere with the fixation of the rate of transportation normally, as it primarily lies within the domain of the Executives, as the fixation of price of transportation rate is a complex subject and only the person conversant with subject, taken all elements into consideration, would be able to



arrive to correct conclusion and fixed the rate of transportation. In support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court in *Rayalaseema Paper Mills Ltd. and Another vs. Government of A.P. and Others*, reported in (2003) 1 S.C.C. 341.

27. On the point of judicial restrain and on judicial scrutiny with respect to fixation rate of transportation, it has been submitted the Court should maintain restrain, learned counsel for the respondents has placed reliance on the decisions of the Hon'ble Supreme Court passed in the case of *Air India Ltd. vs. Cochin International Airport Ltd. and Ors.* reported in 2000(2) S.C.C. 617 and *Global Energy Ltd. and Another vs. Adani Exports Ltd. and Others*, reported in 2005(4) S.C.C. 435.

28. It has further been argued that while fixing the rate of transportation the market force and different inputs have been taken into consideration by the Cost Accountant, who has an expertise in the field of fixation of the rate of transportation. In the present case also, the rate has been fixed by the experts and this Court should maintain the judicial restrain in the matter of fixation of the price as the same has been fixed taking different elements essential for fixation of the rate. The Court may interfere with the decision of



expert except in certain and exceptional circumstances.

29. Learned counsel for the Indian Oil Corporation has submitted that the judicial review is permissible in the event, the public interest is adversely affected; making out legal point will not be sole basis for interference. In support of his submission, he has placed reliance on the decision of the Hon'ble Supreme Court in the case of *Sanjay Kumar Shukla vs. Bharat Petroleum Corporation Limited and Others*, reported in **2014 (3) S.C.C. 493**, submitted that there was sufficiency of material to show and indicate that the fixation of rate is based on reasonable basis on proper classification with the objects to smooth delivery of petroleum products to different retail pumps, with proper and good return to the person engaged in the business.

30. He further submitted that the classification between the R.O. dealers as well as general transport operator of tanker is based upon permissible classification and fulfills the two conditions such as the classification be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and second, that differentia must have a rational relation with the object sought to be achieved. As admittedly the R.O. dealers are different class as that of general operators of the



tanker. Before changing the policy, extensive market survey was done and it was found that the general transporters are in disadvantage position to formalized and rationalized, so the Indian Oil Corporation has brought the new scheme to reduce or remove disadvantages of general transporter.

31. It has been submitted that the R.O. dealers-cum-transporters are supposed to transport petroleum products for the use of their own R.Os and for consortium. The tender finalization policy was revised with effect from October, 2016. Earlier, the tenders were finalized for dealers and transporters simultaneously. However, as per the new policy, the dealer has to submit the E.O.I. for own T.T. and the L-1 rate has to be accepted which will be finalized through the public tender of general transporters. In the earlier system, when both the R.O. dealers-cum-transporters as well as the general transporters used to participate simultaneously, it was found that the general transporters were facing problem as after allotment of work, got attachment with R.O. dealer, in currency period of contract on induction of their own fresh tank truck lorry by R.O. dealer, the working and business area of general transporters got diminished, thereby effected, causing serious prejudice to the business interests of the general transporters as has been explained in



following manner; if 'A' is R.O. dealer and general transporter was selected to supply the bulk petroleum product and during the currency of the contract 'A' R.O. dealer purchases new tank truck lorry for the supply of their own R.O. centre and for consortium, automatically, on induction of fresh tank lorry would hamper the business of general transporters. As admittedly the R.O. dealers would prefer to use their own transport tanker for the supply of bulk petroleum products to their R.O. centre and for consortium. To avoid the conflict of interest of R.O. dealers and the general transporters, it has been submitted that to demarcate the area, which would be occupied by the R.O. dealers, showing Expression of Interest left out, retail outlets were available for the general transporters, to rationalize the system, the policy of E.O.I. has been introduced, whatever, L-1 rate for general transporters will equally and identically be applicable to the R.O. dealers.

32. This policy decision has been introduced to achieve the twin objects, first to minimize the disadvantage of the general transporters as well as to avoid the confusion and second is that if the R.O. dealers transport bulk petroleum products through their own T.T. would create a peace in mind. The moment, T.T. comes under the control of the R.O. dealer will not remain dependent on the



wisdom and choice of general transporters. The R.O. dealers constitute different and distinct class, they were treated in different manner as the R.O. dealers-cum-transporters are required to make a security deposit of Rs.50,000/-, whereas, the general transporters has to deposit Rs.8,00,000/- that itself shows that both have been treated differently for different purposes with the object sought to be achieved, which has been explained hereinabove. It has further been stated that the condition of invitation for tender are not open to the judicial scrutiny unless the same is tailor-made to benefit any particular tenderer or class of tenderers. In the present case, the petitioners have failed to show the conditions have been incorporated just to accommodate a particular class of transporters or the same are detrimental to the public interest. The invitation of tender is not a compulsion, whoever desire may participate there and the conditions attached with N.I.T. or E.O.I. cannot be said to be suffers from arbitrariness. The principle of fixation of rate of transportation and the component which were taken into consideration has been dealt with paragraph no. 15, 18, 20, 21, 22, 23 and 24 of the counter affidavit.

33. In reply to the argument of Indian Oil Corporation, learned counsel for the petitioners submitted that the judgment



placed reliance by the Indian Oil Corporation vide *Rayalaseema Paper Mills Ltd. v. Government of A.P (supra)* is not applicable as the issue in the present case is quite different to the issue involved in that case. As in the present case, the issue in what manner the transportation charge will be fixed whereas, there the issue is royalty, completely divergent issue having no nexus to each other and as such, that case is not applicable in the present case, but to buttress his argument, he placed reliance on the decision of the Hon'ble Supreme Court in the case of *Michigan Rubber (India) Limited vs. State of Karnataka and Others*, reported in **2012(8) S.C.C. 216**, where it has been held that action of the State must be within the bounds of reasonableness. In the present case, the fixation of L-1 rate of transportation having been fixed through public tender for general transporters, thereby they have been given a far superior benefit than to the R.O. dealers, who have employed their tankers. It has been argued that the petitioners should not be confined to the condition made in the Expression of Interest (E.O.I.) but they should also be treated identically in the matter of rate of transportation along with other benefits at par with the general transporters, treating the R.O. dealers at par with the general transporters.

