
(2014) 07 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : CWP No. 4112 of 2014-B

Minil Laboratories Pvt. Ltd.

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

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

Citation : (2014) 07 SHI CK 0064

Hon'ble Judges : Mansoor Ahmad Mir, C.J.;Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Atul Jhingan and Shilpa Sood, Advocate for the Appellant; Shrawan Dogra, Advocate General, with Romesh Verma and V.S. Chauhan, Additional Advocate Generals, J.K. Verma, Deputy Advocate General and Tara Singh Chauhan, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.—Petitioner has called in question the tender notice (Annexure P-2), issued by respondent No. 2, whereby tenders have been invited for supply of Allopathic Veterinary Medicines, Veterinary Feed Supplements, Chemicals, Cotton & Bandages and Veterinary Ayurvedic Medicines from the manufacturers having annual turnover of about Rs. 45 crores for the preceding three years. The petitioner is aggrieved by the said condition.

2. It is averred in the writ petition that respondent No. 2 has imposed this condition just to oust the petitioner from the competition. Further, that the petitioner has successfully supplied the Allopathic medicines to the Animal Husbandry Department of the State of Himachal Pradesh for the last 25 years without any complaint. The cumulative annual turnover of the petitioner for the last three years is stated to be Rs. 20 crores and the annual turnover of the financial year ending on 31st March, 2014 is stated to be about Rs. 10 crores. It is contended that the petitioner has successfully complied with the contracts allotted to it, but was shocked to see the tender document, which was

downloaded by it from the website, while noticing that one of the eligibility condition in the tender document is that the tenderer must be having turnover to the tune of Rs. 45 crores for the last three years. It is apt to reproduce condition No. vii of the Eligibility Criteria For Participation In Tender as under:

6. Eligibility Criteria For Participation In Tender:

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vii. The cumulative sales turnover of the tenderers for Veterinary Medicines/Feed Supplements/Chemicals, Cotton and Bandages during the last three consecutive financial years duly certified by the Chartered Accountant and verified by the Excise and Taxation Department of the State in original alongwith the Notarized copies of VAT/ST returns should be as under:

3. The petitioner has averred that it has been imposed just to oust the petitioner from competition. It is contented that the action of respondent No. 2 is outcome of mala fides and is arbitrary one.

4. The petitioner has prayed for the following reliefs:

a) Direct the respondent No. 2 to accept and consider the tender of the petitioner without enforcing the turnover condition in the tender document, Annexure P-2, namely w.r.t. the minimum cumulative turnover of Rs. 45 crores for last three consecutive financial years as compared to no criteria of earlier years; and in case the petitioner is the successful bidder, then allot the tender to the petitioner;

b) Direct the respondent No. 2 to call fresh tenders by incorporating a just and reasonable condition w.r.t. annual turnover as per the CVC Guidelines;

c) Quash the condition No. vii contained in the tender document, namely, the condition w.r.t. minimum cumulative turnover of Rs. 45 crores for last three consecutive financial years.

d) Direct the production of all the relevant records;

e) Issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case; and allow the costs of the petition.

5. Respondents have filed reply and have resisted the writ petition on the grounds taken in the memo of objections.

6. Respondent No. 1 has specifically averred that the petitioner-company has suppressed and deliberately concealed the material facts from the Court as it has been banned/debarred from taking participation in the tender process of purchase of Veterinary Medicines by Director Animal Husbandry, Uttar Pradesh, in terms of Annexure R-1, which is in Hindi and English translation of which is at Annexure RT-1, in terms of which the petitioner is not competent to participate in any tender/business.

7. Further, stated that it is the competent authority, which has to frame the tender documents and prescribe the norms and conditions of the eligibility criteria and the petitioner has no right to question the same; fixing of the turnover is just to get a best quality and to ensure that the competent and eligible persons compete in the tender process.

