

(1998) 07 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition No. 3196 of 1997

Kanchi Fleet Movers

APPELLANT

Vs

The Collector of Solapur and others

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
Contract Act, 1872 — Section 10

Citation : (1998) 3 ALLMR 474 : (1998) 4 BomCR 268 : (1998) 2 BOMLR 751 :
(1998) 3 MhLj 307

Hon'ble Judges : S. Radhakrishnan, J; A.V. Savant, J

Bench : Division Bench

Advocate : A.A. Kumbhakond and A.B. Borkar, for the Appellant; V.V. Pai, A.G.P. and D.B. Bhosale, for the Respondent

Judgement

A.V. Savant, J.—Heard all the learned Counsels, Shri. A.A. Kumbhakoni for the petitioner, Shri. V.V. Pai, Assistant Government Pleader for Respondent Nos. 1, 2, 3 and 5, and Shri. D.B. Bhosale for Respondent No. 4.

2. This petition is taken up for final disposal pursuant to the order dated 24th October, 1997, passed by the Apex Court in Civil Appeal No. 7522 of 1997 arising out of SLP (Civil) No. 15335 of 1997. The appeal to the Apex Court arose out of an order dated 5th August, 1997 in Writ Petition No. 3196 of 1997 which was disposed of at the admission stage. The controversy relates to the allotment of a contract for transporting rice under the Mid Day Meal Scheme of the Government of Maharashtra promulgated under the Government Resolution dated 22nd December, 1995 as a part of the National Programme of Nutritional Support to Primary Education, In this petition we are concerned with the allotment of the contract to respondent No. 4 under the order dated 5th July, 1997 which is the order impugned in the present petition.

3. The scheme evolved by the Central Government and implemented by the State Government is a part of the National Programme of Nutritional Support to

Primary Education with the object of ensuring proper attendance of the children in the primary schools and to reduce the percentage of the drop-outs at the primary school level. It was decided to distribute 100 grams of rice per day, which works out to three kilogram's of rice per month to every student in the primary school, subject to the condition that the student had a minimum of 80% attendance in the month. For the academic year 1997-98, five tenders were received. The petitioner's offer was Rs. 95/- per quintal which was the lowest whereas the offer of the 4th respondent was Rs. 100/- per quintal. One Shri Ashok Patil had quoted Rs. 105/- per quintal, Ganesh Co-operative Motor Transport Society Solapur had quoted Rs. 101/- per quintal and the 5th person Shri. Ningappa Khyade had quoted Rs. 99/- per quintal. The Contractor had to collect the food grains from the godowns of Food Corporation of India, Solapur, transport them to the godowns of the State Government, at different places in the District, pack the rice in polythene bags of three kilogram's each and deliver the said bags to the Headmasters of the Primary Schools in Solapur District for the eventual distribution to the students in the primary schools.

4. The 4th respondent is in the transport business since 1966. He was awarded the work of distribution of food grains under the above-mentioned scheme from December, 1995 to March 1996 and was re-allotted the same from June, 1996 to March, 1997. He had done the work satisfactorily as is evident from the certificate dated 1-2-1997 issued by the Additional Collector Solapur-Respondent No. 2. For the year 1997-98, the 4th respondent was awarded the contract under the impugned order dated 5th July, 1997.

5. When the petition came up for hearing as to admission on 5th August, 1997, the Division Bench of A.C. Agarwal and S.D. Gundewar, JJ., passed the following order;

"Rule. By consent rule is made returnable forthwith. Grant of contract to respondent No. 4 even though the tender of the petitioner was lowest as compared to respondent No. 4 is impugned in the present petition.

The Additional Collector had chosen to invite tenders. 4th respondent was initially not given the tender forms as his performance during the previous year of the contract was found unsatisfactory. On representation being made by him tender form was supplied to him. He has accordingly submitted his tender form alongwith other tenderers. Petitioner quoted Rs. 95/- as against Rs. 100/- quoted by respondent No. 4. In our view petitioner being the lowest tenderer was entitled to be offered the contract and there is no justification to offer the same to respondent No. 4.

Rule in the circumstances is made absolute in terms of prayer clause (b). No order as to costs.

On application of respondent No. 4 present order is stayed for a period of three weeks from today."

6. It will be evident from the above order that this Court took a view that the allotment of contract to 4th respondent was not justified and, hence, it was directed that the contract of distribution of rice be allotted to the petitioner. Accordingly Rule in this petition was made absolute in terms of prayer clause (b) which reads as under;

"(b) That by an appropriate writ, order or direction this Hon'ble Court be pleased to quash and set aside the impugned order dated 5th July, 1997, passed by the respondent No. 2 whereby the contract for supply of rice in polythene bags to schools is awarded to the respondent No. 4 and further be pleased to direct the respondent No. 2 to accept the tender of the petitioner and the contract for supply of rice in polythene bags to schools for the year 1997-98, be awarded to the petitioner on such terms and conditions as this Hon'ble Court may deem fit and proper."

7. Against the said order dated 5th August, 1997, the 4th respondent moved the Apex Court by way of SLP (Civil) No. 15335 of 1997. Pursuant to leave being granted, Civil Appeal No. 7522/97 was entertained and the following order was passed by the Apex Court on 24th October, 1997;

"Special leave granted.

The question involved in this appeal pertains to the acceptance of the tender with regard to the transporting of food under the Mid Day Meal Scheme of the Government.

Since the year 1966, the appellant is stated to be in transport business and he had been awarded the work under the scheme for the period from January 1996 till March, 1996 and re-allotted for the period from June 1996 to March 1997. For the subsequent period of 1997-98, tenders were invited and after they were opened it was found that the lowest tender was that of respondent No. 1 who had quoted at the rate of Rs. 95/- per quintal. The quotation of the appellant herein, who was the existing contractor, was Rs. 100/- per quintal.

By the order which was impugned by respondent No. 1 in the High Court, the contract of transporting the food was awarded to the appellant herein for the year 1997-98 pursuant to two letters stated to have been written by the Food Secretary being letter No. A.D.P./1997/C No. 4046/CS17 dated 21st June, 1997 and letter No. Supplies/Office/21(1)RR/538 dated 23rd June, 1997, but at the lowest price of Rs. 95/- per quintal. In this way, even though the lowest tender was that of respondent No. 1, the contract was awarded to the appellant herein on the basis that he was the existing contractor who was willing to undertake the work at the lowest freight which had been quoted.

