HARMINDER SINGH ARORA

v.

UNION OF INDIA & ORS.

[R.S. PATHAK, R.B. MISRA AND G.L. OZA, JJ.]

MAY 9, 1986

Constitution of India, Arts. 32 and 226—Government Contracts by calling tenders—Whether can be assailed in writ proceedings as infringing fundamental rights.

Government Contracts by tenders—Variation of terms of tender—Whether notice to parties obligatory.

The appellant is carrying on the business of bulk supply of milk and milk products for the last twenty years. He has a plant for pasteurization at Pune. On July 16, 1985 the officer-in-charge of the Military Farms—respondent No. 2, issued tender notice for the supply of pure fresh buffalo and cow milk. The appellant being eligible and already on the approved list of the respondent authority, submitted a tender offering fresh buffalo milk of the specified fat content and gravity giving a rate of Rs. 421 per 100 litres. The General Manager, Government Milk Scheme, Pune—repondent No. 4, also submitted a tender for the supply of pasteurized milk, an item not contemplated by the tender notice, at Rs.400 per 100 litres. Tenders were opened on August 23, 1985 and the appellant was found the lowest bidder.

The Military Officer concerned submitted a report to the higher authority stating that the appellant was not only the lowest bidder but also that the purchase of milk from him would be profitable, while the purchase of milk from respondent No. 4 would result in serious loss to the extent of rupees ten lakhs or so. But all the same, the respondent authority accepted the higher bid of respondent No. 4, in preference to the lower bid of the appellant contrary to the terms of the notice inviting tender. Feeling aggrieved by the rejection of his tender, the appellant challenged the order by filing a writ petition in the High Court which was dismissed *in limine*.

In this appeal by special leave on behalf of the appellant it was

A contended that even in the matter of contracts, the Government has to act fairly and justly and the failure of the Government to do so gives a right to the citizen to approach the court for justice, that the authority concerned in rejecting his tender had acted contrary to the principles of law, unfairly, arbitrarily and discriminately, that the tender submitted by respondent No. 4 was not in consonance with the tender notice and it should have been ignored, and that if the authority wished to alter the conditions of the tender notice it was obligatory and mandatory for it to call him for negotiation. It was further contended that the 10 per cent price preference given to respondent No. 4 contrary to the terms of the tender notice was illegal and discriminatory.

C On behalf of the respondents it was contended that respondent No. 4 being the Government agency was rightly awarded the contract as per the policy of the Government of India laid down in notification dated August 13, 1985.

D Allowing the appeal, the Court,

HELD: 1. The Government may enter into a contract with any person but in so doing the State or its instrumentalities cannot act arbitrarily. It is open to the State to adopt a policy different from the one in question, but once the authority or the State Government chooses to invite tenders then it must abide by the result of the tender. [75 C-D; 77D -E]

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2. The High Court was not justified in dismissing the writ petition *in limine* by saying that the question relates to the contractual obligation and the policy decision cannot be termed as unfair or arbitrary. [77 E]

F There was no question of any policy decision in the instant case. The notification dated August 13, 1985 laying down the policy came in after July 16, 1985 when respondent No. 2 issued tender notice. The instrumentalities of the State having invited tenders for the supply of fresh buffalo and cow milk, these were to be adjudged on their intrinsic merits in accordance with the terms and conditions of the tender notice. The contract for the supply of milk was to be given to the lowest bidder under the terms of the tender notice and the appellant being the lowest bidder, it should have been granted to him. The authority acted capriciously in accepting a bid which was much higher and to the detriment of the State. [75 B-D; 77 D-F]

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H 3. Where the tender form submitted by any party is not in con-

formity with the conditions of the tender notice the same should not be accepted. So also, where the original terms of the tender notice are changed the parties should be given an opportunity to submit their tenders in conformity with the changed terms. [72 C-E]

4. The authority acted arbitrarily in allowing 10 per cent price preference to respondent No. 4. The terms and conditions of the tender had been incorporated in the tender notice itself and that did not indicate any such price preference to government undertakings. The only concession available to Central/State Government or to the purely government concerns was under para 19 of the notice, that is, that they need not pay tender form fee and earnest money. No other concession or benefit was contemplated under the terms of the tender notice. [73 A-C]

