

(2012) 07 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 861, 5114 and 15738 of 2012

Boodati Radha Krishnaiah and 2 Others

APPELLANT

Vs

The State Project Director, Sarva Shiksha Abhiyan (SSA) and
Rajiv Vidya Mission, SCRT Campus, Opp. L.B. Stadium,
Basheerbagh, Hyderabad and 4 Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Constitution of India, 1950 — Article 21A, 226

Citation : (2012) 5 ALT 516

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : G. Sreedhar Reddy in W.P. No. 861/2012 Sri L. Ravichander, for Sri Milind G. Gokhle in W.P. No. 5114/2012 Sri G.M. Mohiuddin, for Sri Rajasekhar Thallapally in W.P. No. 15738/2012, for the Appellant; D. Ramesh, for Respondent Nos. 1 to 3 in W.P. No. 861/2012 Sri D. Ramesh, for Respondent Nos. 1 to 3, Sri D. Prakash Reddy, Assisted by Smt. G. Vijaya Lakshmi for Respondent No. 5, Sri A.V. Sesha Sai for Respondent No. 6, Sri Kamarajugadda Srinivasa Rao for Respondent No. 7, Sri B. Adinarayana Rao for Respondent No. 8, Sri Deepak Bhattacharjee for Respondent No. 9 in W.P. No. 5114/2012: Sri D. Ramesh for Respondent Nos. 1 to 3, Sri D. Prakash Reddy, Assisted by Smt. G. Vijaya Lakshmi, Sri A.V. Sesha Sai for Respondent No. 5, Sri Kamarajugadda Srinivasa Rao for Respondent No. 6, Sri B. Adinarayana Rao for Respondent No. 7 and Sri Deepak Bhattacharjee for Respondent No. 8 in W.P. No. 15738/2012, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy

1. As the subject matter of the dispute raised in these Writ Petitions is common, they are heard and being disposed of together. In order to translate Article 21-A of the Constitution of India, conferring fundamental right on the children of the age group of 6 to 14 years to free and compulsory education into a reality, the Parliament has enacted The Right of Children to Free and Compulsory Education

Act, 2009 (for short "the RTE Act"). As a part of implementation of the provisions of the RTE Act, the Government of India evidently initiated several measures. One such measure is providing free uniforms for all the children belonging to SC/ST/BPL families studying in Government schools. The Government of India, Ministry of Human Resources Development, Department of School Education and Literacy, addressed letter No. 15/4/2011-SSA(PR), dated 8-6-2011 to State Project Director, Rajiv Vidya Mission (Sarva Siksha Abhiyan)- Respondent No. 1 (for short "RVM") in all these Writ Petitions. It is inter alia stated in this letter that as it was noticed that uniforms constitute an expense which poor families are often not able to afford and with a view to mitigate this problem, a scheme for provision of two sets of uniform for all girls belonging to SC/ST/BPL families studying in Government schools within a ceiling of Rs. 400/- per child per annum, has been introduced under Sarva Siksha Abhiyan (SSA) and included in the revised SSA Framework of Implementation. It is suggested that in order to access the Government of India (GOI) funds, the Right to Education Rules of the States must notify uniforms as a child entitlement which would enable the boys of Above Poverty Line (APL) category to get uniforms under the State funds. The letter has laid down detailed norms for procurement of the uniforms. I shall advert to these details at an appropriate stage.

2. Purporting to give effect to the above mentioned letter of the GOI, the RVM has evolved a methodology for short-listing Composite Mills which can supply uniforms to the respective Government schools in the State. The document under which the methodology is laid down and norms fixed is titled "Expression of Interest (EOI) from the Composite Textile Mills for Empanelment" (for short "EOI"). In pursuance of the EOI, 21 applications were received by the RVM. The petitioners in W.P. Nos. 861/2012 and 5114/2012 also submitted their EOI applications. A Central Government organization by name Rail India Technical and Economical Society Limited (RITES) was appointed as the Technical Consultant and on the guidance of this Consultant, the RVM has short-listed four mills which are Respondent Nos. 5 to 8 in W.P. No. 5114/2012, who are also Respondent Nos. 4 to 7 in W.P. No. 15738/2012 (For convenience, the parties are hereinafter referred as they are arrayed in W.P. No. 5114/2012). Subsequently, the National Textiles Corporation (NTC) and A.P. Handloom Weavers' Co-operative Society Limited (APCO), a State Level society funded by the Government of Andhra Pradesh, were also added to the list for two Districts each.

