

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.679 of 2017

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1. Gurpreet Singh, Son of Late Amarjeet Singh, Partner of M/S/ United Manufacturing Company, Plot No. 191-192, Udyog Bihar, Delhi, Rohtak Road, Sankhaul, Bahadurgarh, District-Jhajhar, State-Haryana.

2. Raj Kishore, Son of Late Ganesh Lal, Managing Director of M/S Shri Ganesh Fire Equipments Pvt. Ltd., D-4 E.P.i.P. Industrial Area Hajipur, District-Vaishalii

.... .... Petitioner/s

Versus

1. The State of Bihar The Principal Secretary, Home (Police) Department, Government of Bihar, Patna

2. Director General of Police, Government of Bihar, Patna.

3. Director General of Police, Government of Bihar, Patna null null

4. The Director General-Cum-Commandant General, Home Guard and Fire Services, Bihar, Chhajubagh, Patna-800001

5. Dr. Praesh Saxena, I.G.-Cum-Additional Commandant General, Home Guard and Fire Services, Bihar, Chhajubagh, Patna 800001

6. The D.I.G.-Cum-Deputy Commandant General, Home Guard and Fire Services, Bihar, Chhajubagh, Patna 800001

7. State Fire Officer-Cum-Director, Bihar Fire Services, Budhmarg, Patna-800001

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Bishnu Kant Dubey,  
Mr. Sanjeev Kumar

For the State : Mr. Nadeem Siraj -GP5  
Mr. Shailesh Kumar, AC to GP-5

For Respondent no.5 : Mr. A. Mustafa,  
Mr. Talib Mustafa

For Respondent no.7 : Mr. Sanjay Singh,  
Mr. Praveen Kumar.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 22.12.2017**

Heard learned counsel for the petitioners and learned counsel for the State as well as respondent nos.5 and 7.

2. In the present writ petition, the petitioners have challenged the letter issued vide Memo No.4340 dated 22.12.2016 (Annexure-9) issued by the Deputy Inspector General of Police-



cum-Deputy Commandant General Home Guard and Fire Services by which he has communicated the decision to the Director, Information and Public Relation Department, Bihar cancellation of tender no.1 of 2016-17, PR 360 Home 2016-17 I.D. No. 360 dated 1.4.2016 due to unavoidable reasons, requested to issue fresh advertisement of tender in the newspaper circulated in the Bihar along with main Cities, such as, Delhi, Mumbai, Kolkata and Chennai, also prayer has been made to quash the letter no.70 dated 11.1.2017 (Annexure-10) communicated to the Public Information Department for publication of fresh tender no.4 of 2016-17 in the newspaper circulated in the State of Bihar and at main cities i.e. New Delhi, Kolkata, Mumbai and Chennai and for issuance of writ in the nature of mandamus directing and commanding the respondents not to cancel the tender bearing Tender No. 1 of 2016-17 published by the Department of Bihar State Fire Services Home (Police) Department relating to the fabrication of the water mist technology of one tone chassis total 268 in number as has been claimed that all formalities relating to the tender have been completed and only the work order was to be issued in favour of the petitioners on the basis of the negotiation in between the petitioners and respondents and that offer has been accepted to proceed with the matter.



Facts of the case:

3. The State Fire Services Headquarter has published a NIT bearing NIT No.1 of 2016-17 invited tender from interested persons to participate in the work for “fabrication of water mist technology of one tone chassis as per specification after completion of process of tender, chassis shall be provided by the department to the successful tenderer for fabrication but not for demonstration (Annexure-1 to the writ petition). In pursuance thereof eight interested persons filed their respective tender. The present petitioners, namely, M/S United Manufacturing Company, petitioner no.1, Sri Ganesh Fire Equipments, petitioner no.2 and intervenor, namely, M/s Ambala Coach Builders joined the fray. Out of eight contestants, seven contestants participated in opening the tender. The tender was in two parts. First part was dealing with technical bid, whosoever will succeed in the technical bid, would participate in financial bid, lowest tenderer will be allotted the work. The technical bid was in two parts, first part deals with verification of the records, second part was demonstration by context, whoever succeeds will be entitled for final contest. After verification of the records out of seven contestants, six contestants were declared successful. Those declared successful in part-1, were asked to furnish guarantee/warranty, accordingly both petitioners furnished their respective