Ramana Dayaram Shetty **v.** *The International Airport Authority of India & Ors.,* **[1979] 3 SCR 1014;** *V. Punnan Thomas* **v.** *State of Kerala,* **AIR 1969 Kerala 81;** *C.K. Achuthan* **v.** *State of Kerala* **[1959] Suppl. 1 SCR 787;** *Viklad Coal Merchants, Patiala etc. etc.* **v.** *Union of India & Ors.* **AIR 1984 SC 95; and** *Madhya Pradesh Ration Vikreta Sangh Society & Ors. etc. etc.* **v.** *State of Madhya Pradesh & Anr.* **[1982] 2 SCR 750, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 824 of 1986

From the Judgement and Order dated 10.1.1986 of the Bombay High Court in W.P. No. 5327 of 1985.

S.N. Kacker. Rani Chhabra and Swatanter Kumar for the Appellant.

V.S. Desai, C.V. Subba Rao, A.S. Bhasme and A.M. Khanwilkar for the Respondents.

The Judgment of the Court was delivered by

R.B. MISRA, J. The present appeal by special leave is directed against the judgment and order dated January 10, 1986 of the High Court of Judicature at Bombay dismissing the petition under Article 226 of the Constitution filed by the appellant.

The appellant is carrying on the business of bulk supply of milk,

A products and milk cream etc. The appellant is well-known in the said field and has a plant of pasteurization in Pune and has been carrying on the said business for more than twenty years. The appellant installed a plant for pasteurization at a heavy cost to the tune of rupees three lakhs. The appellant has been supplying large quantities of milk and
B milk products pasteurized or otherwise to various companies, Government Departments including respondents Nos. 2 and 3. The appellant as a registered contractor has been supplying fresh buffaloes and cows milk to respondent Nos. 2 and 3 as per the requirements for the last twenty years. The appellant is on their approved list for the same period and his supplies and work were always appreciated and accepted by the respondents for all these periods.

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The appellant is also capable of supplying any quantity of pasteurized milk and, indeed, he had been supplying to various organisations the milk and milk products and also pasteurized milk. Later on Respondent No. 2, the officer-incharge of the Military Farms, Pimpri,
D directed that the local purchase of milk be stopped and regular supply under a contract by inviting tenders be effected. Accordingly, the appellant's contract for supply of fresh buffalo and cow milk ended in 1984.

The Military Farm had its own plant for pasteurization and for all
E these years respondents Nos. 2 and 3 had been making purchases of only fresh buffalo milk and used to pasteurize the milk for their own purposes in their own plant. The plant of respondents 2 and 3 is very much in operation till to-day and also on the date of inviting tenders in question.

F Respondent No. 2 issued on or about July 16, 1985 tender notices for the supply of fresh buffalo or cow milk. The said tender notice was published in the Indian Express on July 29, 1985. The tender notice was also sent to the appellant by Respondent No. 2 by registered post acknowledgement due which was received by the appellant in July 1985. By the said tender notice, the respondent had invited tenders for
G supply of fresh buffalo or cow milk at Military Farms of Pimpri, Pune. The appellant being eligible and already on the approved list of the respondents submitted a tendar for supply of fresh buffalo milk to respondents 2 and 3 as per the requirements stated in the tender notice. The appellant had offered the milk at the rate of Rs.4.21 per litre having 6 per cent fat and specific gravity of 1.030 as required in
H the tender notice, thus, giving a rate of Rs.421 for each 100 litres.

Respondent No. 4, General Manager, Government Milk Scheme, Pune, also submitted a tender but the tender of respondent No. 4 related not to the item asked for in the tender notice viz. fresh buffalo or cow milk but related to the supply of pasteurized milk. While the cow milk asked for in the tender provided for 4 per cent fat with a specific gravity of 1.029, respondent No. 4 agreed to supply pasteurized milk for Rs.4 per litre, that is Rs.400 per 100 litres.