The respondent No. 1 filed a writ petition before the Bombay High Court challenging the awarding of the contract in favour of the appellant. By a brief order dated 5th August, 1997, the Division Bench of the High Court allowed the writ petition by observing as follows;

"The Additional Collector had chosen to invite tenders. 4th respondent was initially not given the tender forms and his performance during the previous year of the contract was found unsatisfactory. On representation being made by him tender form was supplied to him. He has accordingly, submitted his tender form alongwith other tenderers. Petitioner quoted Rs. 95/- as against Rs. 100/- quoted by respondent No. 4. In our view petitioner being the lowest tenderer was entitled to be offered the contract and there is no justification to offer the same to respondent No. 4. Rule in the circumstances is made absolute in terms of prayer clause (b). No order as to costs."

It appears to us that the case requires decision on principles of law which arose, the main question being whether the Government could have a policy that in case where tenders are floated preference should be given of renewal of tender of the existing contractor provided he is willing to accept the contract at the lowest rate which is tendered. An allied question would be that, if this can be done whether it is not obligatory for the authority concerned to give an opportunity to all the persons who participate and submit the tenders to negotiate the rate at which the work is to be done. Unfortunately, the High Court has not examined any of these legal issues and without giving its opinion with regard to the validity of the aforesaid two letters dated 21st June, 1997 and 23rd June, 1997 has set aside the award of the contract in favour of the appellant. The High Court should have examined the said letters and then come to the conclusion whether the authority concerned was justified in law in awarding the contract to the appellant at the rate of Rs. 95/- per quintal.

In our opinion, the various issues which arise in this case have to be dealt with and a reasoned judgment given. We, therefore, set aside the judgment of the High Court dated 5th August, 1997 and restore Writ Petition No. 3196 of 1997 filed by respondent No. 1 before the High Court, and would request the High Court to dispose of the said petition at an early date inasmuch as such questions are likely to arise in the future. Till the decision of the writ petition, the appellant will continue to be bound by the terms of the contract and his continuance would be subject to the outcome of the said writ petition.

There will be no order as to costs.

Sd/-

(B.N. KIRPAL, J.)

Sd/-

(S. RAJENDRA BABU, J.)

New Delhi;

October 24, 1997."

8. It will be evident from the order passed by the Apex Court that two principal questions are to be decided by this Court, viz. (i) Whether the Government could

have a policy that in case where tenders are floated, preference should be given of renewal of tender of the existing contractor provided he is willing to accept the contract at the lowest rate which is tendered?, and (ii) and allied question is that, if this can be done, whether it is not obligatory for the authority concerned to give an opportunity to all the persons who participate and submit the tenders to negotiate the rate at which the work is to be done? The Apex Court expressed a view that this Court ought to have decided the above legal issues and the question of validity of the two letters dated 21st June, 1997 and 23rd June, 1997 under which the contract has been awarded to the 4th respondent. It was only after examining these issues, that this Court could have come to the conclusion whether the authority concerned was justified in law in awarding the contract to the 4th respondent at the rate of Rs. 95 per quintal. The Apex Court set aside the order passed by this Court under which the impugned order dated 5th July, 1997 in favour of the 4th respondent was set aside and this Court had awarded the contract to the petitioner. The matter has been restored to this Court for deciding the above-mentioned questions. The Apex Court further directed that till the decision of the writ petition, 4th respondent will continue to be bound by the terms of the contract and his continuance would be subject to the outcome of this petition. In the result, the order passed by this Court awarding the contract to the petitioner was set aside and 4th respondent was allowed to continue the work of transporting rice under the impugned order dated 5th July, 1997.

9. It is necessary to mention at this stage itself that the contract was for the academic year 1997-98 and, therefore, by the end of April, 1998, the contract has come to an end and for the academic year 1998-99, we have now a revised policy regarding the allotment of such contracts. Some changes have been introduced in the revised policy, one of them being that instead of allotment of contract of transporting the foodgrains District wise, the contract should be allotted Taluka wise. For the academic year 1988-99, the Government has laid down elaborate policy by way of three Government Resolutions dated 1st April, 29th April, and 30th April, 1998. It is not necessary for us to go to the details of the policy for 1998-99, since there is no challenge before us to the said policy for the current academic year and all those who have submitted their tenders for the current year are not parties to this petition. This petition has been confined to the allotment of the contract for transport of rice in Solapur District during the academic year 1997-98 which was allotted to the 4th respondent under the impugned order dated 5th July, 1997.

10. We must first deal with the preliminary objection raised by Shri. Pai and Shri. Bhosale on behalf of the respondents. The objection is that the contract which is the subject matter of the petition was for the academic year 1997-98. That year having ended by the end of April, 1988, the petition has become infructuous. Since new guide lines have been issued in the form of 3 Govt. Resolutions of 1st, 29th and 30th April, 1998, in respect of the contracts to be entered into for the academic year 1998-99, it is contended by the respondents that the decision on the two questions has become purely academic and this Court should not decide

purely academic questions. We do not entertain this preliminary objection in view of the directions of the Apex Court in its order dated 24th October, 1997. It is made clear by the Apex Court, while setting aside the order dated 5th August, 1997 passed by this Court, that it was necessary to decide the two principal questions of law which were likely to arise in future. Accordingly, we proceed to decide the two questions in the facts and circumstances of the case. We, therefore, over-rule the preliminary objection raised on behalf of the respondents.

11. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Apex Court was dealing with the question of allotment of a contract to run a second class restaurant and two snack bars at the International Airport at Bombay, pursuant to the notice dated 3rd January, 1977 inviting tenders. The Court observed in para 12 of the judgment at page 1637-38 as under;

"The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard of norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

The sum and substance of the above observation is that if the Government acts in a manner which is arbitrary, irrational, irrelevant or discriminatory, the Governmental action is liable to be struck down.

