

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2445 OF 2024

Health-O-Wonder Private Limited]
Through the Authorised Person]
Amit Akaram Talap]
Age 31 years, occ. Service]
R/o. Shittur Tarf Malkapur, Kolhapur]
Maharashtra – 416213]..... Petitioner

Vs.

- 1] The Commissioner]
Medical Education and Ayush]
Maharashtra]
4th Floor, Government Dental College,]
& Hospital Building, St. George's]
Hospital Premises, P. D'Mello Road,]
Fort, Mumbai- 400001]
]
- 2] The Director of Medical Education]
4th Floor, Government Dental College,]
& Hospital Building, St. George's]
Hospital Premises, P. D'Mello Road,]
Fort, Mumbai- 400001]
]
- 3] The Secretary, State of Maharashtra]
Through Medical Education & Drugs]
Department, Mantralaya, Mumbai]
]
- 4] State of Maharashtra]
(Served through Government Pleader)]
]
- 5] HSCC (India) Limited]
A Company incorporated under the]
Provisions of Companies Act,]

Having registered office at 205,]
 Extend Plaza, Plot No.4]
 D.D.A. L.S.C. Centre-II]
 Vashudhara Enclave – Delhi-110096]
 Through Binod Kumar]
 Dy. General Manager (Civil)]..... Respondents.

**WITH
 WRIT PETITION NO.2921 OF 2024**

- 1] Nashik Zilla Swayam Rojgar]
 Berojgar Seva Sahakari Sanstha's]
 Mahasangh, Maryadit, Nashik]
 Through its Authorized Signatory]
 Kiran Hirma Aher]
 Age 49 years, Occ : Business]
 Resident of Namrata Enclave,]
 Row House No.9, Canal Road,]
 Gangapur Road, Anandwali, Nashik]
]
- 2] Rayat Swayam Rojgar Seva Sahakari]
 Sanstha Limited, Nashik]
 Through its Authorized Signatory]
 Shri Viraj Vijay Ingale]
 Age : Major, Occ : Business,]
 Having address at 6th Shrirang]
 Mangal Apartment, Shrirang]
 Nagar, Pumping Station,]
 Gangapur Nashik – 422013]
]
- 3] Shivam Swayam Rojgar Seva]
 Sahakari Sanstha Maryadit Nasik]
 Through its authorized signatory]
 Shri Kiran Hiranman Aher]
 Having address at Shivam Row]
 Houses House No.8 Anand Nagar]
 Happy Home Colony, Near Shri]
 Krushna Hospital, Behind Ashoka]

- Tower, Drawla. Nashik, 422 011]
]
 4] Bhaukrupa Swayam Rojgar Seva]
 Sahakari Sanstha Maryadit,]
 Through its authorized Signatory]
 Shri Sandip Shantaram Deore]
 Age : Major, Occ : Business]
 Having address at Triveni Row]
 Bungalow No.3, Vrindavan Colony,]
 Pipe Line Road, Anandvalli,]
 Gangapur Road, Nashik]..... Petitioners.

Vs.

- 1] The State of Maharsashtra]
 Through its Principal Secretary]
 Department of Health]
 Mantralya, Mumbai-400 032]
]
 2] Principal Secretary, Finance]
 Department Mantralaya,]
 Mumbai 400 032]
]
 3] Commissioner of Health Services]
 & Director National Health]
 Scheme, 8th Floor, Health]
 Services, Arogya Bhavan, Mumbai]
]
 4] Joint Director (Purchase Dept.)]
 6th Floor, Health Services,]
 Arogya Bhavan, Mumbai.]
]
 5] Principal Secretary Medical]
 Education and Drug Department]
 Mantrayala, Mumbai]
]
 6] Commissioner Medical Education]
 and Ayush Maharashtra]

Directorate of Medical Education]
 Research Government Dental]
 College Hospital Building,]
 St. George Hospital Compound,]
 Mumbai 400 001.].... Respondents.

Dr. Abhinav Chandrachud with Mr. Tushar Sonawane for the
 Petitioner in WP No.2445/2024.

