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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). Nos.14995 & 15600 of 2022

In the matter of an application under Article 226 & 227 of the Constitution of India.

In W.P.(C).No.14995 of 2022

Dilip Kumar Dey & Ors. ... Petitioners

Versus

Chief Executive Officer, SAIL,
Rourkela & Ors. ... Opposite Parties

In W.P.(C).No.15600 of 2022

Sibashankar Dash & Anr. ... Petitioners

Versus

Chief Executive Officer, SAIL,
Rourkela & Ors. ... Opposite parties

For Petitioners ... M/s. S.K.Nanda & A.Nanda.
(In both the writ petitions)

For Opposite Parties ... Mr.Gautam Misra, Sr.Advocate,
Mr.D.K.Patra, Mr.J.R.Deo, &
Mr.S.Mohapatra.
(For O.P.Nos.1to 3).
Mr.B.K.Rao.
(For O.P. No.4)
(In W.P.(C).No. 14995 of 2022 only)

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing: 25.11.2022 Date of Judgment:05.12.2022

Biswanath Rath, J. Both the writ petitions involve following respective prayers:

In W.P.(C).No.14995 of 2022

“The petitioners above named, therefore, most humbly pray on the facts and in the circumstances stated above that this Hon’ble Court be pleased to issue notice to the Opp. Parties and after hearing all the sides be further pleased issue a writ and

a. Order or direction of a suitable nature to all the Opp. Parties not to prevent the petitioners/LCOs of Rourkela, providing Cable Television services to facilitate their trade freely in Rourkela Town;

b. Direct the Opp. Party No.1 & 2 to issue appropriate direction to O.P. No.4, 5 and 6 not to take any coercive action against the LCOs/petitioners and maintain an ethical business practice and develop a feel good factor with LCOs as in pre-MSO’s time.

c. Direct the O.P. No-1 & 2 to come up with a policy for LCOs for coexistence with MSOs, acceptable to all stake-holders for resolution of dispute of such nature for the interest of the LCOs to use its electricity poles with suitable conditions/or on rent;

And be further pleased to pass for such further order and directives as the nature and circumstances of the case may require or justify or as this Hon’ble Court may deem, fit and proper in the facts described above and circumstances of the case;

And for which act of kindness the petitioner as in duty bound shall ever pray.”

In W.P.(C).No.15600 of 2022

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a. Order or direction of a suitable nature to all the Opp. Parties not to prevent the petitioners/LCOs of Rourkela, providing Cable Television services to facilitate their trade freely in Rourkela Town;

b. Direct the Opp. Party No.1 & 2 to issue appropriate direction to O.P. No.4, 5 and 6 not to take any coercive action against the LCOs/petitioners and maintain an ethical business practice and develop a feel good factor with LCOs as in pre-MSO’s time.

c. Direct the O.P. No-1 & 2 to come up with a policy for LCOs for coexistence with MSOs, acceptable to all stake-holders for resolution of dispute of such nature for the interest of the LCOs to use its electricity poles with suitable conditions/or on rent;

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And for which act of kindness the petitioner as in duty bound shall ever pray.”

2. One writ petition while appears to be filed by four Local Cable Operators, the other writ petition appears to have been filed by two Local Cable Operators. Position of the opposite parties appears to be same in both the writ petitions for there is no dispute at Bar that both the writ petitions involve almost

common pleading and common nature of relief sought for, both are taken up together in common disposal herein. Both the writ petitions also taken support of similar documents. It be made clear that there is also common set of counsel arguing both the matters.

3. Factual aspects as narrated in the writ petitions, the pleadings as well as the submissions made in course of argument remain as follows:

Petitioners being citizen of India claiming to be Local Cable Operators (for short "LCOs") functioning in Rourkela claiming to be providing cable T.V. operation to the public in the RSP Township. The petitioners in both the writ petitions also claimed that LCOs appear to have been continuing with customers ranging from 200 to 500 each. It is claimed that to make T.V. programme available to RSP employees in a township having unique culture and taste as people from pan-India are working in the Steel Plant and have different entertainment needs, initially, these citizens were provided with in-house T.V. Channel by Rourkela Steel Plant(for short "RSP") called RSP T.V. It is alleged that for lack of experts to manage such huge stack, at some point of time RFSP entered into