12. In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , the Apex Court had again to deal with the question in the light of allotment of the contracts for extraction of resin from the inaccessible Chir forests in Poonch, Reasi and Ramban Divisions of the State of Jammu and Kashmir for a period of 10 years. The contracts for tapping of resin were of different types and every year the State used to auction blazes in the different forests within its territory and about 40% of the forests were given on royalty basis, some with load and some without load, while the balance of about 60% were given on wage contract basis. The validity of these contracts was challenged. The Chief Conservator of

Forests and other forest officers decided at their meeting of December 9, 1978 that certain blazes could not be tapped through wage contract because, apart from the total non-availability of local labour in these areas, cost of production due to long lead up to coupe boundaries and transit depots would be prohibitive and all such areas should, therefore, be excluded from tapping through wage contracts. It was further decided that these blazes should be allotted to some private parties as procurement of resin from them through wage contracts was not feasible, being difficult and costly and "the financial status and experience in extraction of resin from forests and its distillation in the factory should be decisive factors" in regard to such allotment. The challenge before the Apex Court was on the grounds set out in Para 9 of the judgment at Page 1999, viz; (A) that the order was arbitrary, mala fide and not in public interest, inasmuch as a huge benefit had been conferred on the 2nd respondent at the cost of the State, (B) the order created monopoly in favour of the 2nd respondent who was a private party and constituted unreasonable restriction on the right of the petitioner to carry on tapping contract business under Article 19(1)(g) of the Constitution and (C) that the State had acted arbitrarily in selecting the 2nd respondent for awarding tapping contract, without affording any opportunity to others to compete for obtaining such contract and such action of the State was not based on any rational or relevant principle and was, therefore, violative of Article 14 of the Constitution as also of the rule of administrative law which inhibits arbitrary action by the State. The Apex Court examined these contentions in the light of two considerations. The first is in regard to the terms of the contract and the other, with regard to the person to whom the contract may be awarded. On the first aspect, it was held in Para 14 of the judgment at Page 2000, that the Government cannot give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course, there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people. The Court further referred to the fact that there was one basic principle which must guide the Court in arriving at its determination viz; that there is always a presumption that the governmental 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. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and, therefore, the Court would not strike down governmental action as invalid, unless it is clearly satisfied that the action is unreasonable or not in public interest. This approach has been indicated with reference to the first question as to the terms on which the largess may be

granted.

13. In para 15 of the judgment in *Kasturi Lal's case*, at page, 2001, the Apex Court has dealt with the second question as to the person who may be the recipient of such largess. The Court observed that the law was well established that the Government need not deal with anyone but, if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. Having laid down these propositions, in the facts of the case, the Apex Court concluded in para 24 of the judgment at page 2007 that it could not be said that the State had acted unreasonably or contrary to public interest in preferring the 2nd respondent and permitting them to put up a factory within the State and awarding them tapping contract in respect of certain blazes for the purpose of their factory. In the result, the petitions were dismissed.

14. In *State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others*, , it was held that where the conditions of auction of forest lots inter alia provided that Government was under no obligation to accept the highest bid, and that no right accrued to the bidder merely because his bid happened to be highest and that the acceptance of the bid at the time of auction was entirely provisional and was subject to ratification by the competent authority, namely the State Government, and the Government's power to refuse to accept the highest bid, could not be confined to inadequacy of the bid only. It was held that there may be a variety of good and sufficient reasons, apart from inadequacy of bid, which may impel the Government not to accept the highest bid. The Government had the right, for good and sufficient reasons, not to accept the highest bid, but even to prefer the tender other than the highest bidder. The very enormity of a bid may make it suspect. It may lead the Government to realise that no bona fide bidder could possibly offer such a bid, if he meant to do honest business. Again, the Government may change or revise its policy from time to time and the change of policy subsequent to the auction, but before its confirmation, can be a sufficient justification for the refusal to accept the highest bid. It was held that the Government had the right to change its policy from time to time according to the demands of time and situation and in public interest.

15. In *Ram and Shyam Company Vs. State of Haryana and Others*, , the Apex Court referred to the legal propositions laid down in the above mentioned cases viz. (1) *Ramana Shetty's case* (2) *Kasturi Lal's case* and (3) *Vijay Bahadur Singh's case*, and observed that the law was well established that the Government need not deal with anyone but, if it does so, it must do so fairly without discrimination and without unfair procedure. It was conceded in para 13

that a unilateral offer, secretly made, not co-related to any reserved price made by the respondent in that case after making false statement in the letter was accepted without giving any opportunity to the appellant either to raise the bid or to point out the falsity of the allegations made by the said respondent in the letter as also the inadequacy of his bid. The appellant was, therefore, made to suffer an unfair treatment at the hands of the State in discharging its administrative functions thereby violating the fundamental principles of fairplay in action. In that case, it is of relevance to note that at the first auction held on February 20, 1981, the appellant Ram and Shyam Company had given the highest bid for a particular plot viz; Rs. 1,52,000/- per year. At the fresh auction held on 4th May, 1981, the appellant gave bid for the same plot at Rs. 3,87,000/- for the period of three years. In the letter dated 9th May, 1981 by the respondent addressed to the Chief Minister, Haryana State, the offer made was of Rs. 4,50,000/- per year. During the course of hearing in the Apex Court, the Counsel for the appellant Ram and Shyam Company, had offered to pay rupees one lakh more than the offer of 4,50,000/- made by the respondent: In view of this, the Court had invited the offers in Court and whereas the final offer of the respondent before the Apex Court was Rs. 22 lakhs per year, that of the appellant was Rs. 25 lakhs per year. The Apex Court referred to the shock and surprise on the face of everyone in Court, and finally, quashed the grant in favour of the respondent. The Court thought that it was a case of an Ostrich burying its face in sand and declining to see the reality.

16. In the State of M.P. and Others Vs. Nandlal Jaiswal and Others, , the Apex Court was dealing with the grant of licence for manufacture and sale of country liquor in the State of M.P. One of the questions was whether for the construction of new distilleries, the Government can negotiate with the persons who come with an offer or whether it was necessary to advertise and invite tenders. In para 37 of its judgment, referring to its earlier decision in Kasturi Lal's case the Court concluded as under at page 283 and 284:--

"We may point out that when the State Government is granting licence for putting up a new industry, it is not at all necessary that it should advertise and invite offers for putting up such industry. The State Government is entitled to negotiate with those who have come up with an offer to set up such industry. This principle was clearly and unequivocally accepted by this Court in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, where contracts entered into by the State Government with three manufacturers giving them the right to set up factories in the State for the manufacture of resin, turpentine and other derivatives and making available to them an assured supply of 4000, 3500 and 8000 metric tonnes of resin per year by giving them tapping contract were challenged as violative of Article 14 of the Constitution on the ground that the State Government had not issued any advertisement inviting offers for award of tapping contract or stating that the tapping contract would be given to any party who would be prepared to put up a factory for manufacture of resin, turpentine

and other derivatives within the State and thereby equality of opportunity to compete for obtaining such contracts was denied to other persons."

