
(2005) 10 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14712 of 2004

Ankit Pipes Pvt. Ltd. and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 142 PLR 652 : (2006) 1 RCR(Civil) 154

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : Ashok Aggarwal and Alok Jain, for the Appellant; Sanjeev Bansal, A.A.G. for Respondent No. 1 to 3, M.S. Gugalni, for Respondent No. 4, M.L. Sarin and Hemant Sarin and P.S. Patwalia and D.S. Patwalia, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, C.J.—Rule DB.

2. Since the matter does not brook any delay and we have heard learned Counsel for the parties at considerable length, with their consent, we proceed to dispose of the matter at the motion stage.

3. By this petition, under Articles 226 and 227 of the Constitution of India, three manufacturers of Asbestos Cement Pressure Pipes, using "Magnani" process, question the legality and validity of insertion of a new eligibility criteria in the tender Notice 7/HR/E-2/2004-05, in particular, the requirement of the process certification. The fourth petitioner is the association of manufacturers using the said process. The State of Haryana through its Commissioner and Secretary, Department of Industries; the Deputy Director, Supplies and Disposals, Haryana which has issued the Notice Inviting Tender (for short, "the NIT") for and on behalf of the Governor of Haryana; the Engineer-in-Chief, PWD, Public Health Branch and Director General, Bureau of Indian Standards have been impleaded as respondents No. 1 to 4 respectively. Two manufacturers of the said pipes,

namely M/s Sri Venkateshwara Pipes Ltd. and M/s Kanoria Sugar and General Manufacturing Company Ltd., by employing another process viz., "Mazza" process were impleaded as respondents No. 5 and 6 respectively on their moving applications under Order 1-Rule 10 of the Code of Civil Procedure.

3. The factual matrix, on which the foundation of this judicial action is laid, is as follows:

As noticed above, the petitioners are manufacturers of Asbestos Cement Pressure Pipes, using Automated Lamination Process. They claim that their product meets Indian Standards Specifications, IS 1592/2003 (as amended upto date), laid down by the Bureau of Indian Standards and are duly certified under ISI licence. On 2.9.2004, respondent No. 2 issued an advertisement inviting tenders for supply of AC Pressure Pipes of different diameters in various quantities. The tender document contained various conditions, including (i) pipes should be conforming in all respects to IS 1592/2003 as amended upto date) bearing ISI certification mark; (ii) pipes shall be manufactured by the process which uses thin lamination of minimum thickness around 0.35mm and is fully automatic; (iii) the tenderer must have ISO 9000 series certification and (iv) the manufacturer shall submit with the tender an attested copy of the process of manufacturing form an independent inspecting authority i.e., Quality Assurance DGS&D/RITES, clearly certifying that the process was exactly as per the DS&D Haryana, tender notice. The certificate was to be in a prescribed form. Since the entire controversy revolves around the said certificate, for the sake of convenience, the same is extracted below:

Certified that the process of manufacturing of A.C. Pressure Pipes of M/s.... at their factory located at... has been observed from... 2004 to... 2004. The process employs Kollar gang fitted with automatic water measuring devices hydro disintegrator turbo mixer, vertical mixer, VAT and Sieve Cylinder 0.25mm to 0.35mm thickness. The lamina so formed is then transferred to an endless synthetic felt, which moves over powerful vacuum boxes to facilities dewatering wrapped on a hollow steel cylinder called mandrel under a high pressure ranging between 60 kg/cm² to 25kg/cm². The pipes are dried in a heating/hardening tunnel. Temperature of 70 Degree Centigrade to 90 Degree Centigrade before extraction of the mandrel so as to prevent deformation of the pipes. The process is proved with fully automatic lathe machines, for cutting turning and chamfering operations simultaneously and provided with complete mechanical pipe handling and loading equipment and is fully automatic.