3. As noted hereinabove, except the petitioners in W.P. No. 15738/2012, the petitioners in W.P. Nos. 861/2012 and 5114/2012 have filed their EOI applications. However, as admittedly they did not satisfy the requirements laid down in the EOI, they were not short-listed for empanelment. Feeling aggrieved by their exclusion from the short-listed panel, the petitioners in these two Writ Petitions have filed the said Writ Petitions.

4. While the case of the petitioners in W.P. No. 5114/2012 and 15783/2012 is common, W.P. No. 861/2012 is based on different premises altogether. In the

first mentioned two Writ Petitions, the fulcrum of the case of the petitioners therein is that the RVM has completely diluted the GOI Policy guidelines and acted in total deviation thereof by undertaking a method which is not laid down therein. Their further case is that even if for bona fide reasons, the RVM has chosen to depart from the procedure prescribed by the GOI Policy guidelines, it should have extended uniform treatment to all the individuals/agencies interested in supplying the required uniform cloth by following a transparent procedure. They have challenged the short-listing of Respondent No. 5 and also inclusion of Respondent No. 4 (APCO) and Respondent No. 9 (NTC) in the short-listed panel on the ground that they do not satisfy even the RVM norms.

5. The case of the petitioners in W.P. No. 861/2012, which are the constituent members of Respondent No. 4 (APCO) is that the State Government failed to follow G.O.Rt. No. 41, Industries and Commerce (Tex) Department, dated 27-1-2011, under which all the State Governments have been directed to place orders only on the APCO for their textile needs. It is therefore their pleaded case that the entire cloth required for the uniforms under the RVM should have been procured from the APCO.

6. Separate counter-affidavits have been filed on behalf of the RVM and Respondent Nos. 4 to 9 wherein they have sought to justify the procedure followed by the RVM in short-listing the suppliers of the uniforms. No specific reference to these pleadings need be made at this stage as they are reflected in the submissions of the respective counsel for the Respondents. They shall be referred to hereinafter.

7. Submissions in extenso were advanced by Sri L. Ravichander, learned Senior Counsel appearing for Sri Milind G. Gokhle for the petitioners in W.P. No. 5114/2012, Sri G.M. Mohiuddin, appearing for Sri Rajasekhara Thallapally in W.P. No. 15738/2012 and Sri G. Sridhar Reddy, Learned Counsel for the petitioner in W.P. No. 861/2012.

8. On the Respondents' side, Sri D. Prakash Reddy, learned Senior Counsel Assisted by Smt. G. Vijaya Lakshmi, Sri B. Adinarayana Rao, Sri A.V. Sesha Sai and Sri D. Ramesh, Learned Counsel appearing for Respondent Nos. 5, 8, 6 and 1 to 3, respectively, advanced their submissions. The Learned Counsel for Respondent Nos. 7 and 9 adopted these arguments.

9. Sri L. Ravi Chander, learned Senior Counsel, made the following submissions:

(i) That the GOI Policy guidelines dated 8-6-2011 envisaged decentralization of procurement of uniforms and also Limited Tender method for placing orders on the suppliers by inviting quotations by individual schools at least from three suppliers; that the GOI prohibited preference being given to the Public Sector Undertakings; and that contrary to the said policy, the RVM has issued the EOI document laying down norms which permitted centralized procurements;

(ii) that even while deviating from the GOI Policy guidelines, the RVM failed to

extend uniform treatment to all the agencies interested in supplying the required uniforms under the scheme;

(iii) that Respondent No. 5 failed to satisfy Clause 2.3 of the EOI document which prescribed filing of proof by bidder of having annual turnover of Rs. 200 crore in the preceding three years i.e., 2008-09, 2009-10 and 2010-11; and that even though Respondent No. 9 who was initially excluded from being short-listed for not meeting the said requirement, was subsequently qualified;

(iv) that though Respondent No. 4 does not satisfy the RVM norms, it was also short-listed and thus the RVM has failed to follow uniform and transparent procedure in selecting the agencies for supplying the uniform cloth under the scheme; and

(v) that though the short-listing was for the year 2011-12 Respondent Nos. 1 to 3 have been trying to place orders on the short-listed agencies for the year 2012-13 also.