Thereafter the Apex Court quoted with approval its earlier observations in Kasturi Lal's case and held as under ;

"Here, in the present case, the predominant purpose of the policy decision dated 30th December, 1984 was to ensure construction and setting up of new distilleries with modern technologically advanced plant and machinery at new sites where there would be no possibility of air and water pollution and if for achieving this purpose the State Government considered the offer of the existing contractors and negotiated with them and ultimately decided to grant to them licences for construction of new distilleries on the terms and conditions set out in the recommendations of the Cabinet sub-Committee it is difficult to see how, in view of the decision in Kasturilal Lakshmi Reddy's case (supra) the State Government could be said to have acted arbitrarily or capriciously in violation of Article 14 of the Constitution. The contention of the petitioners based on Article 14 of the Constitution must therefore stand rejected."

17. In Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, , the Apex Court considered its earlier decisions and laid down the following propositions in para 39 of the judgment at page 1133;

"State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

After having laid down the above propositions, the Court came to the conclusion in para 40 that it was impossible to hold that the Government of West Bengal did not act with probity in not inviting the tenders or in not holding the public auction, but, negotiating straightaway at arm's length, with the Taj Group of Hotels.

18. We do not think it necessary to burden this judgment with all the cases that were cited before us on the scope of judicial review in such matters. However, we must now refer to the decision of the Apex Court in Tata Cellular Vs. Union of India, . The Apex Court, on a review of the English, American and Indian decisions on the subject, laid down the proposition that while the State action must be in consonance with the principles underlying Article 14 of the Constitution, it is only the decision making process, and not the merits of the decision, which is reviewable, as the Court does not sit as an Appellate Court

while exercising the power of judicial review. The Court cannot interfere with the Government's freedom of contract. Invitation of tender and refusal of any tender are policy matters and the courts cannot interfere with the Government's freedom of contract where the decision is not vitiated by arbitrariness, unfairness, illegality, irrationality or Wednesbury unreasonableness i.e. to say when the decision is not such as no reasonable person, on proper application of mind, could take. It has further been laid down that where there is no procedural impropriety, the test is whether the wrong is of such a nature as to require intervention, but at the same time, the Court would not substitute its own opinion of that of the experts. The Court can only set right the decision making process. It has been clearly held that mere power to choose between different tenderers cannot by itself be termed as arbitrary. Government has interest in selecting the best having regard to the implementation of a particular scheme. It is only the use of such power for a collateral purpose which is interdicted by Article 14.

19. In para 70 of the judgment in Tata Cellular's case at page 675, the Apex Court observed that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it is clearly stated that there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State and it is expected to protect the financial interest of the State. There can be no question of infringement of Article 14 if Govt. tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide the matters whether contractual or political in nature or, issues of social policy. Thus, they are not essentially justiciable. But if there is any unfairness, the same can be set right by judicial review. Referring to the observations of Lord Scarman in *Nottinghamshire County Council v. Secretary of State for the Environment*, 1986 App Cases 240 : 1986 (1) All. E.R. 199, the Apex Court observed in para 73 that, observance of judicial restraint was currently the mood in England. The power of judicial review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the Court's ability to quash an administrative decision on its merits. It was observed that these restraints bear the hallmarks of judicial control over administrative action. In para 75, the Court quoted with approval, the observations of Lord Brightman in *Chief Constable of the North Wales Police v. Evans*, 1982 (3) All E.R. 141 to the following effect.

"Judicial review is concerned not with the decision, but with the decision making process. Unless that restriction on the power of the Court is observed, the Court will, in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

The Apex Court has further quoted with approval the proposition that "an

application for judicial review is not an appeal;" "judicial review is a protection and not a weapon".

20. In para 77 of the judgment in Tata Cellular's case at page 677, the Apex Court has laid down that duty of the Court was to confine itself to the question of legality. Its concern should be whether the decision making authority (i) exceeded its powers; (ii) committed an error of law; (iii) committed a breach of the rules of natural justice; (iv) reached a decision which no reasonable Tribunal would have reached or (v) abused its powers. The Court observed that, shortly put, the grounds upon which an administrative action was subject to control by judicial review could be classified as under:

i) Illegality; (ii) Irrationality, namely, Wednesbury unreasonableness and (iii) Procedural impropriety.

The Court thereafter referred to one more ground namely the principle of proportionality. After referring to the decision of R. v. Secretary of State for the Home Department ex. Brind, 1991 A.C. 696, regarding the principle of proportionality, the Court observed that in all these cases the test to be adopted is that the Court should, "consider whether something has gone wrong of a nature and degree which requires its intervention." We will later refer to this principle of proportionality which has been elaborated in a recent decision of the Apex Court in Union of India and another Vs. G. Ganayutham (Dead) by LR's., .

21. Reverting to the decision in Tata Cellular's case, the Apex Court has elaborated the grounds of illegality, irrationality and procedural impropriety and in para 94 of the judgment at page 687 deduced the following principles on a review of the English, American and Indian cases;

I) The modern trend points to judicial restraint in administrative action;

ii) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made;

iii) 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.

iv) 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.

v) 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 Wednesbury principle of reasonableness but must be free from arbitrariness not affected by bias or

actuated by mala fides;

vi) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

22. We will now refer to the decision in *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, . The Apex Court reiterates that judicial review was permissible on the ground that the decision was illegal, irrational or procedurally improper and further refers to the growth of the doctrine of proportionality. It is concerned with the way in which the decision maker has ordered his priorities, the very essence of decision making consists surely, in the attribution of relative importance to the factors in the case. These observations are to be found in para 16 of the judgment at page 473-474 where the Apex court has referred to the observations of Lord Diplock in *R v. Goldstein*, 1983 (1) W.L.R. 151; 1983 (1) All E.R. 434 of the judgment at page 477 of the report, the Court observed that in our country, in cases not involving fundamental freedoms, the role of our courts/ Tribunals in administrative law is purely secondary. While applying the principles laid down in (i) *Asstt. Provincial Picture House Ltd. v. Wednesbury Corporation*, 1947 (2) All E.R. 680 and (ii) *Council of Civil Services Union v. Minister for Civil Services*, 1984 (3) All E.R. 935 (*Wednesbury* and *CCSU* principle), to test the validity of the executive action or of administrative action taken in exercise of the statutory powers, the courts and Tribunals in our country can only go into the matter as a secondary reviewing Court to find out if the executive or the administrator, in their primary roles, have arrived at a reasonable decision on the material before them in the light of *Wednesbury* and *CCSU* test. The choice of the options available is for the authority: the Court/Tribunal cannot substitute its view as to what is reasonable.