4. It is pleaded that in an earlier NIT (18/2002-03), issued on 1.11.2002, respondents No. 1 to 3 had put in a similar condition for purchase of AC Pressure Pipes, which was challenged by petitioner No. 4 herein in C.W.P. No. 20200 of 2002. The writ petition was disposed of with a direction that before the tenders were opened, the respondents shall take final decision on the representation made by the said petitioner. The decision was to be communicated to the petitioner on that very day to enable its members to take further legal

proceedings in the event of rejection of their representation or an order adverse to them. It is claimed that since the respondents had no plausible reason to reject the representation, they Permitted the present petitioners and other members of the Association to participate in the tenders, scheduled to be opened on 7.2.2003. It is stated that subsequently also, without any further reference to the decision taken by the respondents on the representation submitted by petitioner No. 4, they had been inviting tenders for supply pressure pipes of various sizes without any kind of restriction or differentiation in the process of manufacture of these pipes or the types of machines used in the manufacturing process. The petitioners also claim that there have been no complaints of any kind whatsoever against the pipes manufactured and supplied by them to various departments in the State of Haryana.

5. It is also pointed out that on yet another occasion, when the respondents had shown an inclination/preference for Asbestos Cement Pressure Pipes manufactured by "Mazza" process for certain sizes of pipes, their action was challenged by a manufacturer in Mumbai and the said writ petition was disposed of on the basis of an undertaking that the competent authority shall have the samples of pipes, with a diameter of more than 100 mm, tested in a suitable laboratory and further action with regard to invitations to tender shall be taken in the light of the report by the laboratory. It is averred that pursuant to the said order, respondents No. 1 and 2 got the pipes tested from Shri Ram Test House, Delhi on one meter length pipe. Whereas the pipes manufactured by "Mazza" process failed the tests, the pipes manufactured by "Magnani" process passed. It is alleged that since these results did not find favour with respondents No. 1 to 3, the test reports were rejected on the hyper-technical plea that the samples were not drawn in conformity with the requirement of IS Code, namely, being less than 4 meters in length. It is the say of the petitioners that they have been manufacturing pipes, using thin lamination of maximum thinckess of 0.35mm; with an automatic process, as specified under note (ii) of Schedule "A" of the tender; the pipes manufactured by them meet the BIS specifications, namely, IS 1592/2003, as amended up to date, and they are all certified under ISO 9000 series, yet the additional condition of use of particular machines and equipments, such as "Vat, sieve cylinder, synthetic felt, heating tunnel" and its certification under note No. iii, in the prescribed form, extracted above, is an indirect attempt to oust the members of petitioner No. 4 and about 40 other similar manufacturers of AC Pressure pipes, which employ Automated Lamination Process or other types of machines, from the tendering process. It is alleged that the insertion of the impugned condition is a deliberate attempt on the part of respondents No. 1 to 3, at the behest of the " manufacturers, using the afore-named machines, described as "Mazza" machines, to somehow oust the petitioners from the tendering process, which action is arbitrary, unreasonable, illegal and unconstitutional. It is claimed that insofar as the quality of the product is concerned, there is really no distinction between the two processes, as all the manufacturers employ the process of formation of pipes layer by layer, i.e.

controlled lamination to ensure uniform and thick layer formation; dewatering to the desired level and application of optimum hydraulic pressure for achieving the required density. In nut shell, the stand of the petitioners is that prescription and user of specific machines or their parts in their manufacturing process, as an essential tender condition, is not only irrational, it is mala fide attempt on the part of the respondents to eliminate a vast majority of pipes manufacturers, thereby creating a monopolistic situation for a very few manufacturers, who would be eligible to tender, leading to lack of competitiveness in the tendering process and fall in standards of quality of the pipes to be procured for supply of drinking water.

