

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 3259 of 2008****For Approval and Signature:**

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see
the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the
judgment ?

4 Whether this case involves a substantial question of law
as to the interpretation of the constitution of India, 1950
or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JYOTI SANJEEV PROPRIETOR - JYOTI TRANSPORT - Petitioner(s)

Versus

**BHARAT PETROLEUM CORPORATION LIMITED THRO' TERRITORY
MANAGER & 1 - Respondent(s)**

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Appearance :

MR MITUL K SHELAT for Petitioner(s) : 1,
MR GN SHAH for Respondent(s) : 1,
MS MINOO A SHAH for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/05/2008

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

In the present petition the petitioner has challenged the

action of the respondents in disqualifying the petitioner for award of contract for transportation of packed LPG Gas Cylinders from their bottling plant at Hariyala. The petitioner has prayed for a writ or direction to the respondents to consider the petitioner eligible for award of the contract for transportation of the packed LPG cylinders and to award such contract to the petitioner in respect of her own dealership.

2. The facts leading to the present petition can be shortly stated as under:

2.1 The petitioner Jyoti Sanjeev is proprietor of Jyoti Transport as well as Jay Jyoti Gas Agency, both of which are proprietary concerns. The petitioner is an authorised LPG Distributor appointed by the respondents for Ahmedabad(West) territory since 1995 and runs the agency in the name and style of Jyoti Gas Agency.

2.2 Respondent No.1 Bharat Petroleum Corporation Limited is concededly "State" within the meaning of Article 12 of the Constitution of India. Respondent No.2 is the officer of respondent No.1 Bharat Petroleum Corporation Limited.

2.3 Respondent No.1 issued an advertisement on 9.1.2008 inviting quotation for LPG Cylinders for the Hariyala Bottling Plant in Kheda District in Gujarat State. The closing date for the same was 23.1.2008.

2.4 As per the petitioner in order to ensure effective and timely delivery of the cylinders, the respondents had encouraged the distributors themselves to acquire trucks and to transport gas cylinders themselves for their own territory. This arrangement has been working satisfactorily since quite

some time. Thus, in addition to the “Transporter category”(so conveniently referred to), the respondents had in the past added another category of distributors transporting their own gas cylinders which may be conveniently referred to as “Distributor category”. It is not in dispute that to be qualified as per the tender requirements, an agency in the “Transporter category” had to have three self owned trucks of the capacity of minimum 300 gas cylinders each. In the “Distributor category” however, such requirement was of only one self owned truck of similar capacity. It may be noted that a transporter in the “Distributor category”, transports the gas cylinders to and from the bottling plant to its own territory only.

2.5 It may be noted that in the Credential Bid under consideration for the first time a third category i.e. “Proposed category” was added wherein even those distributors who did not presently own truck with the required capacity at the time of floating of the tender could participate subject to the condition that within 30 days they would acquire such trucks of their own.

2.6 It is not in dispute that Clause-4 of the Credential Bid provides that “in case the tender is submitted by a tenderer who is an LPG distributor, he/they should submit their tender for transportation under the same name and style as operative for their distributorships with the Corporation.”

2.7 It is the case of the petitioner that though Distributorship is in the name of Jay Jyoti Gas Agency, for the purpose of transportation contract, the respondents had recognized the name Jyoti Transport and all contracts

entered into and accounts maintained in relation to transportation of the gas cylinders were in the name of Jyoti Transport. Both Jay Jyoti Gas Agency and Jyoti Transport are owned by the same proprietor and the said arrangement was for smooth accounting purpose only. There is common PAN number and for all purposes, both the firms are one and the same.

2.8 The petitioner is undertaking the task of transporting the gas cylinders to its own territory under the contract awarded by the respondents since 1998, consistently. Such contracts have been renewed for the years 2002-2003 and 2004-2006 in the name of Jyoti Transport as an existing LPG distributor.

2.9 It is further the case of the petitioner that in the present case all terms and conditions for grant of the contract have remained unchanged except for addition of new "Proposed category" of LPG Distributor. The petitioner applied in the "Distributor category" for transport of LPG cylinders.

