

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.350 of 2017

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1. Bihar Offset Printers Association, Office at Tarang Press Campus, Dr. B. Sahni Lane, Shivpuri, District- Patna 800023 through its Treasurer namely Mukul Kumar Sahni,
 2. Mukul Kumar Sahni, son of Dr. B.Sahni, resident of Dr. B.Sahni Lane, Shivpuri, District- Patna- 800023.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Bihar State Text Book Publishing Corporation Ltd., Pathya Pustak Bhawan, Buddha Marg, Patna 800001 through its Chairman.
4. The Chairman, Bihar State Text Book Publishing Corporation Ltd., Pathya Pustak Bhawan, Buddha Marg, Patna 800001.
5. The Managing Director, Bihar State Text Book Publishing Corporation Ltd., Pathya Pustak Bhawan, Buddha Marg, Patna 800001
6. M/s Surya Enterprises, R.K. Nagar, L.P. Shahi College Road, Near Patna Convent, Patna- 800004.
7. M/s Samrat Offset, Jamungali, Sabjibagh, Patna- 800004.
8. M/s Sai Offset, Sandalpur, Kumhrar, Patna.
9. M/s Indian Art Offset, Mahendru, Patna- 800006.
10. M/s Agrawal Enterprises, Near Gaya Line, Gumti No.1, 58 Mithapur, Patna- 800001.
11. M/s Jan Kalyan Press, Naya Tola, Patna- 800004.
12. M/s Patna Offset Press, Naya Tola, Patna- 800004.
13. M/s Sri Sai Offset, Sandalpur, Kumhrar, Patna.
14. M/s Heva Printing Works, Karmlichak, Patna- 800008.
15. M/s Bharat Printing Works, Jaiprakash Nagar, Ashiyana Road, Patna- 800024.
16. M/s New Ratan Priya, Langar Toli, Patna- 800004.
17. M/s Pakija Offset, Shahganj, Patna- 800004.
18. M/s National Enterprises and Printing Works, Khazanchi Road, Patna- 800004.
19. M/s Patna Offset Press, Nayatola, Patna- 800004.
20. M/s Akash Ganga Press, Jamungali, Sabjibagh, Patna- 800004.
21. M/s The Gandhi Enterprises, Nayatola, Patna- 800004.
22. M/s Maa Bhagwati Press, Nehru Nagar, Patna- 800013.
23. M/s J.M.D. Press, Jamungali, Sabjibagh, Patna- 800004.
24. M/s Babloo Binding House, Shahganj Cold Storage, Patna- 800006.
25. M/s New Fine Art Offset, Shahganj, Patna- 800006.
26. M/s Samar Offset, Shahganj, Patna Cold Storage Compound, Patna- 800004.
27. M/s Imprint, Ranighat, Mahendru, Patna- 800006.
28. M/s The Gandhi Enterprises, Nayatola, Patna- 800004.
29. M/s Super Offset Printers and Stationers, Nayatola, Patna- 800004.
30. M/s New National Offset, Vishwakarma Bhawan, Kadam Kuan, Patna- 800003.
31. M/s Dhanraj Printing Press, Opposite Science College, Kunkun Singh Lane, Patna- 800004.
32. M/s New Fine Arts Offset, Shahganj, Patna- 800006.

.... Respondent/s

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Appearance :



For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.
 Mr. Siddhartha Prasad, Adv.
 For the Resp. No. 21 to 28 : Mr. Krishranjan, Adv.
 Mr. Suman Kumar Jha, Adv.
 For the State : Mr. Kameshwar Kumar-GP17

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
RESERVE JUDGMENT
Date: 26-02-2018

Heard learned counsel for the parties.

2. In the present writ application, a prayer has been made for quashing the work orders issued vide Letter Nos. 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802 and 803 all dated 20.12.2016 and vide Letters Nos. 829, 828, 827, 826 and 825 all dated 30.12.2016 under the signature of Managing Director, Bihar State Text Book Publishing Corporation Ltd. (hereinafter mentioned as 'Text Book Corporation') purportedly in pursuance of Tender No. TBPC/Jobwork-03/16-17 (Amended) dated 14.6.2016 (without cost of paper) in favour of the respondent nos. 6 to 32.

3. Before dealing with the matter, this Court, vide order dated 16.2.17 had allowed the respondents to supply the material which were found to be essential for the academic career of the students of the various schools spread in the State. So, primarily, in the present writ application, the question is only confined with respect to payment of money arising out of the work order in pursuance whereof the respondents have supplied different nature of materials.



4. In sum and substance, the submission of the learned counsel for the petitioners is that the supply has been made without valid tender, without adopting proper procedure, illegality has been committed in distribution of work order to different respondents in derogation to the settled law that the state would distribute its largess only after following the proper procedure. In the event it is found that the procedure has been kept aside and the work orders were issued illegally, the Court, in a proper case, would interfere in the matter and set the matter right, the illegality committed by the State Government and its agency. It has further been submitted that 54 establishments had participated in the tender against NIT dated 14.6.2016 which cannot be said to be related to the present work order. It has been claimed that the NIT was published in the year 2016, was for printing of books and its supply and these work orders have been issued for supply of different materials has no nexus with 2016 NIT even remotely but, illegally, the work order, without maintaining the transparency, awarded the contract. Further it has been argued that as per case of the petitioner, 54 persons had participated but, 26 persons have been selected without maintaining transparency, without disclosure of deficiency of rejected participants. It has further been argued that during the period 2015-16, the cost of printing was 2.54 but, for this time, the rate of payment is on



exorbitant higher side. It has further been submitted that the rate of paper which was prevalent in the year 2014 having been taken but, the quality of the paper is very poor. In such view of the matter, the respondents having engaged in illegal act of awarding the work order, the entire action violates Article 14 of the Constitution of India. The prime thrust is that while selecting the bidders and awarding order, transparency should be followed and arbitrariness should be spurned. It is well known that arbitrariness is the anti thesis of rule of law, violates Article 14 of the Constitution of India.

5. Learned counsel for the petitioner submits that the invitation to tender dated 14.6.2016 (Annexure-1) is the job work for printing of books. The quality of papers and the nature of work of printing of books, is absolutely different and distinct than that of work order is clear from Section II, "Technical Specification", itself discloses that printing was for the books without paper and the paper was to be supplied for printing by the Corporation, has been clearly mentioned in the item of printing paper is also absolutely clear from Section (iii) (A), the nature of work, where the statement in block letter has been mentioned as "Rates for different sequences of book printing for sheet fed/Web offset" itself indicates the job was for printing of the books. The job work was for printing of books with addition of the cost of paper, the invitation to tender reflects the rate



of printing of books and other incidental and allied works connected with printing of books like printing cover page. Learned counsel for the petitioners has placed reliance on tender dated 20.1.2015 (Annexure-4), discloses that this invitation of tender was not for printing of books but, was meant for Brochure Printing of Report Card, quality of paper has been mentioned as 250 GSM Matt finish Art Board paper (Size A/4-21.5X28 Cms) for the Class of I to V. This NIT is inclusive of paper. He has further relied on letter dated 12.11.2015, Short Tender Notice (Annexure-5) for printing D.R.R. Calendar, 2016 depicting road safety, number of pieces has been stipulated, the purpose has been mentioned, quality of paper and size have also been given which indicates that this document is of printing of calendar with specification of paper. Total value of work was 9,43,55,889/-. Annexure-2 is the list of establishments selected for printing the material, are altogether 54 but, the work order has been issued to only 26 persons without following the proper procedure and the volume of the work allotted to different establishments in improper ratio but, in a complete irrational manner, some establishments have been allotted the work of small quantity and some establishments have been allotted work of huge quantity. It has further been submitted that the work order has been issued to M/s Samar Offset, Shahganj, Patna Cold Storage Compound, Patna which



had not even participated in the tender, itself reflects working of the Managing Director in the matter of granting states largess. Learned counsel for the petitioner has drawn attention of this court towards paragraph no. 19 of the counter affidavit wherein it has been accepted that the said organization did not participate in the tender but, has been given his own explanation that in view of the practice followed by the Corporation, the work order would be given at the lowest rate for each and every work and this is not the practice that the work would only be given to the establishment which has participated in the tender but, it must be ensured the L1 rate. The purpose for the tender is only for obtaining the lowest rate for each and every nature of work and as per practice that the work order could be issued even to the establishment which had not participated in the tender. It will be relevant to quote paragraph no.19 of the counter affidavit which reads as follows:-

“19. That in reply to para 16 it is submitted that in view of the practice above paid by the corporation the tender would be only for the lowest rate for each and every work and this would not be the practice that the work would only be given to the printer who have participated in the tender of the rate. The purpose for the tender for the rate is only for obtaining the lowest rate for each and every commodities. It is the practice of the corporation that it gives the work to each and every interest printer who is register with the



corporation and who deposits registration fee in the corporation and who has got capacity to do the work whether he would have participated in the open tender for rate or not. At this stage it is submitted that even if petitioner no.2 have not participated in the open tender for rate in 2014 or 2016 and he would have capacity to do the work and if he would have approached the corporation at the relevant time along with his credentials he would have given the work for doing the job work in view of his capacity. At this stage it is submitted that the petitioner no.2 as stated above has not done any single work after the year 2000 and as such the committee has not considered his case.”

