

(1991) 06 KAR CK 0032

In the Karnataka High Court

Case No : W.A. Nos. 988 to 993 of 1991 c/w W.P. Nos. 6117, 6903 to 6906 of 1991

A.C. Chandrakumar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-06-1991

Acts Referred:

Constitution of India, 1950 — Article 19(1)(G)

Citation : (1991) 2 KarLJ 365

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Judgement

Shivashankar Bhat, J.-Against the dismissal of a few writ petitions writ appeals are filed by the petitioners. Other writ petitions were referred to the Division Bench by the learned Single Judge in view of the pendency of the writ appeals. All the parties are referred with reference to their rankings in the writ petitions. However, one of the parties impleaded subsequently i.e., Karnataka Antibiotics and Pharmaceuticals Ltd., a public sector undertaking is referred as KAPL.

2. Petitioners question the legality and propriety of the Government Order dated 23-2-1991 (referred as the impugned order). By this order the State Government approved the purchases of the drugs and I.V. fluids required by Government Hospitals from Public Sector Undertakings ("PSU" for short) on the basis of an alleged recommendations of a High Power Committee. The conditions stated in the said impugned order are 7 in number, they are as follows:

"1) 100% injectable Antibiotics should be purchased from M/s. KAPL, Bangalore. If the drug is not manufactured by M/s. KAPL then it can be purchased from other Public Sector Undertakings. In case of oral antibiotics, if the rate is cheapest, 100% should be purchased from M/s. KAPL. If the rates are equal 50% should be purchased from M/s. KAPL and the remaining 50% should be distributed equally among other Public Sector Undertakings. In case of other drugs, if the rates are equal 50% should be purchased from M/s. KAPL and the remaining 50% should be distributed equally among other Public Sector

Undertakings. If any one of the Public Sector Undertakings is the only manufacturer for any of the drugs not manufactured by M/s. KAPL, 100% should be purchased from the Public Sector Undertakings only. Where M/s. KAPL is in the picture and if it is cheapest, 100% should be purchased from M/s. KAPL.

2) The Public Sector Undertakings should supply the drugs to the Government Medical Stores and other Government, Quasi-Government Institutions directly and no supplies should be made through Agents.

3) The rates quoted by the Public Sector Undertakings should be valid for at least one year without requesting for price increase except in case of statutory increases like increase in Excise Duty or Sales Tax of DPCO.

4) Only those drugs which are not being manufactured by Public Sector Undertakings be purchased from other sources including SSI.

5) Regarding the security deposits, etc., the amount will be determined by the Director of Health and Family Welfare Services, which will be set-off against the value of defective or short supplied and the Public Sector Undertakings will be required to recoup this amount.

6) The drugs which are not purchased from the Public Sector Undertakings and which are not life saving drugs will be purchased from SSI units of the State provided they are of good quality.

7) All other terms applicable to Rate contract will apply and usual procedure will be followed for fixing Rate of Contract".

3. According to the petitioners the rates at which the PSU supply the articles in question (medicines, drugs etc.) are far in excess of the rates at which the petitioners are willing to supply. It is also the case of the many of the petitioners that the Government had already approved the rates quoted by the petitioners for the supply of the various articles and the said approval is to be operative till the end of August, 1991. These petitioners are all small scale industries started mainly with the hope of supplying the articles to the Governmental Institutions and these industries are substantially financed by the State Finance Corporation and are heavily indebted to the said State Finance Institution. The sudden change of the policy of the Government to place orders substantially from KAPL and other PSU would be injurious to these small scale industries. Their investments in the business of manufacturing these articles will be jeopardised by the curtailment of the available market-the State being the main consumer of these articles. The petitioners have brought out the injury to the public interest caused by the impugned order by illustrating the difference in the rates of the articles at which the petitioners are willing to supply and the rates at which the Government has agreed to purchase the articles from the PSUs. By way of illustration 23 items are highlighted. In respect of the particular quantity estimated to be required during one year regarding these 23 items the cost of purchase from PSUs will be Rs. 1,071.40 lakhs while, if the purchases were to be

made from the petitioners the cost will be only Rs. 557.70 lakhs and thus the excess payment to be made to the PSUs for the supplies from the latter will be Rs. 513.70 lakhs per annum. Apart from these 23 items there are several hundreds of other drugs involved and the loss to the public exchequer by the impugned order will be quite enormous. The impugned order is thus attacked as arbitrary and based on irrelevant considerations resulting in injury to the public interest.