guarantee/warranty vide letter dated 24.5.2016, 6.8.2016, 11.8.2016 and 22.8.2016 (Annexure 5 series) respectively, all six tenderer participated in demonstration out of six only two contestants, namely, petitioners were declared successful, communicated vide letter dated 16.9.2016 (Annexure-6) of opening of financial bid on 19.9.2016 and petitioners were asked to furnish reasons to offer the rate, which petitioners vide letter dated 19.9.2016 (Annexure-7) offered reasons of quoting their respective rates. Petitioner no.1 had offered Rs.5,45,000/- whereas petitioner no.2 had offered Rs.5,49,000/-, as only petitioners were declared successful in the technical bid. The negotiation between the parties started, final negotiation was arrived, finally they were ready to carry out the work of Rs.5,20,000/- which is apparently clear from the proceeding dated 19.9.2016. The proceeding dated 19.9.2016 (Annexure- E) reflects that petitioners have quoted their respective amount, on negotiation both agreed to do fabrication work of Rs.5,20,000/- each, finally decided to allot the work and divided the work to both the petitioners in 50:50 accordingly recommended to allot the work of fabrication of 134 vehicles with water mist technology but all on a sudden the Deputy Inspector General-cum- Deputy Commandant wrote a letter to the Bihar Public Relation Department communicated the decision of cancelling



the tender no.1 of 2016-17 on unavoidable reasons, is under challenge by the petitioners.

4. Later on it was followed by a fresh advertisement of tender dated 11.1.2017 (Annexure-10) mentioning details i.e. filing of the tender, opening of the technical bid, demonstration and opening of financial bid.

5. During pendency of this writ petition an interlocutory application vide I.A No.1285 of 2017 was filed by M/s Ambala Coach Builders, intervenor respondent, making a prayer for impleadment, stating therein that result of this case will have direct bearing with matter of intervenor-respondent, as intervenor had participated in the past tender and also has participated in fresh tender along with present petitioners, petitioners as well as intervenor have been declared successful in technical bid and demonstration and financial bid of petitioners and intervenors are likely to be opened. Hence requested to be impleaded as party respondent. Accordingly the said interlocutory application has been allowed.

6. There is no dispute that petitioners have also participated in the fresh tender for fabrication, this Court vide order dated 22.2.2017 allowed the respondents to open financial bid but final order of allotment of work order will be issued only after disposal of this case. It has been informed at the Bar that



technical and financial bid has been opened and intervenor respondent has been found lowest tenderer as petitioners have failed to compete with the private respondents.

Submission of both sides:

7. The grievance has been raised by the petitioners that when everything was proper all on a sudden on the basis of a complaint made by the M/s Ambala Coach Builders wherein he has mentioned that it had done the fabrication work of the same nature in Himachal Pradesh Fire Brigade for Rs.3,81,000/- whereas Central Purchase Committee made recommendation for allotment of work order in favour of both petitioners for an amount of Rs.5,20,000 each thereby the State would be loosing a quite heavy amount on account of acceptance of quotation of higher rate which is clear from Annexure-1 therein specifically such statement has been mentioned. It will be relevant to quote relevant portion of Chapter I of Annexure 1:

“16. On acceptance of tender, these terms and conditions shall become a “Contract” and tenderer hereinafter called the “Contractor” shall be legally bound by these terms and conditions. The contractor shall execute an agreement on Non judicial stamp paper of Rs.50.00 within 10 days of the acceptance of his tender and in case of his/her failure do so, the DG, Home Guards & Fire Services shall be within his/her right to cancel the



sup[ply order and forfeit the earnest money.”