6. The writ petition is resisted by the respondent. In the affidavit-in-opposition, filed on behalf of respondent No. 1 to 3, it is pointed out that in the "Mazza" process, a very thin lamina having maximum thickness of around 0.35mm is used and it is fully automatic, whereas in the "Magnani" process, slurry is used for manual fabrication of pipes. A Committee, comprising the Engineer-in-Chief, the Chief Engineer and Superintending Engineers, has certified that the pipes manufactured by Mazza process is comparatively far superior to the pipes manufactured by Magnani process. It is averred that the Mazza process is a continuous automatic process carried out by machines only, from the beginning till the end and the pipes so manufactured by bare minimum manual handling hardly have any scope for defect, whereas manufacturing operations under the Magnani process are done manually. The Magnani process does not follow the procedure of adoption of formation of a uniform lamina, which is a critical and vital aspect of the quality of pipes. As regards the follow up action on the orders passed by the Court on 10.10.2001, it is stated that a Committee, under the Chairmanship of a Chief Engineer, was constituted for examining the quality of the pipes manufactured by "Mazza" and "Magnani" processes. The Committee decided to have the pipes manufactured by both the processes tested from the Indian Institute of Technology, Delhi and Shree Ram Institute of Industrial Research, Delhi. The samples of pipes of various sizes, i.e., 150 mm and above were sub grouped in two manufacturing processes, namely, Mazza and Magnani, size-wise and the samples, selected on random basis from the two groups, were sent to the said Institutes for testing. Shree Ram Institute reported that they could conduct only hydraulic pressure test and were not in a position to conduct tests for physical properties, i.e. hydraulic bursting test etc. It is stated that on receipt of the reports from the said laboratories, after long deliberations, the Committee opined that the results received from the Indian Institute of Technology should be given weightage over the results received from Shree Rain Institute. It is averred that as per the result of tests conducted by the IIT, all the eight samples of 150 mm to 300 mm diameter size pipes, manufactured by "Mazza" process passed all the tests, whereas only two samples of 250 mm diameter size manufactured by "Magnani" process passed in all the tests and the remaining six samples failed. After going into all the technical aspects and after analyzing test results, the Committee concluded that the pipes manufactured

through Mazza process are definitely a better product, as compared to the pipes manufactured through Magnani process, in terms of quality and reliability for ensuring availability of protected safe drinking water to the consumers. The report of the Committee was accepted and approved by the then Advocate General, Haryana as also by the Government of Haryana. It is also pointed out that pursuant to order dated 20.12.2002, in C.W.P. No. 20200 of 2002, a Technical Committee was reconstituted and the said Committee again, after consideration of all the aspects and appraisal of the test reports, came to the conclusion that the pipes manufactured by Mazza process follow uniform pattern above the minimum specified standard values, whereas the results of pipes manufactured by Magnani process/Magnani (Automated Lamination Process) are non uniform, erratic and scattered i.e. in some cases, these are high above the minimum specified limits and in most of the cases, these are falling below the specified minimum limits. Thus, this Committee also concluded that the pipes manufactured through "Mazza" process are definitely better, as compared to the pipes manufactured through "Magnani" or "Magnani Automated Lamination Process", being employed by the petitioners, it is thus, pleaded that a conscious administrative decision, based on technical reports by the experts, to purchase AC Pressure pipes manufactured by "Mazza" process cannot be challenged by the petitioners. It is asserted that laying down of the standards and description of the quality is the prerogative of the buyer and a seller cannot have any say in regard to the quality of the product to be purchased.

7. In the written statement filed on behalf of respondent No. 5, it is averred that in fact, there is no process like "Automated Lamination Process" within the "Magnani" process for the purpose of manufacturing AC pressure pipes, as pleaded by the petitioners. It is also pointed out that there are several government bodies in other States, who have provided for similar eligibility criteria in their respective tender documents in respect of the same very product. It is also alleged that the petitioners have deliberately suppressed the fact that one M/s Kalani Industries Ltd., who also manufactures AC pressure pipes through "Magnani" process and is a member of petitioner No. 4-Association, had approached the Gujarat High Court inter alia, challenging an identical eligibility criteria fixed by the Gujarat Water Supply and Sewerage Board in the tender for AC pressures pipes, but the writ petition was withdrawn unconditionally on petitioner's statement that they were satisfied with the selection of "Mazza" process for AC pressure pipes undertaken by the said Board, as a result of the detailed enquiry. It is also pointed out that the Deputy Director General, Bureau of Indian Standards, on a specific query, vide his letter dated 27.09.2001, has clearly pointed out that it is the prerogative of the purchasing agency to stipulate any specific requirement in addition to material bearing ISI mark, depending upon their own needs. It is thus, pleaded that the impugned eligibility criteria cannot be characterized as arbitrary, discriminatory or mala fide under any circumstances.