2.10 It is the case of the petitioner that the petitioner was orally informed that since the petitioner had applied the rubber stamp of Jyoti Transport, the bid has not been considered and the petitioner's price bid would not be opened on 15.2.2008. The petitioner therefore, addressed two representations both dated 14.2.2008 and requested for reconsideration of the matter. The petitioner has produced such letters at Annexure P-4/1 and P-4/2 to the petition. In the letters, the petitioner has stated inter-alia that she is the sole owner of both Jay Jyoti Gas Agency as well as Jyoti Transport and all previous agreements and transactions with

the Company as well as with the Bank have been carried out in the name of Jyoti Transport. It is further pointed out that Jyoti Transport is created only for the sake of convenience of business transactions and that two agencies are not different entities.

2.11 Despite such representations, since the respondents refused to consider the petitioner's bid, the petitioner filed the present petition seeking above-mentioned prayers.

3. While issuing notice on 20.2.2008, this Court by way of ad interim measure provided that the respondents shall wait till the next date of hearing before taking a final decision in the matter of awarding transport contract in respect of the petitioner's distributorship. It was clarified that there is no stay against consideration of the transport contracts being awarded in respect of other distributors. By a further order dated 28.3.2008, it was provided that as a temporary arrangement till further hearing, the petitioner shall be permitted to continue to transport the Gas cylinders for her own distributorship.

4. In response to the notice issued by this Court, the respondents have appeared, filed affidavit in reply dated 24.3.2008 and opposed the petition.

5. In reply following main contentions have been raised :

1) That this Court has no territorial jurisdiction to entertain the petition since the decision is taken by the Head Office of respondent No.1 Corporation which is situated at Mumbai. Reliance in this regard has been placed also on

Clause-31 of the tender documents which reads as follows :

“31. Resolution of conflict between terms and conditions herein and terms of the Agreement:

Over and above the terms mentioned herein, the terms and conditions mentioned in the draft agreement attached herewith will be deemed to have been included under these terms and conditions and if there is any conflict between the terms mentioned herein and the terms mentioned in the draft agreement attached herewith, unless otherwise clarified by BPCL, the terms mentioned in the Agreement will prevail. Any addition/deletion/ modification required in the draft Agreement will be done prior to signing of Agreement.

The tenderers are advised to visit the filling Plant/ Territory officer, discuss with the Territory manager and acquaint with our facilities, loading/unloading practices at the Plant, at destination etc. before quoting for the tender, in order to familiarize themselves fully about the scope of work. “

2) It is contended that there is an arbitration agreement in Clause-32 of the Transportation agreement requiring all disputes to be referred to an arbitrator. This Court therefore, in view of alternative remedy should not entertain the petition.

It may be noted that Clause 32 of the Transportation Agreement provides inter-alia that any dispute or difference of any nature whatsoever any claim, cross claim, counter claim or set off of the Corporation against the Transporter or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this Agreement shall be referred to the sole arbitrator.

3) It is also contended that the Tender Committee comprising of three high level officers of the respondent Corporation has taken a decision which this Court would not in exercise of writ jurisdiction override.

4) It is also contended that the Court would not interfere in contractual relations in exercise of writ jurisdiction.

5) With respect to the merits of the claim of the petitioner, it is stated that the tender submitted by the petitioner has not been signed by her in the capacity of Distributor of Jay Jyoti Gas Agency but for Jyoti Transport. Accordingly, tender of the petitioner could not be considered by the Committee. The Committee however, examined whether the petitioner could be considered for the "Transporter category". It was however, found that the petitioner did not own three trucks of each 300 cylinders capacity. Out of the three trucks owned by the petitioner, admittedly two had capacity of 300 cylinders whereas third truck had capacity of 150 cylinders. On these counts, tender of the petitioner was rejected.

6. Appearing for the petitioner, learned Counsel Shri Mitul K. Shelat submitted that the petitioner has been enjoying distributorship since 1995 and the track record and performance is outstanding. At Annexure-P-3 to the petition, a list of prizes and awards given to the petitioner have been enlisted. These include first price for best overall performance in the year of 2004-2005, 2005-2006 and 2006-2007, first prize for non-domestic sales in the year 2006-2007 and prize for highest and beyond LPG sales in the year 2005-2006 and many other such achievements. It may be noted that this data has not been disputed by the respondents.

