

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C). No. 396 of 2014

Smti. Chandi Bhattacharjee,
Proprietress,
M/S. Quality Tents, Dhaleswar Road No. 2, Nutan Pally, Agartala, West Tripura,
Pin: 799007

.....Petitioner

- V E R S U S -

1. The State of Tripura,
through the Secretary to the Government of Tripura, Department of Revenue
Civil Secretariat, Pin: 799010
2. The Director,
Land Records and Settlement, Government of Tripura, Palace Compound,
Agartala, Pin: 799001

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. S. M. Chakraborty, Sr. Advocate Ms. B. Chakraborty, Advocate
For the respondents	: Mr. S. Chakraborty, Addl. G.A.
Date of hearing & delivery of judgment and order	: 31.07.2017
Whether fit for reporting	: YES

Judgment and Order (Oral)

Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Ms. B. Chakraborty, learned counsel appearing for the petitioner as well as Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents.

[2] The petitioner who deals in products of OTOBI Ltd., having their registered office at Bangladesh has challenged the NIT under No. F.5 (78)-DSLRL/NLRMP/2014 dated 25.08.2014 (**Annexure-**

P/3 to the writ petition) on the ground that the tender was restricted to “reputed authorized dealers of Godrej for supply of furniture of different items under NLRMP Scheme”. According to the petitioner, such restriction is absolutely arbitrary and for keeping out the other firms from competition.

[3] The petitioner has averred in the writ petition that the items for which the tender was floated are manufactured by the petitioner’s principal and of “international class”, but they were arbitrarily debarred from participating in the said process by dint of a restrictive clause of the nature as stated above.

[4] Mr. S. M. Chakraborty, learned senior counsel appearing for the petitioner has submitted that the State cannot create a class by way of restriction without intelligible differentia. There exists no reason for creating the class in the matter of purchase of furnitures as referred in the said NIT. Even the element of the public interest which factors the process has been sacrificed.

[5] Mr. Chakraborty, learned senior counsel has referred a decision of the Apex Court in **City Industrial Development Corporation vs. Platinum Entertainment and others** reported in **(2015) 1 SCC 558**, where the Apex Court has held that every State action or its agencies or instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in

the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy.

[6] The Apex Court has approvingly reproduced in **Platinum Entertainment**, the following passages from **Kasturi Lal Lakshmi Reddy v. State of J & K**, reported in (1980) 4 SCC 1. That decision has unequivocally reaffirmed the principle of reasonableness and non-arbitrariness in the governmental action, which lies at the core of the entire constitutional scheme and structure.

“14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without

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

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in Ramana D. Shetty v. International Airport Authority of India that the Government is not free, like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the court as a rule of administrative law and it was also validated by the court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The court referred to the activist magnitude of Article 14 as evolved in E.P. Royappa v. State of Tamil Nadu and Maneka Gandhi case, (1978) 1 SCC 248 and observed that it must follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets that test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground. This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure.”

[Emphasis added]

[7] Mr. Chakraborty, learned senior counsel appearing for the petitioner has submitted that the same principle is applicable in respect of extending any benefit to any citizen or a group of citizens. In this case, the respondents by restricting the NIT to a particular product manufactured by one company under the brand name Godraj has resulted in exclusion of similar or the other items manufactured by the other companies who are engaged in such manufacturing of those items. This is on the face of it, is arbitrary.

[8] Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents however, in order to address the core of the discontent has submitted that the State is permitted to follow the transparent method by different modes. It is not linear as perceived by the petitioner. In this regard, he has referred to the provisions of Rule 22(8) of the Delegation of Financial Powers Rules, Tripura, 2011 which provide as under:

Rule 22(8). The Department shall have full powers to make purchases of material without calling tender from the DGS & D (Director General of Supply and Disposal) rate contract holders as per the rates and terms of DGS & D contracts subject to the conditions as provides therein.

[9] Mr. Chakraborty, learned Addl. G.A. appearing for the respondents has produced the records relating to the said NIT wherefrom it is gathered that for some items, three men's Committee had recommended to procure the Godrej furniture being the most reputed one in the field. Their serviceability and availability in the State is convenient. From the said note it further emerged that the said committee recommended for procurement of the godrej Compactor. The

Compactor had no DGS & D rate. Even though, tenders were invited two times, but no one came up to participate in the bid.

