
(1995) 09 CAL CK 0034
In the Calcutta High Court
Case No : Writ Petition No. 1459 of 1995

Fylfot (I) Ltd. and another	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 25-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 226, 299

Citation : AIR 1996 Cal 291

Hon'ble Judges : Nikhil Nath Bhattacharjee, J

Bench : Single Bench

Judgement

1. In this writ application the petitioners have challenged the Notice Inviting Tender being T.E. No. S/ W-95-96/02 dated 2-6-1995 initially scheduled to be opened on 13th July 1995, but rescheduled for opening on 1st August, 1995 issued by the Respondent No. 4, the Assistant General (P) under COM, Telocm Stores, Calcutta.

2. The petitioner No. 1 is a company and petitioner No. 2 is its Director. They are engaged in manufacture of PVC Insulated Galvanised M. S. Wires. It is their case that PVC Insulated Galvanised M.S. Wires are manufactured by them exclusively/ or supply to the Department of Tele-communication which is the only buyer of such materials in the country. On 10-1-1994, the petitioner No, 1 got a Type Approval Certificate from the Quality Assurance Authority which is a wing of the Department of Tele-communication. On 9-5-1995, petitioner No. 1 secured an order for supply of 1000 k.m. of PVC Insulated Galvanised M.S. Wires from the Department of Tele-communication. The order was duly executed (o the satisfaction of the Department as would be evident from the Certificate issued by the Quality Assurance Department which inspected the goods manufactured by the petitioners in pursuance of the said order. The petitioners have installed the plant and machinery for manufacturing PVC Insulated Galvanised M.S. Wires with the reasonable expectation of manufacturing and supply the aforesaid ro-ducts to the Department of Telecommunication. It is the petitioners* case that the

Tender Forms on all previous occasions were sold to the manufacturers of such wires at the nominal price of Rs. 200/- and the earnest money payable in respect of each of the Tender Enquiry was the fixed amount of Rs. 5,000/-. But in the impugned Tender Notice for supply of 3000 metric tonnes of PVC Insulated Galvanised M.S. Wires off 2 M.M. dia., the cost bid documents per set has been fixed at Rs. 8,000/- and of the bid security/earnest money deposit at Rs. 20 lacs. According to the petitioners, the cost of the Tender document at Rs. 8,000/- per set and the earnest money amounting to Rs. 20 lacs irrespective of value of the offer are not only unprecedented, but also "prohibitive, arbitrary and so outrageous in its defiance of logic or of acceptable standard that no reasonable person who has applied his mind could have arrived at such figures to be laid down as standards for the purpose of making offer in pursuance of the said Tender Enquiry". This is also unfair, oppressive and nothing but extortion of money from the manufacturers, who have no choice but to succumb to the pressure since there is no other buyer for this material, The respondents being the monopoly buyer is after under advantage and unjust enrichment. There are about 80 established suppliers all of whom are dependent for their survival upon the orders of the Department of Telecommunication and in case the total requirement of 30,000 metric tonnes is distributed among all the established suppliers, the average quantity of the order on each of them could not exceed 250 metric tonnes, the cost whereof at the present supply rate will not be more Rs. 50 lacs. The petitioner can participate in the bidding for supply in full or in part, but the earnest money shall be the same, that is Rs. 20 lacs which is contrary to all reasonable norms for fixation of earnest money. The hostile discrimination against poorer class of manufacturers in gross violation of Art. 14 of the Constitution is only too apparent. It has been alleged that fixing the price of the bid document at Rs. 5,000/- and calling for earnest money of Rs. 20/- lacs for each offer instead of Rs.200/- and Rs. 5,000/- as prevalent so long is nothing but unreasonable economic restrictions to keep the offer restricted to financially affluent class of Tenderers thereby shutting out all other persons carrying on the business.

