**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION Nos.11478 & 11481 of 2019**

**COMMON ORDER:**

Since the parties and the issue involved in both these writ petitions is one and the same, they are being heard together and disposed of by way of this Common Order.

**2. W.P.No.11478 of 2019**

Initially, this Writ Petition is filed assailing the action of the 2nd respondent in issuing E-tender notice/detailed notice, inviting tender dated 16.05.2019 omitting the name of the petitioner from the list of permitted bidders/brands, who are allowed to bid and participate for Tender Notice Ref.No.2019_MES_252923_1 for replacement of passenger lift at Apollo DRDO Hospital against BER Lifts at Kanchanbagh, Hyderabad, as illegal and arbitrary and consequently to direct the respondents to include the name of the petitioner as an eligible bidder to offer its bid the subject tender.

**3. W.P.No.11481 of 2019**

This Writ Petition is filed assailing the action of the 2nd respondent in issuing E-Tender Notice/Detailed Notice Inviting Tender dated 16.05.2019 omitting the name of the petitioner from the list of permitted bidders/brands, who are allowed to bid and participate for Tender Notice Ref.No.2019_MES_253026_1 for replacement of passenger lift under GE I R and D West Bengaluru, as illegal and arbitrary and consequently to direct the respondents to include the name of the petitioner as an eligible bidder to offer its bid for the subject tender.

4. Subsequently, they filed I.A.Nos.3 & 4 of 2019 in WP Nos.11478 and 11481 of 2019, for amending the prayer and also to implead the 3rd respondent as party respondent to the Writ Petition, respectively and the same were allowed on 21.08.2019 and 01.07.2019 respectively. By way of amendment, the petitioner is seeking to quash the communication issued by the 3rd respondent dated 29.05.2017 on the ground that the classification of manufacturers into Group-I and Group-II, is without any legal basis.

5. For the sake of convenience, the facts narrated in WP No.11478 of 2019 are being considered for disposal of these Writ Petitions, which are as follows:

The petitioner i.e., Omega Elevators is a proprietorship concern, having its registered office at Ahmedabad, Gujarat. The petitioner claims to be the original manufacturer of lifts and involving in sale, marketing or after sale maintenance and service of the lifts and is one of the reputed business entities in the field of supply & commissioning of lifts/elevators and escalators. It is a 'A Class' certified/enlisted electrical contractor with various State EWD Departments. It had also commissioned lift/escalator equipment at Rashtrapati Bhawan, New Delhi. The respondents issued impugned tender notification i.e., Tender Notice Ref.No.2019_MES_252923_1 for replacement of passenger lift at Apollo DRDO Hospital against BER Lifts at Kanchanbagh, Hyderabad and Tender Notice Ref.No.2019_MES_253026_1 for replacement of passenger lift under GE I R and D West Bengaluru, with brand specification. Though the petitioner made a detailed representation on 10.06.2019 stating that the office of Hon'ble Prime Minister had also issued a communication urging the Government authorities not to insert any brand specific condition in the tender documents, there was no response from the respondents. When the name of the petitioner was not mentioned in the approved list of bidders in the States of Rajasthan and Maharashtra, on being challenged by the petitioner, the same were rectified. Since the petitioner is a 100% make in Indian entity and manufactures majority of its components in-house, is able to work with lesser margin in comparison to other foreign brands as sought to be promoted by the respondents. Since respondents have added the list of makes to the tender document, without any application of mind, which would encourage formation of cartels/syndicates defeating the purpose of e-auctions and transparency, the same is liable to be quashed.

