

(2019) 12 GAU CK 0035

In the Gauhati High Court

Case No : Writ Petition (C) No. 1984, 2955, 3819 Of 2019

Chatradhar Das And 2 Ors

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Right Of Children to Free And Compulsory Education Act, 2009 — Section 2, 21, 21(2), 22, 38

Right Of Children to Free And Compulsory Education Rules , 2011 — Rule 13(1), 14
Constitution Of India, 1950 — Article 14, 19(1), 19(1)(g), 19(a)(e), 21, 37, 39(c)

Citation : (2019) 12 GAU CK 0035

Hon'ble Judges : Suman Shyam,

Bench : Single Bench

Advocate : S K Goswami, K N Choudhury, U Saikia, S C Keyal

Final Decision : Allowed

Judgement

1. Heard Mr.Nilay Dutta, learned senior counsel assisted by Mr.N.N.B. Choudhury, learned counsel appearing for the writ petitioners in WP(C) No.1984/2019, Mr. K. N. Choudhury, learned senior counsel assisted by Mr. T. Deuri, learned counsel appearing for the writ petitioners in WP(C) No.2955/2019 and Mr. R. K. Nath, learned counsel appearing for the writ petitioners in WP(C) No.3819/2019. I have also heard Mr.D. Mazumdar, learned Additional Advocate General, Assam appearing for the official respondents and Mr. D. K. Mishra, learned senior counsel assisted by Mr.B. Prasad, learned counsel appearing for the respondent No.4 in WP(C) No.2955/2019.

2. There are three petitioners in W.P.(c) No 1984 / 2019 who are engaged in the business of tailoring and supply of school uniforms through their individual SSI units based in the state of Assam. The two writ petitioners in W.P. (c) No 2955/ 2019 are proprietorship firms engaged in the business of manufacturing garments and supply of school uniforms. The petitioners have their respective manufacturing units situated in the district of Kamrup at Guwahati, Assam. The

three writ petitioners in W.P.(c)3819 of 2019 are also proprietorship firms engaged in the business of manufacturing garments and school uniforms. The writ petitioners are aggrieved by the eligibility condition incorporated in the Expression of Interest (EoI) dated 06.03.2019 issued by the respondent no 3 for supply of school uniforms in various schools in the State of Assam.

3. The Right of Children to Free and Compulsory Education Act, 2009 (here-in-after referred to as the Act of 2009) was enacted by the Parliament so as to provide free and compulsory education to all children of the age of 6 to 14 years. Aimed at universalization of primary education in a time bound manner, the Government of India had come out with a scheme viz. Sarva Shiksha Abhiyan (SSA). SSA was a flagship scheme of the Government of India so as to ensure that free and compulsory education is available to children between 6 and 14 years, as a fundamental right. Likewise, Rashtriya Madhyamik Shiksha Abhiyan (RMSA) was another centrally sponsored scheme of the Government of India for developing secondary education in public schools throughout India. Teacher Education (TE) was a scheme primarily aimed at equipping the teachers to discharge their functions more effectively by formulating procedures for developing their knowledge, skills , aptitude etc.

4. By subsuming the three aforementioned schemes,the Ministry of Human Resource Development, Government of India, Department of School Education & Literacy, New Delhi, had introduced a new scheme called "Samagra Shiksha" aimed at strengthening the school education sector in the country, from pre-school to Class-XII, on a mission mode. The SamgraShiksha Scheme was launched in the year 2018-19 with the goal to improve the effectiveness of school education and to provide equal opportunities for schooling and equitable learning outcomes. It appears that for the state of Assam, the Mission Director, SSA, i.e. the respondent No.3, had been appointed as the Nodal agency to implement the scheme.