6. In support of the submission, learned counsel for the petitioners has placed reliance on different judgments of the Hon’ble Apex Court such as *City Industrial Development Corporation through its Managing Director Vs. Platinum Entertainment & Ors.* reported in 2015 (1) SCC 558 Para-37, 38, 39, *Manohar Lal Sharma Vs. Principal Secretary & Ors.* reported in 2014 (9) SCC 516, *Manohar Lal Sharma Vs. Principal Secretary & Ors.* reported in 2014(9) SCC 614, *Centre for Public Interest Litigation & Or.s Vs. Union of India & Ors.* reported in 2012 (3) SCC 1, *Bharti Airtel Limited Vs. Union of India* reported in 2015 (12) SCC 1 Para-42, 43, *Humanity & Anr. Vs. State of West Bengal & Ors.* reported in 2011 (6) SCC 125, *Common Cause, a Registered Society Vs. Union of India & Ors.* reported in 1996(6) SCC 530, *Sterling Computers Limited Vs. M/s M & N Publications*



Limited & Ors. reported in 1993 (1) SCC 445 para 14, 26 and 13.

7. The respondents 7 & 14 have taken a plea that the present writ application is not maintainable as the President and Secretary of the Association participated in the tender and awarded the job of work. The President is the respondent no.29, Secretary of the Association participated in the tender and awarded the job work but, he had shown inability to perform the job in time, made a prayer for extension of time not accepted, when the extension was refused, the present case has been filed. Now, when the President and Secretary could not succeed, now they cannot turn around and challenge that bid. No other member has come forward and challenged the tender and the work order, placed reliance in the case of *Shish Ram & Ors. Vs. State of Haryana & Ors.*, 2000(6) SCC 84 Para-9. He has further submitted that the writ application is not maintainable as it is a defunct organization. In order to counter the claim of non-maintainability, Rameshwar Nath Rai and Lok Prakash Singh as working President and General Secretary issued letter (Annexure-12), thereby authorized Mr. Anand Ranjan Kumar, son of Sri Arun Prasad Singh to swear supplementary/reply affidavit in the present case. With respect to petitioner no.2, it has been said that he neither participated in the tender issued by Text Book Corporation since 2000 nor having done any work since the aforesaid year though he has time to time



renewed his registration by depositing the requisite fee. It has further been said that the petitioner no.2 is neither the person aggrieved nor the person, whose tender has been rejected nor the person to whom lesser quantity of work has been allotted, nor the writ petitioner has raised any grievance. Inasmuch as, as stated in paragraph no.8 of the second supplementary counter affidavit by the respondent nos. 3 to 5 at page no.391, a stand has been taken that the writ has been filed out of malice as certain printers, against whom steps for recovery of huge amount has been taken, are behind the scene and, on this ground alone, the writ application is fit to be dismissed.

8. The respondent nos.3 to 5 have submitted on merit that those who are interested in the work, certain essential formalities is required to be done. The person interested is required to apply for registration in the Corporation along with fees, after receipt of the application, the Corporation will send it to the technical team for verification of infrastructure of the printing press to assess the capability of quantum of printing material. If it is found that the establishment has proper machine and other infrastructure capable to print are registered for future work. In paragraph no.5 of the counter affidavit, it has been stated that the printing job is a very technical job, it requires wide range of activity of printing, materials are assigned to the Corporation by the State Government and its different



departments, giving a very short period of time for delivery, in order to cope up this urgent need, the Corporation has adopted this practice since the year 2007, the advertisement is published for finding out the L-1 rate for composing, designing, tracing, film, P.S. Plate, C.T.P. Place and for that the tender issued, the person interested participates in the Bid and L-1 rate arrived, in the tender is recognized as base rate for future printing of different nature of job work. It has further been submitted that as per policy decision, the tenders are issued for finding out the L-1 rate for paper and also for printing. The Government supplies paper and printing is done at the L-1 rate. It has further been submitted that last L-1 rate was arrived in the year 2007, continued to hold field but, in the year 2016, a fresh tender has been issued to find out L-1 rate and the present mater is for printing of material with respect to the rate of 2016 and paper rate as was fixed in the year 2014, the work order has been allotted on the basis of capacity and past record, person to whom the work order has not been given is not before this Court, they know why the work has not been allotted to them, complaint has been made in the writ application with regard to unequal distribution of work, person aggrieved has not come raising a grievance of granting lesser quantity of the work. It has further been argued that rate of printing and cost of printing has, time to time, increased. The Corporation has followed the practice of



finding out L1 of printing and also L1 rate of paper. The petitioner has not challenged the tender or policy adopted by the Corporation but has challenged the consequential action of issuance of work order and as such the writ petition is not maintainable.

9. Learned counsel for the respondent nos. 17 and 14 Mr. A.N. Singh has submitted that the work order for printing of DDR Calendar was given at L1 rate. If the work is intended to be in the public interest and has already been completed, in such circumstances, the Court should not enter into the niceties of the law. The aforesaid plea has been taken in paragraph nos. 17, 22, 24 and 32. On merits, he has submitted that the tender which has been attached as Annexure-1 to the writ application, is not only tender for printing of the book but also for printing of other material. The tender cannot be confined to printing of books only but, it is composite tender, it will be applicable for all types of works including report card, calendar etc. Clause 4(d) of the tender provides that the establishment interested is to give details of equipments and machines capacity to assess the competence and capability for carrying out the printing work. Clause 8 of the tender document stipulates that the establishment which possess the necessary machines and equipments for the particular requirement are eligible to submit their rates except film making, else their bid are liable to be rejected. Sub-clause 9(iv) Para-21 mentions the rate for



job work for the tender will be valid for a period of two years from the date of issuing orders. Sub-clause 9(iii) mentions that rate should be quoted as per printing machines available with the printers except film making also attached the list of machines availability with its specifications. The aforementioned information is required to be provided by the tenderer to enable the Corporation to assess the suitability and capability of the printing press, so that, the Corporation would allot the work order as per capacity so that the work order should be carried out in the time prescribed. This method has been adopted to enlist suitable bidders and they have been given the works not in an arbitrary, whimsical and capricious manner but, congruent to their respective capacity, this method has been adopted for the two purposes, first to find out the L-1 rate and also to find out the capacity of the respective tenderer and, on that basis, the Corporation gives works according to their capacity and capability. It has further been argued that the author of the tender document is the best person to understand, appreciate the requirement and would interpret the document properly. In support of the submissions, has placed reliance on the judgment in the case of *Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Anr.* Reported in *AIR 2016 SC 4305* Para 14, 15 and 16, in the case of *JSW Infrastructure Limited & Anr. Vs. Kakinada Seaports Limited & Ors.* reported in *2017 (4) SCC 170*, Para 8, 9, 10, 11, 16



and 17.

10. Mr. Amarnath Singh has refuted the allegation of the petitioner that the Corporation has acted with malafide and arbitrary manner, for that, he has placed reliance on the counter affidavit at Para 2 to 5, which is the letter of Managing Director providing guideline for allotment of the work. This letter gives the principle and policy in what manner the work has to be allotted. He has placed list of persons who have been granted the present job work dated 20.12.2016, report card, the job work calendar and printing of evaluation register mentioned in Annexure-D series. If the award of the contract is bonafide and in public interest, even if, there may be some procedure irregularity, the Court would restrain to interfere in the matter. He has placed reliance in the case of Master Marine Services (P) Ltd. Vs. Metcalfe & Hodgkinson (P) Ltd. & Anr. Reported in 2005 (6) SCC 138, Jagdish Mandal Vs. State of Orissa & Ors. reported in 2007 (14) SCC 517, Montecarlo Ltd. Vs. NTPC Ltd. reported in AIR 2016 SC 4946 Para-24. Lastly, he has argued that the petitioner has neither challenged the policy which is prevalent since 2007 nor has challenged the tender rather he is challenging the job work, unless the policy and the tender is challenged, the petition itself is not maintainable. Though in the initial stage, they have challenged the policy but, finally they have limited the challenge to the job of



work not the principle and the tender document lucidly reflects that the tender was not invited for the purpose of grant of work order rather to find out the L-1 rate.

