(1997) 09 MP CK 0001

In the Madhya Pradesh High Court

Case No : W. P. No. 7 of 1997 (J)

M/s. Poddar Industrial Corporation APPELLANT

Vs

State of M. P. and Another RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226, 227

Citation : (1998) 2 MPJR 119

Hon'ble Judges : A.K. Mathur, C.J;Dipak Misra, J

Bench : Division Bench

Advocate : J. P. Sanghi, for the Appellant; S. Menon, G. A. for 1st respdt for Mr. V.K Tankha, Advocate IInd respdt Mr. Amit Verma, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner have assailed the tender notice dated 18.12.96 (Ann. P. 10) inviting tenders from the registered Small Scale Industrial Units of Madhya Pradesh for supply of certain items required by various State Government Departments as infringing Article 14 of the Constitution and prayed for quashment of the said tender notice with a further prayer for issue of a writ of mandamus commanding the respondents to issue a fresh notice inviting tenders from all manufacturers in the country including the petitioners. The petitioners have also challenged the validity of Stores Purchase Rules which have the effect of directing the respondent No. 2 to invite tenders ''from the registered Small Scale Industrial Units of Madhya Pradesh on the ground that the said Rules do not pass the test of equality clause and also violate the constitutional discipline enshrined under Article 19 (1) (g) of the Constitution.

Sans unnecessary details the essential facts which need narration for disposal of the present writ petition are that the petition No. 1 is a partnership firm duly registered under the Partnership Act, and the petitioner No. 2 is the Managing Partner of the said Firm which is situate at Patna in the State of Bihar. The respondent No. 2, Laghu Udyog Nigam Limited (in short ''MPLUNL'') is an undertaking of the Madhya Pradesh Government and it invites tenders for purchase of various materials required for Government Departments. One such tender issued in the year 1993 has been brought on record as Annexure P-3. It is stated in the petition that the petitioner No. 1 is a small Scale Industry, duly registered with the Director of Industries Government of Bihar and it is also registered with National Industries Corporation Limited. The petitioner unit commenced its production on 26.3.82. It is averred that respondent No. 2 had earlier issued order for supply of PVC Pipes to M/s Ashirwad Enterprizes, Poddar Tiles Exhibition Road, Patna which is a sister concern of the petitioners and these orders were placed in the months of October and November, 1996. It is pleaded that in the month of December, 1996 the respondent No. 2 has issued a tender notice under Annexure P-10, wherein, it has been mentioned that the tenders are invited from registered Small Scale Industrial Units of Madhya Pradesh. The grievance of the petitioners is that by confining the tenders to the Small Scale Industrial Units of M. P.; there is imposition of an unreasonable restriction as the petitioners have been kept out of consideration and such an action of the respondent No. 2 violates Articles 14 and 19(1) (g) of the Constitution of India. With these averments, reliefs have been sought for issuance of appropriate writs as has been indicated before.