contract with Ortel Communication Ltd. to make available cable T.V. programs to RSP employees commenced in the year 2001 providing T.V. Programs to all its sectors area at a fixed price and subsequently, it developed through internet to RSP employees to all its sectors at a fixed price by laying overhead cable using the RSP own electricity poles wherever and/or using erecting Ortel private poles in non-pole areas. Copy of the postal registration in favour of the petitioners is appearing at Annexure-1 whereas copy of the agreement with Ortel Communication Ltd. is appearing at Annexure-2. It is claimed, as per the terms in the agreement, Ortel erected cable lines wherever possible through RSPs own electricity poles paying appropriate rent and non-pole areas by drawing its cable lines through its own poles, which system remains intact place till 2016-17 on renewal basis. It is claimed, LCOs have also been continuing parallel systems created an additional option in the cable services which are also under operation since 1995 and claiming they are still continuing with almost 200 to 500 customers to their pocket without any serious conflict with Ortel or RSP during all these periods. It is claimed that during 2016-17 Ortel became sick and started failing in providing quality

operation as a consequence and finding difficulty in providing entertainment ability to its employee in Steel Township, RSP invited quotations from Multi-State Operators (for short “MSOs”) on 28.10.2021 to provide the Cable TV/internet/allied services in Steel/RSP Township and in the process finalized the agreement with M/s. SITI Networks Ltd. M/s. Hathway Cable and Datacom Ltd. and Reliance Industries Ltd. on 04.12.2021 collectively called MSOs with a high licence fees to operate in Steel/RSP Township. Circular for quotation and RSP letter in this regard dated 28.10.2021 and 04.12.2021 are appended in the writ petition as Annexures-3 and 4 respectively. Petitioners alleged that MSOs, who used sophisticated technology for hidden/hub, large consumer base and different revenue streams were able to manage high cost of investment and operation. It is alleged finding LCOs still remain in competition, MSOs started adopting coercive action against the LCOs and they remain engaged in taking out LCOs cable available on the electricity poles of RSP. While also alleging that the MCOs have been continuously doing mischief with connivance of the RSP with clear intention that LCOs could surrender the business. Finding LCOs unable to meet with the clandestine action of MSOs, the

LCOs along with three others moved a writ petition to this Court registered as W.P.(C).No.8833 of 2020. In disposal of the writ petition finding premature at that stage, this Court vide order dated 08.04.2022 dismissed the writ petition with an observation dismissal of the writ petition will not stand on the way of the petitioners for approaching the issue involved before the opposite party no.2 , the RSP. Petitioners enclosed the order of this Court at Annexure-5 and the representation submitted by them as a consequence thereof is appended as Annexure-6. It is asserted, on consideration of representation submitted by the petitioners on 12.4.2022, the opposite party no.2 vide communication dated 11.05.2022 expressing its inability to accede to the request of the petitioners intimated therein that there is already operation of a different system in the cable operation through circular dated 28.10.2021(annexure-3). It is alleged that the circular involved introduced mandatory criteria that an agency must use a minimum number of 7000 poles of RSP. It is averred that pursuant to such circular four parties have applied and in the process of completion of the bid, three of them appearing as opposite party nos.4 to 6 in both the writ petitions have been allowed to lay their OFCs in RSP electrical

pole. It is also admitted through paragraph-13 that all such agency have already resumed their activities for providing services in the Steel Township bringing almost an end to the survival of the LCOs. Petitioners claimed that the action of the RSP in the rejection of representation disallowing the petitioners to operate is in violation of their right to profession as well as right to life as envisaged in the Constitution of India. Petitioners claimed that they being small business establishment are prejudiced by the direct interference by the big entity like MSOs causing direct injury to the small business establishment like that of petitioners. It is alleged, after rejection of representation, the MSOs have started adopting coercive action involving extensively cutting the LCOs cable tied to electricity poles in RSP Township without authority. In addition to the aforesaid pleadings, by submitting a rejoinder and note of argument, there has been reiterations of some pleading. Counsel appearing for each of them while reiterating the above factual aspects and allegations to support their case to find there is discrimination in the attitude of the opposite party nos.1 and 2 thereby preventing them even participating in the bid process through Annexure-3 and attempted to establish their such case