10. The learned Senior Counsel placed reliance on the Judgments in Union of India Vs. Dinesh Engineering Corporation (2008) 1 SCC 491, Brihan Mumbai Electric Supply Transport Undertaking and Another Vs. Laqshya Media P. Ltd. and Others, and M/s Icatch Communications India Ltd., M/s Brand Boutique Pvt. Ltd. and M/s Sign and Design Advertising Vs. M/s Prakash Arts and Others,

11. Supplementing the arguments of Sri L. Ravi Chander, learned Senior Counsel, Sri G.M. Mohiuddin, Learned Counsel for the petitioners in W.P. No. 15738/2012 has pointed out that there are several discrepancies in the annual turnover figures relating to Respondent Nos. 5 and 6 as per the information furnished under the Right to Information Act, 2005 (for short "the RTI Act") on the one side and the figures mentioned by the RVM and the said Respondents in their counter-affidavits on the other and that if the figures furnished under the RTI Act are accepted, the said Respondents will not qualify for being short-listed. The Learned Counsel also further submitted that the RVM has accepted the Composite Mill Certificate of Respondent No. 5 for November 1988 contrary to Clause 2.1 of the EOI document which prescribed furnishing of such certificate for the period after 14-8-2007. The Learned Counsel also submitted that while initially the certificates produced by Respondent Nos. 7 and 9 were not accepted as they were not in the prescribed proforma, they were subsequently accepted and those Respondents were included in the short-listed panel.

12. Sri G. Sridhar Reddy, Learned Counsel for the petitioners in W.P. No. 861/2012 has submitted that the RVM has violated G.O.Rt. No. 41, dated 27-1-2011, by including Respondent Nos. 5 to 9 in the short-listed panel instead of placing the order for supply of entire stock on Respondent No. 4 (APCO).

13. Sri B. Adinarayana Rao, Learned Counsel for Respondent No. 8, made the following submissions:

(i) The entire premise on which W.P. Nos. 5114/2012 and 15783/2012 have been

filed, namely, that the RVM has deviated from GOI policy guidelines, is unfounded and misplaced; and that the RVM has scrupulously followed the Manual on Financial Management and Procurement (for short "the Manual") as envisaged in paragraph 6(i) of the GOI policy guidelines;

(ii) that assuming that the RVM has deviated from the GOI policy guidelines, the only consequence that may ensue is that the expenditure incurred by the respective State Governments will not be eligible for financing from the SSA funds and consequently the States will be liable to fund the same from their own resources as per paragraph-5 of the GOI policy guidelines and therefore the decision taken by the RVM in short-listing the suppliers cannot be invalidated on the ground that the same is in violation of the GOI policy guidelines; and

(iii) that his client has fully complied with the RVM norms and was rightly included in the short-listed panel.

14. Sri D. Ramesh, the Learned Counsel who appeared for Respondent Nos. 1 to 3, submitted that while the RVM has not made any deviations from the GOI Policy guidelines, it has followed transparent method in identifying and short-listing the suppliers of the uniform cloth; that it acted according to the recommendations of its Technical Consultant, the RITES, made after physical verification of the mills of the suppliers. He has submitted that as per the figures contained in the RITES's report, Respondent Nos. 5 to 8 satisfied the turnover and other prescribed norms; that Respondent No. 9 was initially not empanelled due to non-submission of the Composite Mills Certificate from the Ministry of Textiles and that later it has submitted the said certificate through a representation with a request to consider its case also for inclusion in the panel of suppliers; and that accordingly Respondent No. 9 was included in the panel on the strength of the said certificate and being a GOI organization, the State has decided to consider its offers in only two Districts viz., Chittoor and Nellore. As regards Respondent No. 4 (APCO), the Learned Counsel submitted that three of the constituent members of APCO filed W.P. No. 861/2012 questioning the empanelment of Respondent Nos. 5 to 9 and that on the representation given by the former, the State Government considered its request and included in the short-listed panel for considering its offers to supply uniform cloth in only two Districts in the State i.e., Karimnagar and Warangal.