11. Learned counsel for the respondent nos. 21 and 28 has argued that the basic purpose of association is to help its member not to snatch away the livelihood or the benefit which has been conferred by way of allotment of the work. The Union has duty to espouse the cause of its member, not act against the interest of its members. The respondent nos. 21 and 28 challenged the bonafide of filing the writ application, inasmuch as, there is no letter authorizing the petitioners to file the present writ application and, as such, they do not have locus standi to file the writ application. Respondent placed reliance on the Halsbury's Laws of England (Third Edition) on the principle of classification of person aggrieved. It has further been submitted that they are not the persons aggrieved as they have not participated in the tender process and, so, their writ application is not maintainable placing reliance in the case of *Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors.* reported in 2013 (4) SCC 465. The work order has been issued as per the old practice.

12. The counter affidavit of the respondent nos. 6, 9, 12, 19 and 31 has been pressed in service, placed reliance on paragraph no.5 wherein it has been stated that 54 number of associations



including some respondents have filed application before the Hon'ble Chief Minister making a complaint that one Shri Lokprakash Singh alias Pappu Singh who is the General Secretary of the Association had misused the letter head of the Association and filed a complaint to the Chief Minister without authorization and that Pappu Singh is the partner of Puja Printers Private Limited who is under scrutiny by the Vigilance Department for his wrong activity of short supply, amounting to Rs. 15.38 cores. In order to get the matter diverted, suppressed or diluted, he had sent a letter to the Chief Minister on 23.12.16 wrongly making allegations of various irregularities in the present work order.

13. Learned counsel for the respondent nos. 21 and 28 further submits that things have been done in a fair manner, the work order has been given to them fairly and properly, in pursuance thereof, they have already supplied the printed material as per the order. In such circumstances, no relief can be given to the petitioners.

14. This court in the judicial review has to see whether fair procedure has been followed or not. The tender inviting notice Annexure-1 has been issued in terms of policy decision to find out the L-1 rate for the purpose of granting work order. He has placed reliance on certain paragraphs of the counter affidavit, has quoted certain parts of the law of Halsbury on the principle "who can



approach making a complaint by filing the writ application” wherein in paragraph no.9 has classified three categories of persons, namely, (1) person aggrieved, (2) stranger and (3) busybody or meddlesome interloper and has claimed that the present petitioners are nothing but a busybody, as has been mentioned in the judgment reported in (1976) 1 SCC 671 (Ref: Jushabhai Motiobhai Vs. Roshan Kumar) and deliberated categories of persons aggrieved who can raise a complaint and approach this Court under the judicial review. He has placed reliance on paragraph no.20 of the counter affidavit of Respondent Nos. 21 & 28, has conveyed to this Court that the State has adopted a policy to follow rate contract scheme. Rate contract scheme is the process inviting tender for the purpose to find out the lowest rate and whosoever enlisted will be allowed the work at the rate found to be lowest order. It continued for years only substituted by another rate which facilitate the establishment preventing for frequently inviting tender for finding out the lowest tenderer. He has quoted the benefit in paragraph no.20 which reads as follows:-

“20. *That entering into Rate Contract is an established commercial practice by all big purchasers including the Government of India through its agency DGS&D.*

Advantages of the Rate Contract Scheme:

To Buyers

- i. *Facility of bulk rate at lowest competitive price.*
- ii. *Saves time and effort in tedious and frequent*



tendering at multiple user locations.

- iii. Enables buying as and when required.*
- iv. Just in time availability of supplies reduces inventory carrying cost.*
- v. Availability quality goods with full quality assurance back up.*

To Suppliers

- i. Access to large volume of purchase without going through tendering and follow up at multiple user locations – saving in administrative and marketing efforts and overheads.*
- ii. Rate contract lends respectability and image enhancement.”*

15. It has further been submitted that the petitioners have not made out any case in their favour so much so respondents nos. 21 and 28 have not connived with the officials of the Corporation for obtaining the work order rather they have received the work order in a proper manner and in pursuance thereof the work has been carried out. It has further been submitted that there is nothing on record to show that any act has been done in cavalier manner rather has been done under the policy, the NIT was issued, rate was obtained, work order was issued, that has been carried out and there is no allegation of supply of substandard quality of material. In such circumstances, there is no purpose for refusing to make payment.

16. Learned counsel for the respondent nos. 17, 22, 24 and 32 has by and large reiterated the same argument advanced by other



respondents, submitting that it is not a public interest litigation, petitioners does not have locus standi to file the present writ application in view of the fact that the petitioner no.2 had not participated since the year 2000 whereas the President and Secretary had participated in the Bid, the work order was issued to the President but had shown inability to carry out the work having been allotted to him, made request for more time which was not acceded for the reason they have not filed this writ application rather the present petitioners have filed the writ petition under their guidance and direction. It has further been argued that everything has been done under the policy of the year 2007, in pursuance thereof the tender notice dated 14.6.2016 has been issued, the petitioners have neither challenged the policy nor challenged the NIT but, they have challenged the outcome of the NIT i.e. the work order. He has placed reliance on paragraph nos. 7, 9, 11 and 14 of their counter affidavit and placed reliance on the judgment in the case of 2012 (6) SCC 464 Para 15, 2017 SC 1175 Para 10, 2017 Patna 251 pra-9 and 2008 (2) PLJR 199.

17. Mr. Lalit Kishore, learned Advocate General, representing the respondent nos. 10 and 16 has argued maintainability of the writ application on the ground that the Society registered under the Societies Registration Act as per Section 6 of the Act, the



Chairman, President or the Principal Secretary and any person authorized can file the application on and on behalf of the Society and also placed reliance on Clause 16 of the Memorandum of Association wherein it has been provided that the General Secretary is the Chief Executive Officer of the Society and, as such, this application has been filed by the Association without being authorized by the general body or by the Committee of the Society. Secondly, he has taken a point that the petitioner no.2, the Treasurer, cannot per-se represent the Association without authority and no documentary evidence has been brought in the writ application to corroborate authorization to file the present writ application for and on behalf of the Association. Further, he has argued that the petitioners in a personal capacity cannot be said to be a persons aggrieved in view of the fact that petitioner no.2 was not in fray of selection for printing of materials, inasmuch as, since the year 2000, he never participated in the Tender and, as such, he cannot be allowed to challenge the allotment of the work order. Further he has argued that the petitioners have not challenged the NIT, on that basis, the work order has been allotted and he has challenged the result arising from that NIT. It has been further argued that the duty of Association is to cooperate in advancement and development of the Company and the petitioners should not have filed the present writ application in inter-se dispute.



In such circumstances, this Association should not take side of one number against the interest of the another. He has further argued that the Corporation, in its counter affidavit, in paragraph nos. 13, 14 and 15 has elaborately dealt with the manner the processes have been followed and the work order has been allotted to different persons who were registered with the Corporation. It has further been submitted that in terms of the order passed by this Court, the petitioners have already carried out the work, now their payment cannot be stopped when they have invested so much of money and supplied the material to the Corporation and, in that view of the matter, this Court, exercising its judicial review and applying the principle of equality, should not pass any order adverse to the interest of the respondent as it will cause immense loss and that may lead to closure of the business.

18. Learned counsel for the petitioner, in reply, has submitted that the respondents in their respective counter affidavits have not taken a point of maintainability in the manner they have argued, only they have stated that the petitioner no.1 is a defunct organization and is not functioning properly and, as such, they have no right to raise the issue departing from issues/facts mentioned in the counter affidavit. He has submitted that different paragraphs of the counter affidavit by respective respondents have dealt with the issue



of maintainability in the following manner:-

19. Respondent nos. 2 to 5 have dealt with the issue of maintainability at page 106, respondent no.21 in its counter affidavit at page no.166 & 167, respondent no.28 at page no. 230, respondent nos. 17, 22, 24 and 36 age page no. 262, 263 and 269, respondent nos. 21 and 28 at page 277 to 281, respondent no.6, 9, 12, 19 and 31 at page no.288, respondent nos. 8, 11 & 13 at page no.310, respondent nos. 14, 15, 20, 27 at page no. 332.

20. The argument that has been made by the learned Advocate General i.e. in terms of Section 6 of the Society Registration Act prescribes the person who can file the writ application, is not a mandatory provision but, is only permissive and directive provision and even the Society, registered under the Act, having not filed the writ application in terms of Section 6 strictly, cannot be rejected and the Court should see that the justice should not be defeated on mere technical ground if the petitioners could be able to make out a case in their favour and placed reliance 1960 Cal 409 para 8 & 9, 1982 AP 138 Para-5, 1946 Bom 506 Para 27 to 29, 1957 Trav 259.

21. As no pleading has been made on the line of terms of the argument, it has been submitted that, if the objection in the manner raised, certainly the petitioners would produce the certificate of authorization. In the rejoinder affidavit at page no.250, the



petitioners have attached the authority letter giving authorization to Mr. Anand Ranjan Kumar to file supplementary / reply affidavit in the present case on behalf of the Bihar Offset Printers Association which itself indicates that in the event of no objection, proper authorization is not required to be attached.