8. Respondent No. 2 has also stated that the petitioner stands blacklisted, rather, banned/debarred from participating in tender process and has placed on record the document/communication dated 13th November, 2013, whereby the petitioner has been banned/debarred from participating in the tender process of purchase of Veterinary Medicines by Director Animal Husbandry, Uttar Pradesh. It is also averred that respondent No. 2 has issued the tender document and fixed the criteria in order to achieve the goal of providing good quality of medicines and avoid to have unsafe, substandard, ineffective and spurious/false-labeled/falsified/counterfeit medical products; further it is just to have good drug contracts and to make the competition healthy. Further, it is contended that it is the domain of the State/respondents/Executive to fix the tender eligibility criteria and cannot be questioned by the petitioner or any other person on flimsy grounds.

9. The petitioner has filed rejoinder, but has not been able to explain why it has not disclosed the factum of passing the order by the Director, Animal Husbandry, Uttar Pradesh, dated 13th November, 2013 (Annexure R-1/Annexure R-2/1).

10. Learned counsel for the petitioner strenuously argued that the petitioner was not blacklisted, was not supposed to disclose the said fact in the writ petition.

11. Learned counsel for the petitioner has placed reliance on the judgments rendered in P.C. Anand Vs. State of Himachal Pradesh and Others, ; Union of India and others versus Dinesh Engineering Corporation and another, reported in (2001) 8 Supreme Court Cases 491 and Natural Resources Allocation, In Re: Special Reference No. 1 of 2012, , in support of its case.

12. Learned Advocate General and learned counsel appearing on behalf of respondent No. 2 have cited catena of judgments of the Apex Court and of this Court and have also relied upon the latest judgments made by this Court in CWP No. 9337 of 2013-D, titled as Shri Ashok Thakur versus State of Himachal Pradesh & others, decided on 6th May, 2014 and CWP No. 765 of 2014, titled as Namit Gupta versus State of H.P. and others, decided on 27th March, 2014.

13. The arguments of the learned counsel for the petitioner are devoid of any force for the reason that the eligibility clause is the basic foundation for participating in the tender process and fixing the eligibility criteria is the domain of respondent No. 2.

14. Petitioner has been debarred in terms of Annexures R-1 and Annexure R-2/1. Learned counsel for the petitioner stated that it has not been blacklisted, but has been prohibited. While going through the said order made by the Director, Animal Husbandry, Uttar Pradesh, it is recorded in Hindi language-" " Meaning of the word " " has been given in the Consolidated Administrative Glossary Hindi-English, as "1. restricted, 2. banned, prohibited".

15. The word "banned" has been described in the Deluxe Edition of the Webster's Encyclopedic Unabridged Dictionary of the English Language at page 162 as under:

ban, v., banned, ban-ning, n.-1. to prohibit, forbid, or bar; interdict: to ban nuclear weapons; The dictator banned all newspapers and books that criticized his regime. 2. Archaic. a. to pronounce, an ecclesiastical curse upon. b. to curse, execrate-n. 3. the act of prohibiting by law; interdiction. 4. informal denunciation or prohibition, as by public opinion: society's ban on racial discrimination....

16. The word "debar" has been described at page 514 of the same dictionary as under:

debar-v.t.-barred, bar-ring. 1. to shut out or exclude from a place or condition: to debar all those who are not members. 2. to hinder or prevent; prohibit: to debar an action.

17. The word "prohibit" has been described at page 1546 of the same dictionary as under:

prohibit v.t. 1. to forbid (an action, activity, etc.) by authority or law: Smoking is prohibited here. 2. to forbid the action of (a person). 3. to prevent; hinder.

18. Thus, one comes to an inescapable conclusion that the petitioner has been prohibited/forbidden. Thus, whether it has been blacklisted or banned or debarred, in all the cases, it is prohibited from participating in tender process relating to the said drugs. Thus, it was mandatory on the part of the petitioner to have disclosed the said fact, which it has not done.

19. The person, who seeks equity, must do equity and claiming writ relief is an equitable relief; withholding facts and circumstances amounts to concealment of facts; cannot claim equity and no relief can be granted to him.

20. Our this view is fortified by the judgment rendered by the Apex Court in a case titled as S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, . It is apt to reproduce relevant portion of para 13 of the judgment herein:

13. As a general rule, suppression of a material fact by a litigant disqualifies such

litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken (R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington, (1917) 1 KB 486). Thus when the liability to income tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact, the suppression of which disentitled her to the relief claimed.