8. An affidavit has also been filed on behalf of the Bureau of Indian Standards,

wherein it is stated that BIS certification is issued as per the provisions given in the relevant Indian standard, which in the present case is IS 1592:2003 and the licensee is required to manufacture and certify the products covered in their licence, as per the said standard. It is stated that the standard laid down by BIS for manufacture of AC pressure pipes and couplings insist only on technical specifications, being adhered to, rather than specify any particular process or types of machines, used in the manufacture; IS 1592:2003 under its scope in clause I, covers requirements related to plain ended pipes and joints intended for use under pressure; the standard defines certain conditions of manufacture only in respect of raw materials to be used, as specified under Clause 3.1, classification of pipes, characteristics and tests applicable to pipes and joints and that the classifications of the pipes are based on the "Works Hydraulic Test Pressure", but no particular process of manufacture has been referred/specified in the standards. It is also pointed out that the matter regarding reference of particular manufacturing process in standard IS 1592 was discussed in the sub-committee meeting on 3.10.2001 and in the Sectional Committee meeting on 5.10.2001 and it was decided not to give reference to any process in the standard, i.e. IS 1592.

9. We have heard Mr. Ashok Aggarwal, learned Senior Counsel appearing for the petitioners; Mr. Sanjeev Bansal, learned Additional Advocate General, Haryana for respondents No. 1 to 3; Mr. M.L. Sarin, learned Senior Counsel appearing for respondent No. 5 and Mr. P.S. Patwalia, learned Senior Counsel appearing for respondent No. 6.

10. Mr. Ashok Aggarwal has vehemently submitted that the impugned condition stipulating use of particular machines in the manufacturing process is arbitrary and is deliberately designed to keep out the manufacturers of AC pressure pipes, employing "Magnani" process, a well-established process and to favour particular manufacturers. It is urged that the petitioners have hitherto been supplying similar pipes to government bodies in almost all the States, without any complaint about quality. The submission is that fixation of norms of pre-qualification criteria has to be in a fair and reasonable manner to achieve sole objective of purchasing a quality product. It is contended that by laying down the conditions that the pipes must conform to BIS standards (IS 1592:2003), bearing ISI certification, holding of ISO 9000 series certification and use of particular raw material, the quality of the end product is assured and therefore, imposition of additional condition of certification with regard to the use of aforementioned machines, over and above the BIS standards, is per se irrational, irrelevant and arbitrary. Referring us to various provisions of the Bureau of Indian Standards Act, 1986 (for short, "the BIS Act") and the stand of the BIS, in their affidavit, learned Counsel has strenuously urged that none of the provisions in the BIS Act lays down any condition of use of particular machine to achieve the prescribed standards. Thus, the main thrust of the argument of Mr. Aggarwal, is that specification of any condition, which is beyond the scope of the standards, laid down in the BIS Act, is a mala fide exercise of administrative power,

introduced to favour the manufacturers, employing "Mazza" process, which is, ex facie, arbitrary and destructive of the need to have a fair and competitive tendering process. To buttress his argument that the impugned condition has been tailor-made for a handful of manufacturers, learned Counsel has been at pains to point out that there are only four manufacturers, who are using the said machines, two of them being sister concerns.

11. Mr. Sanjeev Bansal, learned Additional Advocate General, appearing for respondents No. 1 to 3, on the other hand, has submitted that the requirement of certification of user of the machines is neither arbitrary nor unreasonable as the laying down of the said condition was based upon valid and relevant considerations, namely, the quality of the AC pressure pipes. It is urged that the tests conducted on the pipes, manufactured by both the processes have proved beyond doubt, that the pipes manufactured by employing "Mazza" process are definitely of a better uniformity and quality as compared to the pipes manufactured, by employing "Magnani" process. Learned counsel has also urged that specification of the four machines/parts in the tender condition is by way of clarification because all these machines/parts are otherwise used wherever "Mazza" process is to be employed. Learned counsel would contend that it is not within the domain of judicial review to set aside a well-considered administrative decision by the respondents, particularly when it is in the realm of policy formulation, even if the Court may feel that "Magnani" process is better. Finally, it is submitted that the impugned decision does not suffer from mala fides of "Wednesbury" unreasonableness so as to justify judicial review. In support reliance is placed on the decisions of the Supreme Court in Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, ; Association of Registration Plates Vs. Union of India (UOI) and Others, and Global Energy Ltd. and Another Vs. Adani Exports Ltd. and Others, .