Mr. Shailesh C. Naidu i/by Mr. Sanjay P. Shinde with Mr.
 Prathamesh T. Bhanuwanshe for the Petitioners in WP
 No.2921/2024.

Mr. P. P. Kakade, GP with Mr. O. A. Chandurkar, Addl. GP and Ms.
 A. A. Nadkarni, AGP for Respondent Nos. 1 to 4 (State) in WP
 No.2445/2024.

Mr. Ashutosh Kumbhakoni, Senior Advocate with Mr. Ashutosh
 Kulkarni i/by Mr. Sarthak S. Diwan for Respondent No.5 in WP
 No.2445/2024.

Mr. P. P. Kakade, GP with Mr. O. A. Chandurkar, Addl. GP and Ms.
 Snehal S. Jadhav, AGP for Respondent Nos. 1 to 6 (State) in WP
 No.2921/2024.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
 ARIF S. DOCTOR, J.**

Reserved on : 12th March 2024
Pronounced on : 14th March 2024

JUDGMENT : (PER ARIF S. DOCTOR, J)

1. Since the challenge in both the captioned Writ
 Petitions is essentially the same, both the Writ Petitions were

heard together by consent of the learned counsel and are being disposed by this common order.

2. The Writ Petitions, challenge in a nutshell is two tenders. Writ Petition No.2445 of 2024 *inter alia* seeks to quash and set aside E-tender dated 1st February 2024 bearing Tender ID No.2024 MERDM_994927_1 issued by Respondent-State for providing Mechanized Cleaning Services at Medical Colleges and Associated Hospitals under Medical Education and Drugs Department, Government of Maharashtra. Writ Petition No.2921 of 2024 in addition to seeking to quash and set aside the same tender as challenged in Writ Petition No.2445 of 2024 also seeks to quash and set aside Tender dated 02nd February 2024 bearing Reference No.E-22/CHS/PC/Mechanized Cleaning Services/23-24 issued by the Respondent-State for providing Mechanized Cleaning Services in Hospitals & Primary Health Care Centers under department of Public Health (E-Tenders) State of Maharashtra.

3. At the outset we must note that while the above-mentioned tenders have been assailed on various grounds, the learned counsel appearing for the respective Petitioners have confined their submissions to only ground of challenge i.e. the Eligibility Criteria prescribed in both tenders which permitted only Public Sector Undertakings ("PSUs") to participate. Thus, submissions were advanced only on this one ground of challenge and all other grounds of challenge were expressly given up by Learned Counsel for the Petitioners. Since submissions were primarily advanced in Writ Petition No. 2445 of 2024 the same shall be treated as the lead Petition and reference to documents etc. shall be as they appear in Writ Petition No. 2445 of 2024.

Submissions of Dr. Chandrachud for the Petitioner in Writ Petition No. 2445 of 2024

4. At the outset, Dr. Chandrachud, learned counsel appearing on behalf of the Petitioner invited our attention to the first page of the Expression of Interest (EOI) which made clear that the same was only for selection of a Public Sector

Undertaking. He then invited our attention to the Eligibility Criteria as set out therein. He then, invited our attention to Condition No.(V)(1) of the said EOI which prescribed as follows, viz.

"V. Eligibility Criteria and Documents to be submitted.

<i>SN</i>	<i>Criteria</i>	<i>Eligibility Details</i>	<i>Documents to be submitted</i>
<i>1.</i>	<i>Legal Entity</i>	<i>The bidder must be a Central or State Government PSU as per Companies Act 1956 and with minimum 5 years of operations.</i> <i>Note :- Consortium of any kind shall not be acceptable for this project. Any deviation would lead to disqualification or termination of the same.</i>	<i>a. Valid copy of registration certificates.</i> <i>b. Copy of GST registration.</i> <i>c. Copies of relevant Certificates of registration Income Tax/PAN Number from the respective Government Department.</i>

From the above he pointed out that only Central or State Government PSU's incorporated under the provisions of the

Companies Act 1956 who had a minimum 5 years of operations would be eligible to participate. It was this condition that he submitted was violative of both Articles 14 and 19(1)(g) of the Constitution of India since the same unfairly and unreasonably permitted only PSU's to participate in the tender process.