22. It has further been argued on behalf of the petitioners that the plea of respondent no.2 that when the petitioner has not challenged the policy as well as the tender notice, he cannot be allowed to challenge the work order, would stand as the work order has not been allotted in terms of the N.I.T. of 2016 (Annexure-1) as said the tender for quite different purpose i.e. for printing of the books which has no nexus with the work allotted to the respondent. He has further argued that the entire action is arbitrary, completely dehors to Article 14 of the Constitution of India, is nothing but, a fraud. This Court had allowed the supply of material by different respondents on the compelling reason of children's academic career, cannot be taken as excuse for payment of money against supply of materials. As the Corporation has failed come out with proper tender, no payment would be made.

23. The respondents have challenged the maintainability of the writ application on the following grounds:-

(i) First plea has been taken that neither the petitioner no.1 nor the



petitioner no.2 is a person aggrieved and the relief which has been sought in the writ application is the nature of certiorari and mandamus, that cannot be extended to them as neither the petitioner no.2 has not participated in the tender nor he has worked for the Corporation since the year 2000, has placed reliance on the two judgments firstly, in the case of *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed & Ors.* reported in 1976 SC 578 which is related to grant of Cinema License, and secondly in the case of *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors.* reported in (2013) 4 SCC 465 wherein detail discussion has been made and has prescribed the contours, the class of persons vis-à-vis nature of litigation will be the factum for arriving to a finding of person aggrieved.

- (ii) The second point has been raised that the writ application has not been filed in terms of Section 6 of the Society Registration Act as Section 6 stipulates that the society registered under this Act may sue or may be sued in the name of President, Chairman or Principal Secretary or Trustee as the manner and procedure of filing case is determined by the Rules and Regulations of the Society and the petitioner no.1 has not filed this case in terms of Section 6 of the Society Registration Act and, as such, the writ application is not maintainable.



- (iii) The third point has been taken that the petitioner has neither challenged the policy decision which has been adopted by the Corporation but, to find out the lowest rate for printing of different natures of job work as well as to find out the L-1 rate of the paper nor the petitioner has challenged the NIT is the basis of selection of the persons for grant of works to them and, as such, the present writ petition is not maintainable.
- (iv) Whether the allotment of work order has been issued fairly and properly adopting fair procedure as well as NIT has any co-relativity with the work order issued.

The locus standi and who will be treated to be person aggrieved in terms of Article 226

24. Before deciding this issue, it will be relevant to examine the different judgments of the Hon'ble Apex Court has dealt with the issue of locus standi vis-à-vis the person aggrieved. As in the present case, the point has been raised that both petitioners do not satisfy ingredients of a person aggrieved, do not have locus standi to present this writ application, liable to be dismissed without discussing the merit of the case. This issue came for consideration before the Hon'ble Apex Court in the case of *Jasbhai Motibhai Desai* (supra). In that case, in the town of Mehmabad, an application was filed for N.O.C. under the Bombay Cinema Rules, 1954. The District Magistrate invited objection as well as opinion from different



interested persons, several objections were filed but, one J.M. Desai did not file any objection but, approached the Court under Article 226 of the Constitution of India. The District Magistrate submitted the report to the State Government, mentioned that the site was not fit for location of cinema hall but, the Government directed to issue N.O.C. to the Roshan Kumar for the proposed site of construction of Cinema Hall. J.M. Desai filed writ application raising various objections, one of the objections was that it is a District Magistrate, who has to decide the suitability of site for proposed construction of cinema hall objectively, should not act on the direction and dictate of the State Government. The Bombay High Court dismissed the writ application on the ground that no right of J.M. Desai was infringed or prejudiced or adversely affected in consequence of the order impugned by him. The matter went to the Hon'ble Apex Court and the discussions were made on the issue of person aggrieved, discussed as to whether will be given a restrictive consideration or will be given extensive consideration. The Court held that it will be dependent on the nature of relief sought for vis-à-vis the statutory provision. Some time it will be given restrictive meaning looking to the relief involved and some time it will be given extensive meaning. The Court has classified three classes of persons and the first is the person aggrieved, second stranger and the third busybody of meddlesome interloper. It has been



held that the person whose right has been infringed directly or indirectly will fall under the category of person aggrieved. The busy body or the meddlesome interloper can easily be identified, are those who do not have any concern with the litigation, they have come to the court as crusader for justice. The person who pretends to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect, they indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives, often, they are actuated by a desire to win notoriety or cheap popularity.

25. The aforesaid class of person cannot be a person aggrieved, the petition is liable to be rejected. To make distinction between the stranger and the person aggrieved, the following are the test for determination and classification of those; whether the petitioner is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense that his interest, recognized by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something" ? Has he a special and substantial grievance of his own



beyond some grievance or inconvenience suffered by him in common with the rest of the public ? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? It is relevant to quote paragraph nos. 36, 37 and 38 of the aforesaid judgment which reads as follows:-

“36 *It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody of meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the past-time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.*



- 37 *The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones: a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer-circle the bounds which separate the first category from the second, intermix, inter fuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".*
- 38 *To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered as legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully*



affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute, dealing with private rights of particular individuals?"

26. The Hon'ble Apex Court further held that as a rule, the Court should not interfere at the instance of the stranger unless there are exceptional circumstances involves, grave miscarriage of justice having adverse impact on the public interest. If a person is stranger and not a busy body then on exceptional circumstances where, the public interest demands interference, in that case, is proper to issue writ of certiorari at his instance. So in the case of stranger, the Court has stipulated that the Court would entertain the writ application, is in the nature of certiorari, in an exceptional circumstances in a case of grave injustice and having adverse impact on the public interest. In those circumstances, the writ filed by the stranger can be entertained and proper relief can be extended. It will be relevant to quote



paragraph no. 49 of the aforesaid judgment which reads as follows:-

“49 *While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a 'stranger' unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a 'stranger', and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all, it will in effect, seriously injure the fundamental rights of respondents 1 and 2, which they have under Art. 19 (1) (g) of the Constitution, to carry on trade or business subject to 'reasonable restrictions imposed by law'.”*

27. Another relevant judgment is in the case of Ayaaubkhan Noorkhan Pathan (supra) which is related to grant of caste certificate. There the Hon'ble Apex Court has decided as to which class of person will be treated to be person aggrieved and further held that meddlesome interloper and the busy body cannot approach the High Court under Article 226 of the Constitution of



India. In that case, a person was claiming to be a member of the scheduled castes, after proper enquiry by the Vigilance Cell of the Committee has granted certificate which was challenged before the High Court on the ground that the person to whom caste certificate was granted was a member of general caste wrongly the caste certificate was granted and has obtained the service. While dealing with the issue of person aggrieved, it has been held that the stranger cannot be permitted to meddle in the proceeding unless he satisfies the authority/court, he falls within the category of person aggrieved, only a person who has suffered from legal injury can challenge the action under Article 226 of the Constitution of India. The writ application is maintainable either for the purpose of enforcing statutory right or legal right or when there is complaint by the person that there has been a breach of statutory duty on the part of authority. Therefore, there must be judicially enforceable right available for the enforcement, on the basis of which writ jurisdiction can be entertained. It has further been held that the Court may enforce the performance of statutory duty at a public body using its writ jurisdiction at the behest of person on such performance. The existence of legal right is a condition precedent before evoking the writ jurisdiction and legal right has been deliberated in the manner that legal right means an entitlement arising out of rules. Thus, it may



be defined as an advantage or benefit conferred upon a person by the rule of law against person aggrieved does not include to suffer from psychological or imaginary injury, a person aggrieved must be one whose right or interest has adversely been affected or jeopardized. It has been culled out that a person who raises a grievance, must show how he has suffered legal injury - existence of a legal right is a condition precedent for invoking writ jurisdiction, generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others but, while deciding the issue of person aggrieved vis-à-vis the locus standing, liberal approach has to be given not the restrictive consideration would be applied while adjudicating the issue of entitlement of a person to approach in the court of law. While dealing with the expression “aggrieved person”, elastic and elusive concept has to be applied. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. So deciding the issue, the nature of litigation is very much relevant factor for deciding the issue of locus standi who can be said to be a person



aggrieved. It is relevant to quote paragraph nos. 9 to 17 of the aforesaid judgment which reads as follows:-

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962



SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361).

11. In Anand Sharadchandra Oka v. University of Mumbai, AIR 2008 SC 1289, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

12. In A. Subhash Babu v. State of A. P. , AIR 2011 SC 3031, this Court held:

“25. ... The expression ‘aggrieved person’ denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the



prejudice or injury suffered by the complainant.”