A return has been filed by the State Government sworn to by the Director of Industries, Bhopal. It is asserted in the counter affidavit that the State has the authority to control the trade and commerce, and the production, supply and distribution of goods which are manufactured by the Small Scale Industries which required special treatment. It is stated that the Small Scale Industries are protected industries as per the policy of the Central Government which has been adopted by all the States and various measures like providing grass-root facilities, infrastructures and finance and marketing facilities to these sectors, are taken up. Keeping the said object in view, M. P. Laghu Udyo Nigam has been established and the said Nigam is required to protect and promote the interest of the Small Scale Industries and to enable them to develop and improve their marketing techniques. The Corporation is also required to ensure a constant market for the Small Scale Industries. The memorandum of association of MPLUNL has been brought on record. It is asserted that apart from the establishment of the Corporation, the State Government has also brought into effect M. P. Stores Purchases Rules, wherein it has been provided that wherever, any purchase is required to be made for public service it should be done in such a manner that it can promote industrial growth within the State. It has been provided therein that in case the purchase has to be made for public service, first preference should be given to the Small Scale Industries, second preference to medium and large scale industries within the State and third to the industries all over the country. It has been put forth in the counter affidavit that small scale industries are also protected, and have been reserved and categorized by the Central Government under the provisions of Industrial (Development and Regulation) Act as the industries needing special attention which are required to be given exemption, concession and various special facilities for nursing and promoting. A list comprising of 1058 Small Scale Industries have been only notified by the Central Government, and ''asbestos pipes and fitting'' finds place in item No. 600 of the said list. In pursuance of Industrial Policy of the Central Government all the State have framed their Industrial Policies in conformity with the guidelines of the Central Government and special preference through Corporation of the State are being given to the Certain earmarked industries. The respondent No. 1 has annexed the industrial policies of Orissa, Rajasthan and Arunachal Pradesh. The allegation of complete exclusion of the petitioners is controverted by the respondent 1 contending, inter alia, that preferential treatment is given to the Small Scale Industries of M. P. keeping the guidelines in view, and in fact in the previous year asbestos pipes and fitting were purchased from the Industrial concerns situate outside the State as the same was not available with the Small Scale sector in the State of M. P. Respondent No. 1 has also highlighted that the Union of India by reviewing the Industrial Policy in respect of Small Scale Industries has also recommended the purchase by the State Government from Small Scale Industrial Units which are to be treated a ''approved sources''. The 14th report of the estimate committee of Ministry of Industry, Department of Industrial Development, Govt. of India has been brought on record under Annexure - R-V. It is further stated that the Small Scale industries have been set up in the backward areas and for the development of such industries special incentives are given. As these Industries form a separate class special benefits are conferred, so that they can rise and develop themselves. Other averments made in the writ petition have been traversed. It is also put forth that the policy adopted by the State Government is neither discriminatory nor does it offend the provisions enshrined under Articles 14 and 19 (1) (g) of the Constitution of India.

The Respondent No. 2, Madhya Pradesh Laghu Udyog Nigam has filed a reply to the interim relief sought for by the petitioners and Mr. V. K. Tankha, learned counsel for the Corporation has prayed for acceptance of the same as the return of the Corporation. In the said reply, Corporation has taken the stand that the main object of the Nigam is to assist, protect and promote and interest of the Small Scale Industries of the State and to render assistance in the manufacture and marketing. There is reference to Rule 14 of the said Rules which stipulates that products specified in Schedule 8, are to be purchased from the Small Scale Industries of M. P. through MPLUNL. It is stated in the return that in the year 1992-93, All India Tender for supply of pressure pipes were invited but the same had to be dropped as the price quoted were abnormally high. It is admitted that in the year 1993 there was an All India Tender which is a solitary instance. Justification has been made for confining the call of tender from Small Scale Industries Units situate in M. P. giving emphasis on the Industrial Policy and the

Rules governing the field.

An application for intervention on behalf of some Small Scale Industries have been filed. They have highlighted the policy of the State Government and the role of the Corporation, and pleaded justification for the action of the respondent No. 2.

Mr. J. P. Sanghi, learned counsel for the petitioners has contended that the Tender Notice issued under Annexure P-10 is discriminatory inasmuch as it discriminates the petitioners who have Small Scale Industries outside the State of M. P. It is his further submission that monopoly is created in favour of the manufactures of M. P. and by confining it to the Small Scale Industries in M. P., the fundamental right guaranteed under Article 19 (1) (g) of the Constitution is absolutely infringed. It is also contended by the learned counsel that by imposition of such restrictions free flow of trade and commerce is also jeopardized. Thus, he submission of the learned counsel is that the notification calling for tenders suffers from constitutional vice and, therefore, deserves to the quashed.

Mrs. Shobha Menon, learned Government Advocate refuting the submission of the learned counsel for the petitioners, has canvassed that there is no discrimination and the equality clause enshrined under Article 14 of the Constitution is not offended by issuance of tender notice of the present nature. It is her submission that the Small Scale Industries registered with the Director of Industries in the State of M. P. stand in a different footing altogether, and that apart under the Industries Policy the State is under obligation to assist and promote them. It is also canvassed by her that preferential treatment has been given as per Rules and, therefore, the pleas taken by the petitioners in regard to discrimination and creation of monopoly are mis conceived. In regard to the contention affecting the right under Article 19 (1) (g) of the Constitution, it is proponed by her that the petitioner'' ''right to trade is no where prohibited in the State of M. P. but source of purchase of the Government Departments and all public offices is confined, in respect of certain items, to the Small Scale Industries, as the Policy decision is to give them protection and assistance. Moreover, if the quality is not met with by the Small Scale Industries the tender is thrown open to all the participants in all over India but initially preferential treatment is maintained as per Rule 14 of the Rules, hence notification calling for tender is not violative of the constitutional conscience.