5. Dr. Chandrachud submitted that the State was expected to act in a equal, fair and non-arbitrary manner, even in matters of contract. He fairly conceded that while no party had a right to enter into a contract with the State or to do business with the State, equally no party could be discriminated against and/or excluded from participation in matters of public tender absent any rational basis or justification. He placed reliance upon the judgement of the Hon'ble Supreme Court in ***Kumari Shrilekha Vidyarthi Vs. State of Uttar Pradesh***¹, to submit that the State could not adopt divergent approaches in public and private spheres and was duty bound to act fairly and equally even in contractual matters under Article 14 of the Constitution of India. He thus submitted that any action of the

1 (1991) 1SCC 212

State when entering into a contract, which would include inviting tenders, must not suffer from the vice of arbitrariness. He submitted that if in fact the State were to exclude a category of persons/entities arbitrarily and unreasonably from entering into contracts with the State the same would clearly fall foul of Article 14 of the Constitution of India, and thus such action would be susceptible to judicial review on this ground.

6. Dr. Chandrachud then submitted that the impugned tender condition was squarely violative of Article 14 of the Constitution of India since the same did not fulfil the twin test as more particularly set out by the Hon'ble Supreme Court in the case of ***State of Rajasthan Vs. Mukanchand***². He pointed out from the said judgement that the Hon'ble Supreme Court had held that for any classification to be sustained as being a reasonable classification under Article 14 of the Constitution, it was imperative for the State and/or Public Authority to establish that such a classification was based on an intelligible differentia and such intelligible differentia, bore a rational nexus with the

² AIR 1964 SC 1633

object sought to be achieved by the law or the action of the State and/or Public Authority in question. In the instant case, he submitted that the intelligible differentia adopted by the Respondent-State was a classification between PSUs and non-PSUs (basically public sector vs private sector). He submitted that there was however absolutely no rational basis for such classification in the present case. He submitted that the Respondent – State had completely failed to establish the intelligible differentia between PSU's and non PSU's in connection with the object which was sought to be achieved by the impugned tender. He submitted that there was absolutely no reason as to why or on what basis PSU's alone would be eligible for mechanized cleaning and not non PSU's. It was thus he submitted that the tender condition clearly fell foul of Article 14 of the Constitution of India.

7. He then invited our attention to the EOI (page 31 of Writ Petition No.2445 of 2024) and pointed out that while the EOI recognized only PSU's as being eligible, the very same EOI

in terms provided that the selected PSU “*was allowed to execute the work through empanelled service Partner/Partners*”. He submitted that nothing could be more arbitrary, unfair and unreasonable than on the one hand holding only PSU’s to be eligible under the EOI and yet the very same EOI providing that the selected PSU would be allowed to execute the work through empanelled service partners i.e. entities other than PSU’s. He submitted that this term of the EOI made clear that there was infact no rational basis for excluding the Petitioners (and the like) in the first place.

8. Dr. Chandrachud then submitted that the impugned tender condition would clearly violate the principle of a level playing field under Article 19(1)(g) of the Constitution of India. Placing reliance upon the judgement of the Hon’ble Supreme Court in the case of ***Reliance Energy Limited Vs. Maharashtra State Road Development Corporation Ltd.***³ he submitted that the Hon’ble Supreme Court had in the said case held that a level playing field was inherent in Article 19(1)

3 (2007) 8 SCC 1

(g) of the Constitution of India. He submitted that exclusion of all other prospective bidders in such a manner had clearly deprived the Petitioner of the right guaranteed to them under Article 19(1)(g) of the Constitution of India, which was the very right to participate in the tender process. It was thus Dr. Chandrachud submitted that the impugned tender condition was clearly unsustainable and was thus required to be set aside as being violative of the Petitioner's fundamental rights under Articles 14 and 19(1)(g) of the Constitution of India.

Submissions of Mr. Naidu for the Petitioners in Writ Petition No.2921 of 2024

9. In addition to the submissions made by Dr. Chandrachud, Mr. Naidu submitted that the nature of tender conditions made it clear that the same were infact tailor-made so as to favour only a few empanelled service providers. He submitted that all these empanelled service providers were entities like the Petitioners and thus the reason to exclude non

PSU's was infact to favour a few. He submitted that it was well settled that the methods to be adopted for disposal of public property/ and State largess must be fair and transparent and must afford an opportunity to all interested persons to participate in the process.