and affecting the right of the cable operators already existing claiming to be remaining contrary to the provision under Indian Electricity Act, 2003. In reference to a judgment of this Court in the case of **Variety Entertainment (Pvt.) Ltd. Vs. State of Orissa and Ors**, reported in *2008 (Supp-II) OLR 580* and two notifications of the Electricity Authority vide Notification No.18271 dated 11.10.2001 and Notification No.148 dated 04.01.2002, counsel appearing for both sets of petitioners attempted to establish that the action of the opposite parties amounts to infringement of the legal position as well as the direction of this Court in the above referred case. Drawing attention to some of the observations, petitioners through their rejoinder attempted to challenge the order/contract awarded to the MSOs being unreasonable and detrimental to the public authority. Further, it is on the premises that the LCOs and MSOs are operating in different footing, taking this Court to the definition aspect at Section 2(bb) and Section 2(dd) of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, an attempt is made to show the difference in the registration of LCOs and MSOs. In reference to Rule 5 and Rule 11 of Cable

Television Networks Rules, 1994, petitioners claimed the LCOs have also a right of self sustenance and livelihood similar to the street vendor and there ought to be room for these organizations while deciding to engage private oriented companies like private opposite parties. It is in the above facts and circumstance and in reference to the decision as well as the provision of law, Mr.Nanda, learned counsel for the petitioners prayed this Court for allowing the writ petition. Through rejoinder affidavit, it has been attempted to submit that for the LCOs still in operation, they have a right to co-exist with the MSOs. Involving the calling for application vide Annexure-3 while admitting that the petitioners not applied/not participated, it is claimed even after decision through Annexure-3 since the petitioners still operate, there is no scope for any of the opposite parties to interfere in the continuance of the business of the petitioners more particularly when there is no action as against these opposite parties by RSP as of now. Through the rejoinder, there is pleading attempting to challenge the restriction imposed through Annexure-3 in making application by LCOs on some of conditions therein and affecting petitioners even making their application. Through paragraph-9, it has been admitted by the

petitioners that in a development pursuant to circular dated 28.10.2021 the MSOs having Pan-India Operation are being selected and necessary permission have been granted to each of them for their continuance in the operation. In sum and substance, an attempt is made to urge that for the restriction in the circular at Annexure-3, petitioners did not have the scope for their applying even.

4. Mr.Gautam Misra, learned Senior Counsel appearing for the opposite party nos.1 and 2 while seriously objecting to the entertainability of the writ petitions involving the prayer made therein, not entertainable for there is no challenge to the bundle of cause of action taken place in between following a circular issued on 28.10.2021 and the action desired through Annexure-3 being taken place over a long period of time. Further, for the petitioners remaining non-participating in the bid process taken place pursuant to issuance of Annexure-3, Mr.Misra, learned Senior Counsel seriously questioning the entertainability of both the writ petitions. Taking this Court to the counter affidavit filed by opposite party nos.1 to 3, Mr.Misra, claimed petitioners are on different heads. In the brief factual backdrop through paragraphs-5 to 8 while not disputing petitioners working in

same line for some period of time competing with other players with same footing. For the development taken place pursuant to Circular at Annexure-3, Mr.Misra, learned Senior Counsel contended that consideration in the bid process, permission/licence were already granted to three operators namely M/s. Jio Digital Fibre Private Limited (JSDFPL), M/s Hathway and M/s. Bharti Airtel Limited, opposite party nos.4, 5 and 6 respectively with permission to all of them to lay their cables and provide their services in the township by way of licence executed for the purpose. Opposite party nos.1 to 3 also filed a sample copy of licence dated 04.02.2022 executed in favour of the M/s. Hathway Digital Limited vide Annexure-A/1.Mr.Misra, learned Senior Counsel admitted the fact that petitioners in their earlier move filed W.P.(C).No.8833 of 2022, which was however disposed of by this Court by order dated 08.04.2022 finds place at Annexure-5 to the writ petition thereby permitting the petitioners to approach the opposite party no.2. It is contended, petitioners accordingly made representation vide Annexure-6 on 12.04.2022 and submitted it was duly considered and disposed of with rejection of the claim of the petitioners vide order dated 11.05.2022 finds place