Mr. Tankha, learned counsel for the respondent No. 2, Corporation has highlighted that similar policies have been introduced in all the States and the policies have been formulated keeping in view the Policy of the Central Government and the role of State Government in shaping the Small Scale Industrial Units. It is his further submission that the Corporation has the duty to see their progress by creating an acceptable market for them. Submission of the learned counsel is that Rules having been framed with the intention to offer room to the Small Scale Industrial Units for their progress and to augment the industrial growth in backward areas of the State, they meet the tests enshrined under Article 14 of the Constitution.

Mr. Amit Verma, learned counsel for the intervener has supported the stand taken by the State Government and the Corporation.

It is essential to refer to the purpose and object behind the formation of MPLUNL, a company registered under the provisions of the Companies Act, 1956. The object, relevant for our present purpose, are reproduced below :-

1. to aid, counsel, assist, finance and protect and promote the interests of Small Industries in the State, whether owned or run by Government, statutory body, company, firm of individuals, and to provide them with capital, credit means resources, and technical and managerial assistance for the prosecution of their work and business, to enable them to develop and improve their methods of manufacture, management and marketing and their technique of production.

to grant or to guarantee or recommend the grant of loans to small industries, to which such sub-contracts are given or orders are issued, or aforesaid, in order to enable them in carrying out the contract sub-contracts or orders, to finance plant construction, conversion or expansion, including the acquisition of land or to finance the acquisition of equipment, facilities, machinery supplies or materials, or to supply such concerns with working capital to be used in the manufacture of articles equipment supplies or material under contract to Government or to this Company and to provide them with such financial, technical, managerial and other assistance as may be deemed necessary for the purpose of enabling them to execute and carry out the contracts or sub-contracts and orders satisfactorily and to organize the production and manufacture for meeting such contract and sub-contracts and orders adequately and according to the specifications, and the ensure satisfactory production by all necessary instruction assistance, inspection and supervision.

to effect co-ordination between large industries and small industries by suitable methods, similar to those as aforesaid enabling small industries to manufacture satisfactorily such parts accessories, ancillaries and components and other articles as may be required by large industries.

to apply for tender, purchase or otherwise acquire contracts and concession for or in relation to the construction, execution, carrying out equipment, improvement management, administration or control of works and conveniences and to undertake, execute, carry out, dispose of or otherwise turn to account the same.

The M. P. Stores Purchase Rules have been framed for providing instruction for the guidance of the officers who are required to make purchases. The Preamble to the Rules states the purpose behind the policy and the essence of the Rules. The Preamble to the Rule reads as follows :-

The policy of State Government is to make their purchases of stores for the public service in such a way as to encourage the development of the industries of this State in particular and the country in general to the utmost possible extent consistent with economy and efficiency, and the following rules, which are applicable to the purchase of stores (other than Printing and Stationary Stores) are prescribed for Madhya Pradesh by the State Government in accordance with the policy.

It is also noticed that in order to give affect to the policy of the Government, State of M. P. in Commerce and Industry Department Notification No. 7521-4300-XI-B, dated 4.7.1986 stipulated the order of preference which are as follows :-

First, to articles which are produced by Small Scale Industries of Madhya Pradesh and registered as such with the Director of Industries provided the quality is sufficiently good;

Secondly, to articles which are produced by Medium and large Industries of Madhya Pradesh provided the price and quality is comparable with the articles produced out side the State;

Thirdly, to articles which are produced in India in the form of raw materials, or are manufactured in India from raw materials produced in India, provided that the qualify is sufficiently good for the purpose;

Fourthly, to articles wholly or partially manufactured in India, from imported materials provided that the quality is sufficiently good for the purpose;

Fifthly, to articles of foreign manufacture held in stock in India provided that they are of suitable type and requisite quality; and Sixthly, to articles manufactured abroad which need to be specially imported.