10. He submitted that the actions of the State and/or its instrumentalities are required to be free from arbitrariness and favoritism. He submitted that the executive did not have any unfettered or absolute discretion in entering into contracts. He submitted that when inviting public tenders, it was incumbent upon the Respondent-State to follow certain principles and ensure fairness in action keeping public interest being paramount. He submitted that the conduct of the Respondent-State in the present case by excluding all entities except PSUs was vitiated by arbitrariness and unfairness and thus squarely hit by Article 14 of the Constitution of India. In support of his contention, he placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Meerut Development***

Authority Vs. Association of Management Studies and Anr.⁴ and MAA Binda Express Carrier Vs. North-East Frontier Railway and others⁵.

11. He then invited our attention to the eligibility criteria as set out in the EOI and pointed out that the Petitioner qualified under each criteria except for not being a PSU. He thus submitted that such exclusion was plainly arbitrary, irrational, and unfair, more so when infact the work awarded under the contract was to be ultimately executed by empanelled service partners of the PSU's who were similarly situated as the Petitioners.

12. He then invited our attention to a letter dated 31st January 2024 submitted by Respondent No.6 (Commissioner Medical Education and Ayush Maharashtra Directorate of Medical Education Research) to a certain PSU's and pointed out therefrom that it was plainly clear that Respondent No.6 intended to, pick and choose those Public Sector Undertakings

4 (2009) 6 SCC 171

5 (2014) 3 SCC 760

mentioned in the said letter. He pointed out from the said letter that Respondent No.6 was seeking an invitation for the EOI for strategic partnership with HLL Infratech Services Ltd. and that the scope of work in the said tender was in Maharashtra and the date of issuance of said tender notice was 3rd February 2024, and thus it was evident that the entire tender was tailor made to pick and choose the said entity. Basis the above he submitted that the Writ Petition be allowed.

Submissions of Mr. Chandurkar, learned Additional Government Pleader for the Respondents-State :-

13. *Per contra*, Mr. Chandurkar, at the outset submitted that the Petitioners did not have any locus to challenge the tenders as the Petitioners were strangers to the tender process not having participated therein. He thus submitted that it was therefore not open to the Petitioners who admittedly did not participate in tender process to whittle down the tender process and the rights of the eligible bidders.

14. He then submitted that the tender conditions were

neither arbitrary nor unreasonable and did not in any manner impinge upon the Petitioners' rights either under Article 14 or Article 19(1)(g) of the Constitution of India. He submitted that it was well settled that the best judge of what was required and/or had to be procured under a tender was the entity who floats the tender i.e. the author of the tender document. In this regard he pointed out that the only challenge of the Petitioners was to the tender conditions and not to any decision and/or decision making process. He therefore submitted that given the fact that the tender conditions which included the eligibility criteria was purely within the sole domain of the Respondent State as author of the document, it was not open to the Petitioners to challenge and it was infact well settled that the terms of the invitation of tender were not open to judicial scrutiny.

15. He submitted that a Court when exercising its power of judicial review must necessarily consider the following, questions:-

(i) Whether the process adopted, or decision made by

the Public Authority is malafide or intended to favour someone;

OR

(ii) Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible Public Authority acting reasonably and in accordance with relevant law could have reached";

(iii) Whether public interest is affected.

He submitted that in the facts of the present case, the Eligibility Criteria to invite bids from only PSU's would not fall under any one of the above and thus there was no scope of judicial review of such a condition. He pointed out that the allegations made in the Writ Petitions were generalized in nature and that a Petition on such generalized allegations would never cut muster in a challenge to a tender. He then submitted that in the present case, there was no question of discrimination since

the tender was open for participation to all PSU's and no particular PSU had been excluded. He submitted that it was not as though a few private entities had been permitted to participate and few had been excluded whereby the Petitioner would infact have been discriminated against.