6.1 The learned counsel for the petitioner has pointed out that the distributorship contract dated 29.3.1995 was issued by the respondents in favour of Ms. Jyoti R Vasandia

carrying on business in the firm name – Jay Jyoti Gas Agency at Ahmedabad (Annexure-B); that LPG cylinder transportation contract dated 9.10.2002 was issued by the respondents in favour of Jyoti Vasandia daughter of Ramsinhji Vasandia carrying on business as sole proprietor under the name and style of Jyoti Transport (Annexure-P6); that said transport contract was in the category of distributors. The learned counsel has further pointed out that while collecting the tender papers, the petitioner had given her name and address as under :-

Name : Jyoti Sanjeev
Address: M/s. Jay Jyoti Gas Agency,
... ..
Vejalpur, Ahmedabad. (Annexure-A)

In the tender dated 11.1.2008 submitted by the petitioner, the particulars were given as under :-

Proprietorship firm (name of firm) : M/s. Jay Jyoti Gas Agency
(Jyoti Transport)
Name (of proprietor in full) : Mrs Jyoti Sanjeev Vansadia

Only while using the rubber-stamp, the petitioner had used the rubber-stamp of Jyoti Transport.

6.2 Learned Counsel further submitted that the petitioner Jyoti Sanjeev is proprietor of both Jay Jyoti Gas Agency and Jyoti Transport. Both these agencies are proprietary concerns and have a common PAN number. Jyoti Transport was created only for the purpose of accounting and for smooth handling of transportation work of Jay Jyoti Gas

Agency. Consistently, from 1998, contracts have been awarded to Jyoti Transport for transportation of Gas cylinders in the "Distributor category" for Jay Jyoti Gas Agency. Till now no objection was ever raised by the respondents regarding the confusion in the nomenclature. It was contended that the respondents themselves had encouraged transportation by Distributors for their own consumption since this facilitates better transportation and regular delivery to the customers and reduction in pilferage. The petitioner has been performing such tasks smoothly and efficiently. In turn, this also enables the petitioner to serve her customers better. Since the petitioner is in control of the transportation of the Gas cylinder and does not have to rely on outside agency, she is able to manage her affair more efficiently.

6.3 It was contended that through the representations dated 14.2.2008, the petitioner had brought these aspects to the notice of the respondents. The respondents however, did not take the representations into consideration and decided to reject the bid of the petitioner on technical grounds.

6.4 It was also contended that admittedly the petitioner owns three trucks. Two of these trucks had capacity of 300 gas cylinders whereas third truck had the capacity of 150 gas cylinders. This capacity is more than sufficient for the petitioner to handle her transportation requirement. In the "Distributor category", transporter is required to own one truck of 300 gas cylinders capacity.

7. On the other hand, learned advocate Ms. Minoo A. Shah appearing for the respondents vehemently opposed the petition and submitted that the decision of the committee

which is just and proper should not be interfered.

7.1 She contended that the committee of three high level officers found that the bid of the petitioner did not fulfill the tender requirements

7.2 It was contended that this Court has no territorial jurisdiction to entertain these petitions, final decision having been taken by the head office at Mumbai. It was contended that as per Clause-32(g) of the Transportation Agreement, jurisdiction would be of Mumbai.

7.3 It was contended that this Court should not interfere in the contractual matters between the parties in exercise of writ jurisdiction.

7.4 It was contended that the decision is otherwise also legal and valid. Since the bid was made in the name of Jyoti Transport, same could not be considered in the "Distributor category" since Distributorship was in the name of Jay Jyoti Gas Agency. The respondents however, considered the bid for "Transporter category" but found that the petitioner did not fulfill the minimum requirement of owning three trucks of capacity of 300 gas cylinders each.

7.5 Learned advocate relied on several decisions of the Apex Court, reference to which will be made at an appropriate stage.