5. The scheme formulated under the Act of 2009 makes provision for providing school uniforms to the students. As such, the respondent No.3 had issued Expression of Interest [EoI] dated 06.03.2019 inviting offers for empanelment of vendors for supply of school uniforms in the various schools in Assam. The EoI indicates that the estimated number of students would be 37,23,700 and the ceiling for each set of uniform has been fixed at Rs 600/-. According to the official respondents, the purpose behind issuing the EoI is to prepare a panel of vendors so as to enable the respective School Management Committees (SMC) to place orders with them . It is their case that since, the Financial Management of Procurement Manual (for short - FMP) permits procurement of uniforms at the state level, hence, the process followed by the respondents cannot be found fault with.

6. Leading the arguments on behalf of the writ petitioners, Mr. N. Dutta, learned senior counsel, has argued that the respondent no 3 was duty bound to follow the mandate of the Financial Management of Procurement Manual (for short -

FMP), according to which, community participation in the procurement process was required to be encouraged by the implementing agencies. Mr.Dutta submits that the impugned eligibility conditions, besides being contrary to the mandate of the FMP, also does not have any reasonable nexus with the purpose sought to be achieved i.e. supply of uniforms to the school students, but has been deliberately inserted with a view to oust lakhs of local entrepreneurs such as the writ petitioners from the domain of the contract.

7. By referring to the BIS standards applicable in this case, Mr .Dutta has argued that by using 100% polyester materials for uniforms, the respondents have not only compromised on the quality of school uniforms but by violating the BIS standard, they have also ignored the interest of a large number of school going children.Urging that ownership of "a composite textile mill" has no reasonable nexus with supply of school uniforms, the learned senior counsel has argued that the entire procedure adopted by the respondent No.2 lacks transparency and has been deliberately designed for concentration of wealth for benefit of a chosen few. To substantiate his above argument Mr.Dutta has referred to Article 39(c) of the Constitution of India to contend that the State, in discharge of its functions, is bound to act and frame policies which are in line with the directive principles of State policies and therefore, any administrative decision which contradicts the spirit of the directive principles, must be held to be unconstitutional. In the above context, Mr. Dutta has further argued that the sudden decision to change the mechanism of procurement and exclude the local entrepreneurs, is not backed by any policy decision of the State Cabinet but is an administrative decision which is not supported by cogent reasons.

8. Supporting the above contentions, Mr. K. N. Choudhury, learned senior counsel appearing for the writ petitioners in WP(C) No.2955/2019, has argued that Clause-1 of the EoI , which lays down the eligibility conditions of the bidders, is in direct conflict with Clauses 7.4(iii) and 7.7 of the FMP and therefore, the EoI is liable to be struck down on such count alone. Contending that the present is a case of protective discrimination selectively extended by the State to a few big corporate houses, Mr.Choudhury has argued that the action of the respondents is nothing but an attempt to create a different class of suppliers without furnishing any quantifiable data before this Court so as to justify such discrimination. In support of his aforesaid argument, Mr.Choudhury has relied upon the decision of the Supreme Court in the case of Union of India and others Vs. Dinesh Engineering Corporation and another reported in (2001)8 SCC 491 and Dr.Jagadish Saran and others Vs. Union of India reported in (1980)2 SCC 768.

9. Opposing the stand taken by the official respondents in their counter-affidavit to the effect that supply of poor quality uniforms by the local entrepreneurs and their failure to supply the uniforms on time during the previous years has prompted the State to incorporate stringent eligibility condition in the EoI, Mr.Choudhury has argued that since the State has failed to substantiate such allegations by bringing on record cogent materials, an adverse presumption be

drawn against the respondents on the above issue.

10. Mr. R. K. Nath, learned counsel for the writ petitioners in WP(C)No.3819/2019, has adopted the arguments advanced by the learned senior counsel and has further submitted that the impugned EoI infringes upon the fundamental rights guaranteed to his clients under Article 19(1) of the Constitution of India.