16. He then submitted that the classification between PSU's and non PSU's was a reasonable classification and there was nothing discriminatory in such classification. He submitted that PSUs, as a class had a specific constitution, where in the State/Centre had a stake and/or control. He submitted that PSU's were specifically established to carry out activities which were commercial in nature, while keeping in view the welfare of people unlike non PSU's which were purely driven by profit. He submitted that PSU's had a specific level of credibility, worth goodwill, financial capacity, and technical qualifications, etc. as against non PSU entities, such as cooperative societies, bachat-gats, start-ups, and MSME's. He submitted that the decision to invite bids from only PSU's was thus an administrative decision

after taking into account the need of the hour and to save time as also not to compromise on the quality of work solicited under the EOI. He pointed out that the said work pertained to the cleanliness of hospital/colleges and hospitals, which was utmost importance. Therefore, he submitted that the conditions put in the EOI were not meaningless or futile and that they had a specific purpose given both the nature and scale of work to be done. He submitted that there was a public interest element involved in these works, as against the vested interest of the Petitioners which was purely a commercial interest.

17. He submitted that by imposition of this qualification criteria in the EOI, the Petitioners were in no manner, obstructed or confined in their activities of doing business in the State. He then submitted that Article 14 of the Constitution of India forbid class legislation but did not forbid reasonable classification for the purposes of legislation. He submitted that the classification in the present case was based on well-founded intelligible differentia which had a rational relation to the object which the

EOI sought to achieve. In support of his contention that such a reasonable classification would be permissible. He placed reliance upon a judgement of this Court in the case of ***Pratibha Industries Ltd vs State of Goa***⁶ in which reasonable classification in matters of public tenders was upheld. He also placed reliance upon a judgement of the Hon'ble Supreme Court of India. In the case of ***Uflex Limited vs Government of Tamil Nadu and Others***⁷ to submit that the judicial process should not be resorted to for downplaying the freedom which the tendering party has merely because it is a State or a Public Authority. He submitted that it was precisely this which the Petitioners in the present case were attempting to do by raising grounds of challenge pertaining to violation of Article 14 and 19(1)(g) the Constitution of India.

Basis this, he submitted that both the captioned Writ Petitions deserve to be dismissed.

Submissions of Mr. Kumbhakoni for Respondent No.5 in

6 2006(5) Mh.L.J.737

7 (2022) 1 SCC 165

WP No.2445/2024.

18. Mr. Kumbhakoni, Learned Senior Counsel appearing on behalf of Respondent No.5 a PSU who was one of the bidders at the very outset submitted that no person had a fundamental right to do business with the State and thus there was no question of any infringement of Article 14 or Article 19(1)(g) of the Constitution of India.

19. He submitted that the work in respect of which tenders were floated was in respect of cleaning to be done in Government hospitals/colleges and hospitals which work in normal course, would have been done by the Respondent-State itself. He submitted that in this eventuality the Respondent-State would not have been required to float any tender. He submitted that it was only because of the nature and scale of the work involved that the Respondent-State had decided to outsource this work and invite tenders from PSUs instead of doing the work itself. He submitted that given stake and control that the Respondent-State had in PSU's, that bids had been invited only

from PSU's to ensure better administration and control of the work to be undertaken. He submitted that it was for this reason that the PSU's stood on a higher footing than private entities and therefore the decision to invite bids only from PSU's was neither arbitrary nor unreasonable.

20. He then submitted that the choice of PSU's was because PSU's were more amenable to State supervision and control than private entities since PSUs were directly answerable to the State as opposed to private entities. He submitted that in engaging with non PSU's the Respondent State could face all sorts of potential problems which, in turn, would hamper the object sought to be achieved under the tender. He therefore submitted that the decision of the Respondent-State in inviting bids only from PSUs could not in any manner be said to suffer from the vice of arbitrariness or be construed to be unreasonable in the wednesbury sense.

21. Mr. Kumbhakoni then posed a hypothetical question

by submitting that had the Respondent-State included in the said tenders private entities but had chosen a PSU over such private entity, could the Court sit in judgement over such decision. He respectfully submitted that the decision to choose was that of the Respondent-State and thus no fault could be found with the Respondent-State in inviting bids only from PSUs and not private entities.