It appears that after the submission of the tender, the appellant received a notice dated October 30, 1985 from respondent Nos. 2 and 3 requesting the appellant to extend the validity period of tender up to November 30, 1985 on the same terms and conditions as mentioned in the tender submitted by the appellant. The appellant acceded to the request and extended the validity period till November 30, 1985 in view of the long standing business and his good relations with respondents 2 and 3.

During this period respondents 2 and 3 kept on receiving supplies of fresh buffalo milk to the satisfaction till the appellant was asked to stop the supply from November 20, 1985 *vide* letter dated October 30, 1985, although the appellant had been requested earlier to continue the supply at least up to December 1, 1985 *vide* letter dated October 30, 1985. The appellant thus had to suffer a huge loss on account of the abrupt stoppage of the supply.

Tenders were opened on August 23, 1985. The appellant was the lowest bidder. The rates given by the appellant in the tender for supply of fresh buffalo milk was lower and tender of respondent No. 4 could be of no consequence as it was for a different item not contemplated by the tender notice. The tender given by Respondent No. 4 was however accepted on November 19-20, 1985 and the tender of the appellant was rejected although it was lower than that of respondent No. 4. The concerned officer had made a report to the higher authorities about the two tenders, one from the appellant and the other from respondent No. 4, *vide* letter dated August 23, 1985. It will be appreciated at this stage to refer to the advice given by the officer concerned which is as follow:

> "CONCLUSION OF CONTRACT FOR SUPPLY OF MILK AT PR MF KIRKEE/PIMPRI.
>
> 1. Reference discussion DDME and ADMP of date.

2. The information required is given below:

(a) The cost of blended milk and standard milk taking the buff milk rate of Rs.421 for 100 litres works out to:

i)	Blended Milk (Taking of BMP Rs.28 per kg.)	— Rs.3.59 per litre
	10% price preference	— Rs.0.36
ii)	Standard Milk (Taking cost of separated milk Rs.2.30 per litre)	— Rs.3.48 per litre
	10% price preference	— Rs.0.35
		Rs.3.83

(b) If contract for purchase of cow milk is concluded, farm will lose 41 paise per litre on blended milk and 52 paise on standard milk per litre. Taking a daily purchase of 3000 litres of cows milk for which tender has been called for it will amount to a loss of Rs.4.48 lakhs in terms of blended milk and Rs.5.69 lakhs in terms of standard milk during the period of contract of one year.

3. In so far as pasteurization is concerned, milk has to be repasteurized as delivery timings of units in the station are different. Moreover, even if Milk Scheme delivers the milk just before one hour of sending out the delivery rounds, it will only save on electricity charges which will be negligible. The 7.500 litres of cows milk being produced daily at Pimpri has to be pasteurized for which the daily section will continue to work as it is at present.

4. The collection charges under farm arrangement works out to Rs.0.10 per litres. The details are enclosed at Appendix–'A'. Though collection charges will be less by 10 paise but it will cause lot of inconvenience to the dairy staff because milk is already being collected three times a day from Pimpri and lot of difficulties are being experienced in route. If Milk Scheme delivers the Milk at MP Dairy that arragement will be the best."

From the above report it is obvious that the respondents will be put to substantial loss to the tune of about Rupees ten lakhs by accept-

ing the tender of respondent No. 4 but all the same the tender of respondent No. 4 was accepted in preference to the tender made by the appellant. Respondents 2 and 3 would have gained by accepting the tender of the appellant which is strictly in terms of the tender notice because the respondent could further increase the quantity of milk by diluting the same to bring to fat and gravity standard. From the terms and conditions inviting the tender, the Government suppliers were given exemption from depositing the earnest money and tender form fee but no other concession to the Government supplies was indicated in the tender notice yet 10 per cent price preference was given to respondent No. 4 without any basis and in violation of the terms of notice inviting the tender. All the same the price of the appellant quoted in the tender was lower than that of respondent No. 4 and there was absolutely no justification whatsoever for not accepting the tender of the appellant.