11. Mr. D. Mazumdar, learned Additional Advocate General, Assam, on the other hand, has strongly refuted the arguments made on behalf of the writ petitioners and by referring to the statements made in the counter-affidavit, submits that there were strong and cogent reasons which had prompted the respondents to incorporate stringent eligibility conditions in the EoI. Mr.Mazumdar submits that the terms and conditions of the EoI, being in the realm of the contract, is based on the policy decision of the Government. Therefore,the petitioners do not have any right to assail the same in a writ proceeding. Mr.Mazumdar has argued that the impugned EoI has been issued in strict compliance with the FMP and the GFR guidelines which permits procurement of uniforms at the State level. Since the FMP has not been put under challenge, no case for interference, submits Mr. Mazumdar, has been made out in the present batch of writ petitions.

12. By referring to the decision of the Supreme Court in the case of Michigan Rubber (India) Limited Vs. State of Karnataka and others reported in (2012)8 SCC 216 Mr. Mazumdar has argued that some latitude must be permitted to the State authorities while formulating conditions of a tender and unless the terms of the tender are found to be arbitrary or incorporated with a malafide intent, the writ court, in exercise of power of judicial review, would not interfere with the terms of the tender. Mr. Mazumdar has also relied upon the decision in Directorate of Education and others Vs. Educomp Datamatics Ltd. and others reported in (2004) 4 SCC 19 to contend that the scope of enquiry of this Court in the matter of award of Government contract must remain confined only to prevent arbitrariness or favouritism.

13. By producing the departmental records, Mr. Mazumdar has argued that the EoI has been issued after obtaining due concurrence of the Education Minister to the Government of Assam and the Department of Finance and therefore, it is not a case where the tender has been issued in violation of the procedural norms. By referring to the materials on record, Mr. Mazumdar has further argued that there are 37,23,700 children in the State of Assam who would be supplied with uniforms under the scheme and taking the minimum price of the uniforms to be Rs.600/- per piece, the total value of the contract would be more than Rs.223 Crores. As such, submits Mr.Mazumdar, there is ample justification for the State to satisfy itself on question of ability and credibility of the supplier, not only to ensure good quality uniforms to such a large number of school students but also to ensure that such supply is made in a time bound manner. On such ground Mr. Mazumdar has argued that there is a reasonable nexus which is sought to be achieved by inserting the impugned eligibility conditions in the EoI and therefore,

there is no justifiable ground for this Court to interfere with the EoI dated 06.03.2019.

14. Mr. D. K. Mishra, learned senior counsel appearing for the respondent No.4 in WP(C) No.2955/2019 has invited the attention of this Court to the terms and conditions of the EoI to submit that having regard to the volume of the work and the overall value of the contract, the respondent No.3 is justified in introducing the eligibility conditions in the EoI. According to Mr. Mishra, by floating the EoI the respondent No.3 is merely seeking to create a panel of suppliers after due verification of their credentials. Since the indent for supply of the uniform would be placed by the respective SMCs directly with the suppliers, without any intervention from the departmental authorities, community participation is automatically protected in the present mechanism. Mr. Mishra has further argued that it is for the first time the FMP is being followed in making procurement and considering the diverse nature of requirement of uniforms coming from different schools, a centralised procurement mechanism would be most suitable so as to ensure time bound supply of the uniforms. On such ground Mr. Mishra has prayed for dismissal of the writ petitions with cost.

15. I have considered the arguments advanced by the learned counsel for the parties and have gone through the materials available on record.

16. As noticed above, the controversy involved in this writ petition pertains to the eligibility condition contained in the EoI dated 06.03.2019. For the sake of ready reference, the impugned eligibility condition contained in the EoI dated 06.03.2019 is reproduced herein below :-

"1. Mission Director, Axom Sarba Siksha Abhiyan Mission (Samagra Siksha), Kahilipara, Guwahati-19, Assam invites Expression of Interest from manufacturers having composite textile mills/manufacturers of Textile for providing uniforms to the children of elementary classes From Class-I to Class-VIII having annual turnover of minimum Rs.100.00 crores per year (turnover of 2015-16, 2016-17, 2017-18)."