Basis this he submitted that the present Writ Petitions deserve to be dismissed.

22. We have heard Learned Counsel considered their rival contentions as also the case law cited and after having done so, find as follows, viz.

A. The Hon'ble Supreme Court has in the case of ***Reliance Energy Ltd. and Another*** (supra) clearly held that a level playing field is an inherent part of Article 19(1)(g) of the Constitution of India. Thus, any

decision or act of the State which would in an arbitrary and/or unreasonable manner result in depriving and/or excluding a person and/or entity from doing business would be violative of Article 19(1)(g) since the same would deprive such person/entity of level playing while benefiting another/others. It is, therefore incumbent upon the State to in matters of public tender/contract, ensure a level playing field which by its very definition means that a fair and equal opportunity of participation should be given to all.

- B. This however does not in any manner whittle down right of the State and/or the Public Authority floating the tender to determine the specific terms of the tender. The State and/or the Public Authority who floats the tender is undoubtedly best suited and the best judge of what the terms and conditions of the tender should be for the work solicited thereunder. However, that does not mean that the State and/or

Public Authority, can *without justifiable reasons*, at the outset restrict the very right to participate in the tender process to only one or more select class of entities. Such restriction without there being an intelligible differentia or rational basis, in our view, would be plainly arbitrary, unreasonable and unfair and thus violative of Article 14 and 19(1)(g) of the Constitution of India.

- C. In the present case, we find that the only reason given to restrict participation to only PSU's is on account of administrative convenience and nothing else. We find that this reason is totally unjustifiable. If such a contention were to be upheld, the State and/or the Public Authority could basis this restrict participation in all public tenders to only those entities with whom they find it "convenient" to enter into contracts with and/or deal with. This approach in our view would not only militate against the concept of

equality under Article 14 but gave an unfettered right to the State to pick and choose. This in our view would plainly be violative of Article 14 of the Constitution of India.

- D. We must also note that the eligibility criteria prescribed by the Respondent-State that it is for administrative convenience that only PSU's are eligible is also plainly untenable since the EOI specifically provides as follows, viz.

"The selected PSU is allowed to execute the work through their empanelled service Partner/Partners. In this case the empanelled service provider shall provide documents of statutory and labour laws compliances and service reports along with the monthly invoices."

Thus, the very work to be carried out in terms of the EOI for which only PSU's are eligible is to be executed not by the PSU's but by empanelled service partners who are non PSU's. These empanelled service

partners are nothing but entities like the Petitioner. Thus, in our view the decision of the Respondent-State to on the one hand to restrict participation to only PSU's and on the other, by the very same EOI to permit the selected PSU to have the work carried out by non PSU's is not only arbitrary, irrational but also unreasonable in the wednesbury sense. We find that therefore such action is certainly open to judicial review.

- E. *Additionally*, we find that the Respondent-State having chosen to differentiate between PSU's and non PSU's was necessarily required to establish that such classification between PSU's and non PSU's was founded upon (i) some intelligible differentia and (ii) which intelligible differentia had a rational nexus with the object sought to be achieved by the EOI i.e. mechanized cleaning. We find that the Respondent-State has completely failed to demonstrate any

intelligible differentia whatsoever between PSU's and non PSU's and how the object of mechanized cleaning could be achieved/fulfilled by only by PSU's and no one else. Nothing has been shown to us to even remotely suggest that such work could be done only by PSU's or that PSU's were in any manner better placed and/or had some unique specialization that was required to fulfill the same. As already noted above, such a contention could never have been advanced by the Respondent State since the selected PSU was infact permitted to execute the work through its empanelled partner and not excite the work itself. Thus we find that the Respondent-State has failed to satisfy the twin test as laid down by the Hon'ble Supreme Court in the case of ***Mukan chand and ors.*** (supra).

- F. We find that the submissions advanced by the Respondent-State (i) qua the locus of the Petitioners

(ii) the Petitioners' non participation and hence consequently the Petitioner having no right to whittle down the Tender process and/or affect the rights of eligible bidders; (iii) the Respondent-State being the author of the Tender document was entitled to decide the terms thereof; were all of no assistance to the Respondent- State in view of the fact that we have found that the conduct of the Respondent – State in restricting participation in the tender at the very threshold to only PSU's is arbitrary, irrational and unreasonable in the wednesbury sense since the same has occasioned a complete exclusion of the Petitioners from even participating in the tender process in the first place.