8. In the proceeding of Central Purchase Committee it has been mentioned, earlier the Government had fixed the upper ceiling of Rs.4 lacs for fabrication of work on such vehicle. Dy. General of Public-cum Commandant, addressed a letter dated 17.12.2016 (Annexure-B) to the Principal Secretary, Home Department, mentioning (i) M/S Hindustan Technology Pvt Cuttak Orissa and (ii) Ambala Coach Builders have offered to make fabrication work one lac below quotation amount of the petitioners and in pursuance thereof Central Purchase Committee convened its meeting, Central Purchaser Committee in its meeting dated 28.11.2016 recorded that recommendation for granting work order in favour of petitioners to carry out fabrication work at Rs. 5,20,000 each would cause huge loss to State of Rs.2.68 crores annulled work order including the earlier advertisement and recommended for fresh advertisement and in pursuance thereof fresh advertisement was published.

9. Learned counsel for the petitioner submits that in order to help M/S Ambala Coach Builders all the action has been taken at the behest of Dr. Paresh Suxena, respondent no.5 who is person responsible to create all sorts of chaos by highlighting the points of complaint of M/S Ambala Coach Builders but in the complaint no-where mentioned that the complainant had done fabrication



work for Rs.3,81,000/-, protected false impression, got the decision in favour of petitioners of allotment of work to be cancelled. He has placed reliance on the e-mail dated 21.9.2016 (Annexure-B to the I.A. No.1285 ) M/s Ambala Coach Builders is the foundation of cancellation wherein, no-where it has been stated that the Company had made fabrication work in an amount of Rs.3,81,000/- but the statement has been made that the Company had quoted the price of fabrication below Rs. 1 lacs of the price quoted by the petitioners, would cause huge loss to the State. He has raised grievance that in manipulated manner, got the decision to allot work have been cancelled by the Central Purchase Committee in its meeting dated 28.11.2016 and further submits that nature of fabrication work in Himachal Pradesh is inferior in quality, can be verified by making comparative study with chart attached by petitioners in present case, completely lucid that the fabrication work as per specification mentioned in the advertisement, is of higher degree is apparent from Annexure-11 of writ petition indicates the justification of quotation of Rs.5,20,000/- as has been said that both are of two specification and cannot be compared. Learned counsel for the petitioner further submits that vide letter dated 10.10.2016 (Annexure-C of I.A. No.1285 of 2017) Ambala Coach Builders requested to cancel the tender. He further submits that it was



completely stage managed affair, all actions were prefixed, has been taken at the behest of respondent no.5 who prepared wrong noting for consideration of meeting of Central Purchase Committee dated 28.11.2016 for canceling the recommendation for work order in its meeting dated 19.9.2016. It has been submitted that it was wrongly withdrawn where petitioners were agreed to carry out the work on the agreed amount of Rs.5,20,000/-. Further raised grievance by the petitioners that in the manner Central Purchase Committee resiled from its commitment itself reflects act of malafide and colourable exercise of power. Basically malacious action has been imputed against respondent no.5 with respect to manner without ascertainment of factual matrix prepared the note sheet and succeeded in getting recommendation cancelled.

10. Learned counsel for the petitioners submits that after negotiation, the price was finalized, merely formality was to be done and as such it will be presumed that the contract was concluded contract. In support of his contention he has placed reliance on the following judgments:

(i) Rasiklal Dalpatram Thakkar, reported in (2010) 1 SCC 1, para 49 and 60 (ii) AIR 1999 Sc 504, para 12 (iii) M/S R.R. Company v. The State of Bihar, reported in 2017(1) PLJR 202.