17. The basic contention of the writ petitioners is that there is not a single textile mill or manufacturer of garment in the entire north-eastern India that would meet the above eligibility criteria. Therefore, it is apparent that the aforementioned eligibility condition has been incorporated with the mala fide intention of excluding the local entrepreneurs like the petitioners. More over, the impugned eligibility condition restricts community participation and therefore, contravenes the guidelines laid down in the FMP.

18. The Samagra Shiksha Manual of Financial Management and Procurement (FMP) 2018 inter-alia deals with the procedure for making financial transaction under the scheme. There is no dispute about the fact that the procurement process undertaken by the respondent no.3 comes within the purview of the FMP and therefore, the process must meet the requirement of the FMP and the General Financial Rules (GFR) 2017. GFR, 2017 lays down the General Principles

relating to expenditure and payment of money framed by the Ministry of Finances, Department of Expenditure, Government of India.

19. The official respondents have also not denied that the principles laid down under the FMP are mandatory. The aforesaid aspect of the matter stands further clarified from the communication dated 06.08.2018 issued by the Secretary to the Government of India, Ministry of Human Resource Development, which is extracted herein below for ready reference :-

"Foreword

Samagra Shiksha - an overarching programme for the school education sector extending from pre-school to class 12 has been launched wef 2018-19 with the broader goal of improving school effectiveness measured in terms of equal opportunities for schooling and equitable learning outcomes. It subsumes the three Schemes of Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and Teacher Education (TE).

As the scale and scope of implementation of the Samagra Shiksha has increased due to subsuming of the aforesaid schemes, the challenge of smooth implementation and coordination has grown manifold. In order to guide and assist the implementing agencies in programme management, the Ministry of Human Resource Development, Department of School Education & Literacy has brought together the procedures, rules and regulations at one place in the Financial Management and Procurement Manual (FMP Manual).

The FMP Manual is intended to be used by the State /UTs as a guide for budgeting and financial reporting procedures, accounting and auditing requirements, and procurement procedures to be followed throughout the country. The provisions laid down in the Manual are mandatory and are to be followed by the States and UTs to ensure that funds are disbursed, utilised and accounted for in an efficient and effective manner.

I am confident that the FMP Manual will help the States and UTs to bring financial rigour in the implementation of Samagra Shiksha and prove to be a valuable tool as we seek to realise the goals and objectives of this centrally sponsored programme."

Sd/- Illegible

(Rina Ray)"

20. A reading of the communication dated 06.08.2018 issued by the Secretary, MHRD, New Delhi takes the matter beyond any pale of doubt that the State implementing agencies would be under a legal obligation to adhere the FMP while making procurements under the scheme. In the above backdrop, let me now examine the challenge made to the impugned eligibility conditions contained in the EoI dated 06.03.2019.

21. Section 21 of the Act of 2009 provides for forming a School Management

Committee (SMC) for each school other than those specified in sub-clause (iv) of clause (n) of section 2. Sub-clause (ii) of clause (n) of section 2 of the Act of 2009 defines an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or local authority. Sub-section 2 of section 21 of the Act of 2009 lays down the functions of the SMC which includes the task of monitoring the utilisation of the grants received from appropriate Government or local authority or any other source.

22. In exercise of power conferred under section 38 of the Act of 2009, Right of Children to Free and Compulsory Education Rules, 2011 (here-in-after referred to as the Rules of 2011) has been framed which is applicable for the State of Assam. Rule 13(1) of the Rules deal with composition and function of the SMC for the purpose of section 21 of the Act of 2009. Rule 14 provides for preparation of a School Development Plan for the purpose of section 22 of the Act of 2009. From a careful scrutiny of the scheme of the Act of 2009 and the Rules framed, I do not find any provision that vests the control of the appropriate Government over the SMC in managing the affairs of the Schools. On the contrary, it appears that under the scheme of the Act and the Rules, SMCs would enjoy sufficient autonomy in the matter of managing the affairs of the school coming under its control.