(Emphasis added)

21. In Bhaskar Laxman Jadhav and Others Vs. Karamveer Kakasaheb Wagh Education Society and Others, , the Apex Court has held that it is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. It is apt to reproduce paras 46 and 49 of the judgment herein:

46. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2nd May, 2003 in the order dated 24th July, 2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2nd May, 2003 was passed or that it has attained finality.

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49. A mere reference to the order dated 2nd May, 2003, en passant, in the order dated 24th July, 2006 does not serve the requirement of disclosure. It is not for the Court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come up-front and clean with all material facts and then, on the basis of the submissions made by learned counsel, leave it to the Court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof.

(Emphasis added)

22. Now, coming to the merits of the case, admittedly, the respondents have kept one of the eligibility criteria in the tender that the tenderer must have turnover to the tune of Rs. 45 crores for the last three years, is the domain of the respondents, cannot be the subject matter of the writ petition and the judicial review is not warranted unless arbitrariness or mala fide is established.

23. It is apt to record herein that the petitioner has not arrayed any official in

personal capacity, though in paras 12 and 13, it is alleged that fixation of such turnover is just to exclude it.

24. We have gone through the tender document, Annexure P-2, whereby it is prescribed that only those tenderers/manufacturers can participate/compete, who were having annual turnover to the tune of Rs. 45 crores for the last three consecutive financial years. The said tender document has been issued for supply of Allopathic Veterinary medicines and in order to have good quality of drugs, the contractors/persons, who are not having the said turnover, are excluded from the competition.

25. The Apex Court in the first case reported in *Tata Cellular Vs. Union of India*, , has held that in tender matters, the judicial review is not permissible unless there is arbitrariness or mala fide writ large on the face of it and has also laid down guidelines. It is apt to reproduce para 94 of the judgment herein:

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 *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 administrative and lead to increased and unbudgeted expenditures.

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26. The Apex Court in a series of cases from the year 1994 till 2005 has also discussed the ambit of the powers of the writ Court, the writ jurisdiction and in which circumstances the tender documents, tender process and the decision-making process can be questioned. It is apt to reproduce paras 38 to 40, 43 and 44 of the judgment rendered by the Apex Court in *Association of Registration*

Plates Vs. Union of India (UOI) and Others, , herein:

38. In the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring supply of high security registration plates, greater latitude is required to be conceded to the State authorities. Unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, tender conditions are unassailable. On intensive examination of tender conditions, we do not find that they violate the equality clause under Article 14 or encroach on fundamental rights of the class of intending tenderers under Article 19 of the Constitution. On the basis of the submissions made on behalf of the Union and State authorities and the justification shown for the terms of the impugned tender conditions, we do not find that the clauses requiring experience in the field of supplying registration plates in foreign countries and the quantum of business turnover are intended only to keep indigenous manufacturers out of the field. It is explained that on the date of formulation of scheme in Rule 50 and issuance of guidelines thereunder by the Central Government, there were not many indigenous manufacturers in India with technical and financial capability to undertake the job of supply of such high dimension, on a long-term basis and in a manner to ensure safety and security which is the prime object to be achieved by the introduction of new sophisticated registration plates.

39. The notice inviting tender is open to response by all and even if one single manufacturer is ultimately selected for a region or State, it cannot be said that the State has created monopoly of business in favour of a private party. Rule 50 permits the RTOs concerned themselves to implement the policy or to get it implemented through a selected approved manufacturer.