at Annexure-7 in both the writ petitions. On the locustandi of the petitioners to maintain the writ petition Mr.Misra, learned Senior Counsel contended that for a bid process following circular dated 28.10.2021(Anenxure-3 in both writ petitions), petitioners being non-participant therein allowing it to consider involving other participants and for the final outcome in such bid process, no development in the process can be adjudicated after operationalisation of the Circular dated 28.10.2021. Mr.Misra, also contended that writ petitions at hand are repetition of the earlier writ petition. On the prayer aspect, Mr.Misra, learned Senior Counsel contended for there is no challenge by the petitioners to the conditions in Anneure-3, even after affected at appropriate time and for there is finalization of the process involving circular dated 28.10.2021 contended petitioners have no scope to maintain a writ petition at this stage. Coming to pleadings and contentions of the petitioners, reading through the response of the RSP-opposite party nos.1 to 3, Mr.Misra also seriously disputed the claims of the petitioners involved herein.. In so far it relates to Opposite party Nos.1 to 3 there is also attempt to respond by way of para-wise reply to the para-wise pleadings by the writ petitiones. Mr.Misra, learned

Senior Counsel to support his case also placed reliance on decisions of the Hon'ble Apex Court settled on the entertainability of the writ petitions and scope, if any, therein in the given circumstance referred to ***Rachna and others Vs. Union of India and another***, reported in (2021). 5 Supreme Court Cases 638 and the other decision involving ***N.G.Projects Limited Vs. VinodKumar Jain and Others***, decided in Civil Appeal No.1846 of 2022 on 21.03.2022, reported in 2022 SCC On Line SC 336. Taking this Court to paragraph-45 and Paragraph-22 of the respective decisions taken note hereinabove, Mr.Misra attempted to satisfy his case on all count. Mr.Misra, also by way of additional submission relied on three other decisions reported in the cases of ***National Highways Authority of India Vs. Gwalior- Jhansi Expressway Ltd.***, (2018) 8 SCC 243, ***Jagdisjh Mandal Vs.State of Orissa & Ors.*** (2007) 14 SCC 517 and in the case of ***Municipal Corporation, Ujjain and Anr. Vs. BVG India Limited & Ors***, reported in 2018 SCC Online SC.578.

5. This Court also finds there has been appearance of Mr.B.K.Rao, learned counsel on behalf of the opposite party no.4. While seriously objecting the allegation of the petitioners

on the private players resorting to coercive measure against the petitioners, attempted to adopt the submissions made by Mr.Misra, learned Senior Counsel. Mr.Rao learned counsel however contended that in a matter of contract, the mere requirement is always involvement a contest amongst parallel players and a non-participant on some ground or other has no locus to challenge the completion of such process and award of contract in favour of the participants and that too the closure of the process. Mr.Rao, learned counsel accordingly requested this Court for dismissal of the writ petition.

6. Considering the rival contentions of the parties, this Court finds undisputed fact remains to be Steel City belonging to Steel Authority of India Ltd. and its operational agency at Rourkela Steel Plant being legal establishment. Matter involves provision of entertainment to its employees being the residents in the Steel Township. In the initial stage of such attempt, the systems since was in force and premature stage, undisputedly, there were casual attention to this site. Looking to the number of players available in the field to provide such facility, the cable operation initially started with one of the major player in the State at the relevant time, namely, ORTEL Communication Ltd. As time

passes, there was arrival of several other players also at some point of time. Finding difficulty for managing the work aspect in the matter of cable supply for TV programs, RSP entertained several players also. Undisputedly, RSP has a large number of player of its own. In the process, there has been also installation of some poles in non-plan area for the purpose of lying cable line. The above situation gave rise to introduction and acceptance of player by LCOs. Undisputedly, LCOs also remained in the playing field for quite a substantial period. On their own claim, these LCOs are having individual customers ranging from 200 to 500, which though seriously objected by the opponents. There is of course no material to support such claim of the petitioners except by way of pleading in the writ petition. Finding ORTEL becoming weak in managing the operational issues, as a matter of policy decision, RSP to streamline the operational issues and to provide a qualitative TV Showing to its customers in its system as social responsibility to its employees brought some actions in improving such operation which finally resulted through circular dated 28.10.2022 finds place at Annexure-3. Undisputedly, the assignment in Annexure-3. has been finalized and there has been grant of licence in favor of

the opposite party nos.4 to 6 in finalisation of such process, further for their own submission of the petitioners there has been also operation commenced by opposite party nos.4 to 6 long since.

7. In the above background and keeping in view the rival contentions, this Court finds for the series of development taken place in the meantime and more particularly in absence of challenge to the conditions, if at all affected to the petitioners herein, nothing prevented the petitioners to bring a writ questioning Annexure-3 but, however, at appropriate time, if not, at least within reasonable period of time. This Court observes for the game involving Annexure-3 since over, winners having been declared and allowed to enjoy the benefits, there is no room for going behind the situation. Thus, this Court finds the writ petition at this stage as a whole is not entertainable.