To start with the appellant had made an offer of Rupees four hundred fifty per hundred litres but para 16 of the tender notice provided for negotiations by respondents 2 and 3 with the contractors on rates or otherwise. As a result of subsequent negotiations between the appellant and the respondents, the offer of Rs.450 was reduced to Rs.421 per hundred litres. If the tender notice had indicated for the supply of pasteurized milk there was no difficulty for the appellant to have done so. But in the absence of any such indication in the tender notice and in the absence of any subsequent negotiations between the appellant and the respondents under para 16 of the tender notice, the appellant offered to supply the buffaloes or cows fresh milk.

Feeling aggrieved by the rejection of his tender, the appellant challenged the order of the authority concerned by a Writ Petition in the High Court. The Writ Petition was, however, dismissed *in limine* by a cryptic order as under:

> "Heard both sides. The Writ Petition involves Questions relating to contractual obligations. Even otherwise, we do not find that there is anything wrong or unfair in accepting the milk from the Government Milk Scheme. The policy decision cannot be termed as unfair or arbitrary. Hence W.P. rejected."

The appellant has now come to challenge the judgment and order of the High Court dated 10.1.1986 by special leave. Shri S.N. Kacker, learned counsel appearing for the appellant has reiterated the same contentions as had been raised before the High Court.

A The main contention is that the authorities concerned had acted contrary to the principles of law, unfairly, arbitrarily and discriminately. The appellant being the lowest bidder his tender ought to have been accepted by the Panel Officers and there was absolutely no reason or justification for the respondents to reject the same. It was B further contended that the tender submitted by respondent No. 4 was not in consonance with the requirements of the tender form and, therefore, that should have been ignored. The tender notice demanded supply of fresh buffaloes or cows milk but respondent No. 4 had submitted for pasteurized milk. In any case, if the respondents wished to alter the invitation of the tender it was obligatory and mandatory for the respondents to call the appellant for negotiations before rejecting C his tender and accepting the tender of respondent No. 4. There was a clear provision for negotiation in the tender notice and it was open to respondent No. 4 to have negotiated with appellant and asked him to tender for the supplying pasteurized milk. In any case, on the own admission of the respondents, that the pasteurized milk supplied by D respondent No. 4 would have to be re-pasteurized and secondly the cost of 50 paise had to be added even to the price of respondent No. 4 as the same was being added to the price given by the appellant. The action of the respondent is completely arbitrary and discriminatory inasmuch as respondent No. 4 merely being the Government organisation had been given preference over the appellant while respondent E No. 4 had no better quality or standard for effecting the supplies asked for under the contract and even for the pasteurized milk. Even in the matter of contract, the Government has to act fairly and justly and the failure of the Government to do so given a right to the citizen to approach the court for justice. The respondents have made a wrongful exercise of their power in rejecting the tender of the appellant.

F It was contended for the appellant that he being the lowest bidder, the authorities concerned acted arbitrarily in accepting the bid of respondent No. 4 which was higher than that of the appellant. We find considerable force in this contention. In *Ramana Dayaram Shetty* v. *The International Airport Authority of India and Ors.*, [1979] 3 SCR G 1014, this Court laid down the law in this respect in the following words:

> "Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of H 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 standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

On August 23, 1985, the officer of the Military Department submitted a report to the Higher Authority stating therein that the appellant was not only the lowest bidder but also the purchase of milk from the appellant could be profitable while the purchase of milk from respondent No. 4 would result in serious losses to the extent of Rupees ten lakhs or so. The report further indicates that respondents would have to re-pasteurize the milk for its supply to its various units without any profit because the minimum fat standard of 4 per cent with the gravity of 1.029 has to be maintained. As such the entire labour would be deployed without any fruitful result or benefit to the respondent while on the other hand, if the respondent wished, by pasteurizing the fresh milk supply of the appellant they could otherwise earn profits extracting fat while maintaining the fat and the gravity standard. In spite of the report of the Military Officer, the higher bid of respondent No. 4 in preference to the lower bid of the appellant was accepted. It clearly indicates that the action of the respondent authority was arbitrary and fanciful.