11. Learned counsel for the petitioner further submits that



entire action of respondent is completely arbitrary, illegal actuated by malafide with sole object to accommodate M/s Ambala Coach Builders. Further submitted if the State action is not fair and proper it strikes at the root as it violates Article 14 of the Constitution of India and this Court, under the judicial review, must strike down the illegal act with an object to restore the rule of law. In support of his contention he has placed reliance on large number of cases (i) Ramana Dyaram Shetty v. The International Airport Authority of India and others, reported in AIR 1979 SC 1628 para 11,12, 21, 22 and 34 (ii) Tata Cellular v. Union of India, reported in (1994) 6 SCC 651 (iii) M/S R.R. Company v. The State of Bihar, reported in 2017(1) PLJR 202, (v) Karnataka State Forest Industries Corporation v Indian Rocks, reported in (2009) 1 SCC 150, para 38 and 39. He further submits that fresh tender has been issued during the pendency of this petition and as such, it was desirable, for the respondent no.5 to stay his hand, await the result of this case instead of moving forward for opening of financial bid and declaring M/S Ambala Coach Builder as successful bidder reflects hurried and desperate action of respondent.

12. Learned counsel for the State and private respondent has taken common stand. They have stated while negotiation was going on with the petitioners complaints were received from M/S



Ambala Coach Builders and Hindustan Technology Pvt. Ltd. stating that they gave quotation below Rs. 1 lac the petitioners and was ready to carry out the work below of Rs.1 lac, further submitted that no-where in the writ petition or its supplementary affidavit any pleading has been made by the petitioners of malafide, all action has been taken to favour M/S Ambala Coach Builders, at the request of respondent no.5 is completely silent save and except oral submission made by the learned counsel for the petitioners. It has been further said that respondent no. 5 against whom allegation has been made the person behind scene was not member of the Central Purchase Committee, nor Technical Evaluation Committee nor participated in the proceeding at any stage, wild and vague allegation has been made against him, he had acted in the interest of State neither in favour of M/S Ambala Coach Builders nor against to the interest of the present petitioners what he has done which was required to be done by honest officer in the official capacity, recorded in the note sheet as he had found as a matter of fact, that State was going to loose the huge amount testified his opinion, giving facts figure and reasons, which was considered by the Central Purchase Committee took decision to salvage the loss of the State of huge amount and decided for fresh re-tender. Further stand has been taken by the private



respondent that petitioners have participated in fresh tender in that view of the matter, in failure to succeed now petitioners cannot be allowed to turn and challenge the outcome of fresh tender, declared intervenor respondents successful, the principle of estoppels will be applicable as has been raised by the learned counsel for the respondent and stated that now the petitioners cannot be allowed to challenge either the fresh tender and consequential result. If petitioners would not have participated the question of challenging the fresh tender and consequent result would have been remained alive, could be a subject matter of the examination by this Court under judicial review. He has further submitted that quotation of arbitrary amount by petitioners was rightly objected by M/S Ambala Coach Builders as is ready to carry out the work below Rs.1 lac of the amount which the petitioners had quoted, accordingly the State saved the huge amount for its exchequer.

13. This Court has directed the State to produce the original record which was placed before this Court for consideration and this Court has examined the note sheet dated 17.10.2016 recorded by Dr. Paresh Saxena, respondent no.5 where in he has recorded that same nature of work had been carried for Rs.3,81,000/- whereas offer of the petitioners was Rs.5,20,000/-. Several firms had participated in demonstration, further said, both firms had



quoted, same price with small variation, allegation has been made, formed a cartel, has been mentioned in proceeding dated 17.10.2017.

14. Learned counsel for the State has produced the agreement between State of Himachal Pradesh with M/S Ambala Coach Builders indicates that the intervenor respondent M/S Ambala Coach Builder had agreed to fabricate in Rs.3,81,000 each. On that basis of such statement, State submits, huge amount has been saved by issuance of fresh tender. The action taken by the Central Purchase Committee cannot be said to be illegal or suffers arbitrary exercise of power. The counsel for the respondent no.5 has submitted that he has wrongly been impleaded as party and made wrong statement against him by the petitioners as he was not the member of Central Purchase Committee, tender committee nor technical evaluation committee. He has denied the allegation collusion with M/S Ambala Coach Builders, but discharged the duty as per official norms and code of conduct. Allegation against him is completely unfounded made prayer to reprimand the petitioners for making wild and unfounded allegation. He had given his opinion in official capacity as he was officially required and acted in public interest. All allegation made against him is completely a smacks of victimisation.



