(2007) 07 DEL CK 0096

In the Delhi High Court

Case No : Writ Petition (C) 12994-95 of 2004

Everest Sanitation (India) and Another APPELLANT

Vs

Delhi Jal Board and Others RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Bureau of Indian Standards Act, 1986 — Section 10, 11, 25, 26, 33
Bureau of Indian Standards Rules, 1987 — Rule 11
Constitution of India, 1950 — Article 14, 19(1), 226
Delhi Water Board Act, 1998 — Section 109, 17, 75, 9

Citation : (2008) 148 DLT 26

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sandeep Aggarwal, for DJ Kartike Anand, for the Appellant;

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—In these writ proceedings under Article 226 of the Constitution of India, a condition has been imposed by the

respondent Delhi Jal Board(hereafter referred to as ''DJB'') through a circular, requiring testing of water meters before their procurement has been

impugned.

2. The petitioners claim to be engaged in the business of manufacturing water meters (domestic type). They also claim to hold valid licenses for use

of ISI Standard Mark, issued by the Indian Standards Institution, by virtue of the Indian Standards Institution (Certification Marks) Act, 1952. It is

averred that the use of ISI Standard Mark is governed by the provisions of Bureau of Indian Standards Act, 1986 (hereafter referred to as ''BIS'')

Act as well as the Rules and Regulations framed under that Act. The bids has spelt out standards applicable to the domestic water meters, which have to be adhered to by the manufacturers, to qualify the use of such mark. The specifications are contained in Indian Standard Water Meters

(Domestic Type) Specifications being No. IS 779:1994 (hereafter called ''the 1994 Standards''). The methods of testing performance requirement

of water meters covered by the 1994 standards have been prescribed in the Indian Standard METHOD FOR PERFORMANCE TESTING OF

WATER METERS (DOMESTIC TYPE) being No. IS 6784 : 1996 (hereafter called ''Performance Standards 1996'').

3. Initially in 1987 the predecessor of DJB by its circular approved procurement of only 8 approved make water meters, which were marked by

the ISI, while sanctioning new water connections or replacement of defective, private meters. On 3.10.1994, due to a felt shortage of water meters

a condition imposed by its previous circular of 1987 was suspended. On 23.8.2001, the DJB issued a circular in effect reviving its condition that

only those water meters bearing the ISI Mark could be installed. This was followed by circular of 5.11.2001 which stated that till completion of

process of formalities, the consumers could purchase, on a purely temporary basis (as stop gap arrangement) use of any ISI Mark dry dial type

water meters manufactured as per bids specification accompanied by a copy of a valid certification mark license.

4. In supersession of its previous circulars the DJB notified on 13.11.2002 the specifications applicable for use of 15 mm size private water meters

for new water connections as well as for replacement of defective water meters. The specification for the meter was prescribed to be 15 mm size,

Class ''B'' Multi- jet, Magnetically coupled, inferential type with dry dial ISI Marked conforming to IS 779 (1994) with up-to-date amendments.

This circular in addition spelt out the following conditions:

Each and every meter shall be accompanied by a test certificate of testing as per above specifications by any of the following agencies Along with

the Manufacturers usual test certificate and Guarantee Card:-

(1) M/S National Physical Laboratory, Dr. K.S. Krishnan Marg, New Delhi

(2) M/s. F.C.R.I., Palghat, Kerala

(3) M/S S.G.S. India Private Ltd., 250, Udyog Vihar, Phase-IV, Gurgaon-122015

(4) Central Water Meter Workshop, Delhi Jal Board, Greater Kailash-I, New Delhi.

5. This notification was followed with a notice published in the Times of India on 4.8.2003. The Public Notice reiterated the above condition in

addition to the specification concern, namely, ISI Mark confirming to IS:779(94).

6. After the Public Notice, another circular was issued by the DJB on 8.9.2003. This stated, inter alia, that the certificate issued by any recognized

testing laboratory to the manufacturer showing that the particular make/brand of water meter was in conformity with the prescribed specification,

sufficed for the purpose of purchase of such meters by the consumers. In other words, the additional requirement spelt out in the circular dated

13.11.2002 and Public Notice 4.8.2003 were dispensed with.