The terms contained in the tender notice have been detailed in the notice itself and it is not necessary to refer to all the terms but we would refer to paras 2, 16 and 19. Para 2 of the tender notice provides that tenders will be invited for the supply of pure fresh buffaloes milk testing not less than 6.0% butter fat and 1.030 specific gravity or pure fresh cows milk testing not less than 4% butter fat and 1.029 specific gravity daily at Military farms/depots as mentioned in Appendix 'A'.

Para 16 provides that as per orders of Army Headquarters, Military Farms contracts are to be concluded through a panel of officers which may hold negotiations with the contractor where necessary and recommend the reasonable rates to the higher authorities.

A Para 19 provides that the Central Government/State Governments are purely government concerns need not pay tender form fees and earnest money. They are, however, requested to inimate the period of supply for which they desire to tender their rates to enable the undersigned to send them the required tender form.

B It is contended for the appellant that the tender submitted by respondent No. 4 did not satisfy the requirement of para 2 of the tender notice. The tenders had been invited for the supply of pure fresh buffaloes milk or fresh cows milk but the respondent had submitted tender for supplying pasteurized milk, and therefore, the tender submitted by respondent No. 4 being not in conformity with the tender C notice should not have been accepted by the authorities. In any case, if the tender of respondent No. 4 regarding supply of pasteurized milk was accepted and the original terms of the tender notice were changed, the appellant should have been given an opportunity to submit his tender in conformity with the changed terms but this was not done D which has caused serious prejudice to the appellant. If the tender forms submitted by any party is not in conformity with the conditions of the tender notice the same should not have been accepted but the authorities concerned arbitrarily and in a fanciful manner accepted the tender of respondent No. 4. The State of its instrumentality has to act in accordance with the conditions laid down in the tender notice. In E any case if the authorities chose to accept the tender of respondent No. 4 for supplying pasteurized milk, the appellant should also have been given an opportunity to change its tender. The authorities have, however, given preference to the tender of respondent No. 4 for offering to supply pasteurized milk contrary to the terms contained in para 2 of the tender notice. We find considerable force in this contention of the F appellant.

It was next contended that the conditions contained in the tender notice did not contemplate of giving 10 per cent price preference to Government undertakings yet 10 per cent price preference was given to the Government illegally and the policy of the Government to give G 10 per cent price preference to Government undertaking was discriminatory and violative of Articles 14 and 16 of the constitution. The State policy places respondent No. 4 above the appellant without any basis or reasonable classification. In the absence of any such stipulation in the contract such price preference was unjustified.

H If the terms and conditions of the tender have been incorporated

in the tender notice itself and that did not indicate any preference to the Government undertakings of giving 10 per cent price preference to Government undertaking, the authority concerned acted arbitrarily in allowing 10% price preference to respondent No. 4. The only facility provided to the Government undertakings was provided in paragraph 19 which contemplates that the Central or State Government Departments are purely Government concerns need not pay tender forms fees and earnest money. This was the only concession available to the Central/State Government or to the purely Government concerns, and no other concession or benefit was contemplated under the terms of the tender notice. If the appellant had known that 10 per cent price preferene to Government undertaking was to be given to respondent No. 4 the appellant would have taken every precaution while submitting the tender. In support of his contentions, Shri S.N. Kacker, appearing for the appellant strongly relied upon *Ramana Dayaram Shetty* v. *The International Airport Authority of India and Ors.* (supra). In that case, the first respondent by a public notice invited tenders for putting up and running a Second Class Restaurant and Two Snack Bars at the International Airport at Bombay. The notice, *inter alia,* stated in paragraph 1 that sealed tenders in the prescribed form were invited from Registered Second Class Hoteliers having at least five years experience for putting up and running a Second Class Restaurant and two Snack Bars at the Bombay Airport for a period of three years. Paragraph 8 stated that the acceptance of the tender would rest with the Airport Director who does not bind himself to accept any tender and reserve to himself the right to accept or reject any tender received without assigning any reason therefor. Out of the six tenders received only the tender of the 4th Respondent was complete and offered the highest amount as licence fee. All the other tenders were rejected because they were incomplete. As the 4th respondent did not satisfy the description of a Registered Second Class Hotelier having at least five years experience prescirbed in paragraph (1) of the tender notice, the first respondent called upon the 4th respondent to produce documentary evidence whether they were registered second class hoteliers having at least five years experience. The Fourth Respondent stated once again that they had considerable experience of catering for various reputed commercial houses, clubs, messes and banks and that they held on Eating House Catering Establishment (Centeen) Licence. On being satisfied by the information given by the 4th respondent, the first respondent accepted the tender on the terms and conditions set out in its letter.