23. Bearing in mind the above legal position and in particular, the limitations on the powers of judicial review, only on the ground of illegality, irrationality, or procedural impropriety and the fact that Court does not sit as a Court of appeal, nor does it have the necessary expertise to correct the administrative decision, we will examine the decision making process in the present case. We will also have to bear in mind that modern trend is towards judicial restraint and it has been unequivocally recognised that the Government must have the freedom of fair play in the joints.

24. We have already set out earlier, the facts in brief, The order impugned in the petition is dated 5th July, 1997 (Exh. B) awarding the contract for the transport of rice from the godowns of the Food Corporation of India to the primary schools for distribution to the children under the National Programme of Nutritional Support To Primary Education. This is a scheme of the Central Government which is implemented by the State Government. The object is to ensure maximum attendance of the children in the primary schools and to reduce the percentage of drop outs at the primary school level. Under the policy resolution dated 22nd November, 1995 100 grams of rice per day per child (3 kg. per month) is to be distributed to a child whose attendance in a month is 80% or more. We are

concerned with the allotment of contract to respondent No, 4 for the year 1997-98 in Solapur District. The guidelines were issued by the State Government on 6th March, 1997 which assume importance in the light of the factual averments and the two questions that have been framed for our consideration. It is, therefore, necessary to refer to the guidelines in some details.

25. In the guidelines dated 6th March, 1997, there is a reference to the fact that in some districts in the State, tenders were invited for allotment of contracts whereas, in some other districts, the old contractors were allowed to continue the work of distribution of rice. In the preceding year, in some districts, there were irregularities committed by some contractors and Government had to face the criticism. Hence, it was decided that, before allotting the contract for the year 1997-98, care should be taken to ensure (i) Credibility and reliability of the contractor, (ii) financial capacity, man power and infrastructure available with the contractor and (iii) experience of transporting food grains in the recent past. Having indicated this approach, the guidelines have been laid down for the year 1997-98. Guideline (A) says that after having invited the tenders, if the rate quoted for transport was more than Rs. 115/- per quintal, then after negotiations, the rate should be fixed at Rs. 115/ per quintal . If, however, despite negotiations, the rate worked out to more than Rs. 115/- per quintal, the matter should be sent to the State Government for approval.

26. Guideline (B) is to the effect that, if for the year 1996-97, the rate was less than Rs. 115/- per quintal, and if it was not certain as to whether the rate for 1997-98 will be Rs. 115/- per quintal, then instead of inviting the tenders, the Additional Collector would be competent to decide the agency for transport. However, the work of the existing contractor should be satisfactory and there should be no complaints against him. Further, if the existing contractor, (meaning thereby the contractor who had done the work for the academic year 1996-97) was willing to do the work of transportation at the same rate, as in the past, then he should be given the contract for the year 1997-98 and this was within the competence of the Additional Collector. We must immediately mention here that, as far as the fourth respondent is concerned, for the academic year 1996-97 (namely the preceding year, since we are concerned with academic year 1997-98) he was transporting the rice at the rate of Rs. 101/ per quintal. There were no serious complaints against him. Serious complaints are characterised under 3 heads viz; (i) Corruption, (ii) supplying sub-standard rice and (iii) misappropriation. This is clear from the letter dated 21st June 1997 to which we will refer a little later. It must, however, be mentioned that there was a complaint against the fourth respondent that there was delay in observing the delivery schedule in a particular sector. The fourth respondent had given his explanation that the delay in observing the delivery schedule in a particular sector was on account of heavy rain fall. This explanation had been found to be satisfactory and the fourth respondent was allowed to operate the scheme. It is not as if any frivolous complaint would disentitle the contractor from continuing the contract. It is only serious complaints of either (i) corruption, (ii) supplying sub-standard

rice or (iii) mis-appropriation which were to disentitle the contractor from getting the renewal for the next year. This is clear from the letter dated 21st June, 1997 issued by the Secretary Food and Civil Supplies Department and the affidavits in reply filed before us. In our view, guideline (B) would, therefore, clearly apply to the case of the fourth respondent because for the preceding year, namely academic year 1996-97, the work was allotted to him at the rate of Rs. 101/- per quintal. There were no complaints against him. On the contrary, there is a certificate on record which is issued by the Additional Collector himself on 1st February, 1997 that the fourth respondent had done the work of transportation of rice for the years 1995-96 and 1996-97 at the rate of Rs. 101/- per quintal and that his work was satisfactory.

27. Guideline (c) says that if in the year 1996-97 the contract was allotted in any district at the rate exceeding Rs. 115/- per quintal, tenders should be invited in such of the districts and agency should be determined. The whole anxiety of the Government perhaps justifiably, was to ensure that not more than Rs. 115/- per quintal was spent for transport of rice in case where the contract was allotted by the Additional Collector. Guideline (C) further states that if the rate quoted was more than Rs. 115/- per quintal (or the year 1997-98, the Additional Collector should call the tenderers for negotiations and try to fix the rate at Rs. 115/- or below it. However, if that was not possible, the matter should be sent to the State Government for approval. It is interesting to note that in the concluding portion of the guidelines there is a reference to the tendency on the part of some of the contractors to initially quote a lesser rate for transport of foodgrain, obtain the contract and then apply for revision of rates. To curb such a tendency, it has been specifically stipulated that rate fixed would not be, revised during the pendency of the contract.

28. What happened in the present case was that initially the fourth respondent was not supplied with the tender forms at Solapur. He, therefore, approached the State Government. The Government called for the report from the Additional Collector and after considering the report of the Addl. Collector regarding the performance of the fourth respondent, the contract was allotted to the fourth respondent but at the lowest quoted rate of Rs. 95 per quintal. In this behalf we may refer to the affidavits in reply that have been filed. The first affidavit dated 4th August, 1997 is by the Additional Collector, respondent No. 2. In para 2 of the said affidavit there is a reference to the guidelines dated 6th March, 1997 and the fact that if the work of the contractor appointed for the year 1996-97 was satisfactory and if he was ready to continue the contract during the year 1997-98, at the same rate, the contract should be awarded to him. It may be recalled that under the impugned order dated 5th July, 1997, the work was allotted to the fourth respondent at the lowest rate namely RS. 95/- per quintal. This Court had, on 5th August, 1997, set aside the order dated 5th July, 1997 and directed that the work should be allotted to the petitioner. Against the order dated 5th August, 1997, the fourth respondent moved the Apex Court. The order passed by this Court was set aside on 24th October, 1997. The matter was

remanded to this Court for deciding the above mentioned questions of law and, in the meanwhile, it was directed that the fourth respondent will continue to implement the scheme of transport of the rice. As against the rate of Rs. 101/- per quintal for the year 1995-96 and 1997-98 the fourth respondent was carrying on the work at the rate of Rs. 95/- per quintal for the year 1997-98. There were no complaints of either corruption or supply of substandard foodgrains or misappropriation against him. The delay in delivery schedule on account of heavy rain fall in some sector was satisfactorily explained by him. His work was certified to be satisfactory and hence the contract was allotted to him. There is no penalty imposed on the fourth respondent at any time nor has any amount been deducted from his security deposit though the Government has such a power to impose penalty and deduct the amount from the security deposit given by the contractor.