15. Smt. G. Vijaya Lakshmi and Sri A.V. Sesha Sai, the Learned Counsel for Respondent Nos. 5 and 6, respectively, have taken this Court through the pleadings and the material relating to the eligibility of their clients for being empanelled, with a view to dispel the allegations that they do not possess the requisite qualifications. They have also relied on the Judgments i P. Narayana Reddy and Others Vs. Govt. of A.P. and Others, Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, , Union Bank of India Vs. Manku Narayana, Netai Bag and Others Vs. The State of West Bengal and Others, and Precision Infratech Ltd. Vs. A.P. GENCO Ltd. and Others,

16. Having regard to the respective pleadings of the parties, the following Points emerge for consideration:

1. Whether the RVM has deviated from the GOI Policy guidelines by identifying and short-listing the suppliers of the uniform cloth under the RVM (SSA) scheme ?
2. Whether the RVM has followed an uniform and transparent method in short-listing the suppliers ?
3. Whether respondent Nos. 5 to 8 satisfied the prescribed norms for being included in the list of suppliers ?
4. Whether the inclusion of respondent Nos. 4 and 9 in the list of suppliers amounts to giving preference to the State Undertakings and the same is contrary to the GOI policy guidelines ? and
5. Whether respondent No. 4 is exclusively entitled to supply the uniform cloth under the RVM (SSA) scheme ?

17. Re Point No. 1: For better appreciation, it is useful to reproduce hereunder paras 3, 5 and 6(i) to (v) of the GOI Policy guidelines, dated 8-6-2012, which constitute the bone of contentions of the parties:

3. The SSA norms provide that procurement of uniforms will be decentralized to the school level and there will be no centralized procurements at the State, district or block level. Centralized procurement processes should therefore not be initiated for providing uniforms.

4.

5. It has been observed that some States have not been following the prescribed procurement procedure for uniforms: this will result in mis-procurement and the expenditure incurred will not be eligible for financing from SSA funds. Consequently, States will be liable to fund the same from their own resources in terms of para 127 of the Manual on Financial Management and Procurement.

6. The following instructions for the procurement of uniforms under SSA may kindly be adhered to:-

(i) Procurement of uniforms should be made under the limited tender method in terms of Para 118 of the Manual on Financial Management and Procurement since the estimated cost at the school level will be within the financial ceiling of less than US\$ 50,000 equivalent (approx. Rs. 22.50 lakh) prescribed for limited tender.

(ii) The school should invite quotations from at least three suppliers to ensure competitive prices. The school should issue letters to the prospective suppliers indicating the description, specification, colour, quantity, required (separately for boys and girls) and the delivery time. In case the school is not in a position to prescribe the specifications, sample uniforms for girls and boys should be provided to the prospective suppliers while seeking quotations. The invitation for

quotation should specifically indicate that prospective suppliers should submit sample cloth/uniform along with the quotations.

(iii) Under the SSA provisions, no preference for procurement can be given to Public Sector Undertakings, Co-operative Societies, National Textile Corporation or any other agencies of the State/Central Governments.

(iv) The quotations received, along with the sample cloth/uniforms, should be evaluated by a Purchase Committee, comprising SMC members and head teacher/teachers, to be formed for this purpose. A comparative statement of quotations should be prepared. The cloth used for stitching the uniform should be inspected and approved by the Purchase Committee.

(v) The purchase order should be issued to the lowest evaluated responsive bidder by incorporating accepted terms.

18. The purport of the GOI policy guidelines dated 8-6-2011, in short, is:

(i) procurement of uniforms shall be decentralized to the school level;

(ii) while procuring the uniforms, Limited Tender method in terms of paragraph 118 of the Manual shall be followed;

(iii) each school should invite quotations from at least three suppliers to ensure competitive prices;

(iv) no preference for procurement can be given to Public Sector Undertakings/Co-operative Societies/NTC or any other agency of the State or Central Governments; and

(v) a purchase committee comprising the School Managing Committee (SMC) members and Head Teacher/Teachers shall be formed by each school and such Committee shall evaluate the quotations and issue purchase orders to the lowest evaluated responsive bidder by incorporating the accepted terms.

19. In the EOI document issued by the RVM, it is inter alia stated that to facilitate SMCs in procurement of cloth for uniforms for the year 2011-12, it was decided to call for "Expression of Interest (EOI)" from the Composite Textile Mills; that a State Level Committee will scrutinize the EOI applications received and will short list the Composite Mills on an objective criteria; and that the State Project Director of the RVM will communicate the details of short-listed mills along with guidelines to the SMCs, which in turn will obtain quotations from the empanelled mills, prepare a comparative statement, evaluate the quotations and place order with the lowest evaluated responsive bidder for the supply of shirting and suiting cloth. It is specifically stated that "L1" bidder will supply the uniform cloth as per the purchase order, school-wise. The EOI has laid down eligibility criteria for the bidders, a detailed reference to which is not necessary except Clause 2.3 thereof, which reads as under:

The Bidder having an Annual turnover of Rs. 200 crores in preceding three years

i.e., 2008-09, 2009-10 and 2010-11 is only eligible to participate.