23. Clause-2 falling under Section VI of the EoI mentions that orders for purchase of uniforms will be placed by the SCM/SMDC of the respective schools and the quantity and size of the uniforms, class-wise and gender-wise student strength, will be clearly specified by the SMC/SMDC of the respective schools in the order copy.

24. Clause-3 of Section VI provides that payment will be made by the SMC/SMDC of the respective schools on receipt of uniforms as per specification, size and quantity mentioned in the order copy. Clause-3.(ii) further provides that no advance payment or part-payment would be made by the SMC/SMDC of the respective schools in any circumstances.

25. Therefore, it is evident that even if a panel of suppliers is prepared by the respondents, subject to the requirement of the FMP, the SMCs cannot be denuded of their autonomy to manage the affairs of the school which would include their right to take decision pertaining to procurement of school uniforms.

26. What would also be significant to note here is that it is the admitted position of fact that the uniforms are required to be supplied to the school students as per the mandate of the Act of 2009 and therefore, procurement of uniforms is not a one-time measure but is a recurring event. Notwithstanding the same, the EoI dated 06.03.2019 does not indicate as to the period for which, the panel sought to be created by the respondent No.3, would remain valid. Therefore, it is apparent that the life of the panel of vendors sought to be created under the EoI is not limited by time.

27. Chapter-7 of the FMP deals with procurement. Clause-7.4 lays down the

guidelines for procurement activities under the new scheme. Clause-7.4 is reproduced herein below for ready reference :-

"(i) All the procurement will now be through Single Implementing Society (due to subsuming of the three schemes namely, SSA, RMSA and Teacher Education) and henceforth, the procurement of goods, services and civil works (also under SCERT, DIET and other institutions) would get regulated through the single implementing society.

(ii) Procurement of goods, services, civil works (infrastructure) has though been mentioned at the various levels but however, for economy and bulk procurement the state can decide the level of procurement.

(iii) Procurement of uniform being provided at the elementary level may also be done at the state/district or school level (SMC/SMDC) but involvement and participation of the community should be encouraged.

(iv) Procurement of textbooks upto the elementary can be made on a single tender basis."

28. Clause-7.7 of Chapter-7 of the FMP lays down the guiding principles that would have to be followed and the type of procurement provided in the GFR (general Financial Rule) 2017. Clause-7.7 is extracted herein below for ready reference:-

Sl. No.

Procurement Type

Financial Limit

1.

No Tender or Direct Purchase (certificate to be furnished as per rule under 145 of GFR 2005)

Upto Rs.25,000/-

2.

Three member committee (Certificate to be furnished as per rule under 146 of GFR 2005)

Above Rs.25,000 and upto Rs.2.5 lakh.

3.

Limited Tender

Above Rs.2.50 lakh and upto Rs.25 lakh

4.

Open Tender

Above Rs.25 lakhs

6.

Service Contracts

6.(a)

Direct Contracting (with three quotations)

Upto Rs.2.50 lakh

6.(b)

Limited tender

Above Rs.2.50 lakh and upto Rs.25 lakh

6.(c)

Open tender

Above Rs.25.00 Lakh

29. A plain reading of the Clauses-7.4 and 7.7 would go to show that while the State has been left with the liberty to make procurement through single implementing agency, yet, under sub-clause (iii) of clause 7.4, involvement and participation of the community has been encouraged. In other words, Clause-7.4. (iii), provides that the level of procurement may be decided by the implementing agency but the same should aim at encouraging community participation in procurement process. The aforesaid provision, in my opinion, lays down a policy statement of the Government and therefore, cannot be ignored by the implementing agency while choosing on a procurement process.

30. Clause-7.7 prescribes different procurement process as per prescription of the GFR, 2017 depending on the financial limit of the order. From a reading of clause 7.7 it is clear that an "open tender" is required to be invited only in cases, where the value of procurement exceed the financial limits of Rs.25 lakhs.