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression, ‘next friend’ means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. (Vide: Charanjit Lal Chowdhury v. The Union of India & Ors., AIR 1951 SC 41; Sunil Batra (II) v. Delhi Administration, AIR 1980 SC 1579; Mrs. Neelima Priyadarshini v. State of Bihar, AIR 1987 SC 2021; Simranjit Singh Mann v. Union of India, AIR 1993 SC 280; Karamjeet Singh v. Union of India, AIR 1993 SC 284; and Kishore Samrite v. State of U.P. & Ors., JT (2012) 10 SC 393).

14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, “ordinarily meddlesome bystanders are not granted a Visa”. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: P.S.R. Sadhanantham v. Arunachalam & Anr., AIR 1980 SC 856;



Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114; State of Uttaranchal v. Balwant Singh Chaufal & Ors., (2010) 3 SCC 402; and Amar Singh v. Union of India & Ors., (2011) 7 SCC 69)

15. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: Dr. Duryodhan Sahu & Ors. v. Jitendra Kumar Mishra & Ors., AIR 1999 SC 114; Dattaraj Natthuji Thaware v. State of Maharashtra, AIR 2005 SC 540; and Neetu v. State of Punjab & Ors., AIR 2007 SC 758)

16. In Ghulam Qadir v. Special Tribunal & Ors., (2002) 1 SCC 33, this Court considered a similar issue and observed as under:—

“There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. ... In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or



property, he cannot be non-suited on the ground of his not having the locus standi.” (Emphasis added)”

28. In view of the discussion made above, applying the principle delineated has to be applied to find out as to whether the petitioners will have a locus or person aggrieved to file writ application for the relief sought for in the present case. In the present case, the matter is distribution of work for printing martial to different persons and the petitioners are challenging the mode and manner having been adopted for grant of work to the respondents and further has challenged printing rate as well as rate of the paper. It is not in dispute that the Corporation is a public body is to distribute the State largess fairly and properly in terms of Article 14 of the Constitution of India, cannot distribute the largess the manner what they like but it has to be done in a reasonable and proper manner, not to be classified in arbitrary and illegal manner. In the case of arbitrary exercise, the Court will interfere in allotment of printing work to the respondents. It can easily be held that neither of the petitioners can be said to be an inter meddler or busy body and they have brought the writ application for intervening in the matter unnecessarily and approached this Court with an improper motive, actuated by cheap popularity but, it has to be examined whether the petitioners are the persons aggrieved or the stranger persons. It is a fact the petitioner no.2 did not participate in the tender and there is no doubt on the part of the petitioners that he



has not done work of the Corporation since 2000, it is also not disputed that he is an official of the petitioner no.1. The petitioner no.1 is no doubt is a Society having been claimed that it is a defunct society but the society has not been liquidated still in existence and, as such, it can always raise objection the manner and method adopted by the Corporation in allotment of the printing work, the rate of printing as well as the rate of paper.

29. The Hon'ble Apex Court even in the case of stranger has held that in an exceptional circumstances involving grave injustice, having adverse impact on the public interest will give locus standi even to the strangers. From the relief which has been sought and the manner the petitioner no.1 and 2 are involved cannot be said that they are directly receiving any injury from the allocation of the work but, in view of the exceptional circumstances claiming to be grave miscarriage of justice, having adverse impact on public interest, confers locus standi to approach the Court cannot be whittle down and, as such, this issue is accordingly decided that writ petition cannot be dismissed as is not directly receiving injury either monetary or legal arising from the commercial transaction by way of granting printing job of different nature to the respondents.

30. The second point has been taken by the respondents that the petitioners have not challenged the policy nor challenged the



tender but, have challenged the outcome. Unless the challenge is not made to the tender or its policy, the consequential result cannot be the subject matter of consideration in the present writ application but, in the present writ application, it appears that the petitioners have pointed out that the tender issued in the year 2016 (Annexure-1) was for printing of books where the nature of work and quality of work will be quite different not doubt in printing of Book, the quality will be of a higher degree than that of the work orders which have been allotted to the different respondents. The petitioners have challenged that the work order, which has been allowed, does not correspond with the tender notice issued in the year 2016 as the work was for printing of books whereas the work order has been issued for the job work related to printing of Evaluation Register of students of Class I to VIII, D.R.R. Calendar and Report Card. The petitioners are correct that they have not challenged the tender but, what they have challenged the work order as the tender which was issued in the year 2016 (Annexure-1) does not relate to the work which was assigned to the respondents. In such circumstances, there was no need to challenge the tender but, what they are challenging is the applicability of the L-1 rate arrived arising out of the said tender. So this plea that has been taken by the respondents with respect to maintainability has no substance and, accordingly, the same is rejected.



31. The third point which has been raised by the respondents is that the writ petition has been filed dehors to the provision of Section 6 of the Society Registration Act. Before deciding this issue, it will be relevant to quote Section 6 of the Society Registration Act which reads as follows:-

“6. Suits by and against societies.—Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion: Provided that it shall be competent for any person having a claim, or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.”

32. It has been provided that the Society can sue or be sued in the name of President or Chairman or any other functionary mentioned therein but, the present writ application has not been filed in the manner prescribed under Section 6 of the Society Registration Act. To counter this contention, the respondents have placed reliance on the judgment in the case of *Sonar Bangla Bank Ltd. Vs. Calcutta Engineering College & Ors.* reported in *AIR 1960 Cal 409*, para 8 & 9, *A.P. Kuruma Sangham Society Vs. Mirza Ayanutullah Baig* reported in *AIR 1982*



AP 138, para 5, *Satyavart Sidhantalankar & Ors. Vs. Arya Samaj, Bombay* reported in *AIR 1946 Bom 516*, para 27 to 29 and *Ezhumattoor N.S.S. Karayogam No. 1190 Vs. L. Janaki Amma & Anr.* reported in *1957 Trav 259*.

33. In the case of *Sonar Bangla Bank Ltd.* (supra), the Kolkata High Court has held that Section 6 of the Act is only permissive and is not mandatory looking to the nature of formulation of the Section 6. The opening sentence of Section 6 of the Act uses the word "may" and therefore it is not mandatory but permissive. Having used the clause that "it shall be competent" is only enabling provision, giving expression of defect, if any, can be removed, cannot be a ground for rejection of the petition/plaint, as Secretary of the Society entered appearance and filed the written statement. It will be relevant to quote paragraph no.9 of the aforesaid judgment which reads as follows:-

"9. On the strength of this Section 6 of the Societies Registration Act it is, therefore, argued that this suit against the Calcutta Engineering College as a registered society is incompetent and bad. I am unable to accept this argument. I am of the opinion that Section 6 of the Act is only permissive. The opening sentence of Section 6 of the Act uses the word "may" and therefore it is not mandatory but permissive. The language of the proviso to Section 6 uses the expression "it shall be competent." That is only an enabling expression'. It does not mean that if the registered society is sued as such, then it shall



not be competent. Defect, even if any, on this point is cured by the fact that the Secretary of this registered Society, namely, the Calcutta Engineering College, himself entered appearance and filed the written statement on behalf of the registered Society. Secretary is one of the persons mentioned in Section 6 of the Act. The view that I am taking that Section 6 of the Societies Registration Act is permissive and not either exclusive or mandatory is supported by the decision of Bhagwati, J. of the Bombay High Court in Satyavart Sidhantalankar v. Arva Samaj, Bombay, AIR 1946 Bom 516. At page 523 of that report Bhagwati, J. observes as follows:

"I am of opinion that the provisions contained in Sections 6, 7 and 8 of the Societies Registration Act are not inconsistent with the use of the registered name of the Society in connection with legal proceedings. As Lord Lindley observed in Taff Vale Railway v. Amalgamated Society of Railway Servants, (1901) AC 426 I do not say that the use of the name is compulsory but it is at least permissive."

34. In the case of Satyavart Sidhantalankar (supra), the Bombay High Court held that once the society is registered with the Registrar. Byelaws, memorandum, rule and regulation has been certified under his hand, then the society is registered under the Act and the society enjoy the status of legal entity apart from its member



constituting the same and is capable of suing or being sued. In support of the proposition, relevant provisions are Section 5, 6 & 8, makes it clear, society can sue or be sued in its name or to be sued in the registered name. It will be relevant to quote the relevant portion of the aforesaid judgment which reads as follows:-

“I am of opinion that by reason of the provisions of the Societies Registration Act, once the society is registered with the Registrar of Joint Stock Companies by the filing of the memorandum and certified copy of the rules and regulations thereof with the Registrar and the Registrar has certified under his hand that the society is registered under the Act, the society enjoys the status of a legal entity apart from the members constituting the same and is capable of suing or being sued.”