12. Supporting the stand taken on behalf of respondents No. 1 to 3, Mr. Sarin, learned senior counsel appearing for respondent No. 5, has submitted that laying down the criteria for a particular product is the prerogative of the purchaser, on which the Court has no jurisdiction to interfere. In support of the proposition, learned Counsel has placed reliance on the decisions of the Apex Court in Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, ; Association of Registration Plates v. Union of India and Ors. (supra) and Indian Drugs and Pharm and Others Vs. Punjab Drugs Manufactures Association and Others, .

13. Appearing for respondent No. 6, Mr. Patwalia, learned senior counsel has invited our attention to the report prepared by a group of Senior Engineers, Gujarat Water Supply and Sewerage Board and a Professor of Civil Engineering, Indian Institute of Technology, Bombay submitted on the inspection of the manufacturing process of Asbestos Cement Pressure Pipes at the factory premises of one M/s Kalani Industries Ltd. and M/s Ramco Industries Ltd. in May, 2002. In the said report, it has been concluded that the quality of product depends on process and raw material. Though in "Mazza" Process of M/s Ramco

Industries and the process of M/s Kalani Industries Ltd., they are using same ingredients of raw material, as prescribed by BIS standards, but due to automation and system control, including process difference, "Mazza" process has an edge over "Magnani" process. All the pipes are to be manufactured and supplied as per BIS standards, even though they may have been manufactured by any process, but by experience, it is learnt that service reliability of "Magnani" process pipes is inferior, as compared to "Mazza" process. Manufacturing process of M/s Kalani Industries is "Magnani" process, which is not "Automated Lamination Process", similar to "Mazza" process.

14. In order to appreciate the rival contentions, it will be useful to notice the broad para-meters, governing the exercise of power of judicial review, while examining an administrative decision.

15. it needs little emphasis that the powers of the High Court under Article 226 of the Constitution are wide and must be exercised to keep the public authorities within due bounds and for upholding the rule of law. At the same time, it is a cardinal axiom that every power has legal limits and therefore, even power of judicial review has self-imposed limitations and restraints. There is no gain saying that the award of contract by a State agency is essentially a commercial transaction and the mode of entering into contract can be chosen by such State agency by fixing such terms of invitation to tender, as are appropriate. The freedom to contract pre-supposes a certain "free play in the joints", it is only the decision-making process, culminating in the award of contract, however, which is subject to judicial scrutiny, where the Courts can interdict the action of the State agency, if it is found to be vitiated by illegality, mala fides, unreasonableness or arbitrariness. (See: TATA Cellular v, Union of India. (1994)6 S.C.C. 651 Air India Ltd v. Cochin International Airport Ltd. and Ors. (supra) and Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar, Municipal Cororation and Ors. (2005)5 S.C.C. 287.

16. All the afore-mentioned decisions have been considered by the Apex Court in Directorate of Education and Ors. v. Educomp Datamatics Ltd. and Ors. (supra). In that case, the Director of Education, Government of National Capital Territory of Delhi, took a decision to establish computer labs in the national capital area in all government schools by the year 2003, in phases, in collaboration with private sector. In furtherance of the said decision, tenders were invited from the firms, having turnover of Rs. 2 crores and Rs. 5 crores, in the first two phases, for the years 2000-2001 and 2001-2002 respectively, but in the final phase, it was decided to invite tenders from the firms, having turnover of Rs. 20 crores or more, in the last three financial years ending 31.3.2002. The said decision was taken to provide quality education, as it was felt that it was easier for the department to deal with one company, which is well managed and not seven to eight, who individually were not in a position to take up the whole project, compelling the government to distribute the contract amongst the bidders at the lowest rate, having no scope to negotiate the rates any further. The said