4. The learned Single Judge dismissed the first batch of writ petitions at the stage of preliminary hearing holding that no monopoly was created in favour of PSUs so as to obliterate the business of the petitioners. There are several drugs which are not covered by the impugned order which could be supplied by the petitioners. Thus the contention based on Article 19(1)(g) of the Constitution was rejected. It was further held that if the Government as a matter of policy decides to purchase from PSUs that action by itself cannot be termed as arbitrary, inasmuch as Public Sector Industries would themselves fall into a separate class. The learned Single Judge observed:

"Whether rates compare themselves with the rates of the products manufactured in Public or Private Sector and whether the quality of goods are the same are matters of commercial expediency and enough way must be left to Government in such matters. It is also matter of policy to encourage Public Sector Industries for it has other economic and industrial ramifications".

These observations were made by the learned Single Judge even though the State Government had not traversed the specific averments made in the writ petitions about huge loss that would result to the public exchequer by placing orders from only the PSUs and vesting a certain monopoly in favour of KAPL regarding a few items. The petitioners had pointed out in the writ petitions that about 139 items of drugs and chemicals are to be purchased from PSUs only (vide para 7 of the W.P. No. 5766/1991). The difference in the rates in respect of just 23 items were also brought out in the same pleading. After the writ appeals were admitted the State Government filed its statement of objections and the said statement of objections was adopted in respect of other writ petitions also. A specific notice was issued to KAPL since in a few writ petitions it was not impleaded. After service of notice the learned counsel for KAPL also did not seek any time for filing the statement of objections and specifically agreed to proceed to argue the matter on the basis of the existing pleadings. We are pointing out this to emphasise that the respondents were afforded full opportunity to file any further statement of objection if they so desired.

5. In the statement of objections filed in the writ appeals, the State Government has sought to justify its action on general principles of law without reference to the facts of the case. The State Government also has not denied the specific case of the petitioners that except KAPL other PSUs are not of the State of Karnataka and they are of other States. The State Government also has not disputed the specific assertion of the petitioners that the loss to the public exchequer will be

quite large if the articles were to be purchased under the impugned order when compared to the rates offered by the petitioners. The State Government nowhere has asserted that apart from the price structure involved, there are other reasons for deciding to purchase the articles from the PSUs., such as higher quality of the articles manufactured by the PSUs, promptitude in service and supply, and guarantee of supply during any emergent situation, etc.

6. The respondents seem to assume that whenever the State Government decides to purchase goods from any PSU the same cannot be questioned at all and the said decision is a matter of policy beyond the pale of judicial scrutiny. It is also contended on behalf of the State Government that in reality the transaction is nothing but purchasing the goods by the State Government which were manufactured by its own instrumentalities and therefore question of bona fides do not arise; Similarly, dealing with the PSU is essentially an internal affair of the State Government in the matter of trade and therefore the same cannot be attacked as arbitrary. If cost of purchases from PSU is more, it is nothing but paying something more to the PSU instead of making the payment to private parties. That is to say Governmental funds are passed on to another wing of the Government even though technically in commercial parlance the cost may be said to be higher.

7. The principle governing the exercise of a contractual power by the State Government is not the same as the principle governing the exercise of a contractual power by the private individuals. This is now made quite clear by the several decisions of the Supreme Court. In *Mahabir Auto Stores and Others v Indian Oil Corporation and Others*, AIR 1990 SC 1031 the Supreme Court reiterated that "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 relevances and reasonableness, fair play, natural justice, equality and non-discrimination" in the type of the transactions and nature of the dealing as in the said case. There, the respondent, which is an instrumentality of State stopped supplying lubricants to the petitioner, who was earlier a distributor of the respondent. The respondent relied on the guidelines issued by the ministry in the matter of supplying lubricants and the petitioner did not fall within the eligible persons with whom respondent should deal. At page 1037 the Supreme Court observed:

"It appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See *M/s. Radha Krishna Agarwal v State of Bihar*, at p. 462 (at SCC): (at pp. 1499-1500 of AIR) (supra), but Article 14 of the Constitution cannot and has not been construed as a charter for judicial

review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to *E.P. Royappa v State of Tamil Nadu*, (1974)4 SCC 3: AIR 1974 SC 555; *Maneka Gandhi v Union of India*, (1978)1 SCC 248; AIR 1978 SC 597; *Ajay Hasia v Khalid Mujib Sehravardi*, (1981)1 SCC 722; AIR 1981 SC 487; *R.D. Shetty v International Airport Authority of India*, (1979)3 SCC 489: AIR 1979 SC 162 and also *Dwarkadas Marfatia and Sons v Board of Trustees of the Port of Bombay*, (1989)3 SCC 293: AIR 1989 SC 1642. 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."