6. Counter affidavit and vacate stay petitions are filed by the respondents 1 & 2 denying the averments in the affidavit filed in support of the writ petition stating that since the petitioner failed to produce any documentary evidence with regard to proprietorship concern, the same is liable to be dismissed on this ground alone. The competent authority approved the makes of the lifts under Group-I, as such, there was no intention on the part of the respondents to omit the petitioner from the Group-I and include in

Group-II. Since the letter of Engineer-in-Chief, Army Head Quarters, New Delhi, who is the competent authority to approve the makes and manufacturers of lifts depending upon the specific requirement for various types of projects, has been endorsed to the petitioner, the petitioner is well aware about policy of MES department about inclusion of makes/manufacturers of Lifts in the tenders. Since the lifts are to be installed in Hospital, as per the agreed policy vide letter dated 29.05.2017, the manufacturers falling in Group-I have been incorporated in the subject matter. The letter of the petitioner dated 10.06.2019 was received in the office of the 2nd respondent on 12.06.2019, by that date, petitioner filed the present writ petition, as such, the respondents unable to give reply to the letter of the petitioner dated 10.06.2019. The manufacturers of lifts included in the tender are India based and approved/authorized by the competent authority, considering their vast reputation, performance and experience in the field of lifts, as such, there was no ulterior motive in inclusion of brands/makes included in the subject tender. The petitioner is at liberty to revise their offer considering the make/brands included in the tender and that the respondent has no intention to reject the offer of the bid, if the petitioner quotes his bid only for the makes/brand/manufacturers mentioned in the tender as per terms and conditions of the tender, provided the bid is in order or otherwise. There was no advertisement published by the respondent in newspapers, as contended by the petitioner, but the tender documents along with the NIT were published in the website www.defproc.gov.in. It is not in the practice of the organization to include the makes/brands of the lifts to be installed under the subject tender in NIT, but the list of manufacturers/brands is part of tender documents and are listed at item rate BOQ Sl item No.2 on Sl. Pge No.23 of the tender document. Considering the equivalency or cost, work and maintenance ethos by the approving authority, the name of the petitioner was listed in Group 2. Since the petitioner had not enclosed any documentary proof with regard to works executed by him, there is no occasion for the respondents to know that they have executed satisfied quality. The respondents have right to discriminate among various manufacturers based on their reputation, performance and experience in the field of lifts and that they have no *malafide* intention whatsoever in cartels/syndicates thereon as the tender was published in e-portal under public domain and any firm/bidder can participate from any corner of the country as per the tender provisions. The respondent has no intention to blacklist the firm or has black listed the firm, but the petitioner had made deliberate attempt to demoralize the spirit of e-tendering. Since the petitioner had already uploaded his bid, he may revise the same as per the terms and conditions of the tender, as such, there was no violation of principles of natural justice, as contended by the petitioner.

4. Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of the writ petition stating that the approval of lifts/elevators manufacturers was done by the highest office of MES department, i.e., Engineer-in-Chief,

New Delhi, based on the credentials. Though the petitioner has received the letter of this respondent on 29.05.2017, petitioner accepted the same without any reservations, he cannot challenge the same after more than two years of issue of ibid letter. The approval of lifts in two groups namely Group I and Group I had been done by a Board of Officers at Engineer-in-Chief's branch, New Delhi, after considering the following factors; (a) Quality of products; (b) Cost compatibility; c) Experience of the firm based on works executed in important and prestigious buildings (d) Reputation in the market; e) Financial capability of the firm and (f) response to maintenance issues during defect liability/warranty period. The approval of elevator of petitioner had been done by the Engineer-in-Chief's branch, New Delhi valid upto 28th May, 2019, but the petitioner has not produced the renewal of their product by the competent authority. The approval of lift/elevators of petitioner is no more valid as on date. That the present writ petition is a writ of mandamus and the amendment pleaded is the nature of certiorari i.e., setting aside and quashing of the approval policy dated 29.05.2017 which is beyond the scope of the amendment application made by the petitioner, in the present writ petition, as such, sought for dismissal of the writ petition.