stipulation of turnover of Rs. 20 crores was challenged by way of writ petitions. The High Court came to the conclusion that neither increase in number of schools nor the quality of education, to be provided, appear to have nexus with the financial turnover of the bidder, inasmuch as the financial turnover had nothing whatsoever to do with the computer education. The High Court came to the conclusion that the said condition was arbitrary and it had nothing to do with the objective sought to be achieved and thus, struck down the offending condition, as being arbitrary and irrational. Aggrieved by the said decision of the High Court, the government took the matter to the Supreme Court. Reversing the decision of the High Court, their Lordships of the Supreme Court, while observing that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract and the Government must have a free hand in setting these terms, including pragmatic adjustments which may be called for by the particular circumstances, have held that the Courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical, The Courts can interfere only if the policy decision is arbitrary, discriminatory or mala tide. (Emphasis supplied).

17. Very recently, in *Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another*, , their Lordships of the Supreme Court have cautioned that even when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, should the Court interfere.

18. It is clear from the aforementioned few pronouncements that judicial restraint in interfering in matters relating to administrative functions, particularly in contractual matters is the order of the day. In administrative matters, the quest has been to find a right balance between the administrative discretion and the public policy. Ultimately, what prevails with the Courts in such like matters is that while public interest is paramount, there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. The State or its instrumentality cannot arbitrarily choose any person it likes for entering into such relationship or to discriminate between persons similarly situated.

19. Thus, the question for our consideration is as to whether the decision of respondent No. 2 to insert the impugned pre-qualification condition of employing particular machinery in the manufacture of AC pressure pipes could be said to be arbitrary, irrational or actuated by mala fides, warranting interference in judicial review on the touch-stone of the afore-noted broad principles?

20. Having examined the matter in the light of the noting on the original file and

the documents, placed on record by the parties we are of the opinion that the impugned conditions cannot be said to be arbitrary or irrational or that the decision to insert the condition of furnishing of the impugned essentiality certificate in the prescribed form, was taken only with a view to oust the manufacturers of pipes using "Magnani" or "modified Magnani" process as alleged by the petitioners.

21. It appears from the record that pursuant to and in furtherance of the undertaking given by the Advocate General, Haryana in C.W.P. No. 14583 and 14585 of 2001 and 20200 of 2002, referred to above, the file was processed by the Assistant Engineer for taking a decision whether the pipes above 100 mm diameter size manufactured by "Mazxa" process were to be indented. The Executive Engineer, referring to the said undertaking, noted that the Technical Committee in its report, submitted on the basis of the tests report received from the Indian Institute of Technology, has categorically concluded that pipes manufactured through "Mazza process" are definitely a better product as compared to the pipes manufactured through Magnani/Magnani (Automated Lamination Process) in terms of quality and reliability and thus recommended for ensuring availability of protected safe drinking water to consumers. The Executive Engineer felt that though the report meets the first requirement of undertaking given by the Advocate General in the High Court but the Committee has not been able to assess the qualitative difference between the pipes manufactured by two processes due to no weightage system for various test results conducted on pipes. He, thus, apprehended that this point may be raked up by the affected parties in the Court of law again, which will result in non-finalization of the purchase. It was pointed out that the department had not purchased the pipes above 150 mm dia size since October, 2001 and therefore, it could not afford to indulge in another long litigation as the same would result into non commissioning of number of schemes which were held up as the pipes of above 150mm dia size had not been arranged for the last three years. The Executive Engineer then states that in the meantime, he has learnt that Punjab W/S and Sewerage Board, Chandigarh in purchasing A.C. Pressure Pipes in the following manners:-

- i) 80 & 100mm dia size: Manufactured by either of the process i.e. Mazza or Magnani.
- ii) 150 mm dia size: Manufactured by improved/modified Magnani process. (Where in improved/modified Magnani Machines provided with Kollar Gang, hydro disintegrator turbo mixer/hydro pulpor machines, vertical mixer and provided with electrically controlled electrical gearing system for controlling the thickness of layers around the mendlral of pipe formation) or by Mazza Process
- iii) Above 150mm dia size: Manufactured by Mazza process only.

22. Pointing out that there has been no litigation in case of Punjab, the Executive Engineer finally proposed that keeping in view totality of the case, the Government may be requested to approve placement of indent of A.C. Pressure pipes on the Punjab pattern as mentioned above.