35. In view of the aforesaid discussion, it is very much clear that the moment the society is registered in its name under the seal and signature, the society can sue or be sued, in its own name as an legal entity and the moment it takes the corporate shape by its registration, though someone has to operate the society, Section 6 merely enables those persons to operate, litigate on and on behalf of the society. In view of this discussion, merely the writ having been not filed in the name of the Chairman and the President or Secretary, it cannot be said that the Society in its own name has no right to challenge the action of the Corporation and, as such, the point that has been raised by the respondent is not sustainable and, in consequence,



the preliminary objection as has been raised by the respondents have been answered as discussed herein above and this Court is of the view that writ petition cannot be dismissed without discussion, dwelling and delving the merit of the case.

Merit Consideration:- Issue No. III & IV

36. The principle has been outlined in the judgment in the case of *Ramana Dayaram Shetty Vs. The International Airport Authority of India & Ors.* reported in *AIR 1979 SC 1628* the State largess would be distributed in the matter of granting work order, jobs and other benefits to citizenry wherein the Court has put emphasis, there should be proper exercise of power in the distribution of state largess, the fairness, legality, transparency requires to be applied. The Corporation is an instrumentality authority under the Constitution as provided under Article 12 of the Constitution of India. It will exercise the power of discretion always subject to the constitutional or public law limitation which prescribes in a matter of illegal exercise of power deals with area in the matter of granting of jobs, state largess, must maintain transparency, power and discretion must be exercised reasonably and properly, as Article 14 strikes at arbitrariness in the state action and ensures fairness and equality of treatments, it requires that State action must not be arbitrary but must be based on some rational, relevant principle which is non-discriminatory. It will not be



guided by extraneous and irrelevant considerations, that would amount to denial of equality and rationality. 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 the State should not act arbitrarily while entering into the relationship directly, contractual or otherwise with the third party. It will be relevant to quote paragraph nos. 20 & 21 which reads as follows:-

“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 in E. P. Rayappa v. State of Tamil Nadu (1974) 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 (AIR 1975 SC 266) (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."

37. The Hon'ble Apex Court was considering the scope



and limit of judicial review in the case of *Sterling Computers Limited Vs. M/s M&N Publications Limited & Ors.* reported in (1993) 1 SCC 445. The Court has held that public authority must have liberty in framing the policy, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. Even in contractual matter, the public authority has not and cannot have unfettered discretion. 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 has to follow the norms recognized by the Court. While dealing with the public policy, it is not possible for the Court to question or attack every decision taken by the authority as because the Government undertaking in due course have acquired the monopolist position in the matter of sale and purchase of products and in certain situations, discretion has to be conceded to the authorities who has to enter into the contract and liberty has to be given to assess overall situation for the purpose of taking decision as to whom the contract be awarded and at what terms. The Court said that there should be freedom of “play in the joints” to the executive. While exercising judicial review, the Court does not act as a court of appeal while examining the administrative decision and to record findings whether such decision could have been taken or otherwise in



the facts and circumstances of the case. The doctrine that power must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority and the authorities are free to exercise the discretion reasonably and properly. No doubt the scope of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized or enjoined by law to decide for itself a conclusion which is correct in the eyes of law. Under judicial review, the Court as an appellate Authority cannot examine the details of the terms of the contract which have been entered into by the public bodies of the State. The Court must ensure that the authority has exercised the power properly, reasonably and rationally in public interest free from biasness and discrimination. It is relevant to quote paragraph nos. 12, 13 and 14 of the aforesaid judgment which reads as follows:-

“12. At times it is said that public authorities must have the same liberty as they have in framing the policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the



Constitution in many cases for years. That is why the Courts have impressed that even in contractual matters the public authority should not have unfettered discretion. 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.

13. *But in normal course some rules must exist to*



regulate the selection of persons for awarding contracts. In such matters always a defence cannot be entertained that contract has been awarded without observing the well settled norms and rules prescribed, on basis of the doctrine of "executive necessity". The norms and procedures prescribed by Government and indicated by Courts have to be more strictly followed while awarding contracts which have along with a commercial element a public purpose as in the present case. The publication of directories by the MTNL is not just a commercial venture; the primary object is to provide service to the people.

14. *The action or the procedure adopted by the authorities which can be held to be State within the meaning of Article 12 of the Constitution, while awarding contracts in respect of properties belonging to the State can be judged and tested in the light of Article 14 of the Constitution, is settled by the judgments of this court in the cases of Raman Dayaram Shetty v. The International Airport Authority of India, AIR 1979 SC 1628; M/s. Kasturi Lal Lakshmi Reddy v. The State of Jammu & kashmir, AIR 1980 SC 1992; Fertilizer Corporation Kamagar Union (Regd.) Sindri v. Union of India, AIR 1981 SC 344; Ram and Shyam Company v. State of Haryana, AIR 1985 SC 1147; Haji T.M. Hasan Rawther v. Kerala Financial Corporation, AIR 1988 SC 157; Mahabir Auto Stores v. Indian Oil Corporation, AIR 1990 SC 1031 and Kumari Shrilekha Vidyarthi v. State of U.P., AIR 1991 SC 537. It has been said by this*



Court in Kasturi Lal :-

"It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State: such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot for example give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so."

38. In the case of *Common Cause, a Registered Society Vs. Union of India & Ors.* reported in 1996 (6) SCC 530 where the Court has said that the Government is a welfare state provides large number of benefit by distribution of wealth in the form of plot of houses, petrol pump, gas agency, minimum contract quota and license but, it should be done in a fair and proper manner, not in a arbitrary and in discriminatory manner, following the rule of law, not should be done in whims and capricious, will lead to violation of Article 14 of the Constitution of India, followed the principle mentioned in the case of *Ramana Dayaram Shetty (supra)*. It will be relevant to quote relevant portions of the judgment which reads as follows:-

"26. ----- This Court in Lucknow Development Authority v. M.K. Gupta [(1994) 1 SCC 243, approved "Misfeasance in public offices" as a part of the Law of Tort. Public



servants may be liable in damage for malicious, deliberate or injurious wrongdoing. Accordingly to wade:

"There is a part of the Law of Tort which has been called misfeasance in public office and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

With the change insocio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner which is arbitrary."

39. In the case of ***Humanity & Anr. Vs. State of West Bengal & Ors.*** reported in (2011) 6 SCC 125, the Court has held as followed the principle laid down in the case of Ramna Dayaram Shetty (supra) and has also mentioned the judgment passed in the case of ***Kasturi Lal Lakshmi Reddy Vs. State of J & K*** reported in (1980) 4 SCC 1 wherein it has been provided that distribution of the state largess must be non-arbitrary and non-discriminatory.

40. In the case of Centre for ***Public Interest Litigation & Ors.*** Vs. ***Union of India & Ors.*** reported in (2012) 3 SCC 1 is known as 2G



spectrum case wherein it has been held that equality has two facets, first, it has held the right and obligation of the State vis-à-vis its people and demands that the people be granted equitable access to natural resources and/or its products and that they are adequately compensated for transfer of resources to the private domain and secondly, it regulate the right and obligation of the State vis-à-vis private parties seeking to acquire/use the resource and demands that the procedure adopted for distribution is just, non-arbitrary and transparent and that it does not discrimination between the similarly placed private parties. Further held that power of judicial review should be exercised with care and circumspection and the Court should not ordinary interfere with the policy decision of the Government in finance matter and the Court should not substitute its opinion for the one formed by the expert in particular field and due respect should be given to the wisdom to those who have been entrusted with the task of framing the policy. The court may not interfere with the policy but, will examine the manner the policy has been acted upon by its officials and further held that if the fiscal policy framed by the State or its instrumentality is implemented contrary to the public interest or his violative of constitutional principle, it is the duty of the Court to exercise jurisdiction in larger public interest and reject the stock plea of the State that the scope of



judicial review should not be exercised beyond the recognized parameter. It is relevant to quote paragraph no.99 & 100 of the said judgment which reads as follows:-

“99. *In majority of judgments relied upon by learned Attorney General and learned counsel for the respondents, it has been held that the power of judicial review should be exercised with great care and circumspection and the Court should not ordinarily interfere with the policy decisions of the Government in financial matters. There cannot be any quarrel with the proposition that the Court cannot substitute its opinion for the one formed by the experts in the particular field and due respect should be given to the wisdom of those who are entrusted with the task of framing the policies. We are also conscious of the fact that the Court should not interfere with the fiscal policies of the State. However, when it is clearly demonstrated that the policy framed by the State or its agency/instrumentality and/or its implementation is contrary to public interest or is violative of the constitutional principles, it is the duty of the Court to exercise its jurisdiction in larger public interest and reject the stock plea of the State that the scope of judicial review should not be exceeded beyond the recognised parameters.*

100. *When matters like these are brought before the judicial constituent of the State by public spirited citizens, it becomes the duty of the Court to exercise its power in larger public interest and ensure that the institutional integrity is not compromised by those in whom the*



people have reposed trust and who have taken an oath to discharge duties in accordance with the Constitution and the law without fear or favour, affection or ill will and who, as any other citizen, enjoy fundamental rights and, at the same time, are bound to perform the duties enumerated in Article 51A. Reference in this connection can usefully be made to the judgment of the three Judge Bench headed by Chief Justice Kapadia in Centre for P.I.L. v. Union of India (2011) 4 SCC 1.”