5. Reply affidavit is filed by the petitioner denying the averments in the counter affidavits filed by the respondents stating that the communication sent by the 3rd respondent dated 29.05.2017 expires by 29.05.2019 and there is no mention of same in the impugned tender notification, as such, there is no nexus of such

communication with the present tender and that the respondents cannot be allowed to amend the tender document by way of counter affidavit filed before this Court. There is no rationality or reasoning behind classification of manufacturers of lists into Group-I or Group-II vide communication dated 29.05.2017 and that the same fails to demonstrate the purpose for which it was issued. It is not the case of the respondents that brands in Group-II are less competent or supply lifts of inferior quality. That the petitioner's bid is in accordance with the requirements of respondents, as such, they ought to have considered the same irrespective of being influenced by the condition of the brand. Though the Ministry of Commerce & Industry, Government of India vide order dated 29.05.2019 issued specific directions for conducting of public auctions and public solicitations, the same are being flouted by the respondents by insertion of brand preference, so as to grant favours to a select group of manufacturers. That the communication date 29.05.2017 is not a government policy or a resolution, as such, the respondents cannot be allowed to rely upon such document so as to determine manner and mode or conduct auction in public tendering process.

6. Heard Sri Bhargav Haseenkar, learned counsel for P.B.A.Ratnamala, learned counsel for the petitioner, Sri Anjali Agarwal, learned Standing Counsel for the respondents 1 to 3.

7. Learned counsel for the petitioner, while reiterating the averments in the affidavit filed in support of the writ petition, submits that though the petitioner is technically qualified to bid for

the subject tender, his name was excluded/omitted from the list of eligible bidders, unilaterally, without any basis. He submits that there is no rationale or reasoning in classifying the bidders into Group-I and Group-II and that no applications were invited while enlisting them into such categories. He submits that the enlistment of applications into Group-I and Group-II vide communication dated 29.05.2017 by the authority is to create a division and discrimination, without any justification and that the same expires by 29.05.2019, as such, there is no application of such communication to the subject tender. He submits that the respondents have deliberately suppressed the order passed by the Principal Secretary to Prime Minister in D.O.No.330/31/C/64/2018-ES-1, dated 03.01.2019, wherein brand specification is prohibited. He submits that the action of the respondents in omitting the name of the petitioner as an eligible bidder amounts to blacklisting the petitioner, without any communication to that effect to him and without recourse to any procedure contemplated under law, which is in violation of principles of natural justice. In support of his contention, he relied on the judgments reported **UNION OF INDIA v. N.S.Rathnam[1], Aashirwad Films v. Union of India[2] and State of Punjab v. Senior vocational Staff Masters Association[3].**

8. On the other hand, learned Standing Counsel for the respondents submits that respondents have included the makes of

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[1] (2015) 10 Supreme Court Cases 681
[2] (2007) 6 Supreme Court Cases 624

[3] (2017) 9 Supreme Court Cases 379

lifts which are approved under Group I and petitioner was placed under Group-II by the competent authority vide communication dated 29.05.2017 and same is endorsed to the petitioner, as such, he cannot challenge said communication in these writ petitions, after lapse of two years. She submits that the competent authority had approved the lift manufacturers based on the technology, expertise, experience and performance. She further submits that the respondents have categorised the bidders only on the technical specification, but not on brand specific. She further submits that since the lifts are to be installed in Hospital for which only Group-I makes/brands/manufacturers are qualified, the name of the petitioner is not included in the list of makes/manufacturers stipulated in the tender documents and sought for dismissal of the writ petitions.

9. In this case, it is to be seen that admittedly the 2nd respondent issued impugned tender notifications dated 17.05.2019 for replacement of passenger lift at Apollo DRDO Hospital against BER Lifts at Kanchanbagh, Hyderabad and also for replacement of passenger lift under GE I R and D at West Bengaluru. The impugned clause in the said notification, in WP No.11478 of 2019 reads as follows:

> "Supply, install, test and commissioning of electrically operated passenger lift of carrying carry 1360 kg (20 passengers) with a speed of approximately 0.5 metre/second to serve basement to fourth floors (total of 06 floors) with AC variable voltage and variable frequency (V3F) drive system on the micro processor controlled with power driven automatic sliding door (COPD) suitable to the size of car having stainless steel panels in hairline finish No.04, SS sliding door, PVC flooring in cabin, SS Hair line finish No.04 ceiling, door operation automatic, entrance protection, 3D full height infra red curtain door detector system, indicators (landing/car) with DOT Matrix type

direction and position indicators with stainless steel face plates (for car-full length COP shall be provided), press and speak three way intercom with speaker, SS Hand Rails in mirror finish, hall lantern (up/down) and Gong indicator arrangement, pit ladder and balustrade, over load warning signal, battery operated alarm bell and emergency light, announcement system with music, stop switch, auto cut-off car fan switch, door open and close button, Auto rescue devise (ARD), do's and dont's information and minor building work, scaffolding and necessary steel items for the erection of the elevator complete all as per standard design of manufacturer with the following accessories complete all as specified and directed include the following accessories (Data sheet is enclosed as per Annexure 'I" at SL Page Nos 134® & 135 of tender documents):-