20. Paragraph 118 of the Manual, which deals with Limited Tender and which is incorporated in paragraph 6(i) of the GOI policy guidelines for being followed for procurement of uniform cloth needs a reference at this stage. This paragraph reads as under:

(a) Goods including books, teaching learning materials, school equipment, hiring of vehicles and operation and maintenance of equipment estimated to cost upto the financial ceiling prevailing in States or less per contract may be procured under contracts awarded under the Limited Tender system.

(b) Limited Tender is a procurement method based on comparing price quotations obtained from several suppliers, usually at least three to ensure competitive prices. As far as possible, Limited Tender enquiries will be issued to those firms, which are borne on the list of approved contractors/suppliers.

(c) The requests for quotations shall be made indicating the description, specification and quantity of the goods, as well as desired delivery time and place. Quotations shall also be obtained by telex or facsimile. The evaluation shall follow sound public or private sector practices. The terms of the accepted offer shall be incorporated in a purchase order.

21. Under the GOI Policy guidelines, the decision of selecting the bidder for placing order for the supply of uniform cloth shall be taken at the School level as centralized decision is strictly prohibited. Clause (b) of paragraph-118 of the Manual extracted above envisages inviting quotations from at least three suppliers. As rightly argued by the Learned Counsel for Respondent No. 8 and Respondent Nos. 1 to 3, identification of suppliers for calling for Limited Tenders from them at individual School level is something which is not practicable in realistic terms. It is very difficult, nay, well nigh impossible, for each school to identify the suppliers of quality uniform cloth with particular reference to their supply capacity. This obviously is the precise reason why the RVM has stepped in to help the schools by identifying the eligible suppliers, empanelling them and leaving them to the individual schools to be dealt with appropriately by following short tender method. This indeed is the essence of the case of Respondent Nos. 1 to 3, as reflected in paragraphs 7 and 8 of their counter-affidavit, which are reproduced hereunder:

The decision to call for EOI from composite mills is intended to ensure quality cloth, prompt supply and for a competitive price so that the School Management Committees will call for quotations from the empanelled mills. Otherwise there is every risk of supply of inferior quality of cloth to School Management Committees as the required machinery or infrastructure to test the quality of cloth cannot be expected at the school level.

I humbly submit that the procedure adopted by Rajiv Vidya Mission in calling for EOI is not in violation of instructions issued by the Government of India. On the

other hand, it is in consonance with the said instructions. It is only a short-listing of composite mills which are capable of supply quality cloth and promptly. It is also in accordance with the instructions of calling for tenders from limited people who are capable of promptly supply of cloth by ensuring quality.

22. In effect, the RVM has intervened to enable the SMCs to give effect to Clause (b) of paragraph-118 of the Manual.

23. On a conjoint reading of the GOI policy guidelines and paragraph 118 of the Manual, I am of the considered opinion that short-listing of the suppliers for being placed at the disposal of the individual schools by the RVM is not in any manner in derogation of the GOI Policy guidelines. On the contrary, this method facilitates proper identification of suppliers of quality uniform cloth with competence to meet the required demand within the stipulated time.

24. Re Point Nos. 2 & 3: The EOI has laid down eligibility criteria for short-listing the bidders. Under Clause 2.1 thereof, the bidders must have Composite Mills, i.e., they should have their own in-house facility for spinning, weaving and processing etc., must possess a valid copy of Composite Mill Certificate issued after 14-8-2007 from the Ministry of Textiles of the Government of India, which must be submitted along with the EOI application. Under Clause 2.2, the bidder should possess annual processing capacity of at least 200 lakh meters of suiting and 240 lakh meters of shirting and a valid copy of processing capacity certificate issued by the Ministry of Textiles and submit the same along with the EOI application. Under Clause 2.3, the bidder having an annual turnover of Rs. 200 crores in preceding three years i.e., 2008-09, 2009-10 and 2010-11, is only eligible to participate. I am not referring to the other Clauses of the EOI document because they are not relevant having regard to the averments made by the petitioners.