15. Learned counsel for the respondent no.5 has drawn the attention of this Court towards letter of DG cum-Commandant wherein he was directed to hold enquiry and submit report with respect to seven issues mentioned therein, item no.7<sup>th</sup> stipulates furnish enquiry report with respect to loss likely to be caused in fabrication work, whereupon he called the agreement from Himachal Pradesh which itself indicates same nature of work was done in Rs.3,81,000, submits that allegation made against respondent no.5, out and out is completely without any basis and without any substance.

16. The Government in 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. Different benefits are given by the State Agency such as social security benefits, cash grants for political sufferers. Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often resemble subsidies. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. 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 religious faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as private individual. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal. The Government has to maintain equality, absence of arbitrariness, discrimination in the matter of awarding contract. The State is not needed to enter into any contract with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. It will be relevant to quote paragraph nos. 12, 20 and 21 of the judgment of the Hon'ble Supreme Court in the case of Ramana Dayaram Shetty (supra):

*"12. We agree with the observations of Mathew, J., in [V. Punnann Thomas v. State of Kerala](#)(1) that: "The Government is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the*



*Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal". The same point was made by this court in [Erusian Equipment and Chemicals Ltd. v. State of West Bengal](#)(1975) 2 SCR 674⊗AIR 1975 SC 266) where the question was whether black-listing of a person without giving him an opportunity to be heard was bad ? Ray, C. J., speaking on behalf of himself and his colleagues on the Bench pointed out that black-listing on a person not only affects his reputation which is in Poundian terms an interest both of personality and substance, but also denies him equality in the matter of entering into contract with the Government and it cannot, therefore, be supported without fair hearing. It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. But the Court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largess*



*and it cannot, without adequate reason, exclude any person from dealing with it or take away largess arbitrarily. The learned Chief Justice said that 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." This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the*



*Government departs from standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.*

20. Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweetwill, but its action must be in conformity with some principle which meets the test of reason and relevance.

21. This rule also flows directly from the doctrine of equality embodied in [Art. 14](#). It is now well settled as a result of the decisions of this Court hl [E. P. Rayappa v. State](#) cf Tamil Nadu (1994) 2 SCR 348: (AIR 1974 SC 555) and [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248: (AIR 1978 SC 597) 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."*

17. The scope of interference in judicial review in the contract matter, has been dealt with in the judgment of the



Hon'ble Supreme Court in the case of Tata Cellular(supra). While dealing with the scope of interference in the juridical review the Court has recorded the modern trend of judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. 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 falliable. 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 but must be free from arbitrariness not affected by bias or actuated by mala fides. The principle of judicial review would apply in the contractual matter by Government bodies in order to prevent arbitrariness or favouritism. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution will be applicable while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government



tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power though power should not be exercised for any collateral purpose and such exercise of power will be struck down. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy. Judicial review is a great weapon in the hands of the Judges but the Judges must exercise the power with circumspection to uphold the constitutional goal. It will be relevant to quote paragraph nos. 70, 71 and 94 of the aforesaid judgment:

*“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in [Article 14](#) of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of [Article 14](#) if the Government tries to get the best person or the best quotation. The right to choose cannot be*



*considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.*

*71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justifiable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.*

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

*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.*

*2. Whether the selection is vitiated by arbitrariness?"*

18. In the case of Karnataka State Forest Industries Corporation v. Indian Rocks, reported in (2009) 1 SCC 150 in paragraph nos. 38 and 39 it has been held that ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract quo contract, when an action of the State is arbitrary or discriminatory and, thus, violative of



Article 14 of the Constitution. It will be relevant to quote paragraph nos. 38 and 39 of the aforesaid judgment:

*“38. Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract quo contract, it is trite that when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable.*