23. The proposal of the Executive Engineer was approved by the Engineer-in-Chief; Financial Commissioner and then by the Chief Minister on 2.6.2004. The State Government, thus, took a policy decision to procure the pipes, as per the recommendations of the Technical Committee. Accordingly, the Haryana State Sanitary Board, in its meeting, held on 2.8.2004, approved the purchase of AC pressure pipes of 150 mm diameter size and above manufactured by "Mazza" process only.

24. At this juncture, it will also be useful to make a brief reference to the correspondence exchanged between the Engineer-in-chief, Haryana PWD, Public Health Branch and the Deputy Director General, Central Bureau of Indian Standards, New Delhi. Vide letter, dated 25.9.2001, the Engineer-in-chief had sought the views of the Bureau of Indian Standards in regard to stipulation of certain additional conditions, which were not specified in the BIS standards, like ISO certification etc. In response thereto, vide his letter dated 27.9.2001, the Deputy Director General gave the following clarification:

This has reference to your fax bearing Memo N0.16-74-G/19049-PH/MM2 dated 25.9.2001, regarding clarification with respect to procurement of AC pressure pipes as per IS 1592:1989 bearing ISI Mark,.

While appreciating your interest in purchase of AC pressure pipes with ISI Mark, it is clarified that the letters written by our Jaipur and Calcutta Offices as referred to in your letter are only to bring to your kind notice the provisions of the relevant Indian Standards and may not be treated as an objection in any form.

It is, however, the prerogative of the purchasing agency to stipulate any specific requirements in addition to material bearing ISI mark depending upon their own needs.

(Emphasis added)

25. The correspondence shows that BIS had no objection to the imposition of any condition over and above the BIS specifications and the same was left to the wisdom of the purchasing agency. What is going to be the ultimate effect of a particular process, employed for manufacturing the pipes, is not for this Court to judge in judicial review. The Court is not concerned with the merits of the decision taken by respondent No. 2. As noticed above, more than one Technical Committee consisting of Chief Engineers and Scientists from the Indian Institute of Technology, evaluated the two processes in detail, on the basis of the tests conducted in the laboratories and found qualitative difference between the pipes manufactured by the two processes. The Committee finally opined that the pipes, manufactured by employing "Mazza" process, are technically superior to the pipes manufactured by other process. There is no reason to reject the said opinion. In that view of the matter, the specification of machines, which are required to be employed in the process, is of no consequence insofar as the petitioners are concerned because admittedly, they are not using the "Mazza process". We do not find any substance in the stand of the petitioners is that

since they are using improved/modified "Magnani" process namely. "Automated Lamination Process", which is used in "Mazza" process as well, the AC pressure pipes manufactured by them are of the same quality, as the pipes manufactured by "Mazza" process and therefore, the offending conditions has no nexus with the object sought to be achieved, namely, the quality of the product. The impugned decision is a conscious decision by the purchasing agency, based on expert opinion, and as cautioned by the Supreme Court in *Educomp Datamatics Ltd.* "s case (supra), we find it difficult to substitute our opinion for that of the experts, even if we were convinced that the pipes manufactured by "Magnani" process were not inferior in quality.

26. It is also pertinent to note that in addition to the impugned condition of furnishing of a certificate in the prescribed form regarding the use of particular machinery, some other eligibility conditions, like ISO 9000 series certification, were also prescribed, but the same have not been challenged despite the fact that these conditions are over and above the BIS specifications. Be that as it may, the paramount consideration, being the quality of the product, which is to be in use for decades, it is always open to the purchasing agency to lay down the standards higher than the specifications fixed by the Bureau of Indian Standards, unless it is established that these have been specified for some extraneous considerations which, in our opinion, is not the case here, In the light of the afore-noted factual scenario, we are unable to even comprehend that the decision of respondent No. 2 to insert the impugned eligibility condition, over and above the specifications laid down under the BIS Act, is arbitrary, biased or actuated by mala fides, warranting interference.

27. For the foregoing reasons, the writ petition, being bereft of any merit, is dismissed, with costs, quantified at Rs. 20,000/-. Rule is discharged and interim order, dated 27.9.2004, stands vacated. All pending applications are also disposed of accordingly