7. On 14.1.2004, the DJB issued yet another circular; this time re- stated/ reinstated the additional requirement. Further it stated that all Zonal

Engineers and Zonal Officials were to ensure compliance of the instructions; no meter without testing certificates by the four agencies mentioned in

the first circular of 13.12.2002, (which was reiterated in the last circular of 14.1.2004) could be permitted to be installed.

8. As a sequel to these circulars in June-July 2004 the DJB issued notice inviting tender dated 10.6.2004 and a document entitled ''expression of

interest for the supply, installation and maintenance of domestic water meters'' proposing to procure water meters from the manufacturers.

9. The writ petitioners impugn the additional condition embodied in the requirement that every meter should be accompanied by its certificate of

testing by the four agencies mentioned in the circular dated 14.1.2004 It is stated that the specifications for the water meters have been spelt out in

accordance with provisions of the Act, namely, the bids Act of 1986. The concerned manufacturers like the petitioners have been certified by the

BIS; their processes have been approved. The standards of performance required to be adhered and followed for testing are in turn prescribed by

the performance regulations of 1996. Thus, when a manufacturer such as the petitioner offers its products in the market, it is with the authority of

the ISI Mark, legitimately entitled to be used. The imposition of an additional condition of further testing and a certification by some other

laboratory, for an additional fee, defeats the purpose of the Act and is, Therefore, unlawful and arbitrary.

10. The petitioners allege that the requirement of a manufacturer holding a valid

license issued by the Institution of Standards, and having to use the

ISI Mark in conformity with bids Regulations serves the public interest and the basic objectives which also underlie the circulars. It is contended

that imposition of a further additional test would only add to the cost and not the quality of the meter. The petitioners aver that if such conditions

are permitted, yet another circular can be issued requiring completely unnecessary testing in addition to the further testing. The circular is also

attacked on the ground that although three agencies specified are Public/ Government Agencies but the fourth viz S.G.S. India Pvt. Ltd. is a private

laboratory and no rationale has been offered why such private party for additional testing is required as a condition of procurement or even

installation of meters which bear the ISI mark according to the bids Act.

11. It is claimed that the impugned condition of second testing is arbitrary and unreasonable and violates the petitioners'' right to carry on their

trade or business in an unhindered manner. The condition is not a reasonable restriction since it would fuel the costs of the meters. According to the

petitioners, the second testing by any of the three Government Agencies would result in the cost of each meter working out between Rs. 3000/- to

Rs. 5000/- whereas the actual cost of the domestic meter is only Rs. 375/-. It is also averred that the private agency, namely, S.G.S. India Private

Ltd., a private laboratory, does not have any laboratory of its own. The petitioners further alleged that the charges collected by the National

Physical Laboratory for testing one water meter is Rs. 5800/-. The other agency, namely, F.C.R.I. is located at Kerala and also charging similar

fees for testing. Therefore, the second testing would entail delay and considerable expenses rendering reasonably priced water meters which are

otherwise permitted to bearing the ISI mark monetarily unfeasible.

12. This Court by an interim order initially stayed the operation of the impugned requirement on 5.10.2004 Later, after hearing an application

moved by the DJB, the interim order was varied. The DJB was permitted to carry out condition strictly in accordance with the circular dated

25.6.2004 which had stated the testing would be by two agencies, namely, National Physical Laboratory, New Delhi and F.C.R.I. Palghat,

Kerala. This order was made till the final out come of the proceedings.

13. The stated position of the DJB, reflected in its detailed averment contained in

an application for vacation of stay and further pleading is that the

impugned a requirement was necessary because it had received feedback from its workers/employees that most of the meters, even those with the

ISI mark, were not performing correctly. According to it, though manufacturers are approved by the BIS, each and every meter manufactured by

them are not in conformity with the prescribed standards. In this respect DJB invited suggestions from various water meter manufactures, as to

how, the quality of every meter could be ensured. The DJB avers that as long as, manufacturers are selling meters directly in the open market, they

would be responsible for sale of any sub-standard meters. However, for meters purchased by the consumer through DJB, it becomes the

responsibility of the latter to ensure that such meters supplied are of right quality. In case of any defect in the meters, the consumer would hold the

respondent liable for the defect. In these circumstances the DJB decided that every meter should be checked by an independent agency at the cost

of the manufacturers, so as to ensure strict compliance of standards. Both the test laboratories i.e. M/s National Physical Laboratory, New Delhi

and M/s F.C.R.I., Palghat, Kerala charge Rs. 55,000/- for a package of three meters and also require approximately 40 days for carrying out the

said test. For them, it is difficult to carry out tests at the manufacturing unit in respect of every meter, whereas, an independent testing agency being