3. The petitioner's further case is that in the impugned Notice inviting Tender the term of despatch has been described as "F.O.R. declination" without disclosing the destination which is liable to make the offer inflated. Freight for 10 k.m. and freight for 1000 k.m. or more cannot be the same. So long the system was that freight paid used to be reimbursed along with advance payment but on production of the R/R. In the new system the Tenderer is left to speculate without knowing for certain as to what would be the destination and corresponding freight. The petitioners allege that the term in question has been framed to reserve upon the respondents unguided power to treat the Tenderers in accordance with the sweet will of the respondents once the tender is accepted and this may open the floodgate for unreasonable discrimination. The respondents being the State such acts as. have been complained of are violative of Art. 19(1)(g) and Art. 14 of the Constitution of India.

4. Upon such allegations as aforesaid the petitioners have prayed for issuance of a writ of/ or in the nature of certiorari calling upon the respondents to transmit all records in connection with this impugned notice inviting Tender so that upon due consideration thereof the same may be quashed as also for issuance of a writ of mandamus commanding the respondents to act in accordance with law and to desist from giving any effect or further effect to the impugned Notice and desisting from accepting any offer or/allotting any work till this application is disposed of.

5. The case of the respondents, Union of India, on the other hand, is that the Department of Telecommunication purchases materials against open Tender policy and places order for any item on limited number of suppliers and not to all suppliers following a consistent policy without discrimination.

6. It has been stated that taking the estimated value of 30,000 MT of Tender items to be of Rs. 60/- crores, the cost of Tender documents fixed at Rs. 8,000/- and earnest money at Rs. 20 lacs cannot be viewed as unreasonable. The earnest money is fixed at 2 per cent of the estimated cost subject to a maximum of 20 lacs and this is applicable on all the Tenders floated by the office of the respondents. It has been asserted that the petitioners have suppressed the fact that apart from being manufacturer of PVC Insulated Galvanised M.S. Wires the petitioners are also manufacturers of Hamilton Poles and are in the record of the Respondent authorities as an established supplier, they having been awarded a contract of Rs. 88.46 lacs worth of Hamilton Poles against an order No.T/E No. S/T-94-95/03 dated 2-5-1994. Hamilton Poles is diversification of M.S. Wires. It has been further stated that the petitioners have made comparison with Tender Notices of 1992-94, but since then the respondents have changed their policy and the price of the bid document and the amount of earnest money have been fixed in accordance with the new policy guidelines, arrived at after taking into account the evaluations made in accordance with the obligations imposed on the Respondents and keeping in view the general trend pertaining to government contracts. It has further been stated that the writ petitioners have to put in the Tender bid at his own volition and choice and are under no obligation to enter into a contract with the Respondents. If the writ . petitioners find that the earnest money is prohibitive and not commensurate with the total bid they always have the option of not submitting the same. There is no legal duty cast upon the Respondents authority to accept a Tender bid of the writ petitioners with an earnest money fixed by the writ petitioners themselves and on the basis of the previous policy of the Respondent authorities which has since been scrapped and replaced by a new policy and guidelines. It has been" stated that particulars in regard to the alleged acts of arbitrariness and discrimination are lacking in the writ petition. The point that there are 80 established suppliers who cannot furnish the bid security of 20 lakhs each has no relevance as it has been decided to place the Tender Quantity on 25 lowest bidders and there is no scope to presuppose that the Tender Quantity will be distributed to 80 established suppliers. Regarding the question of discrimination and arbitrariness in respect of

(he term of F.O.R. Destination, it is stated that all the suppliers are required to quote under similar conditions and that this has been inserted with the idea of ensuring delivery of materials at the destination points by the quickest possible means in the shortest possible time so that the programme of providing millions of connections during the year can be achieved easily by the Department. Finally, it has been stated that if any order is passed on this writ application not only the respondents but also about one million people of India would be deprived of an essential service, viz. Telephone Service during the next few months and upon such considerations the writ petition should be dismissed.