MAKE: M/s.KONE INDIA/ M/s.SCHINDLER INDIA PVT. LTD. M/s.MISTUBISHI ELEVATOR INDIA PRIVATE LIMITED, M/s.OTIS ELEVATOR COMPANY INDIA LTD."

It is the specific contention of the learned counsel for the petitioner that the conditions imposed in the tender notification with regard to brand specification is arbitrary, illegal and contrary to the order issued by Principal Secretary to Prime Minister in D.O.No.330/31/C/64/2018-ES-1, dated 03.01.2019 and also the order of the Government of India, Ministry of Commerce and Industry, Department for Promotion of Industry and Internal Trade, dated 29.05.2019. For the sake of convenience, the same is reproduced as follows:

"NRIPENDRA MISRA
Principal Secretary to Prime Minister

D.O.No.330/31/C/64/2018-ES-1 3rd January, 2019

Dear Secretary,

Complaints are being received, alleging that Government entities are indicating foreign make/brands and/or restrictive conditions in their tenders, thereby excluding local manufacturers from bidding process.

2. It may be noted, that such, stipulation of foreign make/brands and/or restrictive conditions (the mandatory requirement of certification by foreign bodies) in the tenders is not only violative of Public Procurement (Preference to Make in India) Order, 2017 (PPP-MH Order 2017) issued by DIPP but also, in violation of the General Financial Rules, in the regard, it is necessary to following general guidelines.

a. Indicating foreign make brands in the tender, and thereby excluding local manufacturers and service provides from participation, is in violation of public procurement (Preference to Make to India) Order, 2017.

Also, as per Rule 144(1)(b) of GFR 2017, procuring agency shall not indicate a requirement for a particular trade mark, trade name of a brand.

b. As per Rules 144(III) of GFR 2017, the technical specifications shall, to the extent practicable, be based on the nation technical regulations of recognized national standards.

c. Ministries/Departments should also ensure that their procurement entities do not incorporate any such restrictive and discriminatory criteria regarding turnover, specifications/testing/other standards in tender documents that exclude local manufacturers/service providers.

3. Please ensure compliance of above guidelines strictly at the level of Ministry/Department as also by all attached/subordinate offices and PSUs/Autonomous bodies under the administrative control of your Ministry/Department. Any violation in this regard shall be viewed seriously.

With regards.

Yours sincerely,
Sd/-
(Nripendra Mishra)

Sri Arun K.Panda,

Secretary, M/o.Micro, Small & Medium Enterprises, New Delhi.

A perusal of the said order dated 03.01.2019 goes to show that indication of foreign make brands in the tender excluding the local manufacturers is against violation of public procurement (Preference to Make in India) Order, 2017 and to the effect that the there should not be any restrictive and discriminatory eligibility criteria regarding specifications and other standards in the tender documents that exclude local manufacturers/service providers. The Government of India had also taken policy decision to encourage 'Make in India' to promote manufacturing and production of goods and services in India, with a view to enhance income and employment in India. In the said order, at para No.3(a) of the said order, it is stated as under:

"**Requirement of Purchase preference**: Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to local suppliers in all procurements undertaken by procuring entities in the manner specified hereunder.

a. In procurement of all goods, services or works in respect of which the estimated value of procurement is less than INR 50 Lakhs,