- G. There can be no dispute with the contention of the Respondent-State that no one has a fundamental right to enter into contract and/or do business with the State. The said contention is however untenable

in the facts of the present case since the Petitioners' grievance is not that the State is refusing to enter into a contract with the Petitioners, but that the Respondent State has deprived the Petitioner a level playing field by depriving the Petitioners even an opportunity to participate in the tender process without there being any valid and justifiable cause and/or rational basis for such exclusion.

- H. The Respondent-State having chosen to float a public tender, was bound to act fairly and in a non-arbitrary manner and in conformity with Article 14 and 19(1) (g) of the Constitution of India. As we have noted, that except for not being a PSU, the Petitioner in Writ Petition No. 2921 of 2024 has demonstrated that all the other eligibility criteria have infact been met. Thus, the exclusion is solely based upon the fact that the Petitioners are not PSU's. We find that the judgement in the case of ***Pratibha Industries***

Ltd., Mumbai and Another (supra) would not be of any assistance to the Respondent-State since in the facts of the said case the tender condition impugned was one which restricted participation to only those contractors who were registered with the Public Works Department (PWD) Goa. It was in these facts that this Court held that such classification between registered and non-registered contractors was a reasonable classification and the same was not a case of unreasonable exclusion.

- I. We also find that the judgement in the case of ***Uflex Limited*** (supra) is of no assistance to the Respondent – State. The said judgement is in respect of the well settled position of law and sets out that the scope of judicial review is very limited in matters of public tender and that Court shall not sit as appellate authority over the decisions of the state in public tender matters. However, given our findings that the

tender condition which permits only PSU's to participate is one which is arbitrary, irrational and unreasonable in the wednesbury sense, therefore, the said judgement would have absolutely no application to the facts of the present case.

23. In view of the above, we pass the following order :-

(I) Writ Petition No. 2445 of 2024 is allowed in terms of prayer clause (b) and (c) which read thus :-

*(b) By a suitable writ, order or direction in the nature of writ of this Hon'ble Court be pleased to quash and set aside the impugned tender E-tender dtd.01-02-2024 bearing Tender ID no.2024 MERDM_994927_1 issued by the Respondent No.1 annexed at **Exh. `A' (Colly)** to the present Petition by declaring the same being violative of Article 14 and 19(1)(g), 21 of the Constitution of India & issued against the provisions of Micro Small and Medium Enterprises Development Act, 2006.*

(c) By a suitable writ, order or direction in

*the nature of writ of this Hon'ble Court be pleased to **quash and set aside** the Administrative Approval dated 19-12-2024 in G. R. no.VAISHIVI-2023/P.K.257/PRASHA-2 issued by the Respondent no.3 annexed at **Exh. `B`** to the present Petition by declaring the same being violative of Article 14 and 19(1)(g), 21 of the Constitution of India & issued against the provisions of Micro Small and Medium Enterprises Development Act, 2006.*

(II) Writ Petition No. 2921 of 2024 is allowed in terms of prayer clause (c), (d), and (e) which read thus :-

(c) That this Hon'ble High Court be kindly pleased to quash and set aside the tender reference No.E-22/CHS/PC/Mechanized Cleaning Services/23-24.

(d) That on perusal of the same and on further hearing to the Petitioners, this Hon'ble High Court be kindly pleased to quash and set aside the Government decision dated 19/12/2023 issued by the Respondent

*No.6 – Medical Education and Drugs
Department, Mantralaya, Mumbai.*

*(e) That this Hon'ble High Court be kindly
pleased to quash and set aside the
tender reference No.EOI for selection
of PSU for Mechanized Cleaning
(Tender ID
No.2024_MERDM_994927_1) (Ex.H)
issued by Respondent No.6, the
Commissioner medical Education &
Ayush Maharashtra;*

(III) Both the captioned Writ Petitions are disposed of
accordingly.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)