7. Upon such pleadings as aforesaid, the questions that arise for consideration are how far the hike (1) in the price of bid documents from Rs.200/- to Rs. 8,000/- and (2) in respect of earnest money from the fixed figure of Rs. 5,000/- to Rs. 20 lacs and (3) deletion of the provision as to reimbursement of freight charges, amount to discrimination beyond all acceptable norms and standard and are unfair, arbitrary and violative of the principles of natural justice and of the relevant provision of the Constitution of India. At the same time it is to be seen whether judicial review is available in the realm of Govt. contract as in the facts and circumstances of the present case so that Court's interference in this matter will be unwarranted and uncalled for.

8. It appears that the Telecom Commission has since revised its Manual of Procurement of Telecom Equipment and Stores, published in June 1993 by the Govt. of India, Department of Telecommunication. In the preamble to the revised Manual it has been stated that the material budget accounts for more than 80 per cent of the annual budget of the Department of Telecommunications, that material budget is rapidly escalating year after year to cope with the rapid expansion of the Department and that deregulation of the production base for Telecom products and industrial licence not being required for production capability for Telecom products, there has been a rapidly expanding manufacturing base for Telecom Equipment in the country. In such background in order to get the benefit of competitiveness with regard to the quality, delivery and price, the Department is switching over to the open Tendering System of procurement. Also rapid changes in technology which offer techno-economic advantages, rapid induction of new technology equipment into the public Telecommunication network is essential. Keeping all these in view the procurement process is being revised, inter alia, by the new guidelines for procurement of few items through Open Tender floated by the material management branch.

9. From Chapter 16 of the said Manual it appears that Tenderers are since required to purchase bid documents at a predetermined price which is relatable to the estimated cost as under:

Sl. Estimated cost of the Tender Bid document price.

i. Up to Rs. 1 crore Rs. 1000/-

- ii. Above Rs. 1 crore and up to Rs. 10 crores Rs. 2000/-
- iii. Above Rs. 10 crores and up to Rs. 50 crores Rs. 4000/-
- iv. Above Rs. 50 crores and up to Rs. 150 crores Rs. 8000/-
- v. Above Rs. 150 crores Rs.10000/-

10. The Tender amount being 60 crores the bid document price amount to Rs. 8,000/-It has been stated that the escalation is necessary in order to meet the expenditure for preparation of this document. And further that it is also desirable that only genuine prospective bidders should acquire these bid documents to avoid wastage.

11. Chapter 7 of the Manual deals with bid-bond. According to the new guideline a bidder is required to submit bid-bond upto 2 percent of the estimated cost as given in the bid document. In that reckoning the bid security in respect of the instant case should have been fixed at Rs. 1 crore 20 lacs. But in view of the subsequent decision (vide annexure to the supplementary affidavit) the ceiling limit of bid security has been fixed at Rs. 20 lacs in order to enable bidders with small manufacturing unit to participate in the bidding. It appears that while adopting the said guidelines further concession has been given to the small industry units who are registered with National Small Industries Corporation under Single Registration Scheme in that they are exempted from depositing any earnest money at all as per policy decision of the Govt. of India.

12. From the copy letters annexed to the Affidavit-in-Opposition it appears that although DOT Headquarters had adopted the new guidelines and changed their Tender procedure including the forms, the Chief General Manager, Telecom Stores, Calcutta had not done so and accordingly was directed for sake of uniformity throughout the country to its Tender proceedings to the new guidelines. And accordingly the changes in the pricing of bid documents and amount of bid security have been made.

13. Mr. Bimal Chatterjee, learned Counsel, appearing for the writ petitioner at the outset handed over to me a set of bid documents which runs for 12 pages and urged how could such a small booklet be priced at Rs. 8,000/- to be paid by each of the 80 established suppliers who may desire to participate in the bidding. As to genuineness of the prospective bidders to be ensured by escalating the price, Mr. Chatterjee submitted that it is nothing but a fallacious approach for the simple reason that only established suppliers are eligible to participate in the bidding and that before any contract supply is made, materials are inspected by the Quality Assurance Authority which is a wing of the Department of Telecommunication to certify the quality of the goods to be supplied. In the opinion of Mr. Chatterjee increasing the price beyond all proportion is nothing but extortion and unfair and unreasonable.