31. In the instant case, as noted above, there is no purchase order issued yet. The estimated number of students is also not a guarantee of any supply order of a particular financial value. Moreover, it is the stand of the department that all the individual orders for supply of the uniforms need not necessarily go to any one empaneled vendor. From the above, it is apparent that depending on the number of students, gender ratio and size of the uniforms, the supply orders to be placed by each SMC may vary from a few thousand to more than a lakh. In the absence of any other criteria for determining the financial limits of the procurement, I am of the view that the financial limit of the procurement would depend on the value of the supply orders and not on the volume of the business that might ultimately generate under the EoI.

32. Having regard to the prescription of clause 7.7 of the FMP, as noticed above,

I am of the considered opinion that requirement for issuing an open tender would arise, only in case the supply order exceeds the financial limits of Rs 25 lakhs and not otherwise. In case the supply order is valued between Rs.25 lakhs to Rs.25 lakhs, the procedure prescribed under the FMP is for a limited tender and therefore, in those cases also there would be no necessity to go for open tender. Therefore,, this court is of the view that even if the eligibility condition contained in the EoI is upheld, even then, the procurement process has to remain confined to supply orders which are above the financial limit of 25 lakhs.

33. Coming to the question of community participation, as indicated in clause 7.4(iii) of the FMP, it is to be noted here-in that although various types of procurements have been envisaged under clause 7.4 yet, the expression "community participation" has been used only in case of procurement of uniforms. When an expression has been deliberately used in a particular clause, the court, while interpreting the same, cannot presume such expression to be superfluous but would be obliged to give due weightage to the same. Ox-ford dictionary defines "community" as joint ownership, state of being shared or held in common. Although the expression "community participation" has not been defined in the FMP, yet, by employing the dictionary meaning of the word "community" I am inclined to hold that the idea behind including the said expression in sub-clause (iii) is to promote wider participation of the members of the civil society in the matter of procurement of uniforms.

34. After the decision of the Hon'ble Supreme Court in the case of Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651 law is firmly settled that there are inherent limitation in the exercise of power of judicial review in matters of Government tenders and the terms of a tender, being in the realm of the contract, would not ordinarily be interfered with in exercise of writ jurisdiction. The Supreme Court has, however, observed that even in tender matter, whether the decision is vitiated by arbitrariness, un-fairness , illegality or irrationality or is hit by the principles of " wednesbury unreasonableness" the same can be looked into by the courts. A decision is said to be hit by the principle of "wednesbury unreasonableness" when the same is such that no reasonable person, on proper application of mind, could take it.

35. Restating the above principles after taking note of the law laid down on the subject in a number of previous decisions , the Supreme Court has observed in the case of Michigan Rubber (India) Limited (supra) that the basic requirement of Article 14 would be fairness in States action and such action would be amenable to judicial review only to the extent that the State must act validly, for a discernible reason and not whimsically for any ulterior purpose. The Apex Court has further observed that before interfering in tender or contractual matter, the court should pose 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"? and

(ii) Whether the public interest is affected?"

If the answers are in the negative, there should be no interference under Article 226.

36. What follows from the decisions referred to above is that terms of a tender is a policy matter and therefore, the Government must be permitted ample latitude to settle the terms and conditions in respect thereof. There can be hardly any debate on the settled law that the State must have the freedom of entering into contract but what must be borne in mind is that the procedure adopted by the State or its instrumentality to award a Government contract must not only be reasonable, just and fair but the same must also aim towards serving the larger public interest. In the name of freedom of entering contracts, the State cannot claim to have unfettered discretion.

37. In the present batch of writ petitions, it has been alleged that the eligibility condition prescribed by the EoI is only to exclude the state based entrepreneurs. The departmental records produced by the learned standing counsel does not indicate the basis on which the eligibility criteria indicated in the EoI has been settled. There is also nothing in the departmental record to disclose the reason for changing the method or level of procurement nor is there any indication as to why, owners of textile mills having minimum 100 crore turnover have been preferred by the department for awarding the contract.