25. The prime objection against including Respondent No. 5 in the short-listed agencies is that it does not satisfy Clause 2.3 of the EOI document relating to the annual turnover for the years 2008-09 and 2009-10. In support of this plea, the petitioners in W.P. No. 5114/2012 placed reliance on a copy of the check-list furnished by the RVM under RTI Act. A perusal of this document would show that for the years 2008-09 and 2009-10, Respondent No. 5 is shown to have an annual turnover of Rs. 127.07 crores and Rs. 132.38 crores respectively. In their counter-affidavit, Respondent Nos. 1 to 3 have denied that the annual turn over of Respondent No. 5 is less than Rs. 200 crores during the years 2008-09 and 2009-10.

26. As regards Respondent No. 6 (Banswara Syntex Ltd - Respondent No. 5 in W.P. No. 15738/2012), it was pleaded that the said Company has annual processing capacity of 240 lakh meters only as against the requirement of 440 lakh meters. Respondent Nos. 1 to 3 pleaded that the RVM has requested the RITES to inspect the four empanelled mills and submit physical verification report and that after physical verification of all the relevant material relating to the

mills, the RITES has given the following details :

Sl.

No.

Name of the mill

Processing capacity in Meters in Lakhs

Turnover (in Crores)

2008-09 2009-10 2010-11

1

Mafathlal Industries Ltd., Mumbai (Respondent No. 5)

447

547.66

308.14

861.70

2

BanswaraSyntex Ltd., Mumbai (Respondent No. 6)

624

558.95

646.83

838.01

3

Arvind Ltd., Ahmedabad (Respondent No. 7)

600

2353.30

2216

2691

4

Alok Industries Ltd., Mumbai (Respondent No. 8)

440

2976.93

4311.17

27. In its counter-affidavit, Respondent No. 5 averred that in pursuance of the EOI notification, it has submitted its technical bid for empanelment on 24-12-2011 with all the annexures; that it attended the pre-bid meeting; and that it is one of the largest Composite Mills established in the year 1905 and a market leader in school uniform fabric business supplying school uniform throughout India. It is further averred that the State Level Committee on the report submitted by the RITES, after inspection of the mill and examining its turnover details, short-listed Respondent No. 5 and that as per the RITES's report, its processing capacity is 447 lakh meters and the turnover is much more than that is envisaged in the EOI document. After empanelling Respondent No. 5, the RVM addressed letter on 28-1-2012 informing the former about its empanelment for the year 2011-12 in 19 Districts except Karimnagar, Warangal, Chittoor and Nellore Districts and that after completing all the formalities, Respondent No. 5 entered into an agreement with Respondent No. 2 on 5-2-2012 pertaining to the details of specifications of uniform cloth and other essential requirements to be complied with, and submitted bank guarantee of Rs. 2 crores with HDFC Bank. Respondent No. 5 further averred that after preparation of the panel by the State Level Committee, the SMCs called for quotations for the supply of uniform cloth and accordingly quotations were submitted and after a thorough discussion in the meeting held by the District Collectors of the respective Districts with the SMCs, the Mandal Educational Officers etc., the patterns/shades of the uniform cloth were finalized. It is further averred that after receipt of quotations, the SMCs prepare a format in Annexure-II showing the comparative statement of rates of all the bidders and after the "L1" bidder is identified, the SMCs place the orders.

28. Respondent No. 6 also asserted that as certified by the RITES, it possesses the required processing capacity and it has filed documentary proof in support thereof.

29. With regard to the submission of Sri G.M. Mohiuddin that Respondent No. 5 has produced the annual capacity certificate of November 1988, Smt. G. Vijaya Lakshmi, the Learned Counsel for Respondent No. 5, submitted that no such pleading has been raised in the Writ Petition. She has however explained that the said certificate of November 1988 pertains only to annual capacity while Clause 2.1 of the EOI document envisages submission of the Composite Mills Certificate issued after 14-8-2007. She has invited the Court's attention to the Certificate dated 25-4-2008 which is titled as "Composite Textile Mills Certificate".

30. The Director's report of Respondent No. 5, a copy of which is filed by the petitioners in W.P. No. 15738/2012, is subject to a serious contest between the parties. The said report contains the turnover details for the years 2009-10 and 2010-11. The Learned Counsel for the petitioners argued that the RITES, in its report, has added components under other heads such as other income, increase/decrease in stock of finished goods and Process Stock, Gross Profit etc., in the

turnover of the suppliers/bidders, while arriving at the recommendations made by it. According to Respondent No. 5, as these components were also subjected to income tax, they also need to be included while taking into account the annual turnover.