34. It has further been argued that L-1 rate should be read



down in the manner that it will vary at the same rate as and when the rate is enhanced to other general tank lorry transporters, if it is not read down in such manner, it would violate the Article-14 of the Constitution of India. It has also been argued that judicial scrutiny is not only applicable in the case of tailor-made rate to benefit a particular tenderer or class of tenderer, but it will equally be applicable if the classification does not satisfy twin test of reasonableness of classification and the objects sought to be achieved. He has further stated that even if the reasonable classification test is satisfied, but unless it is satisfied that the classification has been made for a particular goal to be achieved, cannot be said to have been tested and affirmed on the anvil of Article-14 of the Constitution of India. In paragraph No.13 of the counter affidavit of the Indian Oil Corporation, it has been submitted that this has been done in order to stop the pilferages of the Oil and quality of the petroleum products will not be compromised, as it appears that the classification has been done with sole purpose that the R.O. transporters should remain in peace and will be able to lift the petroleum products without any disturbance in the mind and it will get a pure material without having any mental distress, cannot be said to have satisfied the test of reasonableness for the object which has been mentioned hereinabove. The R.O. tanker



transporters should have benefit of utilization of RTKM 4000 km. at par with the general transporters. It has further been stated that the rate which has been mentioned in paragraph no. 21 of the counter affidavit cannot said to be reasonable if the table no. C and D minus 10 percent is taken for classification of the profit, in such circumstance, in place of any profit, it will run in loss, which is evidently clear from calculation mentioned therein.

35. Learned counsel for the petitioners has further submitted though the argument of the Oil Company that the fixation has been done on the advice of the expert's report but is not impermissible for the Court, in suitable case, to examine and interfere the opinion of the expert. The Court and other judicial authority, entrusted with the task to examine the opinion of the expert, deserve respect not worship. Before entertaining the report, the Court is to examine as to whether the expert body has examined the matter in a proper and right direction, has taken into consideration all relevant material facts, has not arrived conclusion in mechanical manner without due consideration, though the Court cannot sit in appeal over the opinion of the expert, but has to examine whether essential elements have been taken into consideration. In nutshell, it has been stated that before interfering or



approving the report of the expert, it has to be seen by the Court that the expert while recording its opinion has taken into consideration the correct element, if it is found that the expert has failed to consider the essential element and necessary material for due conclusion and considered the element which should not have been taken into consideration, played vital role for arriving to the opinion, in such circumstance, the Court should interfere with the report of the expert.

36. In support of submission, learned counsel for the petitioners has placed reliance on the judgment in the case of *Veer Pal Singh vs. Secretary, Ministry of Defence* reported in (2013) 8 SCC 83.

37. Learned counsel for the petitioners further submitted that as the fixation of rate of transportation is so oppressive it is in the interest of justice, this Court should direct the Indian Oil Corporation to constitute a fresh Expert Committee, on the basis of opinion, the rate of transportation be fixed.

38. On the last leg of the argument, learned counsel for the petitioners has submitted that the Indian Oil Corporation has floated the NIT for Barauni Terminal, estimated rate has been fixed at



Rs.2.6794 for beyond Free Delivery Zone (FDZ) and Rs.133.5333 for within Free Delivery Zone is better rate than the rate at Patna Terminal, manifestly discloses hostile discrimination.

39. The Indian Oil Corporation has filed its reply and explained why the Indian Oil Corporation has fixed this estimated rate for Barauni Terminal, *inter alia* estimated transportation rate depends on various factors including factors such as, loading in shifts, bottom/top loading. While fixing the rate, the location factors are important in arriving at the estimated transportation rate and the said rates can vary from one location to other location as Patna Terminal is far better equipped than Barauni Terminal because terminal operating at Patna is carried out in two shifts which help in drastic reduction in down time of vehicles as the vehicles can take 2-3 loads in a single day, depending upon the distance of previous trips. Even, when the distance is long, upon its return it gets an opportunity for immediate loading if reporting between 0600 hours to 2200 hours at Patna Terminal. Whereas, Barauni Terminal operators only between 0830 hours and 1700 hours, gets an opportunity for loading and the remaining period gets converted into down time as the Barauni Terminal being a single shift operating location. On account of reduction of time, utilization of T.T. is in



better manner as Patna Terminal works in two shifts, whereas Barauni Terminal have to stand idle for taking next load due to single shift, in order to compensate the loss, the operators at Barauni has been provided higher rate than to the Patna Terminal. While fixing the rate at Barauni Terminal the essential and proper elements have been kept in mind. The Patna Terminal is in better position than to the Barauni Terminal and as such, there is nothing wrong fixation of higher rate.

40. It has been argued by the Indian Oil Corporation that the decision reported in *Veer Pal Singh vs. Secretary, Ministry of Defence* (supra) will not apply in the present case where the essential elements which were necessary for consideration were not taken into consideration.

41. Having considered the rival contentions of the parties, now this Court has to examine how far the Court can interfere in exercise of judicial review the rate of transportation fixed by the Oil Company.

42. In the case of *Union of India and Another vs. Cynamide India Ltd. and Another*, reported in 1987(2) S.C.C. 720, the question came for consideration the limit and extent of the Court



to examine the correctness and legality of the price fixation of essential commodities fixed under Essential Commodities Act. The Hon'ble Supreme Court has held that the Court cannot sit in appeal on the question of price fixation, but it may be questioned on the grounds of denial of the right guaranteed by Article 14, if it is arbitrary, i.e. if either the guidelines prescribed for the determination are arbitrary or if, even though the guidelines are not arbitrary, the guidelines applied in an arbitrary manner. It has further been held that it was open to the subordinate legislative body to prescribe and adopt its own mode of ascertaining the cost of production and the items to be included and excluded in so doing. So long as the method prescribed and adopted by the subordinate legislative body is not arbitrary and opposed to the principal statutory provisions, it could not legitimately be questioned. The Court further held that price fixation is neither the function nor the forte of the Court. The Court is neither concerned with the policy nor with the rates, but it has jurisdiction of interference to enquire into the question, in appropriate proceedings, whether relevant considerations have been gone into and irrelevant considerations kept out is primary area of enquiry under judicial review. It has further been held that the inquiry by the subordinate legislative body in a particular situation, the nature and the extent of the enquiry is in the discretion of the



subordinate legislating body which held the inquiry and became a basis for fixation of rate of objectives on the basis of such inquiry. The provision for such an enquiry is generally an enabling provision, intended to facilitate the subordinate legislative body to obtain relevant information from all and whatever source considered necessary. It is the sort of enquiry which the legislature itself may cause to be made before legislating, an enquiry which will not confer any right on anyone other than the enquiring body. So the inquiry has to be conducted keeping in mind the aim and object for collecting the correct and right information for submitting the correct report, which became the basis for fixation of the price.