> only local suppliers shall be eligible to bid. However, in procurement of all goods, services or works, in respect of which the Nodal Ministry/Department has communicated that there is sufficient local capacity and local competition, only local suppliers shall be eligible to bid irrespective of purchase value.
>
> Provided that for any particular item, the Nodal Ministry/Department may also prescribe an upper threshold limit, below which procurement shall be made only from local suppliers.
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> Further provided that in any particular case of procurement, if the procuring authority is of the view that the goods, services or works of required quality/specifications etc. may not be available in the country, or sufficient capacity or competition does not exist domestically and it is necessary to undertake global competitive bidding, the procuring authority may allow the same after recording reasons. In such cases, the provisions of sub-paragraph b or c, as the case may be, shall apply"

A perusal of the aforesaid clause goes to show that in procurement of all goods, services or works, in respect of which the Nodal Ministry/Department has communicated that there is sufficient local capacity and local competition, only local suppliers shall be eligible to bid irrespective of purchase value. However, if the procuring authority is of the view that the goods, services or works of required quality/specifications etc., are not be available in the country, or sufficient capacity or competition does not exist domestically and if it is necessary to undertake global competitive bidding, it may allow the same after recording reasons. Admittedly, the petitioner is a local manufacturer, having vast experience in the field of manufacture and installation of lifts and had also executed several works in the Government and Semi-Government institutions including at Rashtrapathi Bhawan, New Delhi. It is not the case of the respondents that the petitioner had issues with regard to the projects executed by it nor that the lifts manufactured by the petitioner is of inferior quality. Therefore, it is clear from the order of the Government of India that the local suppliers shall be given preference, if they meet the eligibility criteria. But in the instant case, the respondents have specified the make of the lifts in the subject tender.

10. Learned counsel for the petitioner, while relying on the Office Memorandum dated 10.01.2019, issued by the Central Public Works Department, submits that the indication of brand specification in the impugned tender notification excluding the name of the petitioner, is arbitrary and illegal, as such, same is unsustainable in the eye of law. For the sake of convenience, the said Memorandum, is extracted hereunder:

"CENTRAL PUBLIC WORKS DEPARTMENT
ISSUED BY THEAUTHORITY OF DIRECTOR GENERAL, CPWD
DG/SE TAS(E)/enlist.Rules-Lifts-A/03

NIRMAN BHAWAN, NEW DELHI Dated: 10/01/2019

OFFICE MEMORANDUM

Sub: Discontinuation of the enlistment of contractors in Category-Lifts, Class-A

In continuation to OM No.DG/Misc.(E&M)09 dated 09-11-2018 vide which list of 5 nos. Lift Manufacturers i.e., Ms OTIS, M/s.Kone, M/s.Mitsubishi, M/s.Schindler and M/s Johnson Lifts Pvt.Ltd Chennai was kept on hold, it has now been decided to discontinue the enlistment of lift manufacturers. Accordingly, Enlistment Rules-2018 for Category-Lifts, Class-A issued vide OM No.DG/SE TAS (E)/Enlist.Rules-Lifts-A/01 dated 10-04-2018 stands modified with immediate effect. This also applies to the effect of removal of names of Ms OTIS, M/s Kone, M/s Mitsubishi, M/s.Schindler and M/s Johnson Lifts Pvt. Ltd. Chennai from the Works Manual as laid down in Section 16.7(i) of CPWD Works Manual 2014.

NIT approving authorities may therefore take decision to invite tenders of SITC of Lifts as per prevailing Rules, Orders and Guidelines of the Government issued by the Government from time to time and as per the requirements of the client.

This issues with the approval of DG, CPWD.

Sd/-

(D.K.Tulani)

Superintending Engineer (E) TAS"