8. Having thus heard learned advocates appearing for the parties, it is abundantly clear that the petitioner is enjoying Distributorship in the name and style of Jay Jyoti Gas Agency. The petitioner is running the Distributorship since year 1995.

She is managing her business efficiently and there are no complaints about her performance or of any nature related to her Distributorship. In fact, she has received several awards from the respondents appreciating her work performance.

9. The petitioner has been transporting her own cylinders from the bottling plant of the respondents. This arrangement is in existence since 1998 and the respondents have awarded such contracts for transport consistently since 1998. Such contracts have been renewed from time to time. All these contracts have been granted in the name of Jyoti Transport. There is no serious dispute that the petitioner is sole proprietor of both Jay Jyoti Gas Agency as well as Jyoti Transport. That the PAN number of both the proprietary concerns is also common. It is thus clear that Jyoti Transport has been brought into existence only for the purpose of better accounting and to facilitate the transportation of the gas cylinders for and on behalf of Jay Jyoti Gas Agency.

10. When the respondents themselves had consistently in the past accepted the tender bid from the petitioner in the name of Jyoti Transport and also awarded such contracts in the name of Jyoti Transport, it becomes difficult to understand as to what was the material change in the present bidding which prompted the respondents to reject the bid of the petitioner outright even without opening the price bid only on the ground that tender bid was signed in the name of Jyoti Transport. We fail to understand and appreciate such hyper technical and somewhat rigid stand on behalf of the respondents. The stand of the respondents has to be viewed in background of peculiar facts of the case namely, there is no complaint about the work performance of the agency operated by the petitioner, in the past admittedly several

awards and appreciation letters have been issued in favour of the petitioner and in the past respondents themselves had accepted tenders from Jyoti Transport and actually granted contracts also to Jyoti Transport. This time around in the present round of consideration, we find it extremely inequitable to permit the respondents to knock out the petitioner only on such technical consideration, particularly, when admittedly petitioner owns two trucks of 300 cylinders capacity and one truck of 150 cylinders capacity and since years has been handling the work of transportation of cylinders most efficiently to the satisfaction of the respondents and to the benefit of her customers. The petitioner has always shown readiness and willingness to make amendment and to carry out transportation work in the name of Jay Jyoti Gas Agency and also to enter into the contract in the said name for this purpose with the respondents.

11. Counsel for the respondents however, vehemently submitted that the tender bid once submitted could not be altered. Ordinarily, such a contention would be valid. However, in special facts of the present case noted here-in-above, the stand appears to be rigid.

12. In the past at no point of time, the respondents had pointed out to the petitioner that transportation work cannot be entrusted to any other agency even if there is a difference only in the name and barring this cosmetic difference, there is no difference between the two entities. The respondents themselves also did not find it objectionable to enter into the contract with the proprietary concern called Jyoti Transport for the purpose of transportation of gas cylinders knowing fully well that the same proprietor was enjoying the

Distributorship in the name of Jay Jyoti Gas Agency.

13. Counsel for the petitioner had also contended that the petitioner has acquired three trucks solely for the purpose of transporting gas cylinders for the Distributorship. If the transport contract is not awarded, such investment would remain idle. She would also not be in a position to maintain smooth supply of gas cylinders to the customers since she would have to rely upon third party agency for transportation. In addition to the above, we also find that admittedly the rate being paid by the respondents for transportation of cylinders to the "Transporter category" is Rs. 5.66 per cylinder whereas the rate being offered to the Transporter in the "Distributor category" is Rs. 5.61 per cylinder. Thus by awarding contract to the petitioner for transportation of cylinders, the respondents would in fact be saving revenue.

14. Considering the matter from all angles, the decision of the respondents cannot be countenanced. It is not that this Court is sitting in appeal over the decision of the Committee of the respondents. We find that decision to disqualify the petitioner was wholly irrational and arbitrary.