43. It will be relevant to quote paragraph nos. 4, 5, 6, 31, 32 and relevant portion of paragraph no.33 of the said judgment, which read as under:-

“4. We start with the observation, 'Price fixation is neither the function nor the forte of the Court'. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We



will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not re-value the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The Court will, of course, examine if there is any hostile discrimination. That is a different 'cup of tea' altogether.

5. The second observation we wish to make is, legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing- there are several instances of the legislature requiring the subordinate legislating authority to give public notice and a public hearing before say, for example, levying a municipal rate - in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. The right here given to rate payers or others is in the nature of a concession which is not to detract from the character of the activity as legislative and not quasi judicial. But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity.

6. Occasionally, the legislature directs the subordinate legislating body to make 'such enquiry as it thinks fit' before making the subordinate legislation. In such a situation, while such enquiry by the subordinate legislating body as it deems fit is a condition precedent to the subordinate legislation, the nature and the extent of the enquiry is in the discretion of the subordinate legislating body and the subordinate legislation is not open to question on the ground that the enquiry was not



as full as it might have been. The provision for 'such enquiry as it thinks fit' is generally an enabling provision, intended to facilitate the subordinate legislating body to obtain relevant information from all and whatever source and not intended to vest any right in any one other than the subordinate-legislating body. It is the sort of enquiry which the legislature itself may cause to be made before legislating, an enquiry which will not confer any right on anyone.

31. We mentioned that the price fixed by the Government may be questioned on the ground that the considerations stipulated by the order as relevant were not taken into account. It may also be questioned on any ground on which a subordinate legislation may be questioned, such as, being contrary to constitutional or other statutory provisions. It may be questioned on the ground of a denial of the right guaranteed by Article-14 if it is arbitrary, that is, if either the guidelines prescribed for the determination are arbitrary or if, even though the guidelines are not arbitrary, the guidelines are worked in an arbitrary fashion. There is no question before us that paragraph 3 prescribes any arbitrary guideline. It was, however, submitted that the guidelines were not adhered to and that facts and figures were arbitrarily assumed. We do not propose to delve into the question whether there has been any such arbitrary assumption of facts and figures. We think that if there is any grievance on that score, the proper thing for the manufacturers to do is bring it to the notice of the Government in their applications for review. The learned counsel argued that they were unable to bring these facts to the notice of the Government as they were not furnished the basis on which the prices were fixed. On the other hand, it has been pointed out in the counter affidavits filed on behalf of the Government that all necessary and required information was furnished in the course of the hearing of the review applications and. there was no justification for the grievance



that particulars were not furnished. We are satisfied that the procedure followed by the Government in furnishing the requisite particulars at the time of the hearing of the review applications is sufficient compliance with the demands of fair play in the case of the class of persons claiming to be affected by the fixation of maximum price under the Drugs (Prices Control) Order. As already stated by us, manufacturers of bulk drugs who claim to be affected by the Drugs (prices Control) Order, belong to a class of persons who are well and fully informed of every intricate detail and particular which is required to be taken into account in determining the price. In most cases, they are the sale manufacturers of the bulk drug and even if they are not the sole manufacturers, they belong to the very select few who manufacture the bulk drug. It is impossible to conceive that they cannot sit across the table and discuss item by item with the reviewing authority unless they are furnished in advance full details and particulars. The affidavits filed on behalf of the Union of India show that the procedure which is adopted in hearing the review applications is to discuss across the table the various items that have been taken into account. We do not consider that there is anything unfair in the procedure adopted by the Government. If necessary it is always open to the manufacturers to seek a short adjournment of the hearing of the review application to enable them to muster more facts and figures on their side. Indeed we find that the hearing given to the manufacturers is often protected. As we said we do not propose to examine this question as we do not want to constitute ourselves into a court of appeal over the Government in the matter of price fixation.

32. The learned counsel argued that there were several patent errors which came to light during the course of the hearing in the High Court. He said that obsolete quantitative usages had been taken into consideration, proximate cost



data had been ignored and the data relating to the year ending November, 1976 had been adopted as the basis. It was submitted that there were errors in totalling, errors in the calculation of prices of utilities, errors in the calculation of net-worth and many other similar errors. As we pointed out earlier, these are all matters which should legitimately be raised in the review application, if there is any substance in them. These are not matters for investigation in a petition under Article 226 of the Constitution or under Article 32 of the Constitution. Despite the pressing invitation of Shri Diwan to go into facts and figures and his elaborate submissions based on facts and figures, we have carefully and studiously refrained from making any reference to such facts and figures as we consider it out- side our province to do so and we do not want to set any precedent as was supposed to have been done in Premier Automobiles though it was not so done and, therefore, needed explanation in later cases.

33....It was open to the subordinate legislating body to prescribe and adopt its own mode of ascertaining the cost of production and the items to be included and excluded in so doing. The subordinate legislating body was under no obligation to adopt the method adopted by the Income-tax authorities in allowing expenses for the purpose of ascertaining income and assessing it....So long as the method prescribed and adopted by the subordinate legislated body is not arbitrary and opposed to the principal statutory provisions, it cannot be legitimately questioned..."

44. So, in the aforesaid case, the proposition which has been given, while exercising a judicial scrutiny in the matter of price fixation when it is governed by the statutory provision, it has to be examined by the Court whether the factor prescribed in the



legislature was taken into consideration which is the guiding factor for determination of the price. It has to be examined whether the essential element necessary for fixation of the price mentioned in the statute was taken into consideration, whether proper factor guiding the determination of the price has been taken into consideration and the Court will not examine beyond aforesaid factors, but fixation of price not governed by the statutory provision, the criteria or principle which will be followed or the guideline factor to be adopted will be based upon on the doctrine of fairness and reasonableness, not suffers from arbitrariness, as arbitrariness is antithesis of the rule of law.

45. In *Royalaseema Paper Mills Ltd. v. Government of A.P.* (supra), there the royalty was fixed by the paper mill, claiming that the rate is so oppressive it will cause a loss to the industry itself. The Court refused to interfere and placed reliance on the judgment passed in the case of *Cynamide India Ltd. (supra)* and held that as the consideration of fixation of royalty was not based upon the statutory provision, will be examined on the test of non-arbitrary and reasonable exercise, leading to resonant result is test provided in Article 14 of the constitution of India. It has further been stated that while making a judicial scrutiny, the superior Court does not act as



an appellate authority.