29. In the petition, the petitioner has alleged that the contract was allotted to the fourth respondent in violation of the guidelines and it negotiations were held under which the fourth respondent had agreed to work at RS. 95/- per quintal as against Rs. 100/- per quintal quoted by him, then opportunity ought to have been given to the petitioner to negotiate for a lesser rate. The petitioner's grievance is that since initially he had quoted a lesser rate, he ought to have been given an opportunity for negotiations. The petitioner has also challenged the State Government's competence to issue directives dated 21st and 23rd June, 1997 under which the contract was allotted to the fourth respondent.

30. In the affidavit in reply filed by the fourth respondent he has denied the allegation that there was any complaint against him. He has stated that he has been doing the work since January, 1996 and had sufficient experience in the matter of transport of foodgrains in Solapur District. At no point of time was he fined or was any penalty imposed on him. He pointed out that he had the necessary manpower and infrastructure to operate the scheme. He had not committed breach of any of the terms and conditions of the contract between him and the Government in the preceding two years. The fourth respondent, has, therefore, denied the allegation of either unfairness or arbitrariness in the matter of allotment of contract to him.

31. In the affidavit dated 29th June, 1998 filed by the Secretary to the Government of Maharashtra, Food, Civil Supplies and Consumer Protection Department, there is a reference to the mid-day meal scheme started by the State Government pursuant to the directions of the Central Government as per the Government Resolution dated 22nd November, 1995. In para 4 of the affidavit, it is stated that since the scheme is to distribute the foodgrains to the children, qualified contractors who had past experience in transporting the foodgrains and who are having good reputation were required to be engaged. It was also necessary to take proper precaution to evade the malpractice at the time of distribution of foodgrains and, hence, the reputation and past record of the contractor was required to be taken into account. In para 5 it is stated that

the performance of the fourth respondent for the preceding years was satisfactory and that there was no serious complaints. Hence, instead of inviting open tenders, only limited tenders were invited. In para 7 there is a reference to the procedure to be adopted where the rate was more than Rs. 115/- per quintal as was the position in some districts and in other cases, where the rate was less than Rs. 115/- per quintal and the contractor who had operated the scheme in the previous year was willing to operate the scheme at the same rate. In para 9, there is a reference to the fact that if the contractor was operating the scheme in the previous year, the experience was that he makes substantial investment towards purchase of truck, packing material and machinery and training of manpower and, therefore, a policy decision was taken that, instead of calling for open tenders, only limited tenders be called and if the work of old contractor was satisfactory, his contract should be renewed provided he was willing to do the work at the same rate as in the previous year. This was despite the rate of inflation being 7 to 10% per year. It is stated that such a policy of the Government cannot be said to be unreasonable or arbitrary.

32. As held by the Apex Court in para 14 of the judgment in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , if there are considerations which render it reasonable and in public interest, the Government can choose a particular contractor in the matter of carrying out a welfare scheme. Similarly, as held in *State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others*, , it is obvious that the Government has the power to refuse or accept a particular bid. There may a variety of good and sufficient reasons, Government may change or revise its policy from time to time even subsequent to the auction and before its confirmation. In a given case, the bid itself may be suspicious as was the position in *Vijay Bahadur Singh's* case where auction of forest lots had fetched bids which were 71% over the estimated price of the timber. Bids were so fantastically high that it gave rise to the suspicion that the bidder may indulge in illicit felling of trees. Merely because the petitioner may have been willing to negotiate for a lesser rate, it was not obligatory on the Government to negative (sic negotiate) and allot the contract to him. Admittedly, the petitioner had no experience of transporting rice, as against which, the fourth respondent was experienced in the past two years. The possibility of a contractor obtaining a contract at a lesser rate, for transport of rice, and then bargaining for revision of rate has been specifically referred in the guidelines of 6th March, 1997. There may be a case where the person who gave a lesser rate, may indulge either in corruption or in distribution of sub-standard foodgrains or in misappropriation. Therefore, Government in its wisdom decided not to invite tenders if the rate quoted for 1997-98 was less than Rs. 115/- per quintal and if the contractor who operated the scheme in the previous year was willing to operate the same in the next year at the same rate, and that there were no serious complaints against him.

33. As held above, the fourth respondent satisfied all the criteria laid down in Clause (B) of the guidelines. The only lapse on his part, if any, was failure to

adhere to the delivery schedule in some sector on account of heavy rainfall and his explanation was found to be satisfactory. In para 11 of the affidavit filed by the Secretary to the Government, there is a reference to the fact that lapse of delay in effecting delivery on account of heavy rainfall was found to be a minor lapse not necessitating any penalty to be imposed on the fourth respondent. The District Supply Officer, Solapur had erroneously refused to even give the tender forms to the fourth respondent for 1997-98. The fourth respondent, therefore, made a representation to the State Government. The Government called for the report from the second respondent, Additional Collector and, on consideration of the said report, decided to award contract to the fourth respondent. In para 13 of the affidavit, it is categorically stated that having regard to the performance of the fourth respondent in the previous year and the fact that he was willing to carry out the contract at the rate lower than the rate for the previous year, (namely Rs. 95/-- per quintal for the year 1997-98 as against Rs. 101/- per quintal for the year 1996-97), it was really unnecessary to even call for the limited tenders. As per the policy guideline (B), the work could have been straightaway allotted to the fourth respondent. As indicated by the Apex Court there is no arbitrariness in selecting a particular contractor. In the very nature of allotment of such works there is an element of selection. That by itself does not suggest arbitrariness. The Secretary has denied the allegation that it was necessary for the second respondent to negotiate the rate with all the tenderers. It is stated in para 15 of the affidavit that the Govt. had taken an appropriate decision of awarding contract to the fourth respondent which decision was neither arbitrary nor irrational nor unreasonable nor was it in any manner malafide. The mere fact that power has been delegated to the Additional Collector under circular dated 6th March, 1997 did not mean that the Govt. had no power to take a decision when a representation was made to the Govt. that the fourth respondent was wrongly denied the supply of tender form. The scheme is being implemented by the State Govt. as a part of the National Programme of Nutritional Support to Primary Education.