S.G.S. India Pvt. Ltd. is a world renowned testing laboratory having more than 1000 labs all over the world. Testing by such an agency of repute

with several branches in India, would actually benefit public interest as it would address quality concern and also not impose a heavy burden or

cost. For these reasons, the respondent decided to impose the additional condition on manufacturers, pre-qualifying them to obtain test certificates.

However, after being qualified, every meter was to be certified by an independent agency being M/s S.G.S. Pvt. Ltd., so that a guarantee card

could be given, along with, every meter to the consumer and the latter is free from any trouble at least for a period of two years.

14. In the course of the proceedings, the Bureau of Indian Standards (BIS) was imp leaded as third respondent. In its affidavit it confirmed that the

petitioners are licensees and maintaining the prescribed standards. According to the bids no complaint was received against them. However, it is also averred that issuance of license is by itself not guarantee that the product with ISI Mark is proper, unless the manufacturer comes on its

production properly. The marking of water meters manufactured by the petitioners under the bids certificate mark scheme, it is averred, is done

after strictly following IS 779:1994 standard. The manufacturer is granted license initially for one year in respect of each article, produced in its

factory. The bids carries out inspection of the manufacturing and testing capability located in the factory premises for the relevant period, draws

samples from a batch of the production of the items, tests them in an independent laboratory, where the complete manufacturing and testing

facilities are available. Subject to conformity of the samples to the relevant standard, bids also carries out surprise periodic inspection of the

licensee factory to ascertain continued implementation of the standards as well as collect samples from the market including consumers and

organizations such as DJB. Further bids inspects periodic performance of the licensee and if the operation of the standards of testing and inspection

are not satisfactory, suitable action is taken.

15. The bids has averred that it has no provision for commercial testing of any item and that it only tests products. It asserts inability to extend its

testing facilities to any other person who has not applied for license from BIS. It is further averred that bids does not provide facilities to anyone to

carry out thorough testing of each and every item manufactured by its licensee. According to the provisions of 1986 Act, if violations are reported,

bids can commission a search and seizure operation besides taking remedial act of suspending the license or cancelling it. It can also prosecute the

offending licensee.

16. Sh. Sanjay Sherawat, learned Counsel contended that in terms of the scheme of the Constitution, particularly, the various Entries in the Lists to

the VIIth Schedule in the Constitution such as Entry 50 List-I, Entry 29 List-II and Entry 33-A of List-III, Parliamentary legislation on the issue of

standards of weights and measures, have an overriding effect over any other legislation. Thus, even though Entry 17 of List-II enables the State to

legislate on the subject of water, such legislation would be subjected to and necessarily yield, to provisions in the Parliamentary legislation on

questions relating to standards. It was submitted that in the event of any repugnancy or conflict the law made by Parliament would override

provisions of State legislation. It was contended that in this background the provisions of the bids Act, and the 1994 standards as well as the 1996

performance standards were conclusive. The petitioners'' concerns products being lawfully marked by the bids in terms of the Act and its

specifications cannot be subjected to further testing. Learned Counsel contended that none of the provisions in the Delhi Water Board Act 1998

by which the DJB was constituted enable testing of water meters; they do not authorize the DJB in any manner to impose additional conditions in

regard to the quality of water meters marked under the bids Act.

17. It was next contended by learned Counsel that the requirement having to undergo additional testing is an arbitrary and unwarranted condition.

He relied upon the decisions reported as Mahendra Labs Pvt. Ltd. Vs. State of Karnataka and Others, where a tender condition regarding

imposition of three years manufacturing experience was held to be unlawful as it excluded participation by a licensee under the Drugs and

Cosmetics Act who was entitled to sell his products. Learned Counsel also relied upon the decision reported as Gharda Chemicals Limited Vs.