A perusal of the aforesaid Memorandum goes to show that initially, the CPWD, by virtue of proceedings dated 09.11.2018 continuation of lift Manufacturers i.e., Ms OTIS, M/s Kone, M/s Mitsubishi, M/s.Schindler and M/s Johnson Lifts Pvt. Ltd. were kept in abeyance and subsequently, by proceedings dated 10.01.2019, decided to discontinue the enlistment of the aforesaid lift manufacturers and removed their names from the Works Manual as laid down in Section 16.7(i) of CPWD Works Manual, 2014. When once, CPWD had removed the names of the aforesaid lift manufacturers from the CPWD Works Manual, the respondents cannot incorporate the same in the impugned tender notification. Though it is specifically contended by the learned Standing Counsel that the competent authority had categorized the lift manufacturers under Group-I and Group-II, basing on the reputation and experience, in view of the Office Memorandum dated 10.01.2019, the same cannot be taken into consideration, omitting the name of the petitioner, who is local supplier. That apart, no specific reasoning is offered in the proceedings dated 29.05.2017 by the competent authority for categorizing the lift manufacturers in Group-I and Group-II. It is not the case of the respondents that the petitioner has no experience and that the goods and services supplied by the petitioner is of inferior quality and that there are complaints against the petitioner. Therefore, if the petitioner is equally competent enough to offer his tender on par with the lift manufacturers enlisted in Group-I, they have to be treated equally and petitioner shall be permitted to participate in the bid. There should be some rational nexus between the basis of classification and the object intended to be achieved by the respondents. When there is no such glaring difference between the lift manufacturers mentioned in Group-I with that of the petitioner, the said categorization is unsustainable in law. When the respondents have incorporated such brand specifications, then this Court can always review said conditions, as held by the Hon'ble Supreme Court in **Union of India v. N.S.Rathnam (supra),** wherein it is held as follows:

> "13. It is, thus, beyond any pale of doubt that the justiciability of particular Notification can be tested on the touchstone of Article 14 of the Constitution. Article 14, which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws. Equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed. Therefore, if the two persons or two sets of persons are similarly situated/placed, they have to be treated equally. At the same time, the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position. It would mean that the State has the power to classify persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality but mere production of inequality is not enough. Article 14 would be treated as violated only when equal protection is denied even when the two persons belong to same class/category. Therefore, the person challenging the act of the State as violative of Article 14 has to show that there is no reasonable basis for the differentiation between the two classes created by the State. Article 14 prohibits class legislation and not reasonable classification.
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> 14. What follows from the above is that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory. In Sube Singh v. State of Haryana[5], this aspect is highlighted by the Court in the following manner:

> 10. In the counter and the note of submission filed on behalf of the appellants it is averred, inter alia, that the Land Acquisition Collector on considering the objections filed by the appellants had recommended to the State Government for exclusion of the properties of appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of 'B' or 'C' class and could not be easily amalgamated into the developed colony which was proposed to be built. There is no averment in the pleadings of the respondents stating the basis of classification of structures as 'A' 'B' and 'C' class, nor is it stated how the amalgamation of all 'A' class structures was feasible and possible while those of 'B' and 'C' class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some land owners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into 'A', 'B' and 'C' class is a reasonable classification having an intelligible differential and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the land proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with R.C. roofing, Mozaic flooring etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan.
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> 18. We are conscious of the principle that the difference which will warrant a reasonable classification need not be great. However, it has to be shown that the difference is real and substantial and there must be some just and reasonable relation to the object of legislation or notification. Classification having regard to microscopic difference is not good…”

13. In **Aashirwad Films v. Union of India (supra),** the Hon’ble Supreme Court held as follows:

"24. This Court in this case is not concerned with the application of test of reasonableness while considering the constitutionality of a statute. The test of reasonableness, however, would vary from statute to statute and the nature of the right sought to be infringed or the purpose for imposition of the restriction. It is also not a case where a Section of the people have been picked up and they form the constituted class by itself. It is furthermore not a case where the State has picked up and chosen districts, objects, methods in the matter of imposition of tax. However, although a legislative body has a wide discretion, and taking statute may not be held invalid unless the classification is clearly unreasonable and arbitrary but it is also trite that class legislation is that which makes an improper discrimination by conferring particular privileges. "Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege. A classification must not be arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates." (See Weaver's Constitutional Law, Page 397)

25. The purported classification only on the basis of language without anything more and in particular having regard to the difference in the rate of tax, in our opinion is ex-facie arbitrary. The burden was, therefore, on the State to show that the imposition was justified. Different rates of entertainment tax had not been levied having regard to the nature of theatre, the area where they were situated or extent of occupancy etc. It has not been explained as to whether cinema theatres exhibiting Telugu films suffer from any disadvantage which others had not been. It has not been shown as to why the same theatre where films in different languages are exhibited would be a class apart, only because at different times exhibit films produced in different languages. Moreover, how telugu films have been treated as a separate class have not been stated. Although the legislature enjoys a greater freedom and latitude in chosing person upon whom and suggest upon which it can levy tax, it is trite that taxing legislations are not immune from attack based on Article 14. It is also not the case of the respondent State that in imposing different rate of tax, they intend to achieve an avowed object envisaged under Part IV of the Constitution of India."