34. In the light of the above factual position and the decisions of the Apex Court to which we have made a reference, we will answer the two principal questions that have been framed for our decision. On the first question whether the Govt. could have a policy that in case where the tenders are floated, preference should be given for a renewal of the tender of the existing contractor provided he is willing to accept the contract at the lowest rate which is tendered; our answer is in the affirmative.

35. On the second question as to whether, if this could be done, whether it was not obligatory for the authority concerned to give an opportunity to all the persons who participated and submitted the tenders to negotiate the rate at which the work is to be done, our answer is that, having regard to the guidelines dated 6th March, 1997 and the fact that the petitioner had quoted a rate which was less not only than Rs. 115/- per quintal but was also less than the rate of Rs. 101/- per quintal at which he had executed the contract for the previous

year, it was not absolutely necessary for the authority concerned to give an opportunity to all the persons who participated and submitted the tender to negotiate the rate at which the work is to be allotted. The rate quoted by the petitioner was Rs. 100/- which was less than Rs. 115/- per quintal indicated in clause (B) of the guidelines. The petitioner was willing to execute the work at Rs. 95/- per quintal, which was the lowest rate, and was obviously less than Rs. 101/- per quintal at which he had executed the contract for the previous two years. This was despite the rate of inflation being 7 to 10% per year. In view of the policy guidelines, our answer to the second question would, therefore, be in the negative. We must add that if clause (B) of the guidelines were absent, and if there was no discretion left to the Additional Collector, even in a situation where the existing contractor had offered the lowest rate, our answer to the second question would have been different. In such a case, falling under clause (C) and not under clause (B) of the guidelines, our answer would be in the affirmative. In this behalf we may refer to the decision of the Apex Court in Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, . In para 10 of the judgment at page 77 of the report, it is observed that inadequacy of the price offered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtaining highest available price. The inadequacy may be for several reasons known in the commercial field. Inadequacy of the price quoted in the highest tender would be a question of fact in each case. Retaining the option to accept the highest tender in case the negotiations do not yield a significantly higher offer would be fair to the tenderer. After having observed this, the Apex Court concluded in the facts of the case that after opening the tender on 18th May, 1992, the appellant decided to negotiate with all the tenderers on June 9, 1992 when a significantly higher amount was offered above the amount quoted in the highest tender. In such a situation, if the negotiations do not yield a desirable result of obtaining the significantly higher price, the appellant Food Corporation of India had the option to accept the highest tender before the last date. The fact that it was a significantly higher bid obtained by adopting this course, was held to be sufficient, in the facts of the case before the Apex Court, to demonstrate that action of the Food Corporation of India satisfied the requirement of non arbitrariness. It was, therefore, held that the High Court was in error in taking the contrary view. Consequently, the appeal filed by the Food Corporation of India was allowed.

36. As indicated earlier, the pleadings and, in particular, the affidavits in reply clearly indicate that this case squarely falls in clause (B) of the guidelines dated 6th March, 1997 and not under clause (C) thereof. In this view of the matter we have no hesitation in coming to the conclusion that the answer to the second question, in the facts of the case, must be in the negative namely, it was not obligatory for the authority concerned to give an opportunity to all those who had submitted the tenders to negotiate the rate at which work was to be done. As held earlier, the fourth respondent had executed the work in the previous year

at Rs. 101/- per quintal. There were no complaints against him. The minor lapse on his part was satisfactorily explained by him. He had the necessary infrastructure and man power as also the experience to do the job. There was nothing to doubt his credibility and reliability. Hence all the criteria laid down in the guidelines were satisfied by him. He was willing to do the work at the lesser rate of Rs. 95/- per quintal despite the rate of inflation being 7 to 10% per year. If, therefore, the facts of the case do not attract clause (C) of the guidelines the answer to question No. 2 must be in the negative.

37. While arriving at this conclusion, we are conscious of the limitations on the power of review as indicated by the Apex Court in its decision in Tata Cellular's case. In particular, we may refer to the principles summed up in para 94 of the judgment at page 687 of the report. (See para 21 above).

38. We will now refer to the two letters dated 21st June and 23rd June, 1997, to which a reference has been made in the petition and the validity of which is required to be decided in the light of the directions of the Apex Court. By the first letter dated 21st June, 1997 addressed to the Additional Collector, Solapur, the Secretary, Food and Civil Supplies Department informed the Additional Collector that on perusal of the relevant record, it transpired that as far as the fourth respondent was concerned, in the year 1996-97, there were no complaints of corruption or supply of sub-standard food grains or misappropriation. Hence, it was too severe a punishment to terminate his contract for the year 1997-98. If there were any alleged defaults on his part, some amount can be deducted from his security deposit. The last observation has a reference to the complaint of not adhering to the delivery schedule in one sector as a result of heavy rainfall. The affidavit filed by the State Govt. shows that the explanation tendered by the petitioner (sic respondent) was accepted and this was a minor lapse on his part. It was only because of the heavy rainfall that there was a delay in adhering to the delivery schedule for which the fourth respondent could not be blamed. This is categorically stated in para 11 of the affidavit of the Secretary. It was in the light of the above that the Secretary informed the Additional Collector that for the year 1997-98 the contract should be continued with the fourth respondent. However, since the lowest tender was Rs. 95/- per quintal, the contract should be given to the fourth respondent at the rate of Rs. 95/- per quintal. This is important because in the preceding year the contract was given to the fourth respondent Rs. 101/- per quintal and he had offered Rs. 100/- per quintal for 1997-98. Certificate dated 1st February, 1997 issued by the Addl. Collector itself shows that both for 1995-96 and 1996-97 the fourth respondent had transported the foodgrain at the rate of Rs. 101/- per quintal and that his work was satisfactory.

39. Coming to the second letter dated 23rd June, 1997, it is addressed by the Additional Collector, Solapur to the fourth respondent. It refers to the above letter dated 21st June, 1997 and the fact that the contract was to be awarded to the fourth respondent for the year 1997-98 at the rate of Rs. 95/- per quintal.