A B C D E F G H

A The appellant challenged the decision of the first respondent in accepting the tender of the 4th respondent. This Court held that the action of the first Respondent in accepting the tender of the 4th respondent who did not satisfy the standard or norms was clearly discriminatory since it exlcuded other persons similarly situated from tendering for the contract and it was arbitrary and without reason. The B acceptance of tender was invalid as being violative of the equality clause of the Constitution as also the administrative law for its arbitrary actions. This Court also did not justify the action of the first respondent on the ground that it could have achieved the same result by rejecting all the tenders and entering into direct negotiations with the 4th respondent. This Court observed:

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> "It is true that there was no statutory or administrative rule requiring the 1st respondent to give a contract only by inviting tenders and hence the 1st respondent was entitled to reject all the tenders and, subject to the constitutional norm laid down in Article 14, negotiate directly for entering D into a contract. Paragraph (8) of the notice also made it clear that the 1st respondent was not bound to accept any tender and could reject all the tenders received by it. But here the 1st respondent did not reject the tenders outright and enter into direct negotiations with the 4th respondents for awarding the contract. The process of awarding a con- E tract by inviting tenders was not terminated or abandoned by the 1st respondent by rejecting all the tenders but in furtherance of the process, the tender of the 4th respondents was accepted by the 1st respondent. The contract was not given to the 4th respondents as a result of direct negotiations. Tenders were invited and out of the tenders F received, the one submitted by the 4th respondents was accepted and the contract was given to them."

This Court quoted with approval the following observations of Mathew J., in *V. Punnan Thomas* v. *State of Kerala*, AIR 1969 Kerala 81:

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> "The Government is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a H democratic society. A democratic Government cannot lay

down arbitrary and capricious standards for the choice of persons with whom alone it will deal." A

Shri Anil Dev Singh, appearing for the respondents, has contended that respondent No. 4 being the State Government agency was rightly awarded the contract as per the policy of the Government of India as laid down in Letter No. 12(1)/1/85/D/(QS) dated August 13, 1985. The policy adopted by said letter dated August 13, 1985 came in after the 16th July, 1985 when respondent No. 2 issued tender notice for the supply of fresh buffalo or cow milk. As such the notification dated August 13, 1985 is of no avail to the respondent in so far as the acceptance of the tender of respondent No. 4 is concerned. Acceptance or rejection of tender made by the appellant or the respondent No. 4 will depend upon the compliance of the terms of tender notice. It is true that the Government may enter into a contract with any person but in so doing the State or its instrumentalities cannot act arbitrarily. In the instant case, tenders were invited and the appellant and respondent No. 4 submitted their tenders. The tenders were to be adjudged on their own intrinsic merits in accordnace with the terms and conditions of the tender notice. The learned counsel, however, placed reliance on *C.K. Achuthan* v. *State of Kerala*, [1959] Suppl. 1 SCR 787 where Hidayathullah, J., as he then was, held that a contract which is held from Government stands on no different footing from the contract held by a private party and when one person is chosen rather than another, the aggrieved party cannot claim protection of Article 14. B C D E

The wide observation made by Hidayatullah, J., was explained in *Ramana Dayaram Shetty* (Supra). Bhagwati J. as he then was, speaking for the Court observed: F