31. There is undoubtedly a huge variation in respect of the turnover figures of Respondent No. 5 for the years 2008-09 and 2009-10, between the information furnished under the RTI Act and the figures adopted by the RVM on the basis of the RITES's report. The RMV is unable to explain this discrepancy. However, it is not the pleaded case of the petitioners that in order to favour Respondent No. 5, the RVM has empanelled the latter despite being ineligible.

32. The law on judicial review in award of contracts is well crystallized. The Constitutional Courts while undertaking judicial review of the administrative actions under Article 226 of the Constitution of India are only concerned with the decision making process and not with the merits of the decision. In this process, the Court will not examine the decision as if it is sitting in an appeal over the decision of the authority.

33. In *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, the Apex Court has cautioned against interference with the award of contracts by holding as under:

....Therefore, unless the Court is satisfied that there is substantial amount of public interest, or the transaction is entered into mala fide, the Court should not intervene under Article 226 in disputes between two rival tenderers.

34. In *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, , the Supreme Court held as under:

Even when some defect is found in the decision making process, the Court must exercise its discretionary power 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.

35. It was further held that the Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not and that only when it comes to the conclusion that the overwhelming public interest requires interference, the Court should intervene.

36. A similar note of caution is contained in *B.S.N. Joshi Vs. Nair Coal Services Limited* 2006(11) SCALE 526 wherein the Supreme Court held :

The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record.

37. In *Jagdish Mandal Vs. State of Orissa* 2007(8) SCJ 359, the Supreme Court held that if a decision relating to award of contract is bona fide and is in public interest, Courts will not, in exercise of judicial review, interfere even if a

procedural aberration or error in assessment or prejudice to a tenderer, is made out.

38. While reviewing the case law on the subject in Precision Infratech Ltd. (8-supra), I have held at paras 33, 34 and 35 as under :

In the light of the above settled principles by the plenitude of judgments, the Supreme Court held that a Court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone, or, whether the process adopted or decision made is so arbitrary and irrational that the Court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached;

(ii) Whether public interest is affected

The Supreme Court held that if the answers to the above questions are in negative, there should be no interference under Article 226.

In its latest opinion rendered by a three Judge Bench in Siemens Public Communication Networks Pvt. Ltd. and another Vs. Union of India (2009(1) SCJ 634), the Supreme Court reiterated its earlier views referred to above and particularly the ratio in Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, that even when some defect is found in the decision making process the Court must exercise its discretionary power 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 and that only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene. While referring to the judgment in Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction (I) Ltd. and Others, the Supreme Court held:

As we noted in the case of Asia Foundation and Construction Ltd. (supra), though the principle of judicial review cannot be denied so far as exercise of contractual powers of Government bodies are concerned, but is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the Court that in the matter of award of a contract power has been exercised for any collateral purpose.

39. In a recent Judgment in Tejas Constructions & Infrastructure Pvt. Ltd. Vs. Municipal Council, Sendhwa 2012(1) Decisions Today (S.C.) 239 the Supreme Court has made a compendious reference to the various Judgments taking the above line.

40 In Tata Cellular Vs. Union of India, , the Apex Court has laid down the following five core tests to be applied while undertaking judicial review:

(i) whether a decision making authority exceeded its powers;

- (ii) committed an error of law;
- (iii) committed breach of rules of natural justice;
- (iv) reached a decision which a reasonable Tribunal would not have reached; or
- (v) abused its powers

41. Applying these tests to the case on hand, I am convinced that the empanelment of Respondent No. 5 by the RVM in the list of suppliers of the uniform cloth, only on the ground of discrepancy between two sets of figures, as mentioned supra, cannot be invalidated, more so, in the absence of any mala fides ascribed to the former. In case of Respondent No. 6, the plea of the petitioner in W.P. No. 15738/2012 is strongly denied by the former. The RITES, a Government of India undertaking has examined the figures of the empanelled agencies relating to their production capacity and turnover and submitted its reports based on which the RVM prepared the panel. As no bad faith has been imputed to any of the Respondents, including RITES, I have no reason to hold that the figures submitted by the RITES need to be doubted. If those figures are accepted, undisputedly, all the Respondents, except Respondent Nos. 4, and 9, will qualify for being short-listed.