14. Mr. Chatterjee's next submission is that as a bidder can offer to supply for the whole quantity or any part thereof, there being no floor quantity fixed for

bidding, the bid security relatable to the estimated cost and not to the offer-value is arbitrary and whimsical having no nexus with the purpose which is intended to be achieved. He argued that a Tenderer who wants to quote for goods worth Rs. 1 lac he has to deposit 20 lacs earnest money whereas a Tenderer quoting for the entire quantity worth 60 crores will have to furnish the same earnest money of Rs. 20 lacs. This is a treatment of unequals as equals and is one of those cases where lack of classification has created inequality. In his view there would have been rationality in the event the amount of earnest money is related to the value of the offer as a percentage thereof, as has been made in the case of performance security deposit where it is fixed, as previously, at the rate 5 per cent of the contract value of the purchase order up to Rs 4 crores and beyond Rs. 4 crores a further 2 per cent of the contract value of the purchase is to be deposited, subject however, to the limit of Rs. 1 crore in total. Regarding freight charges no supplier used to be affected whether he had to despatch to a nearer destination or to a far away destination as reimbursement of freight charges was allowed. But in the present system the reimbursement provision has been withdrawn and as a result a supplier is put to unnecessary speculation and not only that he has to place himself at the mercy of the official who will direct him to supply the store to the nearby depot or to far away depot.

15. Mr. Chatterjee has relied on the following decisions of the Supreme Court:--

- (1) Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another,
- (2) Rashbihari Panda etc. Vs. State of Orissa,
- (3) Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,
- (4) Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation,
- (5) Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others,
- (6) Gauri Shanker and others Vs. Union of India and others,

16. The relevant propositions of law laid down in the said decisions are noted seriatim.

17. While dealing with the scope and effect of a State Taxing Statute, whether immune, from attack on ground of violation of Art. 14, the Supreme Court observed that where inequality is writ large on the Act and where it is clear that there is no attempt at classification in the provisions of the Act no mere was required to be said as to what could have been the basis for a valid classification. "It is one of those cases where the lack of classification creates, inequality." And is hit by the provision to deny equality before the law contained in Art. 14 of the Constitution.

18. The question before the Court was whether Govt. inviting offers for advance purchase of Kendu leaves which was the monopoly of the Govt. of Orissa, only from purchasers of the previous year who had carried out their obligations to the

satisfaction of the Govt. in preference to open competition how far violative of Arts. 14 and 19 of the Constitution. It was held, "right to make offers being open to a limited class of persons do effectively shut out all other persons carry ing on trade in Kendu leaves and also new entrants into the business. It was ex facie discriminatory and imposed unreasonable restrictions upon the right of persons other than existing contractors to carry on business." The schemes evolve by the Govt. were branded discriminatory as they gave rise to a monopoly and singled out other traders for discriminatory treatment.

19. While testing how far a Tender Notice inviting Tenders from particular persons for running a restaurant and snack bar at the airport which was held to be an objective test of eligibility and not a subjective one, the Hon"ble Judges of the Supreme Court agreed with the following observation of the Kerala High Court in *v. V. Punnen Thomas Vs. State of Kerala*,

"The Govt. is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity the Govt. is still the Govt. and will be subject lo restraint inherent in its possession in a democratic society and democratic Govt. cannot lay down arbitrary and capricious standards for the choice of person with whom alone it will deal". The Supreme Court observe "The power or discretion of the Govt. in the matter of grant of largess including award of jobs, contracts quota, licences etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Govt. departs from such standard or norm in any particular case or cases the action of the Govt. would be liable to be struck down, unless it can be shown by the Govt. that the departure was not arbitrary, but was based on some valid principle which in itself was not irrirtional, unreasonable or discriminatory."