8. The long course of conduct, there, revealed that petitioner had been treated as a dealer by the respondent. Therefore when policy is changed, petitioner should have been taken into confidence by the respondent. It was held at page 1038:

"Having considered the facts and circumstances of the case and the nature of the contentions and the dealings between the parties and in view of the present state of law, we are of the opinion that decision of the State public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field. It appears to us that in respect of Corporation like IOC when without informing the

parties concerned, as in the instant case of the appellant firm herein on alleged change of policy and on that basis action to seek to bring to an end the course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. Whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any straight jacket basis. It depends on the nature of the right involved and nature of the power sought to be exercised in a particular situation. It is true that there is discrimination (distinction) between power and right but whether the State or the instrumentality of a State has the right to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances of the situation, but such exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not being taken into confidence."

9. In a recent decision involving the termination of contractual appointments of Government Pleaders, the termination of the appointments of all the Government Pleaders was struckdown in *Kumari Shrilekha Vidyarthi and Others v State of U. P. and Others*, (1991)1 SCC 212. The Supreme Court once again pointed out the widened scope of the judicial power, to scrutinise the State's actions in the realm of contracts.

10. In entering into contracts, State acts as "the State"; its actions are liable to be tested to see whether they serve public interest. In *All Karnataka Conductor Manufacturers Association v Karnataka State Electricity Board*, ILR 1990 Karnataka 2483 a passage from an earlier decision in *Indian Hume Pipe Co. Ltd. v Bangalore Water Supply & Sewerage Board*, ILR 1990 Karnataka 1134 para 8 is quoted with acceptance by Shivaraj Patil, J., which reads:

"Since the act impugned is of the instrumentality of the State, same is liable to be tested by the touchstone of reasonableness and arbitrariness. This test is applied, not to enforce the right of anyone of the parties who submitted the tender. The object of the judicial examination is to see whether the public interest would suffer, by the transaction in question, and the State has failed to play fairly while entering into the transaction. Court's jurisdiction is invoked usually, by one of the parties, who made the tender offering to purchase the public property or articles put up for sale at a price which he asserts as the highest, or, offering to supply goods or works to the Government of a State instrumentality, at a rate which he asserts as lowest. In such a situation, Court is not concerned as to how far, the party's interest suffered, by non-acceptance of his tender. The judicial review is permitted, in order to safeguard the public interest."

The decision in All Karnataka Conductors Manufacturers Association's case, was affirmed by a Bench of this Court. In *Sri Sachidanand Pandey & Another v State of West Bengal*, AIR 1987 SC 1109 at 1103, Chinnappa Reddy, J. speaking for the Bench of the Supreme Court, held: "State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

11. In *Harminder Singh Arora v Union of India and Others*, AIR 1986 SC 1527 acceptance of the tender of Governmental agency was set aside by the Supreme Court, when the tender of the private agency satisfied all the conditions stated in the tender notification and the price at which the private agency offered to supply milk was the lowest; Supreme Court directed awarding of contract to the private agency. This decision highlights that no charm is created by the tenderer being a public sector undertaking; the tenderer has to abide by the terms of tender notification.

12. There may be exceptions in the matter of preferences. Preference may be given to public sector undertakings when other things are equal. When State enters the commercial field and engages itself in a trading activity, it should be prepared to compete with private traders, unless monopoly is created in the State by a valid law. The State in its trading activity should be prepared to abide by the rules of the game. Competition, efficiency, promptitude, are some of the inherent elements that qualify the traders. The enterprenual skill is developed and becomes creative only when it is compelled to face the challenges posed by the rules of the game. Public sector undertakings cannot and should not feel shy of competition, especially when the nation has so far followed the principles of mixed economy. Article 19(6) of the Constitution requires specific legislation to create any monopoly in the State.

12-A. Complacency created by lack of competition would add to the beaurocratic lethargy and redtapism, if the public sector undertakings are to be favoured by the State in the matter of commercial dealings, resulting in injury to the public interest. Government hospitals require mere qualitative drugs and medicines. When cheaper drugs and medicines are available in the open market, if the State were to purchase such articles at a higher cost from public sector undertakings, it will result in diverting the tax payers money to these undertakings, when, in fact, the legislature had permitted appropriation of those funds for the purchase of drugs and medicines for the hospitals. This apart, the saving done by

purchasing the medicines at cheaper rates, could be utilised for other similar purchases for the benefit of the poor, who mainly, resort to Government hospitals for treatment. The diversion of Governmental funds to the public sector undertakings by purchasing drugs and medicines from them at a higher prices, probably, may help to keep alive in running condition, those undertakings, which is not a purpose that could be preferred, as against the vast number of sickly poor who could be properly treated in the hospitals.