*39. There cannot be any doubt whatsoever that a writ of mandamus can be issued only when there exists a legal right in the writ petition and a corresponding legal duty on the part of the State, but then if any action on the part of the State is wholly unfair or arbitrary, the superior courts are not powerless. Reliance placed by Mr. Divan on G.J. Fernandez v. State of Mysore is not apposite. In that case itself it was held : (AIR p. 1757. para 12)*

*“12. Thus under Article 162, the State Government can take executive action in all matters in which the legislature of the State can pass laws. But Article 162 itself does not confer any rule-making power on the State Government in that behalf.”*

19. In view of the aforesaid proposition this Court is not to act as an appellate court. A fair-play in joints is a necessary concomitant for an administrative body while discharging the



administrative function, the Court can interfere, when exercise has been made in arbitrariness, malafide, discrimination and illegality but maximum judicial restraint should be maintained particularly in the contract matter. The Government has expertise to select the best person to carry out the job unless decision suffers from illegality and arbitrariness.

Discussion on point of law:

20. Applying the aforesaid principle in the present case two points have been raised by the petitioners, first point of malafide has been raised against Dr Paresh Saxena, I.G.-Additional Commandant General, Home Guard and Fire Services having taken a plea that he is instrumental in derailing recommendation of issuance of the work order which was finalized to be given to the petitioners as they were found best suitable person. The price after negotiation was settled but it has been turned turtle giving wrong information in the note sheet led to withdrawal of the offer.

21. It will be proper to examine the allegation of malafide against (a) The role of Dr. Praesh Saxena with respect to withdrawal of the offer for granting the work order for fabrication work.

22. Before deciding the allegation of malafide necessary facts has to be taken into consideration. For fabrication of 240



vehicles a tender no. 1 of 2015-16 was issued in which M/S United Manufacturing Company had participated was declared disqualified by technical evaluation committee. M/S United Manufacturing Company filed an objection and after consideration of the same earlier tender was withdrawn and fresh tender no. 1 of 2016-17 was published which is Annexure 1 to this writ petition. Altogether seven contestants filed their respective tender out of which six were declared successful in the technical bid but after demonstration petitioner nos.1 and 2 were declared successful and they have quoted the price of Rs. 5,49,000/- and Rs.5,45,000/- respectively. They were asked to give details the manner the price has been fixed by them but after negotiation the price of fabrication was fixed of Rs.5,20,000/- each and accordingly the work was divided in 50:50 as 134 vehicles each was granted to both the petitioners but in the meantime M/S Ambala Coach Builders has made a complaint to the Director General, Home Guard & Fire Service, Bihar Patna as well as the Home Secretary, Government of Bihar, Secretariat, Patna, Bihar it made allegation that respondents have wrongly declared the intervenor Company as unsuccessful without considering they quoted lower price below Rs. 1 lac that of the price, proposed to be given the work order to the petitioners. On receipt of the complaint Dr Paesh Saxena



respondent no.5 was directed to give its report with regard to the work order having been given to the petitioners in 50:50. He has called the agreement from Himachal Pradesh wherein he found that M/S Ambala Coach Builders had made fabrication work of the vehicle for an amount of Rs. 3,81,000/- each. This fact has been verified by this Court, as this Court has directed the State to produce the original record, perused the report of Dr. Paresh Saxena respondent no.5 to Director General-cum-Commandant, relevant portion of report is as follows:

बिन्दु 7. में पूछा गया है कि क्या किसी अन्य राज्यों में इस विशिष्ट का फेब्रिकेशन इससे कम राशि में किया जा रहा है ?