46. It will be relevant to quote paragraph nos. 14 and 15 of the said judgment, which reads as under:-

“14. Before we enter the discussion, it is made clear that the determination of rates of royalty for supply of forest produce to paper mills is not governed by any statute or a statutory order. The Government while entering into the agreement with the paper mills had undertaken to supply a certain specified quantity of wood each year for a period of 20 years. The government had not assured the mills that it will supply bamboo and other forest produce required by them at a particular rate. Nor was there an agreement between them with respect to the manner in which the rates of royalty would be determined. There was no assurance that the mills would be consulted or associated while fixing the rates of royalty. Even where the matter is governed by a statute or a statutory order, the scope of judicial enquiry is limited. This Court in Union of India & Another vs. Cynamide India Ltd. examined the scope of judicial interference in the matters of price fixation and observed: (SCC pp. 734-35, paras 4-6)

"4. We start with the observation, 'Price fixation is neither the function nor the forte of the Court'. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone



in and irrelevant considerations kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not re-evaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The court will, of course, examine if there is any hostile discrimination. That is a different 'cup of tea' altogether.

5. The second observation we wish to make is, legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of parliamentary legislation, the proposition is selfevident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing-there are several instances of the legislature requiring the subordinate legislating authority to give public notice and a public hearing before say, for example, levying a municipal rate- in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. The right here given to rate payers or others is in the nature of a concession which is not to detract from the character of



the activity as legislative and not quasi-judicial. But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity.

6. Occasionally, the legislature directs the subordinate legislating body to make 'such enquiry as it thinks fit' before making the subordinate legislation. In such a situation, while such enquiry by the subordinate legislating body as it deems fit is a condition precedent to the subordinate legislation, the nature and the extent of the enquiry is in the discretion of the subordinate legislating body and the subordinate legislation is not open to question on the ground that the enquiry was not as full as it might have been. The provision for 'such enquiry as it thinks fit' is generally an enabling provision, intended to facilitate the subordinate legislating body to obtain relevant information from all and whatever source and not intended to vest any right in anyone other than the subordinate legislating body. It is the sort of enquiry which the legislature itself may cause to be made before legislating, an enquiry which will not confer any right on anyone."

15. *This Court was examining the scope of judicial scrutiny in the matters of price fixation where it was governed by statutory provisions. The scope of judicial scrutiny would be far less where the price fixation is not governed by the statute or a statutory order. Where the legislature has prescribed the factors which should be taken into consideration and which should guide the determination of price, the courts would examine*



whether the considerations for fixing the price mentioned in the statute or the statutory order have been kept in mind while fixing the price and whether these factors have guided the determination. The courts would not go beyond that point. In the present appeals, there is no law, or any statutory provision laying down the criteria or the principles which must be followed, or which must guide the determination of rates of royalty. No doubt, any arbitrary action taken by the State would be subject to the scrutiny by the courts because arbitrariness is the very antithesis of rule of law. But this does not mean that this Court would act as an appellate authority over the determination of rates of royalty by the government. Government is the owner of the products. While it had agreed to supply a particular quantity every year for specified period, it had never agreed to supply at a particular rate; not did it stipulate with the mill owners the basis upon which it would determine the rates of royalty. It is open to the government to fix such price as it thinks appropriate having regard to public interest, which interalia, may include interest of revenue, environmental, ecology, the need of mills and the requirements of other consumers. The price is not to be fixed keeping in mind the requirements of the mills alone.

47. In the case of ***E.P. Royappa vs. State of Tamil Nadu***, reported in ***(1974) 2 S.C.R. 348 : AIR 1974, S.C. 555***, the Hon'ble Supreme Court has held that the equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the



whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unethical both according to political logic and constitutional law and is therefore, violative of Article-14. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Article- 14 forbids class legislation, but permits reasonable classification for the purpose of legislation, which the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute or policy in question.

48. This aforesaid proposition has been repeated in the case of ***D.S. Nakara & Others vs. Union Of India***, reported in ***1983 AIR 130***. It will be relevant to quote paragraph nos. 11, 13, 14 and 15 of the said judgment, which read as under:-

“11. The decisions clearly lay down that though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things



that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question. (See Ram Krishna Dalmia v. S.R. Tendolkar, 1959 SCR 279 at p. 296 : (AIR 1958 SC 538 at p.547). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be nexus i.e. causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.

13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi's case (AIR 1978 SC 597) in the earliest stages of evolution of the Constitutional law, Art.14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in E.P. Royappa v. State of Tamil Nadu (1974) 2 SCR 348 : (AIR 1974 SC 555), it was held that the basic principle which informs both Articles 14 and 16 is equality and inhibition against discrimination. This Court further observed as under:

"From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article-14, and if it



affects any matter relating to public employment, it is also violative of Art.16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”

14. *Justice Iyer has in his inimitable style dissected Article-14 as under:*

"The article has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knighterrants of 'executive excesses' if we may use current cliché, can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law; be you ever so high, the law is above you.(1978(2 SCR 621 at p. 728 : AIR 1978 SC 597 at p. 661). Affirming and explaining this view, the Constitution Bench in Ajay Hasia etc. v. Khalid Mujib Sehravardi, (1981) 2 SCR 79 : (AIR 1981 SC 487) held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article-14. After a review of large number of decisions bearing on the subject, in Air India etc. v. Nargesh Meerza (1982) 1 S.C.R. 439 : (AIR 1981 S.C. 1829) the Court formulated propositions emerging from analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable



basis.”

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.”

49. So, the Article 14 forbids class legislation but reasonable classification is permissible satisfying the conditions, the classification must satisfy twin tests of classification being founded on the intelligible differentia, which distinguishes person or things that are grouped from those that left out of the group and that differentia must have rational nexus to the object sought to be achieved and if there is proper rational and it has been done to achieve particular object, then in such circumstance, classification based on rationality cannot be classified to be suffering from vice of arbitrariness and discrimination, which has been prohibited under Article-14 of the Constitution of India.