38. It is a matter of common knowledge that a school uniform is required to be stitched as per the measurement applicable to each individual student. Therefore, it is not understood as to how and why a textile mill engaged in the business of manufacturing cloths has been found to be more suitable for manufacturing school uniforms. There is no discernible reason as to why the respondents had to choose owners of textile mills with over 100 crore turn over so as to prepare a panel of suppliers.

39. Although Mr.Mazumdar has submitted that there were numerous complaints against the local manufacturers in so far as the quality of the uniforms supplied by them is concerned, yet,there is nothing on record to substantiate such allegation. Moreover, if quality control was the only reasons, then also, there is no reason to presume that a composite textile mill will not falter on such count. That apart quality of the uniforms and their timely supply can always be ensured by inserting stringent conditions in the contract agreement. A mere presumption that smaller business groups would fail to deliver quality items, which in this case is merely school uniform, cannot be the justification for excluding such entrepreneur from the realm of the contract.

40. For the reasons stated above, this court is of the view that the decision to incorporate the impugned eligibility criteria in the EoI is for the purpose of

excluding the local entrepreneurs from the realm of the contract. If that be so, there can hardly be any doubt about the fact that the decision of the respondent no 3 is wholly unfair, irrational, unreasonable and hit by Article 19(1) of the Constitution of India.

41. Chapter IV of the Constitution of India contains the directive principles of state policy laying down the guidelines to be followed by the State. Article 37 provides that Directive Principles of State Policy shall not be enforceable by a court but principles therein are fundamental in the governance of the country and it shall be the duty of the state to apply these principles while making laws.

42. Article 39(c) of the Constitution provides that the State while framing its policies, must ensure that there is no concentration of wealth on limited individuals.

43. In the instant proceeding, I find that the eligibility condition in the EoI, has been designed in fashion so as to ensure that the supply orders are received only by a few composite textile mill to the exclusion of all others, which in my opinion, would undoubtedly lead to concentration of wealth in a few hands to the common detriment.

44. Interpreting the nature of right to livelihood guaranteed under Article 19(1) (g) of the constitution in the context of right to life under Article 21, the Supreme Court has held in the case of *Olga Tellis and others Vs. Bombay Municipal Corporation and others* reported in (1985) 3 SCC 545 that the sweep of right to life conferred under Article 21 is wide and far reaching. It has been observed that right to livelihood is one aspect of right to life as otherwise the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. In the said decision, the Apex court has observed that so unimpeachable is the evidence of the nexus between life and the means of livelihood that it is the most precious liberty that a man possess because it sustains and enables a man to live and the right to life is a precious freedom.

45. In *Olga Tellis*(supra), a large number of persons who lived in the pavements and slums in the city of Bombay had approached the court assailing the decision of the Bombay Municipal Corporation to evict them from the pavements. The case of the petitioners was that they have a right to lifeguaranteed under Article 21 of the Constitution which is a right that cannot be exercised without the means of livelihood. Emphasising on the importance of the directive principles in the governance of the country and the duty of the State to promote and protect right to life, the supreme court has made the following observation :-

"22. It is further urged by the petitioners that it is constitutionally impermissible to characterise the pavement dwellers as "trespassers" because, their occupation of pavements arises from economic compulsions. The State is under an obligation to provide to the citizens the necessities of life and, in appropriate cases, the courts have the power to issue orders directing the State, by

affirmative action, to promote and protect the right to life. The instant situation is one of crisis, which compels the use of public property for the purpose of survival and sustenance. Social commitment is the quintessence of our Constitution which defines the conditions under which liberty has to be enjoyed and justice has to be administered. Therefore, directive principles, which are fundamental in the governance of the country, must serve as a beacon light to the interpretation of the constitutional provisions. Viewed in this context, it is urged, the impugned action of the State Government and the Bombay Municipal Corporation is violative of the provisions contained in Article 19(a)(e), 19(1)((g) and 21 of the Constitution. The paucity of financial resources of the State is no excuse for defeating the fundamental rights of the citizens."