Central Warehousing Corpn., where a Division Bench of this Court held that inclusion of requirement of three years manufacturing experience of an

ISI marked Chemical manufacturing licensee was irrational and arbitrary. Learned Counsel relied upon the judgment of this Court reported as Anil

Kumar Gupta Vs. Municipal Corporation of Delhi and Others, and submitted that standards prescribed by the bids cannot be overridden or

ignored by insistence on certain additional or fresh conditions. In that case, the Municipal Corporation of Delhi (MCD) had insisted upon the grant

of license for use of premises for purposes of water packaging plant. The Court had held that having regard to the nature of the process and the

license granted by the bids to the petitioner, packaged drinking water could not fall within the term aerated water.

18. Learned Counsel next contended that the insistence on testing, prescribed by the impugned circulars amounted to unreasonable restrictions on

the right to carry on trade or business guaranteed under Article 19(1)(g). It was contended that every citizen is entitled to uninhibited right to carry

on a business vocation or trade and that restrictions to such right can be imposed only on stated grounds, and in public interest. The requirement of

testing unreasonably impacted on the petitioner''s right to trade. Its products were manufactured admittedly in confirmity with Parliamentary

legislation. Yet, they were subjected to testing by an outside agency. Learned Counsel relied on the decision reported as Pathumma and Others

Vs. State of Kerala and Others, Kharak Singh Vs. The State of U.P. and Others, ; Mohammad Yasin Vs. The Town Area Committee, Jalalabad

and Another, and S.L. Sachdev and Ors. v. Union of India and Ors. AIR 1981 SC 411. Learned Counsel lastly contended that once the

petitioner was issued a license in terms of bids Act and the Rules, the latter containing an elaborate mechanism for inspection of quality and putting

in place control system which included search and seizure proceedings, there was no rationale for insisting upon further testing by an unauthorised

and unlicensed agency. It was contended that the various processes indicated in the rules which can be resorted to by the bids included type

testing, line testing, continuous testing of products and temperature test. All these were known as good manufacturing practices. It was contended

that once the products including water meters undergo such rigorous tests and procedure which are pre-conditions to their marketing, the further

insistence of testing by a completely private agency whose credentials are unknown and were not disclosed to the Court, and whose testing for a

few minutes for a fee is insisted upon, is not only contrary to the provisions of the bids Act but an arbitrary condition. It was contended that such a

condition betrays utter non-application of mind and is not founded on reason. Learned Counsel submitted that even if it were assumed that the DJB

as a public procuring agency had a concern and anxiety about the quality of meters, it had to necessarily address such concerns in a reasonable

manner. The proper mode would have been to ask the bids to make a suitable mechanism. In stead it unilaterally imposed such unwarranted

conditions which cannot withstand the test of reason. All State action including action by instrumentalities of the State are to be founded on reason.

The impugned notification and condition does not show any reason and are, Therefore, irrational.

19. Mr. Sandeep Aggarwal, learned Counsel for the DJB resisted the petition. Initially, he made an argument about the petitioner''s inability to

maintain the proceedings on account of suspension of their license by the BIS. However, he later did not press the submission in view of the

documents and materials suggestive of the bids with drawing its objections. It was contended by counsel that in terms of Section 17 of the Delhi

Water Board Act 1998, DJB has to provide meters to measure consumption of water by users. Learned Counsel contended that the DJB in

exercise of its powers u/s 75 had the authority to enter into contracts and it can make regulations u/s 109 to effectuate provisions of the Act.

Learned Counsel also relied upon Section 9(f) of the Act which enables the DJB to provide for ancillary or incidental matters necessary to

promote the object of the enactment. It was contended that on an overall conspectus of provisions of the Delhi Water Boards Act, the necessary

inference is that DJB has legitimate concerns and, Therefore, the power to ensure that water meters supplied by it conform to their description,

perform as such and are of the desired standard and quality. Learned Counsel contended that experience had shown to employees of DJB that a

large number of water meters procured from private manufacturers though labeled with the bids mark, were sub-standard. As long as the

consumer purchased such meters directly from the market, he could take suitable action in case of defects in the products. However, where the

DJB in exercise of its powers u/s 17 read with Section 75 procured such meters and supplies them to the consumers, it owed an obligation to

them. It was in order to allay any such apprehensions that the conditions in the impugned notification were framed.