41. In the case of *City Industrial Development Corporation through its Managing Director Vs. Platinum Entertainment & Ors.* reported in 2015 (1) SCC 558, the said judgment also followed the Ramana Dayaram Shetty case (supra). It has also followed the case of Kasturi Lal Lakshmi Reddy (supra), it is relevant to quote paragraph nos.36 to 39 of the aforesaid case which reads as follows:-

“36. We, therefore, after having considered facts detailed hereinabove, are prima facie of the view that no transparency has been maintained by the appellant Cidco in making these allotments of the government land.

37. It is well settled that whenever the Government dealt with the public establishment in entering into a contract or issuance of licence, the Government could not act arbitrarily on its sweet will but must act in accordance with law and the action of the Government should not give the smack of arbitrariness. In Ramana Dayaram Shetty v. International Airport Authority of India 1979 3 SCC 489, this Court observed as under: (SCC pp. 504 & 506, paras 11 & 12)



“11. Today 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. The valuables dispensed by the 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 relationships to the 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 businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of the 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 the 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



largesse 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? ...

12. ... 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 largesse, 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 largesse 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 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.”

38. In **Akhil Bhartiya Upbhokta Congress v. State of M.P.**, 2011 5 SCC 29, this Court while considering the question of legality of allotment of land by the State or its agencies on the basis of applications made by individuals, observed as follows: (SCC p. 60, paras 65-66)

“65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies,



organisations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.”

39. In *Kasturi Lal Lakshmi Reddy v. State of J&K*, this Court observed as under: (SCC pp. 13-14, paras 14-15)

“14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to



do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must



necessarily weigh with the Government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every Government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides.

15. The second limitation on the discretion of the Government in grant of largesse is in regard to the persons to whom such largesse may be granted. It is now well settled as a result of the decision of this



Court in Ramana Dayaram Shetty v. International Airport Authority of India that the Government is not free, like an ordinary individual, in selecting the recipients for its largesse and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largesse, 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 some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the court as a rule of administrative law and it was also validated by the court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The court referred to the activist magnitude of Article 14 as evolved in E.P Royappa v. State of T.N 1974 4 SCC 3 and Maneka Gandhi case Maneka Gandhi v. Union of India , 1978 1 SCC 248 and observed that it must 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 anyone, 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'. (Ramana Dayaram Shetty case, SCC p. 512, para 21)

This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure.”

42. The scope of judicial review and its accessibility and interference has been considered in the case of *Tejas Constructions & Infrastructure Private Limited Vs. Municipal Council, Sendhwa & Anr.* reported in 2012 (6) SCC 464 held as follows:-

- (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 or quasi- administrative sphere. However, the decision can be tested by the application of the "Wednesbury principle" of reasonableness and the decision should 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.

43. It has also been held that even when some defect is found in the decision-making process the Court must exercise its discretionary power under Article 226 with great care and 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.

44. In view of the aforesaid discussions, this Court has



decided whether it require the Court's interference in the present matter and particularly in the matter of policy adopted by the Textbook Corporation as well as payment to the respondents. As already this Court by order dated 16.2.2017 has allowed the respondents to supply material on account of overwhelming public interest of the students of the school, the resultant and the consequence as to whether the payment should be made in the terms of rate stipulated, job contract or it requires interference or proportionality should be applied if it arrived to a finding that the work order has been issued having no nexus with Notice Inviting Tender dated 14.6.2016 but there is no allegation of supply of sub-standard material.

Discussion and Finding on merit of the case

45. The petitioner has raised a grievance that the respondents have not followed proper procedure in allotment of the work to the different beneficiaries, whole action of the respondents is illegal, arbitrary and they have not maintained uniformity, rationality in distribution of the work as some establishments have been given the huge quantity of work and some establishments have been provided very lessor quantity of the work without any policy, principle guideline, in irrational manner, it has also been submitted that the job work has been allotted at very high rate having no



connection with the Notice Inviting Tender (Annexure-1) which is related to the job work of printing of Books. As the NIT has been published for printing of the book and the rate has been mentioned about printing of Books and other incidental material but the job work in the present case is related to different type of work such as printing of Report Cards, evaluation register of students from class 1 to class 8, printing of DRR Calendar and the NIT which is the basis for allotment of work is not related for the aforesaid purpose and even those establishments such as M/s Samar Offset, Sahganj, Patna did not participate in the tender having been granted the job work which itself shows the arbitrary and discriminatory exercise of power on the part of the Corporation whereas the Corporation has taken a plea that the tenders/NIT was issued with the sole purpose to find out the L-1 rate for printing of different types of material and it has nothing to do with the fact as the persons who have quoted the L-1 rate will be granted the work but the purpose is to find out the L-1 rate of the different item of the job work as well as the L-1 rate for the paper. And further said that as there was no bar that only the work order will be allotted to those establishments which have participated in the NIT but, the Corporation has issued the work order even to those who have not participated but has been registered in the Corporation. Further it has been argued that the work order has been issued on the strength of



their working capacity, as a team of the Corporation visited each establishment to find out and assess the capacity of printing machine, other infrastructure such as capacity and capability to print the different nature of item of printing materials. In such view of the matter, as per the claim of the Corporation that they issued the NIT for the purposes of finding out the L-1 rate and not the L-1 establishment. For that, it has to be examined the pleadings of the parties and the document which has been brought for consideration. As the Corporation in its counter affidavit in paragraph no.5 has specifically stated that the Department used to give work order of printing and provide a very short span of time for delivery of the goods. To sort out this problem and cut short the time consumed for obtaining the printed material, the Corporation has adopted a policy with the approval of its Board of Director since 2007 that by open tender, it gives the rate of different type of work of printing such as composing, designing, tracing, film, PS Plates, CTP Plate and its binding as well as the calling from the proposal by its registered printers and to get the rate finalized by going through the lowest rate of each work by the tender process and after getting the lowest rate, as and when the work of exigency come by the Department then it gives work order to the registered printers to set makers view of the lowest rate in the tender process which has been stated above. So, the



Corporation has stated that in 2007 they have adopted a policy to issued a tender for the purposes of getting the lowest rate of the different nature of work and this fact has been stated by different private respondents as respondent nos. 7, 22, 24 and 32 has mentioned in paragraph no.5(i) that the Board of Directors in the year 2007 took policy decision that at first by floating tender to get the lowest rate of different type of printing material such as composing etc. and calling proposal from its registered printers and get the rate finalized by recording the lowest rate of each work and after getting the lowest rate, any work of exigencies comes from any department, the work is carried out in a short span of time. Same has been stated by the respondent such as respondent nos. 6, 9, 12, 31, same plea has been taken by the respondent nos. 14, 15, 20 and 27, respondent no. 21 and 28 have also taken the same plea and further the respondent have stated that such nature of practice is adopted by the establishment which are engaged in getting bulk printing work in a short span of time. That provides a benefit to the establishment as they get a competitive lower price which saves money, time and effort, time for supply of printing materials was reduced as well as the availability of quality work done by those, are registered with the establishment. So from the above plea taken by the corporation and the respondent, they have stated that the tenders are issued not for the purposes of find out



who is the lowest tenders but the purpose behind is to find out the lowest rate of different nature of printing job.

46. In order to find out the real picture behind the scene is appropriate to examine the different terms and conditions of the tender as has been pointed out in the counter affidavit that in item no. 15 of the NIT (Annexure-1) wherein it has specifically been mentioned that tender is for fixation of rate only. This does not confer any right to the L-1 bidder regarding the allotment of work and the work will be awarded separately. So the item no.15 makes it very clear that the advertisement was published to find out the lowest rate of different type of job work. As the Corporation has adopted this policy, in order to find out the L-1 rate will hold field for subsequent period unless it is substituted by new rates arrived at by another fresh advertisement. As this is a policy of the Corporation under the judicial review, in the policy matter, the Court should always keep restrain and very slow to interfere in the policy matter unless the policy of a Government or its Agency is irrational, unfair, non-transparent, leads to discrimination or policies which has been adopted is completely arbitrary, attracts Article 14 of the Constitution of India. If the policies which has been framed by the Government or Corporation is in consonance with the different constitutional provision and reasonability has been maintained followed by transparency, in such circumstances, the



Court will refrain to interfere with the policy and, in such a situation, this Court feels that the policy which has been adopted the 2007 for the purposes of expeditious execution of the work order in a short span of time by different agencies in the rate which has already been arrived into, cannot be said to be arbitrary policy or in any manner is illegal, irrational or prejudicial to any of the establishment.