13. Our observation has nothing to do with the policy regarding public undertakings and the desirability of the State in venturing into trading and industrial activities; we are not concerned with them.

14. Here, we are concerned with the constitutional propriety of the State in deciding to award contracts for the purchase of medicines and drugs to its hospitals, at a higher rate, than the rates offered by other competing manufacturers.

15. The State has filed its statement of objections in the writ appeals. It has not traversed in any manner the assertions of the petitioners that the rates for the articles manufactured by PSUs are higher than that of the petitioners. The petitioners have given, by way of illustration, rates pertaining to 23 items. The total loss to the revenue, by the purchase of those items from PSUs is Rs. 513.70 lakhs. If this illustration, is indicative of the trend, then, the total loss to the public revenue in respect of the purchase of all the drugs covered by the impugned order will be quite enormous.

16. Statement of objections do not deal with the facts. It is confined to highlight the Government's alleged privilege in dealing with anyone it likes in the matter of contracts and that the impugned order favours only public sector undertakings. The State Government has not even cared to traverse the petitioners' assertion that KAPL is the only undertaking in which the State Government has a shareholding and other PSUs are of different Governments. The likelihood of damage caused during transportation of medicines, non-availability of drugs in the State during an emergency caused by unexpected outbreak of diseases, if drugs are to be supplied by outside PSUs, are some of the aspects that should have been dealt, in the statement of objections. It is not possible to agree with the State's claim of an exclusive privilege to deal with anyone it likes and select manufacturers of its choice (even if it is a public sector undertakings), irrespective of the economy involved in the transaction and other relevant considerations as to quality of the goods to be supplied, promptitude, after sales service, etc. The fact situation in *Punjab Drugs Manufacturers Association v State of Punjab*, AIR 1989 Punjab 117 is almost similar to the instant cases. The State Government took a policy decision to have the drugs and medicines purchased from approved manufacturers and issued orders to have the said goods purchased from a few public sector undertakings. This was set aside by the High Court. At page 122, the Bench held:

"Even if it be granted to the respondents that respondents 4 to 8 being public sector undertakings of the Government of India and respondent 9 being a joint sector company in which the PSIDC, a Punjab Government undertaking held 50 per cent equity could be separately classified and preferential treatment could be extended to them, the action of respondents 1 and 2 in creating a monopoly in favour of respondents 4 to 9 amounts to discrimination and denial of the guarantee of equal protection of law. In *Mannalal Jain v State of Assam*, AIR 1962 SC 386, clause 5 of the Assam Food Grain (Licensing and Control) Order, 1961, which enabled the licensing authority to give preference to a co-operative society in the matter of grant of licence for dealing in rice and paddy was not held to be bad because it did not create the monopoly in favour of the co-operative society. Private dealers in rice and paddy were still eligible for applying for a licence. But the State Government had issued executive instructions creating a right of monopoly procurement of paddy in favour of cooperative society and had directed that no licences should be granted to individual dealers other than co-operative societies. The licensing authority complying with the executive instructions declined licence to the private dealers and granted licences in favour of the co-operative societies alone. This order was struck down being violative of the petitioner's rights guaranteed under Articles 14 and 19 of the Constitution."

The Court further pointed out that protection of Article 19(6) was not available to the State, since, legislature had not passed any law creating exclusive rights in the public sector undertakings to sell the drugs to the State. The Court held, at page 124:

"The State can create a monopoly in the public interest in relation to any trade, business or industry even to the exclusion of citizens, by making law. Admittedly, the State Legislature has not passed any Act authorising the State Government to restrict the purchase of drugs from approved sources only. It is also conceded that no statutory rules have been framed for this purpose. The policy decisions have been taken in exercise of the executive powers of the State. The expression "law" as understood in Article 19(6)(ii) of the Constitution is a statute enacted by a competent legislature or statutory rules framed thereunder. The expression "law" herein does not encompass mere administrative or executive orders/instructions."