14. In **State of Punjab v. Senior Vocational Staff Masters Association (supra),** the Hon'ble Supreme Court held as follows:

"23. It is a cardinal principle of law that government has to abide by rule of law and uphold the values and principles of the Constitution. Respondents herein alleged that creating an artificial distinction between the persons in the same cadre would amount to violation of Article 14 i.e. equality before law and hence, such an act cannot be sustained. The doctrine of equality is a dynamic and evolving concept having many dimensions. Articles 14-18 of the

Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination which lacks the object of achieving equality, in matters of employment. It is well settled that though Article 14 forbids class legislation but it does not forbid reasonable classification. When any rule of statutory provision providing classification is assailed on the ground that it is contrary to Article 14, its validity can be sustained if it satisfies two tests, namely, that the classification was to be based on an intelligible differentia which distinguishes persons or things grouped together from the others left out of the group, and the differentia in question must have a reasonable nexus to object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the Statute or the Rule.

26) The principle of equality, is also fundamental in formulation of any policy by the State and the glimpse of the same can be found in Articles 38, 39, 39A, 43 and 46 embodied in Part IV of the Constitution of India. These Articles of the Constitution of India mandate that the State is under a constitutional obligation to assure a social order providing justice- social, economic and political, by inter alia, minimizing monetary inequalities, and by securing the right to adequate means of livelihood and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections. Meaning thereby, if the State is giving some economic benefits to one class while denying the same to other then the onus of justifying the same lies on the State specially in the circumstances when both the classes or group of persons were treated as same in the past by the State. Since Vocational Masters had been drawing same salary as Vocational Lecturers were drawing before the application of 4 th pay commission, any attempt to curtail their salary and allowances would amount to arbitrariness which cannot be sustained in the eyes of law if no reasonable justification is offered for the same.

19) In view of the forgoing discussion, we are of the considered opinion that the High Court was fully justified in declaring that the vocational masters are entitled to pay scale of Rs. 6,400-10,640/- on the ground that the nature of duties being discharged by the vocational masters are the same as vocational lecturers and that there was no rationale behind making a classification between the two especially when both the categories were treated as one and the same in all the previous pay revisions since 1978 onwards. Vide notification dated 31.03.1995, only the nomenclature of vocational masters was changed without changing their nature of duties and pay scales. Further, the impugned order dated 16.07.2003 deserves to be quashed on the short ground that it has been passed without complying the rules of natural justice. The same could not have been passed without giving an opportunity of hearing to the concerned employees."

15. In similar circumstances, when petitioner had challenged the impugned brand specific condition imposed by the respondents-tendering authority, the High Court of Madhya Pradesh set aside the said condition in WP No.12880 of 2018, dated 16.08.2018. The High Court of Calcutta had also set aside said impugned brand specific condition in WP No.486 of 2018 vide order dated 11.10.2018.

16. In view of above facts and circumstances, and also in view of principle laid down in the aforesaid decisions, this Court is of the considered opinion that inclusion of impugned clauses making brand specifications and categorization into Group-I and Group-II is illegal and without any basis, as such, the same is liable to be quashed and accordingly quashed.

Since it is stated in the counter affidavit that the petitioner can submit revised tender and specification, it is open for him to do so, if he feels necessary. The respondents are directed to consider the tenders/bids submitted by the petitioner, *dehors* the brand specification in the impugned notifications.

Accordingly, both these writ petitions are allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, shall stands closed.

**A.RAJASHEKER REDDY,J**

17-09-2019
kvs

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

Writ Petition Nos.11478 & 11481 of 2019

Date: 17.09.2019

kvs