47. In such view of the matter, this Court holds that the policy adopted and followed by the Corporation in arriving to L-1 rate with respect to the work order as well as well as to the rate of paper is legal and it does not require any interference by this Court.

48. But this is not the end of the matter. Even if the court approves the policy but it has to be examined whether in practice the Corporation has followed the policy which the Corporation has itself prepared while making allotment of the work order. Though this Court has not interfered with the policy as has been decided herein above but will examine the complaint of the petitioner that the advertisement which has been issued in the year 2016 is for the printing of the books and for that the Corporation was required to find out the lowest rate of different nature of printing of books but, that tender was not published for the job work of printing of report cards, evaluation register, DRR Calendar as having claimed that in the year 2015, the Corporation has issued the tender for printing of report



cards, evaluation register and DRD Calendar and they have awarded the work order to Puja Printech at the very lower rate whereas this time the work order has been given in some cases more than 33%, 50% and 30% i.e. at much higher rate than that of the rate which was fixed for the same work order in the last year. For examining this complaint, it will be appropriate to examine the different terms and conditions stipulated in the tender mentioned in the NIT, 2016 was for printing of books or was inclusive of printing of job work of report card, evaluation register and DRR Calendar. For that, it requires a forensic examination of Annexure-1 to find for what purpose the tender was published and tenders were invited. Clause-1 of the tender notice provides that the sealed tenders are invited from reputed and experienced single, double & multicolor sheet fed and web offset printers registered with BSTBPC for printing rates of various sequences of printing. The printers are required to quote the printing rates, Binding, plate making, Film making including manual and scanned if required in the prescribed format in Section-III- "A", "B", "C", "D", & "E" are enclosed. In the tender document, item no. (15) mentions that the participation in the bid will not confer any right of ward of contract work in corresponding opposite, it has been mentioned that the tender is for fixation of rates only. This makes it very clear that it does not confer any right to the L-1 bidder regarding



allotment of work. Work will be awarded separately. Section (II) provides the Technical Specification of printing works, the item no.1 is related to size of books, different nature of size has been mentioned as (i) Double Crown 1/8 (18X24 CM), (ii) Double Demy- A/4 (20.5X27.9 CM) and (iii) Double Demy- A/5 (14X20.5 CMS.) and with regard to the printing paper, it has been mentioned that as per the job requirement, the Corporation may supply paper for printing. In some job work, the bidder/printer shall be required to procure the papers. So it indicates that item no.1 gives a picture that the printing was to be done of books, specification of quality of paper has been mentioned. Section III (B) mentions as rates for different sequence of book printing for SHEET FED OFFSET (UNDER JOB WORK) FINANCE BID 2016. Section III (C) also mentions as rates for different sequences of book printing for web offset (Under Job Work) Financial Bid- 2016. Section III(D) mentions as rates for different sequences of book printing for sheet fed offset (Under Job Work) Financial BID 2016. Below it has been mentioned that cover printing rate per thousand cover.

49. So Annexure-1 gives glimpse that tender was advertised for the purpose to find out the rate for printing of books as every where it has been mentioned that the job work is related to printing of books and it has not been mentioned other items itself



shows that tender was not of composite nature. As some of the respondents have taken a plea that the tender which has been published in the year 2016 is a composite tender to find out the rate of job work with respect to books and other nature of works including the rate of job work of evaluation register, report card and DRR Calendar. To find out the crux of the matter, on examination submissions made by the respondents vis-à-vis argument of the petitioner, it will be proper to examine the other documents which have been brought on record for the purpose of consideration. It will be appropriate to examine the NIT which has been issued on 20.1.2015 (Annexure-4) which reflects that the tender was floated by BSTBPC (Corporation) which includes the cost of paper was for brochure printing report card. Another notification dated 12.1.2015 (Annexure-5) is a short tender notice, is for printing DRR Calendar, poster, booklet, DRR Calendar booklet. Another tender notice dated 21.1.2015 (Annexure-6) which has been issued to find out the L-1 rate for printing job of short portfolio, 2014 which includes the cost of paper. So the contention of the Corporation as well as some other private respondent, the 2016 tender is inclusive all type of work is not correct state of affair as has been claimed. It further appears that for different type of jobs, the Corporation use to invite tender for different work and time to time they allot the specified work to the



establishment for the printing purposes. In the counter affidavit, the plea has been taken by the Corporation that the rate fixed in 2007 continued to operate to 2015 and there was resistance and objection by the establishment about the lower rate of printing and, as such, the fresh tender was issued in the year 2016. It appears that it is not a correct state of affairs which the Corporation has projected but, this Court is of the view that 2016 NIT is meant for the purpose of printing of books not for the purpose of printing of report card, evaluation register or DRR Calendar.

50. The petitioner in order to substantiate its claim of allotment of work order at higher rates is reflected from the work order which was issued to the Puja Printtech in the year 2015 and 2016, is clear from Annexure 7 & 8 which shows that the Corporation has granted work to Puja Printtech Pvt. Ltd. for report card as well as table calendar.

51. So on analysis of facts and materials, the finding can safely be recorded that the Corporation did not issue composite tender to find out the lowest rate for different types of job but, it is clear that the Corporation from time to time issued the tender for different nature of job work and to find out the lowest rate as has been claimed by the Corporation that the tenders are issued only for the purposes to find out the lowest rate. This arrives to a finding that NIT dated



14.6.2016 (Annexure-1) is to find out lowest rate for printing of Books only.

52. In the counter affidavit, the claim has been made by the Corporation that it has given the rate of the paper as per lowest paper rate fixed in the year 2014 as has been stated in the paragraph no.6 that generally the Corporation takes the rate as stated above by open tender without the rate of paper, if that paper remains in the possession of the corporation, it supplies paper to the printer. But sometime it happens that for such type of work, the papers are not available and, in such circumstances, the establishment has to carry out the work order along with paper and the lowest rate of the paper is arrived through the separate tender. It has been further stated that earlier in the year 2006, the rate of paper was obtained by open tender but in the year 2013, the rate of paper required to be re-fixed and, in that context, the proposal was moved to Principal Secretary, Department of Education and in view of that in the year 2014, the new rate of paper was obtained by calling upon the tender. So the plea has been taken that the rate of paper which has been obtained in the year 2014 would be paid to the respondent. So the crux of the submission of the Corporation and the other private respondent that the printing rate will be based upon the lowest rate arrived in the year 2016 tender and the rate of paper which has been arrived in the year 2014, will be



the basis for payment to the work carried out by the different establishment. In that context, it has to be seen that whether the action of the corporation in payment of cost of paper at the rate which is meant for the printing of Books will be a proper for the nature of paper used for printing of Books as the nature and quality of paper used in printing of Books will be quite different and distinct that that of the paper which will be used for the purpose of printing of job of report card, evaluation register and DRR Calendar. So it is apparently clear that the rate of paper meant for printing of books cannot be basis for payment of the work carried out with respect to the nature of the work as stated above. Certainly the printing of books will be of high quality, quite different, distinct the paper used for report card, evaluation register etc.

53. As this Court vide order dated 6.2.2017 has allowed the respondents to complete the supply of material as it was found that it was related to the academic career of the students and it should not be in any way hampered but, the present matter is only limited to in what rate the payment should be made to the 27 establishment which have supplied the printing material to the Corporation.

54. In my view, the N.I.T. (Annexure-1) relates to the rate of the book, cannot be basis for the payment of job works allotted to different respondents. Hence this Court directs the constitution of



Three Man Committee represented by the Principal Secretary of Finance or any of his representative, second member, Principal Secretary of the Industries Department or his representative and third member, Managing Director of Corporation, to examine recent past rate corresponding to present nature of job work involved in the present work order and the rate of paper corresponding to the quality of paper utilized for job work, rate fixed by the Committee will be basis for payment of amount of money to the respondents against the job work done by them. This Court directs Committee would complete its exercise within a period of six months from the date of receipt or production of a copy of this order.

55. Another point has been taken by the petitioners that the Corporation has not maintained rationality in allotment of the work order to the 27 establishments correspondingly as some of the establishments have got a lion share and others have been given a very small quantity of work. This Court is not required to examine this issue in the sense that none of the establishment with whom the irrationality has been meted has come forward and raised the grievance. So this issue will be decided in appropriate case but, however, this Court is of the view that Corporation should maintain rationality, transparency in the matter of allotment of the work order so there may not come any occasion to raise the finger at the



Corporation of illegal and arbitrary exercise of power as reasonability and rationality is the part and parcel of Article 14 of the Constitution of India which is a golden thread running through every fabrics of the constitutional provisions.

56. With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

Rishi/-

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