50. In the case of *M/s Michigan Rubber (India) Ltd. Vs. The State of Karnataka & Ors.* (supra), the issue regarding scope and area of interference in contractual matter has been considered. In that case, the Court has considered the decision passed in *Tata*



Cellular vs. Union of India, (1994) 6 SCC 651 and *Raunaq International Ltd. vs. I.V.R. Construction Ltd. & Ors.* (1999) 1 SCC 492, where the Court has held that the writ Court would not be justified in interfering with commercial transactions in which the State is one of the parties except where “there is substantial public interest involved” in cases where the “transaction is mala fide and the term and conditions were tailor-made to favour particular party”

51. The Court has also considered the decision passed in the case of *Union of India & Anr. vs. International Trading Co. & Anr.*, (2003) 5 SCC 437, wherein it has been held that while the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or with any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on the touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action, non-arbitrariness in essence and substance is the heartbeat of fair play. Whether any action is arbitrary or non-arbitrary, the answer is always based upon facts and circumstance of



the given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

The Hon'ble Supreme Court also considered the decision passed in *Reliance Airport Developers (P) Ltd. vs. Airports Authority of India (2006) 10 S.C.C.- 1*, wherein it has been held that while judicial review cannot be denied in contractual matters or matters in which the Government exercises its contractual powers, such review is intended to prevent arbitrariness and must be exercised in larger public interest. The decision passed in *Jagdish Mandal v. State of Orissa (2007) 14 S.C.C. 517*, has also been considered, in which it has been held that 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 than the Court can say “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have arrived and whether public interest is affected”.

52. It will be relevant to quote paragraph nos. 11, 12, 13, 20, 23 and 24 of the said judgment, which are as follows:-

“11. In Tata Cellular vs. Union of India, this Court



emphasised the need to find a right balance between administrative discretion to decide the matters on the one hand, and the need to remedy any unfairness on the other, and observed: (SCC pp.687-88, para 94)

“(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. ...

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

12. In Raunaq International Ltd. vs. I.V.R. Construction Ltd. this Court reiterated the principle governing the process of judicial review and held that the writ court would not be



justified in interfering with commercial transactions in which the State is one of the parties except where there is substantial public interest involved and in cases where the transaction is mala fide.

13. *In Union of India v. International Trading Co. this Court, in similar circumstances, held as under: (S.C.C. pp. 445 and 447, paras 15-16 and 22-23)*

“15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. 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. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.”

16. *Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not*



disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.

22. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed.

23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See Parbhani Transport Coop. Society Ltd. v. RTA, Shree Meenakshi Mills Ltd. v. Union of India, Hari Chand Sarda v. Mizo District Council and Krishnan Kakkanth v. Govt. of Kerala.)”



20. In Reliance Airport Developers (P) Ltd. vs. Airports Authority of India, this Court held that while judicial review cannot be denied in contractual matters or matters in which the Government exercises its contractual powers, such review is intended to prevent arbitrariness and must be exercised in larger public interest.

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.”

24. *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 negative, then there should be no interference under Article 226.”

53. In ***Ramana Dayaram Shetty vs. International Airport Authority of India and Others*** (supra) the issue in what manner the State largess has to be distributed, the action of executive to be examined on the touchstone of Article 14 of the Constitution of India came for consideration. The Hon’ble Supreme Court has held that the Government is a welfare State, is the regulator and dispenser



of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationship to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare, but in every action it has to be tested on the touchstone of Article 14, it has to be examined whether the action is free from arbitrariness. It has further been held that every administrative action has to be tested in the light of Article-14, in which the test will be its fairness reasonableness and reasonable person cannot arrive to such a finding.

54. It will be useful to quote paragraph nos. 10, 11, 21 and relevant portion of 27 of the said judgment, which are as follows:-

“10. Now, there can be no doubt that what paragraph (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered 2nd class hotel or restaurant and he must have at least 5 years’



experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by respondent 1 and since the respondents 4 did not satisfy this standard or norm, it was not competent to respondent 1 to entertain the tender of respondents 4. It is a well settled rule of administrative law that 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. This rule was enunciated by Mr. Justice Frankfurter in Viteralli v. Seton where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. . . . Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. . . . This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

This Court accepted the rule as valid and applicable in India in A. S. Ahuwalia v. Punjab and in subsequent decision given in Sukhdev v. Bhagatram, (3) Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as an emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule of



administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade's Administrative Law 4th edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. To-day with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set-forth by Harry Jones in his "The Rule of Law and the Welfare State", there is as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in "democracy Equality and Freedom," "substantial agreement is in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this



principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege.

11. Today the Government, is a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationship to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of business or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges But on that



account, can it be said that they do not enjoy any legal protection ? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largesse. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised." "The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religions faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual.

21. *This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in E. P. Rayappa v. State of Tamil Nadu and Maneka Gandhi v. Union of India that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and*



relevant principle which is non- discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in Erusian Equipment and Chemicals v. State of West Bengal (supra) where the learned Chief Justice pointed out that

"the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person The Government cannot choose to exclude persons by discrimination. The order of black- listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting.... A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling....It is true that neither the petitioner nor the respondent has any



right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods."

It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

27. Now this rule, flowing as it does from Article 14, applies to every State action and since "State" is defined in Article 12 to include not only the Government of India and the Government of each of the States, but also "all local or other authorities within the territory of India or under the control of the Government of India", it must apply to action of "other authorities" and they must be held subject to the same constitutional limitation as the Government..."

Same principle has been reiterated in case of ***Natural Source allocation In Re. Special Reference No.1 of 2012*** (supra).

55. The decision passed in ***Tata Cellular vs. Union Of India*** (supra) is a beckon light highlights on the scope of judicial review on the contractual matter, where the Hon'ble Supreme Court has held that the judicial review is permissible in three counts; first,



illegality, which means the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Second, irrationality, namely, Wednesbury unreasonableness, it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at, and third is procedural impropriety, but the Court has said that the action of the State must not be suffers from vice of Article 14 and every action must be fair and proper in terms of Article 14. In case of arbitrary exercise, the Court has certainly jurisdiction to interfere in the matter, but also mentioned that the executive cannot be deprived “the right of play in joints”. The Court has further held that Judicial review is not concerned with the merits of a decision, but to test the manner in which the decision was made. The Judicial review is entirely different from an ordinary appeal. It is effective tool of the Court to control the administrative decision without substituting its own decision, and contrast to the power of appeal where the appellate tribunal substitutes by its own decision on the merits for that of the administrative officer. The judicial review is a great weapon in the hands of the Judge to correct illegal and arbitrary exercise of power.