8. This Court here takes into account the position of law in the given circumstance through ***Rachna & Others (supra)*** where in paragraph-45 the Hon'ble Apex Court came to observe as follows:

“45. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are

absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the courts to legislate. The courts do interpret the laws and in such an interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Services Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right.”

Similarly, looking to the decision cited at Bar in the case of *N.G.Projects Limited (supra)*, through paragraph-23 the Hon’ble Apex Court came to observe as follows:

“23. In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the

wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work.”

Both the above decisions appear to be supporting the case of the RSP.

9. Considering the scope of challenge to the conditions in the tender process intended to debar small players and the time of challenge, this Court finds such a ground being considered, the Hon’ble Apex Court has the following view:

In the case of **Jagdish Mandal Vs. State of Orissa & Ors.**, reported in *(2007) 14 SCC 517*, the Hon’ble Apex Court came to observe as follows:

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

Similarly, in the case of *National Highways Authority of India Vs. Gwalior- Jhansi Expressway Limited*, (2018) 8 SCC 243, the Hon’ble Apex Court in paragraph-20 came to observe as follows:

“20. While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent forum. Going by the terms and conditions in the tender documents, as already alluded to in para 10 above, there is no tittle of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money. The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was to participate in the bidding process, it shall be deemed to fulfil all the requirements of the tender Clauses 3 to 6 of RFP, being the existing concessionaire of the project, does not exempt the respondent from participating in the tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered as a responsive bidder, along with others. Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had

participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.”

In another case between ***Municipal Corporation, Ujjain & Anr. Vs. BVG India Limited and Ors.*** , reported in (2018) 5 SCC 462, the Hon’ble Apex Court in paragraphs 14 and 16 held as follows:

“14. The judicial review of administrative action is intended to prevent arbitrariness. The purpose of judicial review of administrative action is to check whether the choice or decision is made lawfully and not to check whether the choice or decision is sound. If the process adopted or decision made by the authority is not mala fide and not intended to favour someone; if the process adopted or decision made is neither so arbitrary nor irrational that under the facts of the case it can be concluded that no responsible authority acting reasonably and in accordance with relevant law could have reached such a decision; and if the public interest is not affected, there should be no interference under Article 226.

16. The State, its corporations, instrumentalities and agencies have a public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary power under Article 226 with great caution and should exercise them 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 interfere. (See the judgment in *Air India Ltd. v. Cochin International Airport Ltd.* [Air India Ltd. v. Cochin International Airport Ltd., (2000) 2 SCC 617])”

In the case of ***U.P. Financial Corporation Vs. Gem Corp (India (p) Ltd.***, (1993) 2 SCC 299, it was observed that the High Court while exercising its jurisdiction under Article 226 of the

Constitution of India cannot sit as an appellate authority over the acts and deeds of the corporation and seeks to correct them and that the doctrine of fairness evolved in the administrative law was not supposed to convert the writ courts into Appellate Authorities over Administrative Authorities. This is also the view of Hon'ble Apex Court in the case of ***Karnataka SIIDC Ltd. Vs. Cavalet India Ltd., (2005)4 SCC 456.***

In the case of ***Afcons Infrastructure Limited V. Nagpur Metro Rail Corporation Limited and Another***, reported in 2016 16 SCC 818, in paragraphs-13 and 15 the Hon'ble Apex Court came to observe as follows:

“13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.”

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional

courts but that by itself is not a reason for interfering with the interpretation given.”

10. Looking to the factual background and the challenge involved, this Court observes even assuming that the pleading there involves a challenge to the policy decision of the authority by way of introduction of Annexure-3, law has been settled in the given circumstance observing it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.(ii) Irrationality, namely, Wednesbury unreasonableness. (iii) Procedural impropriety. Keeping in view the above broad principle, taking in to account the dispute involved here, this Court finds the claim of the petitioners does not fall under either of the categories indicated hereinabove. This Court even here finds there is no challenge to the decision as of now and for the loss of time in between, there is no scope

in entertaining such issue presently Of course such issue, if raised, at the time of future cause of action the same maybe decided in appropriate case.