20. Learned Counsel contended that under Rule 11 of the bids Rules, agents can be appointed for the purpose of testing. Having regard to the

experience in the field and the large number of complaints received the DJB formed the opinion that condition of testing by the concerned agencies

should be insisted. It was submitted that the condition is neither unreasonable nor arbitrary and designed to achieve a public purpose. Learned

Counsel contended that the decision of the DJB, insisting upon the testing by the agencies is neither actuated by mala fides; admittedly such a

pleading had not been made by the petitioner nor even proved. Further it is in the nature of a decision taken by an expert body and the Court

should be circumspect in interfering with it in exercise of its power under Article 226 of the Constitution of India.

21. Learned Counsel relied upon the decisions of the Supreme Court reported as M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and

Others, and submitted that the courts do not ordinarily interfere with policy decisions of the executive unless they are faulted on ground of mala

fide, unreasonableness, arbitrariness or unfairness. If the policy cannot be faulted on such grounds, the mere fact that it hurts the business interest of

a party would not justify judicial intervention. Learned Counsel relied upon the judgment of the Supreme Court reported as Directorate of

Education and Others Vs. Educomp Datamatics Ltd. and Others, and submitted that the Court should be careful in interfering with tender

conditions set by the State or its agencies since they are framed in exercise of undoubted power and to further public interest. He also relied upon

the decision reported as Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, .

22. Learned Counsel for the bids Sh. R.K. Tripathi submitted that in terms of the bids Act, the Bureau had extensive powers to carry out testing

for ensuring adherence to its standards. It was submitted that the bids did not receive any complaints from consumers regarding the meters

manufactured and marketed by the petitioners. He further submitted that the bids does not provide facilities to anyone to carry out thorough testing

of each item manufactured by its licensees.

23. Pleadings and contentions of parties give rise to the following questions for decisions by the Court:

1. Whether DJB has the competence and authority of the DJB to insist on additional testing and inspection of water meters and whether such

conditions are contrary to the bids Act and standards framed by it;

2. Whether the impugned notification is arbitrary.

QUESTION NO. 1

24. A look at the provisions of the bids Act show that it meant to be a comprehensive legislation for the setting up of a specialised expert body in

regard to formulation of standards, certification of quality of various products and enforcement of such standards through various methods including

penal action. There is no doubt that the BIS, a successor to the Indian Standards Inspection, was set up pursuant to Parliamentary intention to

have uniformity in standards for products and processes. In terms of the Act, the bids is constituted as a statutory, autonomous body. It charged

that the duty of the spelling out standards in regard to both the processes of productions as well as products. It has regulation framing powers and

further to its duties, standards in regard to the various goods, services and processes have been notified.

25. The main objection of the petitioner is that once its processes are certified to be in accordance with the bids standards and performance norms

and it is allowed to affix the ISI/BIS mark, the requirement of additional inspection or testing for any purpose, for individual products would violate

provisions of the bids Act. This argument is premised on two limbs. The first limb is that the DJB cannot invoke any power under the Constitution

since the legislative field has been occupied by the Parliament which enacted the bids Act in 1986. In such case, the DJB cannot prescribe a rival

set of standards. Reliance has been placed upon Section 10 of the bids Act which provides for function of the BIS, Section 11 which prohibits the

improper use of standard mark etc. The petitioner also relied upon enforcement powers u/s 25 and 26 of the bids Act which enable inspecting

officers to make surprise inspections and take coercive action. Further reliance has been placed upon Section 33 which prescribes penalty for

improper use of standard mark. It was also contended that in terms of Bureau of Indian Standards Rules, particularly, Rules 10, 11 and 12, the

licensees are permitted to affix the authorized mark on the products only after the bids is satisfied that its processes are in conformity with the

prescribed standards. In the absence of any similar elaborate mechanism or a more detailed specific processes regarding water meters by the Delhi

Water Boards Act, the contention that the DJB cannot insist on additional tests of the bids marked water meters of the petitioners. An important

part of this argument is the contention that the impugned testing requirement, does not have statutory sanction and is vocative of the bids Acts,

Rules and Standards in question.

26. The second limb of these submissions is that the DJB does not have any authority under the Delhi Water Boards Act to the insist on additional

testing and the obligation (to supply water meters) if any u/s 17 of the said Act is not mandatory but only optional.