It has further been held that it is not possible for Courts



to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances, the Court has to be conceded to the authorities who have to enter into contract, giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. “If the decisions have been taken in *bona fide* manner although not strictly following the norms laid down by the Courts, such decisions are upheld on the principle laid down by Justice Holmes, that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of 'play in the joints' to the executive”.

56. It will be relevant to quote paragraph nos. 91, 92, 93 and 94 of the same judgment, which read as under:-

“91. In Food Corpn. of India v. Kamdhenu Cattle Feed Industries, it was observed thus : (SCC p. 76, para 7)

"In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non arbitrariness is a significant facet. There is no unfettered



discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'."

92. *In Sterling Computers Limited v. M&N Publications Ltd.* this Court observed thus : (SCC p. 455, para 12)

"In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of 'play in the joints' to the executive."

93. *In Union of India v. Hindustan Development Corpn.* this Court held thus : (SCC p. 515, para 9)

"... the Government had the right to either accept or reject



the lowest offer but that of course, if done on a policy, should be on some rational and reasonable grounds. In Erusian Equipment & Chemicals Ltd. v. State of W.B., this Court observed as under: (SCC p. 75, para

'When the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions". The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure.'

94. *The principles deducible from the above are :*

“(1) The modem trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an



administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

57. The scope of judicial review came for consideration in the case of ***Air India Ltd. vs. Cochin International Airport Ltd. and Ors.*** (supra). In that case the Court has held that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract, but the selection should be bona fide based on reasonableness. It may not accept the offer even though it happens to be the highest tenderer.



58. It will be relevant to quote paragraph no.7 of the said judgment, which reads as under:-

“7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India, , Fertilizer Corpon. Kamgar Union (Regd.) v. Union of India, ; CCE v. Dunlop India Ltd, , Tata Cellular v. Union of India, Ramniklal N. Bhutta v. State of Maharashtra, and Raunaq International Ltd. v. I.V.R. Construction Ltd.. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise



its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.”

59. In *Om Kumar and Others vs. Union of India* (supra) the Hon’ble Supreme Court has dealt with the issue of primary and secondary judicial review and explained the stage of primary and secondary review and it has been held that when the challenge is made Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. When the Court deals with the merits of the balancing action of the administrator and is, in essence, applying proportionality is a primary exercise of power of judicial review, but when the administrative action is challenged, whether the administrative order is rational or reasonable or arbitrary based on Wednesbury principle, then the Court be confined only to a secondary role. When administrative action is attacked as discriminatory under Article 14, the principle of primary review will



apply, when it is said to be arbitrary the principle of secondary review will apply.

60. It will be relevant to quote paragraph nos. 66, 67 and 68 of the said judgment, which read as under:-

“66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the Court deals with the merits of the balancing action of the administrator and is, in essence, applying 'proportionality' and is a primary reviewing authority.

67. But where, an administrative action is challenged as 'arbitrary' under Article 14 on the basis of Royappa (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. [In G.B. Mahajan v. Jalgaon Municipal Council SCC at p.111)]. Venkatachaliah, J, (as he then was) pointed out that 'reasonableness' of the administrator under Article 14 in the context of administrative



law has to be judged from the stand point of Wednesbury rules. In Tata Cellular v. Union of India, (SCC at pp. 679-80), Indian Express Newspapers, Bombay (P) Ltd. v. Union of India, (S.C.C. at p. 691), Supreme Court Employees' Welfare Assn. v. Union of India (SCC at. 241) and U.P. Financial Corpn. v. GEM CAP (India) (P.) Ltd., (SCC at p. 307), while Judging whether the administrative action is 'arbitrary' under Article 14 (i.e. otherwise then being discriminatory, this Court has confined itself to a Wednesbury review always.

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the Courts by applying proportionality. However, where administrative action is questioned as 'arbitrary' under Article 14, the principle of secondary review based on Wednesbury principles applies.”

61. In the case of *Natural Source allocation In Re. Special Reference No.1 of 2012* (supra), where the Hon’ble Supreme has dealt with the application of Article 14 of the Constitution of India, there the Hon’ble Supreme Court has approved the earlier principle which has been laid in *Budhan Choudhayr vs. State of Bihar, A.I.R. 1955 S.C. 191* and *Ram Krishna Dalmia v. Justice S.R. Tendolkar, A.I.R. 1958 S.C. 538* and held that in what manner Article 14 will be applicable and held that Article 14 forbids class legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, the classification must be founded intelligible differentia which distinguishes the persons or thing that



are grouped together from others left out of the groups and that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be based on different basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of the Court that Article 14 condemns discrimination not only by a substantive law but also by a law procedure.

62. It will be relevant to quote paragraph Nos. 96, 97 and 98 of the said judgment, which read as under:-

“96. Article 14 runs as follows:

“14. Equality before law. – The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” The underlying object of Article 14 is to secure to all persons, citizens or non-citizens, the equality of status and opportunity referred to in the preamble to our Constitution. The language of Article 14 is couched in negative terms and is in form, an admonition addressed to the State. It does not directly purport to confer any right on any person as some of the other Articles, e.g., Article 19, do. The right to equality before law is secured from all legislative and executive tyranny by way of discrimination since the language of Article 14 uses the word “State” which as per Article 12, includes the executive organ. (See: Bhasheshwar Nath vs. CIT) Besides, Article 14 is expressed in absolute terms and its effect is not curtailed by



restrictions like those imposed on Article 19(1) by Articles 19(2)-19(6). However, notwithstanding the absence of such restrictions, certain tests have been devised through judicial decisions to test if Article 14 has been violated or not.

97. For the first couple of decades after the establishment of this Court, the 'classification' test was adopted which allowed for a classification between entities as long as it was based on an intelligible differentia and displayed a rational nexus with the ultimate objective of the policy. Budhan Chaudhry vs. State of Bihar referred to in Shri Ram Krishna Dalmiya vs. Shri Justice S.R. Tendolkar explained it in the following terms: (Budhan Chaudhry case, A.I.R. p.193, para-5)

"5.....It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

98. However, after the judgment of this Court in E.P. Royappa vs. State of T.N. the 'arbitrariness' doctrine was



introduced which dropped a pedantic approach towards equality and held the mere existence of arbitrariness as violative of Article 14, however equal in its treatment. Justice Bhagwati J. (as his Lordship then was) articulated the dynamic nature of equality and borrowing from Shakespeare's Macbeth, said that the concept must not be "cribbed, cabined and confined" within doctrinaire limits: (SCC p.38, para 85)

"85... Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits."