40. Selecting one manufacturer through a process of open competition is not creation of any monopoly, as contended, in violation of Article 19(1)(g) of the Constitution read with clause (6) of the said article. As is sought to be pointed out, the implementation involves large network of operations of highly sophisticated materials. The manufacturer has to have embossing stations within the premises of the RTO. He has to maintain the data of each plate which he would be getting from his main unit. It has to be cross-checked by the RTO data. There has to be a server in the RTO's office which is linked with all RTOs in each State and thereon linked to the whole nation. Maintenance of the record by one and supervision over its activity would be simpler for the State if there is one manufacturer instead of multi-manufacturers as suppliers. The actual operation of the scheme through the RTOs in their premises would get complicated and confused if multi-manufacturers are involved. That would also seriously impair the high security concept in affixation of new plates on the vehicles. If there is a single manufacturer he can be forced to go and serve rural areas with thin vehicular population and less volume of business. Multi-manufacturers might concentrate only on urban areas with higher vehicular population.

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43. Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim a fundamental right to carry on business with the Government. All that he can claim is that in competing for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest. Undisputedly, the legal position which has been firmly established from various decisions of this Court, cited at the Bar (*supra*) is that government contracts are highly valuable assets and the court should be prepared to enforce standards of fairness on the Government in its dealings with tenderers and contractors.

44. The grievance that the terms of notice inviting tenders in the present case virtually create a monopoly in favour of parties having foreign collaborations, is without substance. Selection of a competent contractor for assigning job of supply of a sophisticated article through an open-tender procedure, is not an act of creating monopoly, as is sought to be suggested on behalf of the petitioners. What has been argued is that the terms of the notices inviting tenders deliberately exclude domestic manufacturers and new entrepreneurs in the field. In the absence of any indication from the record that the terms and conditions were tailor-made to promote parties with foreign collaborations and to exclude indigenous manufacturers, judicial interference is uncalled for.

27. The Apex Court in *Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others*, , has laid down some principles and has held that it is the prerogative of the department to fix any criterion and that cannot be made subject matter of a writ petition unless it is arbitrary or mala fide, which too appears on the face of it. It is apt to reproduce paras 23 and 35 of the judgment herein:

23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim fundamental right to carry on business with the Government.

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35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced

persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide.

28. In this judgment, the Apex Court, in paras 11 to 15, has also discussed and made reference to all the judgments of the Apex Court on the issue. In these judgments, the same ratio has been laid down and after taking note of all these judgments, the Apex Court has culled out the principles, reference of which has been made in para 23 (supra).

29. The Apex Court, in another case titled as Tejas Constructions and Infrastructure Pvt. Ltd. Vs. Municipal Council, Sendhwa and Another, , has discussed what is judicial review, how it is to be exercised in economic cases and other cases related to business. It is apt to reproduce paras 27 and 31 of the judgment herein:

27. That leaves us with the second ground on which the appellant questioned the eligibility of Respondent 2 to offer a bid, namely, the non-execution by Respondent 2 of a single integrated water supply scheme for the requisite value. The appellant's case, in this connection, is twofold. Firstly, it is contended that the works executed by Respondent 2 for Vyare and Songadh were distinct and different works which did not constitute a single integrated water supply scheme hence could not be pressed into service to show satisfaction of the condition of eligibility stipulated under the tender notice. The alternative submission made by the learned counsel appearing for the appellant in connection with this ground is that the work executed by Respondent 2 for Upleta also did not satisfy the requirement of the tender notice inasmuch as the said work did not involve the construction of intake wells, which was an essential item of work for any integrated water supply scheme.

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31. It is also noteworthy that in the matter of evaluation of the bids and determination of the eligibility of the bidders the Municipal Council had the advantage of the aid and advice of an empanelled consultant, a technical hand, who could well appreciate the significance of the tender condition regarding the bidder executing the single integrated water supply scheme and fulfilling that condition of tender by reference to the work undertaken by them. We, therefore, see no reason to interfere with the view taken by the High Court of the allotment of work made in favour of Respondent 2.

30. Applying these tests to the instant case, as discussed hereinabove, we are of the considered view that it is the prerogative and domain of respondent No. 2 to

decide how to have a good supply, that too, of good quality and not from a person, who is not competent, is debarred, banned or prohibited from the competition.