27. The provisions of the bids Act undoubtedly lend support to the submissions

that it is a complete code in itself and to the extent specific rules

and standards have been prescribed regarding production processes, inspection, testing and enforcement, there cannot be any other mode or

method obliging manufacturers to undergo something more by way of standards. The petitioners'' submissions would have been attractive if the

DJB were to insist that regardless of the ISI standard or mark, the water meters in question would have to conform to some other standards

prescribed by it or would have to undergo some other form of testing, inspection and certification, rivaling or claiming to be better than the bids

standard. That, however, is not the case. The DJB here is accepting the standard laid down by the bids ''it also recognizes that the petitioner is a

licensee of the bids and is bound by the standards prescribed under the bids Acts and Rules. The impugned notification is, however, insisting the

additional procedure of testing'' what is characterized as commercial testing because the DJB''s claim is that being a supplier of procured products,

and an instrumentality of the State, it is in public interest concern to ensure that each water meter performs as required, namely, recording the

consumption accurately. The claim of the petitioners here is not in the context of licensing or their right to manufacture. That is not disputed by the

DJB; in fact the bids has admitted that it is a licensee. The additional testing, Therefore, is projected as an impediment to its free trade with the

DJB.

28. In this case, the question of bids standards being rival or in any manner questioned or its enforcement processes being disputed do not arise.

The DJB''s concern to ensure that the water meters procured and supplied by it perform as water meters is well within the scope of its power u/s

75 of the Act read with Section 17. It is, no doubt, true that the DJB is under no compulsion to supply water meters but if it chooses to do so it not

only should supply proper water meters but is also under an obligation to ensure that they are of the desired quality. Anything less would entail

action against the DJB. In these circumstances, the inclusion of an additional condition of testing in the facts of this case cannot be termed as

beyond the competence and jurisdiction of the DJB or vocative of the provisions of the bids Acts and Rules.

REGARDING QUESTION NO. 2

29. What has emerged from the factual matrix is that the two official laboratories which apparently have sanction under the bids Act, Rules and the

Standards as agencies nominated for testing water meters, take unduly long time, i.e. about 4-6 weeks in performing their task. They also charge a

huge amount. It is an admitted fact that such testing would entail additional expenditure working out to approximately Rs. 6,000/- for each meter.

The third agency, M/s. SGS Pvt. Ltd. however charges much lower amount for inspection and certification. No supporting material has been

shown to the Court as to its acclaimed credentials or experience in this field. It is also not denied that SGS is not one of the agents nominated

under the bids Acts and Rules as a licensee, authorized to undertake testing of the products.

30. In the light of the above facts, the question is whether the imposition of the additional requirement is arbitrary and unreasonable. In answer to

the first question formulated it was held that the DJB was within its powers under the Act to require additional test to water meters.

31. The State, its instrumentalities and public agencies, like any other concern have the right to stipulate suitable conditions while entering into

contracts and disposing of public property. Yet, the special character of such State/public agencies and Constitutional imperatives, particularly,

Article 14 require that the stipulations should be non-arbitrary equal in operation and the process of contract awarding, fair and reasonable. This

has been spelt out in numerous decisions of the Supreme Court including in Tata Cellular Vs. Union of India, , Sterling Computers Limited and

Others Vs. M and N Publications Limited and Others, ; Union of India and Others Vs. Dinesh Engineering Corporation and Another etc., , Air

India Ltd. Vs. Cochin Int., Airport Ltd. and Others, etc. The Courts have repeatedly held that Article 14 of the Constitution prohibits the

Government from arbitrarily choosing a contractor according to its will and pleasure. It has to act reasonably, fairly and in public interest while

awarding contracts. The Courts have ruled that at the same time no person can claim a Fundamental Right to carry on business with the States or

its agencies. All that he can claim is that while competing for the contract he should not be unfairly dealt with or discriminated, to the detriment of

public interest.

32. In this case, the question is whether the imposition of tender condition requiring additional testing by any of the three named agencies is

arbitrary or unreasonable. The petitioners assert that such conditions are arbitrary and have no rationale; they also complaint that the conditions

unreasonably restrict the right to carry on trade and business guaranteed by Article 19(1)(g) of the Constitution. The DJB on the other hand asserts

that the condition is necessary and has been imposed in public interest. It is contended that the impugned requirement is the product of a policy

decision of an expert body and the Court should be circumspect in disturbing it.