63. In the case of *Sanjay Kumar Shukla vs. Bharat Petroleum Corporation Limited and Others* (supra) the question in what manner the Court can examine the matter while exercising the power under Article 226. The Court has held that while exercising the power, the Court must be satisfied that some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public



interest is involved in intervening of such commercial transaction. It has further been held that in the award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at an opinion in commercial matter, the considerations which are paramount important is commercial consideration. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and method and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. If some defect is found in decision making process, the Court must exercise its discretionary power under Article-226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference public interest, the Court should intervene.

64. It will be relevant to quote paragraph no. 17 of the said judgment, which reads as under:-

“17. In Air India Ltd. vs. Cochin International Airport Ltd. there was a further reiteration of the said principle in the



following terms:- (SCC pp. 623-24, para 7)

“7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India, Fertilizer Corpn. Kamgar Union v. Union of India, CCE v. Dunlop India Ltd., Tata Cellular v. Union of India, Ramniklal N. Bhutta v. State of Maharashtra and Raunaq International Ltd. v. I.V.R. Construction Ltd. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution



and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.” (Emphasis supplied)

65. From the above discussions, it emerges that if a scheme or policy decision has been challenged on the ground of discrimination, then the Court has to see whether there is rationality in creating two classes and the classification is based on rationality with the object sought to be achieved. So it can be bifurcated on three parts; first the classification of two classes is based on rationality; second, it has to be examined whether creation of two class has been made with any object sought to be achieved, by applying a rational discrimination and third, it has to be seen whether the fixation of rate for transportation has been arrived after taking into consideration element and component which are necessary for fixation of rate of transportation or the elements which are necessary has been left out or decision arrived is so arbitrary, no reasonable person applying the test of reasonableness, would arrive to such conclusion, fairness and reasonableness has been observed.

66. Let this case be examined on the principle as has been



deduced hereinabove. It appears from the counter affidavit of the Indian Oil Corporation that it has constituted a team of Cost Accountant, they have conducted the market survey with respect to earning of general transporters vis-à-vis R.O. dealers while transporting the bulk petroleum products and it was found that the general transporters were adversely affected on account of following facts; R.O. dealers as well as the general transporters were called to participate together in the tender for transportation of bulk petroleum products and L-1 rate of transportation was applicable to both classes transporters. During market survey, it was found that some time, the R.O. dealers used to prefer the transportation through the general transporters, during currency of the contract, if they themselves purchased the tank lorry for the purposes of transportation of bulk petroleum product, in such circumstance, it was found, such R.O. dealers were employing their own tanker lorry and lost interest with general transporters. The interest of general transporters were adversely affected to the extent that they were kept out of the job of transportation by the R.O., to mitigate this predicament of general transporters as well as maintain purity of the petroleum products supplied to the R.O. for creation of peace in mind, R.O. dealers have been offered that they are at liberty to employ their lorry for transportation of petroleum products called



upon them to show their Expression of Interest, R.O. dealers would be benefited from this new scheme to keep movement of T.T. under their control, they would not be required to compromise with the quality of the petroleum products, and for that the Corporation took policy decision to introduce the system Expression of Interest (E.O.I.), notifying the R.O. dealers if they intended to introduce their own lorry they would be allowed in terms and conditions made under E.O.I. in order to find out the actual number of R.O. dealers are interested for carrying the bulk petroleum product and after identification of the petrol pump where the petroleum products will be supplied by the R.O. dealers left out the petroleum outlet, would be made available to the general transporters.

67. One of the conditions mentioned in the E.O.I., once given option, cannot be allowed to resile from the option, the left out outlets were to be identified by the Indian Oil Corporation and accordingly, the N.I.T. was published, calling upon the general transporters and the R.O. dealers to participate, the L-1 rate which would be fixed after the finalization of the tender, will be applicable with regard to transportation of bulk petroleum products by the R.O. dealers. On comparison of the condition mentioned in the E.O.I. and N.I.T. it reflects different and distinct condition has been attached



for R.O. transporters vis-à-vis as E.M.D. cum-security amount is a meager amount of Rs.50,000/- whereas, the general transporters has to deposit E.M.D.-cum- security amount of Rs.8,00,000/-. It can safely be said that the R.O. transporters dealers are quite different and constitute distinct class than to the general transporters. They not only earned the profit from running their outlets, but also they have been allowed to participate in the E.O.I. as well as the N.I.T. itself indicates, both are not one and the same rather, two different and distinct classes, which cannot be said to be irrational classification with the object that there should be continuity of business during currency of contract to the general transporter with the surety of fair and proper return. The new policy chalked out with the purpose to identify the left over outlet which were not opted, R.O. dealer transporters would be made available for public auction for general transporters to avoid overlapping which would not cause adverse impact upon the general transporters or the R.O. dealer transporters. Another angle, for R.O. dealers, the movement of transportation will remain under their control, will not be dependent on other transporters, which will give benefit to avoid in pilferage, security of quality and purity of petroleum products. So in my view, it cannot be said the new policy, creating two classes transporters devoid of object sought to be achieved, but the creation of two



classes are based on rationality. So, this Court is of the view the new scheme satisfies the test of primary judicial review as has been held in Om Kumar's case (supra).

68. Now, the second question has come for consideration, as has been claimed the R.O. dealer transporters should be given the identical privilege as has been given to the general transporters. Primarily, the thrust has been laid on clause, whereby it has been stated that if sufficient number of L-1 transporters are not available, the Corporation would negotiate with L-2, L-3 and L-4 for transportation of petroleum products, in such situation, general transporters would be in better position, so the claim has been made same benefit would be made available to the R.O. dealers transporters. It has been argued that when the E.O.I. was circulated they were not knowing the L-1 rate or the proposed approximately base L-1 rate, after two and half months they floated the N.I.T. and fixed the estimated base rate, which was completely unknown to them. It has further been stated that the benefit of L-2, L-3 and L-4 rate has been given to the general transporters, but the R.O. dealers have been deprived, in such circumstance, the L-1 rate which has been mentioned in the terms of the E.O.I. should be read in such a manner that it will vary as and when the rate of transportation fixed



for the general transporters varies. The E.O.I. is invitation to the tender, stipulating terms and conditions, no compulsion was exerted to accept or opt E.O.I, it is the wisdom of R.O. dealer to participate in the E.O.I. as it was not compulsion from the Indian Oil Corporation to accept it, but it was made clear whoever are interested they may participate in the E.O.I. and in view of the judgment passed in *Tata Cellular vs. Union of India (supra)* and *Jagdish Mandal v. State of Orissa (supra)* the terms of the invitation to the tender is outside the judicial review unless the same is arbitrary, tailor-made to grant advantage to certain persons, violates Article-14 of the Constitution of India, in my view, there was no compulsion for the R.O. dealers to participate in the E.O.I. and when they accepted the terms of the E.O.I. knowing well L-1 rate will be declared later on in the event of public auction for general transporters, where estimated transportation rate would be decided, cannot be a ground for the Court to interfere in the matter inasmuch as the petitioners have not shown in what manner the public interest is being affected as the present matter is out and out a commercial venture falls squarely in the realm of contract and the Court should keep his hand off while exercising the power of judicial review.