46. In the case of *The U. P. State Electricity Board and Ors. Vs. Hari Shankar Jain and Ors* reported in (1978) 4 SCC 16 interpreting Article 37 of the constitution the Supreme Court has observed that although those principles are not enforceable by the court, the principles are, nevertheless, fundamental to the governance of the country. It has further been observed that while courts are not free to direct making of legislation, the courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goal set out in the Directive Principles.

47. What crystallizes from the above observations made by the supreme court is that although the directive principles are not enforceable by the court, yet, it shall be the duty of the state to bear in mind the underlying principles flowing therefrom, while taking decisions in policy matters.

48. It is a common refrain that the process of industrialisation is yet to reach the desired level in the State of Assam and therefore, there can be no denying the fact that a large number of unemployed youths, entrepreneurs, traders and business houses in Assam are heavily dependent on Government contracts for earning their livelihood. Whether or not a person is successful in a tender process floated by the Government is a different matter. But to design tender conditions in manner that altogether restricts participation of such persons engaged in the concerned trade or profession, in the opinion of this court, would be highly discriminatory, and therefore, violative of the equality clause enshrined in Article 14 as well as the right to livelihood guaranteed under the Constitution of India. The State, as a matter of policy, cannot deny opportunity of participation to the citizens in a process involving distribution of State largesse, save and except for discernable reasons that are constitutionally valid.

49. In the present case, as noticed above, the respondent authorities have failed to provide sufficient justification for incorporating the impugned eligibility conditions. Applying the test laid down by the Hon'ble Supreme Court in the case of *Michigan Rubber (India) Limited (supra)*, I am of the view that the impugned eligibility clause is neither in consonance of the provisions of the FMP nor is it aimed at serving the larger public interest. Rather, it appears that the impugned eligibility clause has been inserted only to extend favour to a chosen few.

50. In the case of Union of India and Others v S.B. Vora And others reported in (2004) 2 SCC 150 , the Supreme Court has observed that judicial review is a highly complex and developing subject and the scope and extent of exercise of such power varies from case to case. It has been observed that the court, in exercise of its power of judicial review, would zealously guard the human rights, fundamental rights and the citizen's right to life and liberty. Therefore, if a policy decision of the State or its instrumentality is found to be aimed at depriving the citizens of their right to life and livelihood, such policy decision would certainly be amenable to judicial review.

51. In view of the discussions made above, this court is of the considered opinion that the impugned eligibility criteria contained in the EoI, in the facts and circumstances of the case, is arbitrary and hence, unsustainable in law. Having held as above, this court would have ordinarily gone on to strike down the EoI. However, having regard to the mandate of Clause 7.4 read with 7.7 of the FMP, and keeping in mind the interest of the school students, balancing the equities, these writ petitions are being disposed of with the following observations and directions :-

A. The respondent no 3 may prepare a panel of vendors for supply of school uniforms as per the impugned EoI but the operation of the panel shall be kept confined only to those individual supply orders, the net value of which, exceeds Rs 25 (Twenty Five) Lakhs.

B. The panel so prepared shall remain valid only for a period of one year from the date of notification.

C. For the supply orders valued at less than Rs 25 Lakhs, the principles and procedure laid down in clause 7.7 of the FMP read with GFR 2017 shall be followed.

D. In the matter of procurement of school uniforms, the respondent nos 1,2 and 3 shall not, in any manner, encroach upon the autonomy vested upon the respective SMCs under the Act of 2009 and the Rules framed thereunder.

These writ petitions stand allowed to the above extent.

Records be returned.

Parties to bear their own cost.