The Additional Collector informed the fourth respondent that if he was willing to transport the food grains at the rate of Rs. 93/- per quintal, during the academic year 1997-98, he should give his consent to abide by the terms and conditions strictly, within a period of 3 days from the date of receipt of the said letter. In the light of the facts stated above, we do not find any illegality, irrationality or procedural impropriety on the part of either the Secretary or the Additional Collector in issuing the letters dated 21st or 23rd June, 1997 respectively. The National Programme for Nutritional Support to Primary Education was the scheme of the Central Govt. which was being implemented by the State Govt. Merely because under the circular dated 6th March, 1997 some discretion was vested in the Additional Collector, it would not divest the State Govt. of its power to look into the complaints that were addressed to it in the actual implementation of the said scheme. For instance, if on account of a minor lapse of delay in abiding by the delivery schedule due to heavy rainfall in one sector, the fourth respondent was not even allowed to participate in the process of submitting the tender, we do not think that the State Govt. was powerless to entertain the complaint in its executive power and call for the report from the Additional Collector as it did in the present case. The report of the Additional Collector showed that the performance of the fourth respondent was satisfactory and there were no complaints against him meaning thereby complaints of the nature of corruption, supply of sub-standard foodgrain or mis-appropriation. The minor lapse on his part was satisfactorily explained by him. The State Govt. was implementing the scheme of the Central Govt. We do not think that in such a situation there is any illegality, irrationality or procedural impropriety in the matter of allotment of the contract to the fourth respondent. Hence, we are of the view that no objection can be taken to the two letters dated 21st and 23rd June, 1997.

40. In the view that we have taken, allotment of the contract to the fourth respondent for the transport of the rice for the academic year 1997-98, must be held to be valid- In our view, the said contract is not vitiated by earlier arbitrariness or unfairness. In view of our answer to the two questions that were framed by our decision, there is no breach of the provisions of Art. 14 of the Constitution of India. No case is, therefore, made out for intervention in this writ petition.

41. As indicated earlier, the first question has been answered in the affirmative and as far as the second question is concerned, in view of the finding that the case fell under clause (B) of the guidelines dated 6th March, 1997, our answer is in the negative.

42. Before we could conclude, Shri Kumbhakoni for the petitioner pointed out one difficulty. For the year 1998-99, the petitioner himself has obtained a stay from this Court on 6th May, 1998. On a motion by the petitioner, this Court ordered that this matter should be fixed for final hearing on 10th June, 1998 and till that time the State Govt. was restrained from taking any decision in relation

to the fresh tenders for the distribution of rice in Solapur district for the academic year 1998-99. Shri Pai, the A.G.P., has placed on record the three Govt. Resolutions dated 1st, 29th and 30th April, 1998. There is a substantial change and instead of allotment of the contract district wise, the allotment of contract this year is has to be taluka wise. There are other details of the policy for the academic year 1998-99. However, we refrain from expressing any opinion whatsoever on the validity of the policy for the academic year 1998-99 since that is not an issue before us and no arguments were advanced before us in the absence of any pleadings on that point. Shri Pai and Shri Bhosale suggested that since last date for submitting the tender for 1998-99 is already over and more than 80 tenders have been submitted for 11 talukas of Solapur district, the petitioner not having submitted any tender, though he had collected the tender forms, should not now be permitted to submit the tender for the academic year 1998-99. As against this Shri Kumbhakoni points out that there was a confusion in the mind of the petitioner as a result of the interim order obtained by him on 6th May, 1998 and, in the peculiar circumstances of the case, the petitioner should now be allowed to submit his tender. We find merit in this contention of Shri Kumbhakoni. We are of the view that it would be unfair to the petitioner to deny him an opportunity to submit his tender for the academic year 1998-99 particularly in view of the interim order dated 6th May, 1998 though it was the petitioner himself who had obtained that order from this Court. In our view it would be in the larger public interest to permit the petitioner to submit his tender on or before Saturday the 18th July, 1998. The petitioner, who is present in the Court, agrees to do so.

43. It is then brought to our notice that the quota of rice for the month of June, 1998 has already lapsed as a result of the interim order passed by this Court. If that be so, it is really unfortunate because it is the poor school children belonging to the lower strata of society who have been deprived of the rice. In the circumstances mentioned above, we are inclined to direct the fifth respondent State to consider allotment of the quota of rice for the month of June, 1998 for the primary schools in Solapur district in the month of July, 1998 in addition of the quota for July 1998.

44. In the circumstances, we pass the following order :

i) The allotment of the contract to the fourth respondent for distribution of the rice in Solapur district under the order dated 5th July, 1997 was valid and is upheld.

ii) Answer to question No. 1 framed by the Apex Court in its order dated 24th October, 1997 is in the affirmative and the State Govt. can have a policy that in case where the tenders are floated preference should be given for renewal of the tender of the existing contractor provided he is willing to accept the contract at the lowest rate which is tendered.

iii) The answer to the second question which is referred to as an allied question,

is, in the facts and circumstances held proved, in the negative namely if the case fell under clause (B) of the guidelines dated 6th March, 1997; it was not obligatory for the authority concerned to give an opportunity to all the persons who had submitted their tenders to negotiate the rate at which the work was to be done.

iv) The letter dated 21st June, 1997 issued by the Secretary to the Govt. to the Additional Collector, as also the letter dated 23rd June, 1997 issued by the Additional Collector to the fourth respondent are both valid and legal.

v) The petitioner is hereby allowed to submit his tender for the academic year 1998-99 for the distribution of rice to the primary schools in Solapur District. The petitioner agrees to submit his tenders to the appropriate authorities on or before Saturday the 18th July, 1998.

vi) Having regard to the possibility of the foodgrains perishing or the quota lapsing, the concerned authorities are directed to take a decision regarding the allotment of contracts (or the academic year 1998-99 on or before Monday the 27th July, 1998 after following the requisite procedure in accordance with law and ensure that the quota for the month of July, 1998 is released by 31st July, 1998.

vii) The fifth respondent State of Maharashtra is directed to approach the concerned authorities to revive the quota of rice for June, 1998 and consider the possibility of June, 1998 quota being distributed in this month at the earliest.

45. The petitioner is disposed of accordingly in the above terms with no order as to costs.

46. Issuance of certified copy expedited.

47. Petition disposed of accordingly.