15. Coming to the technical objections raised by the respondents, we find that none of the objections can be sustained.

16. It is not in dispute that the Gas cylinders are to be transported from Hariyala in Kheda where the respondents have their LPG Bottling Plant. Such cylinders are to be brought to Ahmedabad where the petitioner is operating her Distributorship. The committee which decided to disqualify the petitioner was convened at Hariyala. The decision was

taken at Hariyala. Thus cause of action did arise within the territorial jurisdiction of this High Court. Even if final decision was taken at Mumbai that by itself would not oust the jurisdiction of this Court since we find that major part of cause of action arose within the limits of this Court.

17. Reliance on Clause 31 of the Tender Document read with clause 32(g) of the Transportation Agreement, also can be of no avail. Clause 31 of the tender agreement only provides that over and above the terms and conditions contained therein, conditions in the draft agreement will be deemed to have been included under these terms and conditions. Clause 32(g) of the Transportation Agreement in turn provides that the parties agree that Courts of Mumbai alone shall have jurisdiction to entertain any proceedings in respect of anything arrived under the agreement. Issue however, is whether the present proceedings is arising under the said agreement. Parties have yet to enter into any agreement. The said clause therefore, cannot be pressed in service to oust the jurisdiction of this Court. Otherwise also the present issue cannot be stated to have arisen under the said agreement. As already noted, part of the cause of action has arisen within the territorial jurisdiction of this Court.

18. With respect to the insistence on arbitration also, similarly we find that such requirement is found in Clause 32 of the tender agreement. Parties have not yet entered into any agreement and the petitioner has not agreed to abide by such terms. Dispute is also not arising out of or in relation to the said agreement and insistence on referring the dispute to the arbitration, therefore, cannot be accepted.

19. Counsel for the respondent relied on following

decisions to urge that the petitioner be relegated to the arbitration proceedings in terms of agreement of tender agreement conditions:

1) **Alimenta S.A. v. National Agricultural Cooperative Marketing Federation of India Ltd. and anr.** [(1987) 1 SCC 615].

2) **J.K. Jain and ors v. Delhi Development Authority and ors.** [AIR 1996 SC 318].

3) **Jivan Service Centre v. Hindustan Petroleum Corporation Ltd.** [1999(2) Arb. LR 638(Bombay)]

4) **Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums** [(2003) 6 SCC 503].

5) **Ardy International (P) Ltd. and anr. v. Inspiration Clothiers & U and anr.** [(2006) 1 SCC 417].

6) **M/s. Kamal Gas Service v. Bharat Petroleum Corporation Ltd.** [Civil Application No.8502/2007 dated 20.7.2007].

20. In the present case, however, we may recall that the parties had not yet entered into the contract for transportation. The petitioner had not yet agreed to abide by terms and conditions thereof. Even otherwise as earlier noted, the arbitration clause 32 of the tender agreement provides that any dispute or difference of any nature whatsoever, any claim, cross claim, counter claim or set off of the Corporation against the Transporter or regarding any right, liability, act, omission or account of any of the parties

arising out of or in relation to that Agreement shall be referred to the sole arbitrator. The dispute between the petitioner and respondents is not arising out of the Transportation agreement. As such agreement is yet to be entered into between the parties. We therefore, find that there was no clause for arbitration governing relations between the parties.

21 Counsel for the respondent relies on following decisions to urge that High Court in exercise of writ jurisdiction should not interfere in contractual matters and further that any commercial transaction of a State or public body involving element of public law or public interest, Court should not interfere :

1) **Runaq International Ltd. v. I.V.R. Construction Ltd. and ors.** [(1999)1 SCC 492].

2) **AIR India ltd. v. Cochin International Airport Ltd. and ors.** [(2000) 2 SCC 617].

3) **M/s. B.S. N. Joshi and Sons ltd. v. Nair Coal Services Ltd. and ors.** [AIR 2007 SC 437].

4) **Agarwal Roadlines v. Hindustan Petroleum Corporation Ltd** [Special Civil Application No. 9505/2006 to Special Civil Application No. 9525/2006 with Civil Application No. 9921/2006 to Civil Application No. 9941/2006 dated 3.10.2006].