The further observations at para 17 are also quite relevant here:

"The object of creating a monopoly in favour of respondents 4 to 9 may be laudable. The authorities may be impelled by the desire that middlemen may not prosper at the cost of the tax-payers. However, in a society ruled by Rule of Law, even measures for achieving laudable objects have to conform to the constitutional mandates and other laws of the land. In a democratic system means do not justify the ends. By the impugned orders the Government may have been able to eliminate the traders who operate with only the profit motive, but for achieving that end, the Government has to act in accordance with the

Constitution. They could have achieved this object by making valid laws and not by issuing only executive instructions."

17. To the same effect is the decision of Andhra Pradesh High Court in Mahindra & Mahindra Ltd., Bombay v State of Andhra Pradesh and Another, AIR 1986 Andhra Pradesh

332. The Government had decided to purchase vehicles only from its undertaking and this was set aside by the High Court. In Ramana Dayaram Shetty v The International Airport Authority of India and Others, AIR 1979 SC 1628, the principle involved was stated as:

"Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest: the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated."

17. It was contended that there are several other drugs and medicines not manufactured by the PSU, available with the petitioners which will be purchased by the State from them. That may be so. But, we are concerned with different types of drugs and medicines. Each variety is an independent "article", "thing" or "goods", purchase of which is the subject of this litigation. For example, articles or goods falling within the broad nomenclature "Injectible Antibiotics" are to be exclusively purchased from KAPL; thus monopoly is created in favour of KAPL to sell these goods to the Government hospitals", all other manufacturers are excluded from consideration while purchasing these goods by the Government hospitals. Similarly there are several other goods in respect of which petitioners are completely excluded, except in the case of non-availability of these goods with the PSU. If each variety of drugs and medicine, is taken as the subject of contract, the picture becomes quite clear depicting the total exclusion of private manufacturers in the matter of awarding contracts to supply those goods.

18. Irrespective of the rate-structure, quality, availability, promptness in services and other relevant factors, petitioners are sought to be excluded.

19. Petitioners are, admittedly small scale industrialists. Their specific case is that they have invested large amounts by borrowing mainly from State's Financial agencies in the hope of getting contracts from the Government; this assertion also has not been denied. According to the petitioners, a change of Governmental attitude ignoring the several rate-tenders accepted by the Government till the end of August 1991 would cripple those industries and cause irremediable sufferings to a large number of employees and others.

20. There are a few basic facts to be noticed here: i) The loss to the public exchequer by the implementation of the impugned order will be quite large. If those funds could be saved, the funds could be utilised for the purchase of more drugs other essential articles needed in the Government hospitals. It is a well

known fact that Government hospitals are impoverished and are in need of better facilities and these hospitals are mainly resorted to by the under-privileged sections of the society. The State legislature has obviously set apart quite a large amounts to be spent for the requirements of the Government hospitals instead of utilising the said funds to the maximum benefit of the hospitals, the State Government has indirectly sought to divert a part of the same to feed the public sector undertakings. This cannot be justified as in the public interest and the Court in the exercise of its writ jurisdiction cannot withhold its powers to strike at this ill-conceived action of the State Government; ii) Till the end of August 1991 there is a specific and legitimate expectation created in favour of the petitioners that the Government would be ordering the articles from the petitioners. The said expectation has been nullified by the impugned order. Fairness in action on the part of the State Government requires a proper notice to the petitioners either individually or generally pointing out the change of the alleged policy and giving some breathing time to the petitioners to adjust themselves to the changed situation and take remedial action to absorb the shock caused by the impugned order. The sudden decision of the State Government as per the impugned order naturally would place the petitioners out of gears. The petitioners are justified in pointing out that large number of persons, such as their employees and dependents sustain their livelihood through the manufacturing activities of the petitioners; iii) In respect of some of the major items which are covered by the impugned order monopoly is created in favour of KAPL and other PSUs to the exclusion of the petitioners. The question is not whether the industry as a whole would survive with reference to the other articles of manufacture because different manufacturers engage in manufacturing different items of articles in question; iv) If other things are equal certainly the State Government may prefer the PSUs but the burden is on the State Government to place full materials and justify its action by pointing out that even though the cost of purchasing from PSUs will be higher, there are other reasons to prefer the PSUs. In the instant case no such material is forthcoming.

21. For the reasons stated above we are constrained to differ from the view expressed by our learned brother who dismissed the writ petitions. We accordingly set aside the impugned order of the State Government dated 23-2-1991 as per Order No. HFW 87 HPC 90, Bangalore. All the writ appeals and writ petitions are accordingly allowed. Rule made absolute. No order as to costs.