69. In such view of the matter, the contention of the



petitioners that the Oil Corporation should have provided the estimated rate while calling upon the R.O. dealers to participate in the E.O.I. proceeding is not acceptable in view of the fact, if they were feeling aggrieved they should have asked clarification about the estimated rate, but instead of doing so, they have entered into the contract and now complaining about arbitrary condition of E.O.I. beyond the pale of judicial scrutiny, is completely not permissible in the eye of law to test the reasonableness terms of E.O.I. The R.O. dealers transporters cannot claim equality with general transporters, as both constitute different and distinct class, both classes have different and distinct condition and stipulations, both stand on different platform, equality cannot be claimed in unequal.

70. Now, the question has been raised by the petitioners that the rate which has been fixed, is punitive in nature. Even in certain cases, the rates in the State of Jharkhand and Uttar Pradesh are better than to the Patna. It has been argued by the Corporation, the rates are being fixed taking into account several factors, market force, dependent upon the nature of road, distance of terminal, technology used in loading at the terminal, the rate of transportation is fixed taking into consideration the different elements such as loading in shifts, bottom/top loading, location factors are equally



important in arriving into the estimated transportation rate. During the argument, they have pointed out that the Barauni terminal rate is better rate than to the Patna Terminal rate, it has been replied in the counter affidavit, the working hours of Patna Terminal is 06:00 to 22:00 hours whereas at Barauni terminal TTs available only between 08:30 hours and 17:00 hours and is working in single shifts, whereas Patna Terminal have an opportunity to have the double shifts. In paragraph no.16 of the counter affidavit different element which have been considered while fixing the rate has been mentioned, which are as follows:-

“Capital Cost (Tank Truck including Anti Braking System, Stainless Steel Security Locking System, Vehicle Mounted Unit-Vehicle Tracking System, Over fill Senso Devices, etc.)

Fuel Consumption

Lube Consumption

Tyre usage

Salary of drivers/helpers

Other perks of drivers/ helpers viz. uniform, safety shoe, annual bonus, insurance premium

Statutory obligations viz. registration charges, route permit charges, road tax, fitness expenses pollution control charges, insurance charges

Painting of TTs

Maintenance expenses, including engine overhauling

Battery cost

Depreciation.”



71. It has been argued by the Indian Oil Corporation that the transportation rate is fixed on terminal to terminal basis, taking into account the several factors including loading system, top loading is based on different mechanism than to bottom loading, in this system, the tanker owner is required to install special type of fitting, has to bear heavy cost of amount, which is kept in mind while fixing rate of transportation to compensate cost incurred in extra fitting.

72. In such view of the matter, it is very difficult to say that in the present case the fixation of the rate is based upon any irrationality. In view of the decision passed in the case of *Cynamide India Ltd. and Anr (supra)* and *Rayalseem Paper Mill Ltd. (supra)* this Court is required to see the fairness and rationality has been observed in fixing the rate of transportation, as also the fact that whether the essential elements which are necessary for fixation of the transportation rate has been taken into consideration or not. This Court does not feel any irregularity committed by the Indian Oil Corporation for fixating the rate of transportation for the reasons as stated hereinabove.

73. In *Rayalseema case (supra)*, the argument was made that the royalty is so oppressive it will cause a loss to the industry



itself. The Court has rejected the submission and held that price fixation is not within the function nor forte of the Court nor concerned with policy, nor rate, but examination is limited, whether proper factors have been taken into consideration, in view of aforesaid preposition, the Court has to see that while determining the rate of transportation whether the necessary elements for arriving to a proper conclusion have been taken into consideration, as the fixation of rate of transportation is not based on statutory provision similar to that case where also fixation of royalty was not based upon the statutory provision, but examination was confined on the principle of reasonableness on the touchstone of Article-14 and while making a judicial scrutiny the Superior Court does not act as an appellate authority.

74. In view of judgments mentioned hereinabove, the interference of this Court is very limited with respect to the fixation of the rate, it is found that necessary components have been taken into consideration for fixation of rate as has been explained in paragraph no.16 of the Counter affidavit proper factors have been taken into consideration in fixation of transportation rate. It is also very difficult to accept the contention that in certain special circumstances transporters are offered the L-2 rate, in the event of



non- availability of sufficient L-1 transporter, the identical relief should be given to them as the terms of the stipulation in the E.O.I. is quite lucid, different to the N.I.T. Both constitute a different and distinct class based on different consideration with different stipulation. So, asking the same opportunity or benefit which has been given to the general transporters, in my view, is not permissible and cannot be accepted on the premise, unequal cannot be treated equal as well as equal cannot be treated unequal, if submission is accepted, it amounts to treating unequal as equal, is prohibited in Article-14 of the Constitution. In net result, if the R.O. dealers transporters are treated equal to the general transporters, would violate Article 14 of the Constitution of India.

75. The claim has been made by the petitioners that this Court should remand the matter and asked the Indian Oil Corporation to constitute a fresh team for the purposes of fixation of the rate, even they have done their exercise, in my view, is not acceptable as primarily, the report of the Expert Committee cannot be a subject matter of judicial review as has been held in the case of *Sanjeesh Babu K. vs. N.K. Santosh and Ors.* reported in (2012) 12 *S.C.C. 106* unless it is shown the factors which are essential for fixation of rate has been ignored, which the petitioners have failed



to point out.

76. The decision of *Veer Pal Singh vs. Secretary, Ministry of Defence* (supra) relied upon by learned counsel for the petitioners is not applicable to the facts and circumstance of this case, as in that case necessary factors were not taken into consideration by the Board, but in the present case, the petitioners have not pointed out which essential component was not taken into consideration.

77. For the foregoing reason, this Court does not find any merit in this Writ Applications. Accordingly, these writ applications are dismissed.

(Shivaji Pandey, J)

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