5) **Jayshakti Road LPG packed Transport Contracto V. Bharat Petroleum Corporation Ltd.** [Special Civil Application No.1510/2007] **Shiv Transport Co. v. Bharat**

Petroleum Corporation Ltd. [Special Civil Application No. 1654/2007]. **Vikas Enterprises v. Bharat Petroleum Corporation Ltd.** [Special Civil Application No. 2097/2007 dated 4.7.2007].

6) **Larsen and Toubro Ltd. and anr. v. Gujarat State Petroleum Corpn. Ltd & ors.** [AIR 1979 SC 1628.]

7) **Ramana Dayaram Shetty v. The International Airport Authority of India and ors.** [AIR 1979 SC 1628].

22. With respect to the question of interference by the Court in the matters of contract entered into by the State or its instrumentality or the agency, it is by now well settled that though ordinarily the Court would not interfere into the actions in contractual matters, at the threshold, when the State is entering into a contract, there is duty to act fairly and not arbitrarily. While examining State action of awarding contracts therefore, Courts make a more intrusive inquiry.

23. With respect to the question regarding power of Court to interfere in contractual matters entered into by the State or its instrumentality or agency, it is true that in such cases Courts are slow in exercising writ jurisdiction. There is no total bar in exercise of writ power. In case of **ABL International ltd. and another v. Export Credit Guarantee Corporation of India Ltd. and ors.** [(2004) 3 Supreme Court Cases 553], the Apex Court observed that High Court can interfere under Article 226 of the Constitution if the State or its instrumentality acts in arbitrary manner even in matters of contract. It is also well settled that the State has duty to act fairly and not arbitrarily in the matters of awarding contracts and when High Court is examining

such a State action, its inquiry is mere intrusive.

24 In **Noble Resources Ltd. vs. State of Orissa**, (2006)

10 SCC 236, the Hon'ble Supreme Court has laid down the following principles :-

"14. The Respondent No.2 is a 'State' within the meaning of Article 12 of the Constitution of India. Its conduct in all fields including a contract is expected to be fair and reasonable. It was not supposed to act arbitrarily, capriciously or whimsically.

15. It is trite that if an action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on its part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter."

(emphasis supplied)

25. **Mahabir Auto Stores Vs. Indian Oil Corpn.**

(1990) 3 SCC 752 was a case of termination of contract even there the Apex court laid down as under :-

"It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."

(emphasis supplied)

26. In **Coimbatore District Central Cooperative Bank vs. its employees association**, 2007 (4) SCC 669, the

Apex Court has held that so far the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “doctrine of proportionality”. “Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise – the elaboration of a rule of permissible priorities.”

27. In the result, we find that the decision of the respondents in disqualifying the petitioner and her tender bid was wholly arbitrary and unreasonable.

27.1 In the result, we direct that the tender of the petitioner be treated as valid for being considered for transportation contract in “Distributor category”. Her request shall be considered accordingly for awarding the contract as per the terms and conditions of the respondents in the Distributor category. The decision in this regard shall be taken as expeditiously as possible and preferably within two months from the date of receipt of a copy of this order. Until

such time, such decision is taken, the present arrangement as directed by interim order dated 28.3.2008 shall continue.

27.2 It would be open for the respondents to require that such agreement be entered into by the petitioner in the name of Jyoti Gas Agency and not in the name of Jyoti Transport.

27.3 We find that the stand of the respondents was wholly unreasonable and the issue which should have been sorted out by the respondents themselves was not only allowed to be blown out of proportion, but the petitioner was dragged to litigation, the petition was also opposed vehemently. Despite opportunities being given to the respondents to reconsider the case of the petitioner, respondents refused to adopt a reasonable and pragmatic approach. We find that the authority which is a State within the meaning of Article 12 of the Constitution should not have taken such a rigid and unreasonable stand which besides causing hardship to the citizen in such cases also ends up needlessly consuming the Court's time.

In the result, while the petition is allowed in the above terms, the respondents are directed to pay the petitioner costs quantified at Rs. 10,000/-.

(M.S.Shah,J.)

(Akil Kureshi,J.)

At this stage, learned Counsel for the respondents prays for stay of directions given in this judgement.

In the facts and circumstances of the case, the request is rejected.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)