42. Re Point No. 4: The allegation against Respondent No. 9 (NTC) is that as per the information provided by the RVM under the RTI Act, its EOI application was rejected due to non-submission of the Composite Mill Certificate and production details. In their counter-affidavit, Respondent Nos. 1 to 3 categorically averred that on a subsequent request made by Respondent No. 9 to consider its application, it was empanelled on the strength of the Composite Mill Certificate produced by it along with the report. As regards Respondent No. 4, Respondent Nos. 1 to 3 stated that in order to protect the interests of the weavers' community in the State, it has been empanelled for two Districts.

43. There is no gain saying of the fact that the GOI Policy guidelines prohibited giving preference to organizations such as Respondent Nos. 4 and 9. In this context, the difference between empanelment and awarding of contract is to be noticed. By mere empanelment, a person or organization is not entitled for placing of supply orders in his/its favour. They have to necessarily compete with the other empanelled agencies by offering competitive prices for supply of the uniform cloth. As noted above, their empanelment is confined only to two Districts each as mentioned supra. In my opinion, if a contract is awarded by giving preference to any of the agencies of Central or State Governments, then such an action will fall foul of Clause 6(iii) of the GOI Policy guidelines. Mere empanelment of Respondent Nos. 4 and 9, on considerations of public interest, cannot be said to be in violation of the said guidelines. At any rate, as rightly argued by Sri B. Adinarayana Rao, violation of the GOI Policy guidelines may at best constitute "mis-procurement" within the meaning of paragraph-5 of the said guidelines and the State may not be eligible for financing from the SSA funds to that extent.

44. Re Point No. 5: It is the pleaded case of the petitioners in W.P. No. 861/2012 that under G.O.Rt. No. 41, dated 27-1-2011, the State Government has decided to give necessary instructions to all the Departments to purchase their respective cloth requirements only from Respondent No. 4 (APCO). In the counter-affidavit filed by Respondent No. 1-State Project Director, RVM, it is inter alia stated that for the financial year 2010-11, the State Government of Andhra Pradesh has entrusted the supply of uniforms to the Government undertakings like APCO, NTC, SERIFIED etc., out of which 50% of supply was entrusted to the APCO and that the latter expressed its inability to supply upto 50% of the number of uniforms and accordingly its request for supply order was modified to 25%. It is further averred that the APCO could not meet even the reduced requirement. Respondent No. 1 while stating that the interests of the APCO have not been ignored and that since supply of uniforms is undertaken under the RVM (SSA) scheme, G.O.Rt. No. 41 has no application.

45. I find force in the stand taken by Respondent No. 1. On a perusal of G.O.Rt. No. 41, dated 27-1-2011, it is evident that the said G.O. is not concerned with the uniform cloth to be supplied under the RVM (SSA) scheme. The policy guidelines issued by the GOI dated 8-6-2011, which exclusively govern the uniforms to be supplied under the RVM (SSA) scheme will prevail over G.O.Rt. No. 41. At any rate, the petitioners who are only three of the constituent societies of the APCO cannot espouse the latter's cause. The very fact that the APCO has not questioned G.O.Rt. No. 41, dated 27-1-2011, itself would show that it is not interested in supplying the uniform cloth exclusively. The further fact that it has expressed its inability to supply even 50% of the uniform cloth during the previous year would prove that the APCO does not have the capacity of meeting such a huge requirement under the RVM (SSA) scheme.

46. Before closing the discussion on the merits of the case, the submission of Sri L. Ravi Chander, learned Senior Counsel, that the short-listing of the suppliers was made only for the year 2011-12 while the empanelment is not restricted only to that year, needs to be mentioned. At the hearing, it is not disputed by the learned Counsel appearing for any of the Respondents that the empanelment of the suppliers under the scheme in question is only for the year 2011-12 and that the tenders to be filed/filed by Respondent Nos. 4 and 9 should be considered only for the year 2011-12. It therefore necessarily follows that for the year 2012-13, Respondent Nos. 1 to 3 need to follow the GOI Policy guidelines by considering the requests of the petitioners and other similarly placed agencies for their empanelment subject to their satisfying the eligibility criteria for such empanelment.

47. On the analysis as above, this Court answers Point Nos. 1 to 3 in the affirmative and Point Nos. 4 and 5 in the negative.

48. The Writ Petitions are accordingly dismissed. As a sequel, WPMP Nos. 1077 & 1693/2012, 6517/2012 and WPMP No. 20307/2012, WVMP Nos. 1976, 2070 & 2081/2012 filed in the respective Writ Petitions are disposed of as infructuous.