31. The Apex Court in a latest judgment in the case titled as Pathan Mohammed Suleman Rehmatkhan Vs. State of Gujarat and Others, , has also laid down the principles. It is apt to reproduce paras 11 and 14 of the judgment herein:

11. We have extensively referred to these principles in Arun Kumar Agrawal Vs. Union of India (UOI) and Others, , where we have held as follows: (SCC p. 17, para 41)

41... This Court sitting in the jurisdiction cannot sit in judgment over the commercial or business decision taken by parties to the agreement, after evaluating and assessing its monetary and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or taken for extraneous considerations or improper motives. States and its instrumentalities can enter into various contracts which may involve complex economic factors. State or the State undertaking being a party to a contract, have to make various decisions which they deem just and proper. There is always an element of risk in such decisions, ultimately it may turn out to be correct decision or a wrong one. But if the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be wrong, that itself is not a ground to hold that the decision was mala fide or taken with ulterior motives.

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14. We are of the view that these are purely policy decisions taken by the State Government and, while so, it has examined the benefits the project would bring into the State and to the people of the State. It is well settled that non-floating of tenders or absence of public auction or invitation alone is not a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable or amounting to mala fide or improper exercise of power. The courts have always held that it is open to the State and the authorities to take economic and management decisions depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest. We are of the view that is what has been done in the instant case and the High Court has rightly held so. We, therefore, find no reason to entertain this SLP and the same is dismissed.

32. The Apex Court in Siemens Aktiengesellschaft and S. Ltd. Vs. DMRC Ltd. and Others, , has taken note of all the judgments right from the year 1949 and has culled out the principles. It is apt to reproduce paras 17, 18 and 22 of the judgment herein:

17. Principles governing judicial review of administrative decisions are now fairly well-settled by a long line of decisions rendered by this Court, since the decision

of this Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, which is one of the earliest cases in which this Court judicially reviewed the process of allotment of contracts by an instrumentality of the State and declared that such process was amenable to judicial review. Several subsequent decisions followed and applied the law to varied situations but among the latter decisions one that reviewed the law on the subject comprehensively was delivered by this Court in *Tata Cellular Vs. Union of India*, where this Court once again reiterated that judicial review would apply even to exercise of contractual powers by the Government and Government instrumentalities in order to prevent arbitrariness or favouritism. Having said that this Court noted the inherent limitations in the exercise of that power and declared that the State was free to protect its interest as the guardian of its finances. This Court held that there could be no infringement of Article 14 if the Government tried to get the best person or the best quotation for the right to choose cannot be considered to be an arbitrary power unless the power is exercised for any collateral purpose. The scope of judicial review, observed this Court, was confined to the following three distinct aspects:

- (i) Whether there was any illegality in the decision which would imply whether the decision making authority has understood correctly the law that regulates his decision making power and whether it has given effect to it;
- (ii) Whether there was any irrationality in the decision taken by the authority implying thereby whether the decision is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at the same; and
- (iii) whether there was any procedural impropriety committed by the decision making authority while arriving at the decision.

18. The principles governing judicial review were then formulated in the following words:

- (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. However, the decision must not only be tested by the application of 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.

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

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22. There is no gainsaying that in any challenge to the award of contract before the High Court and so also before this Court what is to be examined is the legality and regularity of the process leading to award of contract. What the Court has to constantly keep in mind is that it does not sit in appeal over the soundness of the decision. The Court can only examine whether the decision making process was fair, reasonable and transparent. In cases involving award of contracts, the Court ought to exercise judicial restraint where the decision is bona fide with no perceptible injury to public interest.

33. This Court in CWP No. 9337 of 2013-D, titled as Shri Ashok Thakur versus State of Himachal Pradesh & others, decided on 6th May, 2014 and CWP No. 765 of 2014, titled as Namit Gupta versus State of H.P. and others, decided on 27th March, 2014, has laid down the same principle.

34. Keeping in view the ratio laid down by the Apex Court and by this Court, as discussed hereinabove, we are of the considered view that the respondents have, in their wisdom, thought it proper to fix the turnover in terms of the tender notice in order to have a better, which may conclude in the best, keeping in view the purpose of supplies aimed at.

35. Having said so, the writ petition merits to be dismissed and is dismissed as such alongwith all pending applications. The interim directions granted on 17th June, 2014, shall stand vacated.