33. The two decisions cited by the petitioners, namely, Mahendra Labs Pvt. Ltd. of the Karnataka High Court and the Gharda Chemicals Limited

of a Division Bench of this Court no doubt interdicted the stipulations in tender conditions. The question, however, is whether in the facts of this

case the condition for additional testing are arbitrary in the sense that they unfairly exclude the petitioners.

34. The Supreme Court in its decision reported as Association of Registration Plates Vs. Union of India (UOI) and Others, had to decide on the

challenge to a tender condition that the bidder or promoter should have sufficient experience in the field and should have worked in at least five

countries for production of license plate, (which were sought to be procured) and should have worked at least in countries with license place

having security features world wide. A condition of minimum of annual turn over of Rs. 30 crores in the year immediately preceding the bid, of

which 25% should have been from the license plate business had also been mandated. The Court held that in the matter of tender condition

formulations great latitude had to be conceded to the State authorities or agencies concerned; unless the action was found to be malicious and in

misuse of its powers such tender conditions were held to be unassailable. The Court held that such conditions did not violate the equality clause

under Article 14 or encroach the Fundamental Rights of the class of intending tenderers under Article 19(1)(g) of the Constitution.

35. In this case, the condition of additional testing has been insisted upon in relation to all manufacturers who intend to supply to the DJB. It applies

equally, regardless of the fact that such suppliers and manufacturers to all licensees of the bids who have to conform to its standards. No material has been shown to the Court indicative of malice in law or bias against the petitioners. In these circumstances, the charge of the conditions requiring

such additional testing being arbitrary as vocative of Article 14 has to fail.

36. The last limb of arbitrariness set up by the petitioners in the proceedings was that inclusion of M/s. SGS India Pvt. Ltd. an unlicensed private

agency whose credentials are unknown, vitiates the notification and amounts to non- application of mind. It was also claimed that such a condition

is not founded on reason.

37. The factual narrative shows that SGS India Private Ltd. was included as one of the testing agencies for the first time on 13.11.2002. For a

brief while this condition was suspended but later re-introduced on 14.1.2004 While the concern of DJB to ensure that water meters procured by

it and supplied to the consumers conform to the quality and the necessity of visual inspection and same form of testing cannot be denied, the

rationale for including a private agency and (an unlicensed one at that), to inspect and certify water meters, has not been disclosed. In terms of Rule

11 of the bids Rules 1987, bids can appoint any person or organisation in India or outside India as its agent for discharging any of the functions

such as carrying out inspection in the manufacturers premises, or test samples of productions for conformity with the Indian Standards and inspect

consignments intended to be covered by the standard mark. The bids has asserted in this case that it cannot test individual products of its licensees.

In such an event, if indeed the DJB was so minded to ensure individual testing of the water meters logically it should ensure that such testing or

visual inspection to its satisfaction is carried out through its own agency or officials. In stead, it ''out sourced'' it to the SGS India, which is not an

agent of the bids under the rules. Had such condition related to a private agency with the unimpeachable credentials and which was an agent under

Rule 11, there could have been no difficulty. However, neither is the case. No materials were disclosed about the expertise of the SGS India

Private Ltd., although DJB asserted about its experience in the field.

38. It is well settled that all decisions of the State have to be founded on reason which is also a facet of fairness and non-arbitrariness. It is not as if

reasons in such cases have to be elaborate or even disclosed to the concerned parties. Yet, the obligation of the State agency to act on the basis of reasons which can be justified, is an integral part of the Constitutional set up. In this case, the DJB''s rationale for including SGS India Private Ltd.

as a testing agency has not been disclosed.

39. In view of the above finding, the petition has to partly succeed. The condition in the impugned notification requiring additional testing of the

water meters by the SGS India Private Ltd. is hereby quashed. It is made clear that this judgments does not preclude the DJB from insisting on

testing by inspecting the water meters itself at the stage of acceptance or insisting that at the stage of pre-tendering they should be tested by official

agencies and/or agencies under Rule 11 of the Bureau of Indian Standards Rules 1987.

40. The petition is allowed to the above extent. No costs.