स्पष्टीकरण – मैंने हिमाचल प्रदेश के राज्य अग्निशमन पदाधिकारी से दिनांक 14.10.2015 को किए गए करार की प्रति प्राप्त की है जिसे पृ0 333-325/प0 पर देखा जा सकता है। दोनों निविदाओं की तुलना करने पर स्वतः स्पष्ट है कि इनकी विशिष्टियाँ लगभग हू-ब-हू हमारे प्रकार की है जबकि इनका स्वीकृत मूल्य केवल रु0 3.81 लाख प्रति वाहन फेब्रिकेशन सहित है और हमारा मूल्य है रु0 5.20 लाख प्रति वाहन।

वर्तमान निविदा में दिनांक 26.5.2016 को किए गए प्रदर्शन में सभी भाग लेने वाली फर्मों का एक जैसा इक्वूप्मेंट लगाया जाना (देखें पृ0 334/प0) मात्र संयोग नहीं था बल्कि प्रतीत होता है कि ये निविदाएँ मिल-जुल कर बनाई गई थी। पूर्व में अच्छा व्यवसायिक इंजन लगाने वाली कम्पनी द्वारा इस वर्ष निम्न स्तर के घरेलू इंजन का लगा कर 35 प्रतिशत अधिक का निविदा दर प्राप्त होना दर्शाता है कि निविदा प्रक्रिया दूषित हो चुकी थी।



CVC की Guidelines के अनुसार दर वार्ता केवल न्यूनतम बोली करने वाले निविदाकर्ता की पहचान के लिए की जाती है तथा टेण्डर कंडिशन में ऐसा कुछ नहीं था कि कार्यादेश को दो फर्मों के बीच बाँटा जाएगा। दोनो फर्मों का मूल्य लगभग एक जैसा निकलना और निगोशियेशन के बाद एक जैसी शर्त मानना भी इस बात प्रमाण है कि इन दोनो फर्मों की मिली भगत है। इस दौरान दो फर्म मेसर्स अम्बाला कोच बिल्डर्स एवं हिन्दुस्तान टेक्नोलॉजी प्रा० लि० से प्राप्त आपति पत्रों को पृ० 338-335/प० पर देखा जा सकता है। पता चलता है कि उन्होंने दावा किया है कि उनका मूल्य एक लाख प्रति वाहन कम था।

उक्त परिस्थितियों में कृपया निर्णय लेना चाहेंगे।

ह०-अस्पष्ट

(डॉ० परेश सक्सेना)

म०स०

निविदा पर निर्णय केन्द्रीय क्रय समिति की बैठक में लिया गया है। अतः केन्द्रीय क्रय समिति के निर्णय के संबंध में अपर महासमादेष्टा द्वारा उठाए गए बिन्दुओं पर निर्णय भी केन्द्रीय क्रय समिति में ही हो। केन्द्रीय क्रय समिति की बैठक दिनांक – 15.11.2016 को 12:00 बजे से किया जायेगा। केन्द्रीय क्रय समिति में अपर महासमादेष्टा को सदस्य के रूप में मनोनित किया जाता है। वैसे भी उप-महासमादेष्टा तकनीकी समिति के अध्यक्ष हुआ करते हैं। इसलिए अपर महासमादेष्टा की उपस्थिति लाभदायक होगा।

केन्द्रीय क्रय समिति की बैठक का वृत्त भी संचिका में उपलब्ध नहीं है। उसे संचिका में लगाया जाय।

(पी एन० राय)



महानिदेशक—सह—महासमादेष्टा,

23 The State also produced agreement between Himachal Pradesh, Chief Fire Officer vis-à-vis M/S Ambala Coach Builders reflects the work order was given in Rs.3,81,000/-.

24. On receipt of report, the Central Purchase Committee again convened and deliberated in the meeting dated 28.11.2016, recorded that M/S Ambala Coach Builders have done fabrication work in Rs.3,81,000/-, inasmuch as it was also recorded that the Government has fixed maximum ceiling price for fabrication work of Rs. 4 lacs each vehicle and also recorded that granting of work at Rs.5,20,000/- would cause unnecessary loss to the State to Rs.2.68 crores and on that account the recommendation which was given earlier was withdrawn and recommended for fresh advertisement. Letter dated 7.12.2016 (Annexure-B) of DIG-cum-Deputy Commandant addressed to the Principal Secretary Home Department mentioning therein that Hindustan Technology Ltd. and M/S Ambala Coach Builders have offered to execute the work below Rs. 1 lac of the price quoted by the petitioner will cause unnecessary loss of Rs.2.58 crores to the State and in that situation the Central Purchase Committee has decided in its meeting dated 28.11.2016 to withdrew the recommendation and for fresh advertisement. Dealing with the issue of malafide, it is apparently clear, Dr. Paresh Saxena was