[10] Surprisingly, it is found in the note: *“it may be mentioned here that M/S Sunil Kumar Banik is the only authorized distributor of the Godrej products and this product has fixed price list.”* The respondents having considered the urgency relating to the procurement and utilization of the C.S.S. fund under the NLRMP. The Finance Department had accorded concurrence to the proposal for various computer hardware and software including the peripherals and the furniture according to the DGS & D rate and where the DGS & D rates are not available, the procurement had been suggested to be made by finalizing rates through the open tendering and on observance of codal formalities.

[11] Mr. Chakraborty, learned Addl. G.A. has further submitted that in the pendency of the writ petition the entire supply order has been executed in terms of the order dated 14.05.2014 (**Annexure-R/1 to the writ petition**) as the petitioner would not obtain any stay order on such supply and on completion of the supply, the payments have been made to the supplier. In paragraph-2 of the additional affidavit dated 01.09.2015, the respondents have asserted accordingly.

[12] The respondents have as it appear, created a mess in the process. They have taken all the items together including the compactor, the computer, hardware and software, with their peripherals and

furniture etc. and the tender was floated by the impugned NIT **(Annexure-P/3 to the writ petition)**.

[13] What the Finance Department had suggested was not comprehended by the respondents. The Finance Department was clearly of the opinion that where the department would go for the DGS & D rate, they may not go for tendering but the products which are not covered by the DGS & D rates, the respondents shall go for the tendering. It is the admitted position that all the products except one, are covered by the DGS & D rates. In respect of the compactor, the respondents were bound to float the tender keeping it open to be participated by all the eligible manufacturer directly or through their authorized dealers inasmuch as there was no DGS & D rate for the compactor.

[14] It is needless to say that the State or any of its department is not bound to procure any materials and items under the DGS & D rates. It is the alternative option. Normally, the State shall go for the tendering process as the CVC manual has clearly provided that the tendering process is the most transparent process for the public procurement activities when for any reason or for urgency or in the public interest that process cannot be pursued then, of course, the alternative mode or method can be followed and for this reason only this alternative method of the purchase at the DGS & D rate has been provided, even by the Delegation of Financial Powers Rules, Tripura, 2011.

[15] But here even the respondents invited tenders but that was restricted to the reputed authorized dealers of the Godrej. This Court really at loss how such kind of tender can be floated. If the submission made by Mr. Chakraborty, learned Addl. G.A. is accepted, it is only to find out that out of the DGS & D rates who can provide the lowest rate. Then the entire process will turn absolutely illegal inasmuch as the rate as fixed by the DGS & D is the rate has to be accepted for this process.

[16] No legal framework is available to support the State action under challenge in this writ petition so far the DGS & D rates are concerned, those rates are to be accepted or they shall launch the tendering process for all eligible manufacturers or the dealers. They cannot be allowed to do the both and accordingly, the tender process was absolutely arbitrary.

[17] Having observed thus, this tender process is liable to be declared unsustainable and quashed. The quashing of tender process shall not serve any purpose as the entire tendering process has come to its logical end as the payment for procurement has been made in favour of one of the authorized dealer of Godrej.

[18] On another event, the tender is absolutely bad. Procurement of the compactor by way of the said restricted contract is not tenable. Even it is true that the compactor is not manufactured by so many Indian manufacturing units. Even then, there should be the tendering inviting rates, whether someone can provide the compactor, even if

manufactured by the same manufacturing unit in a lower rate, because the DGS & D has not provided any rate for the said item.

[19] The challenged action of the state was wholly unsustainable. Hence, this writ petition is allowed but the consequential benefits cannot be granted. For such arbitrary action, even the petitioner is entitled to get some cost in the writ petition. It is therefore ordered that the respondents shall pay a sum of Rs. 50,000/- to the petitioner as cost jointly and severally.

In terms of these observations and direction, this petition stands allowed. The records as produced by Mr. Chakraborty, learned Addl. G.A. is returned.

JUDGE

A.Ghosh