"29, it can be no longer be doubted at this point of time that Art. 14 or the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Govt., even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Art. 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrary or by any ulterior criteria. The wide sweep of Art. 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose."

"39. no doubt, it.is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uniformed by reason inasmuch as there is no discernible principle or; which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repell

the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable. If after a prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable the State action must perish as arbitrary.

"7. The scope and content of Art. 14 of the Constitution of India, familiarly known as the equality clause, have been laid down in innumerable decisions of this Court. It is unnecessary to refer to all of them. Briefly stated the gravamen of the article is equality of treatment. Article 14 forbids discrimination. As stated by Shah, J. in *Western M.P. Electric Power and Supply Company Ltd. Vs. State of U.P. and Another*, .

"Article 14 of the Constitution ensures equality among equals; its aim is to protect persons. similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law."

"It is implicit from the above, that equals should not be treated unlike and unlikes should not be treated alike. Likes should be treated alike. It is settled law that in giving effect to the said salutary principle, a mathematical precision is not envisaged and there should be no fanatical or "doctrinaire" or wooden approach to the matter. A practical or realistic approach should be adopted. It is open to the State to classify persons or things or objects, for legitimate purposes."

20. On the other hand, Mrs. U. B. Mukherjee, learned Counsel appearance for the respondent Union of India has placed] her reliance on the following decisions of the Supreme Court:--

- (1) *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*,
- (2) *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*,
- (3) *Assistant Excise Commissioner and Others Vs. Issac Peter and Others*,
- (4) *Tata Cellular Vs. Union of India*,

21. The relevant propositions of law laid down in the above decisions are noted and quoted below:--

"There are two limitations which structure and control a discretion of the Govt. in regard to grant of largesse by it. The first is in regard to the terms on which largesse may be granted and the other in regard to the persons who may be the recipients of such largesse. As regards the first limitation it is imperative that if the Govt. awards a contract or grants any other largesse it would be liable to be

tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test it would be unconstitutional and invalid. It cannot act arbitrarily, capriciously or in an unprincipled manner. However there is always a presumption that the Govt. action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. Govt. is not free like an ordinary individual in selecting the recipients for its largesse and it cannot choose to deal with any person it pleases in its discretion, Governmental action must be based on some principle which meets the test of reason and relevant. If the terms and conditions of contract show that the State has acted mala fide or out of improper or corrupt motive or in order to promote some private interest at the cost of the State the Court will undoubtedly interfere and strike down the State Action."

22. The action or procedure adopted by the State authorities while awarding contracts in respect of properties belonging to the State can be judged and tested in the light of Art. 14. The Executive does not have absolute discretion, certain norms and principles have to be followed. By way of judicial review the Court is however not expected to act as a court of appeal while examining an administrative decision and to record a finding Whether such decision could have been taken otherwise in the facts and circumstances of the case. The court is concerned primarily as to whether there has been an infirmity in the decision making process and whether the decision making process was reasonable rational, not arbitrary and violative of Art. 14 of the Constitution.

23. The doctrine of fairness and reasonableness cannot be invoked to alter express terms of the contract of statutory nature. Contract entered into by the State with private party pursuant to public auction or floating of tenders or negotiation is of voluntary nature without involving State power.

24. The principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Art. 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Art. 14 if the Govt. tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

25. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court

cannot substitute its own decision. Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly the Court would interfere. It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

26. The duty of the court is thus to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its power?
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or, -
5. abused its powers.

27. Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it. "

(ii) Irrationality, namely, Wednesbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. The decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

(iii) Procedural impropriety.

28. The above are only the broad grounds but it does not rule out addition of further grounds in course of time. Another development is that referred to by Lord Diplock in *R. v. Secretary of State for the Home Deptt., Ex parte Brind* (1990 (I) All ER 95), viz. the possible recognition of the principle of proportionality. Two other facets of irrationality may be mentioned: (1) It is open to the court to review the decision-maker's evaluation of the facts. The Court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. (2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes.