"Though the language in which this observation is couched is rather wide, we do not think that in making this observation, the Court intended to lay down any absolute proposition permitting the State to act arbitrarily in the matter of entering into contract with third parties. We have no doubt that the Court could not have intended to lay down such a proposition because Hidayatullah J. who delivered the judgment of the Court in this case was also a party to the judgment in *Rashbihari Panda* v *State of Orissa* (Supra) which was also a decision of the Constitution Bench, where it was held in so many terms that the State cannot act arbitrarily in selecting persons with whom to enter into G H

A contracts. Obviously what the Court meant to say was that merely because one person is chosen in preference to another, it does not follow that there is a violation of Article 14, because the Government must necessarily be entitled to make a choice. But that does not mean that the B choice be arbitrary or fanciful. The choice must be dictated by public interest and must not be unreasoned or unprincipled."

Next reliance was placed on *Viklad Coal Merchants, Patiala, etc. etc.* v. *Union of India & others,* AIR 1984 SC 95. In that case this Court had to construe section 27A and 28 of the Railways Act and the C Court observed:

"Section 28 forbids discrimination by giving undue or unreasonable preference or advantage in respect of any particular traffic to any particular person or any railway D administration but this general prohibition against discrimination is subject to the overriding power conferred on Central Government under section 27A. If while giving effect to the orders of the Central Government issued under Section 27A, priority is accorded in the matter of transport of goods consigned to Central or State Government or E class of goods specified in the general or special order issued in this behalf, the action of the railway administration in complying with such special or general order could not be said as tentamounting to giving undue or unreasonable preference or advantage to or in favour of any particular person or railway administration. What section 28 forbids F is discrimination in the matter of transport of goods against a class but this is subject to the permissible classification that would be introduced by a special or general order issued by the Central Government in exercise of the power conferred by Section 27A. It may be recalled that the Preferential Traffic Schedule according to Priority 'C' to transG port of coal by those mentioned therein has been issued in exercise of the power conferred by Section 27A. Therefore, the submission that petitioners in the matter of transport of coal are similarly situated with the Central or State Government or transporters given priority by general or special order issued under Section 27A cannot be H entertained."

This case is not of much help in the present case. The facts were materially different in that case. In that case, the railway authority had to comply with the directions given by the Central Government which was in the public interest. A

Lastly, the counsel relied upon *Madhya Pradesh Ration Vikareta Sangh Society & Ors. etc etc.* v. *State of Madhya Pradesh & Anr.* [1982] 1 SCR 750. In that case the question for consideration was whether the Fair Price Shops in the State under the Government Scheme should be directly run by the Government through the instrumentalities of the Consumers Co-operative Societies as its agents or by retail dealers to be appointed by the Collector. This Court took the view that essentially this was a matter of policy to which the Court is not concerned. This case also is not of much help in the present case. B C

In the instant case, the instrumentalities of the State invited tenders for the supply of fresh buffaloes and cows milk and, therefore, this case has to be decided on the basis of bid by the tenderers. There was no question of any policy in this case. It is open to the State to adpot a policy different from the one in question. But if the authority or the State Government chooses to invite tenders then it must abide by the result of the tender and cannot arbitrarily and capriciously accept the bid of respondent No. 4 although it was much higher and to the detriment of the State. The High Court, in our opinion, was not justified in dismissing the writ petition *in limine* by saying that the question relates to the contractual obligation and the policy decision cannot be termed as unfair or arbitrary. There was no question of any policy decision in the instant case. The contract of supply of milk was to be given to the lowest bidder under the terms of the tender notice and the appellant being the lowest bidder he should have been granted the contract to supply, especially, when he has been doing so for the last so many years. D E F

In the result, the appeal must succeed. It is accordingly allowed and the judgment and order of the High Court dated January 10, 1986 is set aside and the Writ Petition is allowed and the order of the authorities rejecting the tender of the appellant and accepting the tender of respondent No. 4 is quashed. The respondents authorities are directed to accept the tender of the appellant. There is, however, no order as to costs. G

P.S.S. Appeal allowed. H