11. From the background involving pleading herein, this Court finds petitioners through their pleading in paragraph-8 of both the writ petitions have categorically submitted that introduction of circular dated 28.10.2021 inviting quotation from Multi-State Operators to provide cable TV/Internet/allied services in Steel/RSP Township and the RSP has already finalized the agreement with M/s. SITI Networks Ltd. on 04.12.2021 and also with M/s. Hathway Cable and Datacom Ltd and Reliance Industries Ltd., collectively called as MSOs. Looking to the relief sought for in both the writ petitions, this Court for a series of development taken place therein and invitation of quotation following circular dated 28.10.2021 finds place at Annexure-3 to both the writ petitions. In the event petitioners were aggrieved by the conditions set out in case depriving them from participating, nothing prevented the petitioners to challenge the issuance of circular vide Annexure-3 in both the writ petitions. On the threshold itself, petitioners did not involve in such prayer taking out the effect of Annexure-

3.Further, for Annexure-3 already settled through subsequent course of action in favour of opposite party nos.,3 to 6, these writ petitions remain unentertainable for lack of appropriate exercise at appropriate time.

It is here, keeping in view the above, attending prayer no. 'a' in both the writ petitions, this Court looking to the averments in both the writ petitions in paragraphs-13 and 14 finds there is clear admission of the petitioners in the operation of Annexure-3. Further, taking decision in favour of opposite party nos.3 to 6 to lay their OFCs in RSP electrical poles and that the said agencies have already resumed their activities in providing services in Township, further through paragraph-14, the sole allegation of the petitioners in both the writ petitions appears to be taking advantage of the rights created in favour of MSOs dependant on the cause of action following circular at Annexure-3 to both the writ petitions and further consequent upon rejection of the representation of the LCOs, the MCOs have started adopting coercive action intensively by extensively cutting the LCO's cable tied to electricity poles in RSP Township. Looking to the nature of grievance through paragraphs-13 and 14 and keeping in view the prayer no. 'a'

appearing in both the writ petitions, this Court finds the grievance of the petitioners is against adopting coercive action by the MCOs who are in their private status, not maintainable to the writ jurisdiction. This relief does not involve anything to it with the RFSP. In the circumstance, this Court finds prayer made in both the writ petitions since involves private party, the same is not entertainable by way of writ petition. To add to it, it is surprise to give a note that rejection of representation of the petitioners vide Annexure-7 by public authority is not challenged leaving no scope with this Court to even interfere in that regard.

12. Undisputedly the pleadings involving introduction of a scheme and calling for application keeping in view advancement/upgrading in the system in operation, such a decision always remains in the domain of the authority taking such decision. If decision involves an attempt in quality improvement even assuming some bodies prevented in approaching pursuant to such decision, nothing prevented such body to challenge such action on the threshold of the matter. Almost one year has passed from the date of issuing the circular at Annexure-3. Further, undisputedly, there has been giving effect of such circular immediately after issuance of the same.

Further on completion of the exercise involved therein again undisputedly three private players appearing here as opposite pay nos.4 to 6 have already succeeded in attending to the requirement through such circular, leaving no scope for challenging such action of a party sleeping all these time.

In the circumstance, coming to consider prayer no. 'b', this Court finds keeping in view the allegation through paragraphs-13 and 14, LCOs disturbed by MSOs, prayer no. 'b' direction to opposite party nos.1 and 2 appears to be not sustainable. So far as prayer no. 'c' is concerned, for the reasoning assigned and for a clear submission of the opposite party nos.1 and 2 bringing in the circular at Annexure-3 with an aim to improve the quality of supply and to bring an orderly supply to its employees remaining as customers, this Court finds the request of the petitioners for issuing a direction to opposite party nos.1 and 2 to come up with a policy to find coexistence with MSOs, this Court observes in the event the LCOs also co-exist along with the business of MSOs and having a substantial customer to its fold, in fresh bid process in future exigencies, the opposite party nos. 1 and 2 may consider the

plight for survivability of s system also encouraging small power players like that of petitioners.

13. For the above, this Court finds the writ petitions are wholly misconceived and not entertainable, which are dismissed accordingly. Interim order dated 17.06.2022 passed in I.A. No.7994 of 2022 stands vacated. In the circumstance, there is no order as to cost.

*Orissa High Court, Cuttack.
Dated the 5th day of December, 2022/SKS*

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Biswanath Rath, J.