"94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of the Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

29. What emerges from the aforesaid authorities applicable to the facts of this case? Put in a nutshell, Courts do not ordinarily interfere with policy-decisions of the Government. Government can also change its policy and the Govt. action is to be presumed reasonable and in public interest. However, judicial review is permissible not only in respect of the decision-making process, but also as regards the decision itself if the administrative action complained of suffers from (i) illegality in that it violates any statutory provision, (ii) gross irrationality (Wednesbury unreasonableness) and is so illogical that no sensible person applying his mind could have arrived at it. Terms of invitation to tender are not normally open to judicial review because the authority issuing the notice knows how to get the best person and they have the right to choose the lowest or any other tender. But in reviewing the administrative action Court shall not endeavour to substitute its own views as an Appellate Authority though however its concern shall be to examine whether the equality clause in Art. 14 of the Constitution has been violated or not.

30. In the instant case the price of a small booklet running for 12 pages is charged at a certain proportion to the estimated cost of the whole contract and the booklet has been priced at Rs.8,000/-. So long its price has been only Rs. 200/-. It is the case of respondent that such price hike is necessary for meeting the cost for expenditure, as also to ensure that only genuine bidder participate. It is beyond comprehension how cost of preparation of a 12-page booklet can run into several lakhs, for each of the intending bidders has to purchase at Rs.8,000/-

and there are at least 80 established bidders. Then again, the bidders are more or less genuine for they are the established bidders and quality of the materials to be supplied by them is subject to inspection and report by the Quality Inspectors. Therefore the price hike has no relation to the object it has intended to achieve. It is so outrageous in its defiance of logic that no sensible person applying mind could have arrived at it. The bid security is rented to the estimated value of the entire supply and it comes to Rs. 1 crore 20 lacs though, however, the ceiling is fixed at Rs. 20 lacs which does not appear to have had the sanction of the Telecom Commission. There is no floor limit of submission of tender for supplying materials. As a result, one who quotes, say, goods worth Rs. 10 lacs is to stand on equal footing with another who quotes for Rs. 60 crores, and deposit Rs 20 lacs and keep the same in deposit for a period of 270 days. This is unfair and blatantly unequals are being treated as equals and unlikes as likes. Had there been a floor quantity fixed, this question would not have arisen. If the price of the bid document and the amount of bid security were related to the value of the offer made, such question of unequal treatment also would not have arisen. In any case what stands out is that there is gross irrational of Wednesbury unreasonableness in relating the price of the booklet and the amount of bid security to the estimated cost instead of to the offer value. Equality principle is thus violated.

31. Again in the F. O. R. Destination without the provision as to reimbursement of freight charges, there is the irrational approach resulting in violation of natural justice and indulging in corrupt motive and hence is unfair and discriminatory. Such question would not have arisen if the destination was disclosed to enable the offerer to know what freight charges he was likely to incur in reaching the supply. In my view Article 14 has been infringed in this respect also.

32. In the instant case it is not really the terms of the tender notice which have been challenged but the decision to vary the erstwhile terms, that has been challenged. And challenge has been made on the ground that the resultant effect is highly illogical and grossly irrational inasmuch as no sane person applying his mind could have made such a decision. The decision infringes the equality clause in more respects than one and must be struck down.

33. For the reasons aforesaid the writ petition is liable to be and the same is allowed.

34. Let a writ of mandamus do issue commanding the respondents and each of them to act in accordance with law and desist from giving any effect or further effect or to act in terms of the impugned notice inviting tender being Annexure-E to the writ petition.

35. There shall be no order as to cost.

36. After the judgment is pronounced, the learned advocate appearing for the respondent authority prays for stay of operation of this order but any stay of operation of the order would amount to frustrating the writ application and the

order passed by this Court thereon and accordingly prayer is refused.

37. All parties do act on a signed copy of the operative part of this judgment and order or the usual undertaking.

38. Petition allowed.