not the member of the Central Purchase Committee constituting five persons nor he was in technical evaluation committee but he has only given his report on the direction of the Commandant, inasmuch as it also appears from the affidavit that Dr. Paresh Saxena wherein he has said that charges leveled against him is personal bias/favoritism is completely wrong as there is no shred of evidence indicating any way that he had acted in biasness against the petitioners in any manner save and except the bald and uncorroborated statement but frivolous allegation has been made with the sole object to tarnish his image as well as with the purpose of deter him from discharging his official duty, fearlessly but he is committed to remain unaffected from any such unholy design. He has worked to earn dignity and respect in public life. He has further stated in the counter affidavit that original record will display an unimpeachable evidence of the probity has been maintained, has given detailed and reasoned ground has been given in his every single observation and remarks. He has only brought to the notice of the authorities that fixation of price was in very high side in order to save public exchequer which is solemn duty has pointed out malady of price.

25. Dr. Paresh Saxena has filed another I.A. No.2036 of 2017 wherein he has taken a plea that he was not a member of the Central Purchase Committee or Tender Committee or



Technical Evaluation Committee at any point of time and he was not part of impugned decision. All decision has been taken by the Central Purchase Committee inasmuch as he has taken a plea that he was on earned leave during the months of April, May and June 2016 i.e. the period overlapping publication of tender no. 1 of 2016-17 dated 8.4.2016, opening of the technical bid on 12.5.2016, demonstration and evaluation by the Technical Committee dated 26.5.2016. So during that period he was on leave and whereafter he has joined and dealt with the concerned file between 12.7.2016 to 6.12.2016 which has not been denied by the petitioners.

26. In view of the aforesaid discussions of the fact admittedly Dr. Paresh Saxena was not the member of any of the committee but he has given its report on the instruction of higher official and this Court has called file and found that the report is based upon agreement received from Himachal Pradesh which discloses that M/S Ambala Coach Builders has made fabrication work in Rs.3,81,000/-. Petitioners nowhere made any allegation any of the member of the Central purchaser Committee nor against the Technical Evaluation Committee and the finding recorded by Technical Purchase Committee is based upon the materials collected and report submitted by Dr. Paresh Saxena respondent no.5 in his official capacity which he was required to



discharge honestly and sincerely.

27. In such view of the matter, this Court does not find any shred of evidence of malafide against Dr. respondent no.5, what has been found, he had done his official duty, what he was required to do it and this Court does not find any material save and except the vague allegation made by the petitioners that on wrong premises of a report was submitted is the basis for cancellation of work order.

28. This Court has already arrived to a finding that a fair play in the joints is a necessary concomitant of discharging all administrative function. While exercising the juridical review the Court does not act as Court of appeal but has to ensure fairness and transparency in the action and if test is satisfied, in such circumstances, the Court should refrain to interfere in the matter on the plea of parties. This Court does not find any basis for interference in the decision of the Central Purchase Committee.

29. Petitioners have raised point that contract is concluded contract which bereft of any substance, was at the stage of recommendation and neither the work order was issued in his favour nor the parties have entered into agreement. The judgment which he has placed reliance is not at all applicable to the facts of the case.

30. During pendency of this case this Court vide order dated



22.2.2017 has given liberty to open financial bid but the work order will be issued after disposal of the case. It has been informed to this Court that technical bid and financial bid has been opened, private intervenor respondent having been found to be lowest tenderer but the work order has not been issued on account of pendency of the present case. This Court does not find any substance and merit for interference in the matter. Accordingly this writ petition is dismissed and it is directed to the concerned authorities to issue necessary work order to the lowest tenderer.

Vinay/-

(Shivaji Pandey, J)

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 23.12.2017 |
| Transmission Date | NA         |