Competent authority shall give preference to articles manufactures by the Small Scale Industries of M. P. registered as such for the concerned articles with the Director of Industries.

To ensure that the qualify of the article is sufficiently good it is advised the preference should be given to ISI certified products by way of price preference and for avoidance of pre-dispatch inspection.

It is worth mentioning that a notification was issued by the Commerce and Industry Department vide Notification No. F.5/7/78/B/XI, dt. 29.4.1978 indicating the area and nature of preference. The said guidelines are as under:

1. The rules express a definite preference for articles which are produced by Small Scale Industries of M.P.

The difference in the character of the preference which may be given should be carefully noted. In the case of first four categories mentioned in the preamble the condition is that the quality is sufficiently good for the purpose, and for the fifth category that the articles are of suitable type and requisite quality. This means that the articles coming under the first four categories should be accepted in that order unless it is considered that the quality is definitely not up to the standard required even though articles manufactured elsewhere and imported articles may be considered to be of better quality.

The other kind of preference referred to in the rules is the reservation for certain articles produced or manufactured by the Small Scale Industries, to be purchased only through the M. P. Laghu Udyog Nigam Ltd.

The rules which are relevant for the present purpose are Rule 3 and 14. They read as under :-

Rule 3. Subject to rule 14, articles which are produced or manufactured in Madhya Pradesh should be purchased in preference to articles produced or manufactured in other parts of India provided that the qualify is sufficiently good and the price reasonable.

Rule 14. Articles included in Annexure ''B'' which is subject to revision from time to time produced or manufactured by Small Scale Industries of M. P. registered as such with Director of Industries for concerned articles shall be purchased through the M. P. Laghu Udyog Nigam, Ltd. only at the rates fixed by them. No tenders for purchase of such articles shall be called by the competent authority separately.

Further guidance has been given under Clauses 50 and 51 which read as under:

50. The intention of rule 14 is that items, reserved for purchase, from the Small Scale Industries shall be purchased from these industries only. Whenever such items are required to be purchased an indent should be placed with the Laghu Udyog Nigam without inviting tenders and reasonable time should be given to them for making the supply. Only if the M. P. Laghu Udyog Nigam certify their inability to make the supply the purchase should be made from other sources in accordance with these rules.

The purchasing authority while sending bills to Treasury shall record a certificate on it to the effect that the provision of Rule 14 have been fully complied with.

On a plain reading of the aforesaid provisions it is abundantly clear that the State Govt. has created the Nigam to enhance industrial growth in the State more particularly in backward areas and the Nigam is expected to render assistance to the Small Scale Industrial Units not only in setting up the industries but also creating a market for them. Simultaneously emphasis is also laid on the maintenance of the qualify. The reading of Rule 14 with Clause 50 and the guidelines incorporated under Clause 3 of the notification dated 29.4.78, it is luminously clear that certain articles mentioned in Annexure - 8 which are produced and manufactured by Small Scale Industrial Units of M. P. registered as such with the Director of Industries shall be purchased through the Nigam. The aforesaid Rule came for consideration by this Court in M. P. No. 366/90 (Shiv Shankar v. State of M.P. & others) disposed of on 30th March, 1990 wherein the Court while referring to the Rule 14 held that it cannot be debated that the Rules shall be attracted only in respect of the articles listed in Annexure - B which produced or manufactured by Small Scale Industrial Units of Madhya Pradesh which are registered with the Director of Industries for concerned articles. This Court further held that if MPLUNL is not in a position to supply the articles or not in a position to maintain the quality or its price is excessive and unreasonable, the Government can always purchase from other manufactures. To arrive at this conclusion the Court relied upon Clause 50 which explains the scope and ambit of Rule 14.

The question that falls for consideration in the case at hand is whether the policy and Rules offend the equality clause under Article 14 of the Constitution of India and affect the right to trade as contemplated under Article 19 (1) (g) of the Constitution. the object and purpose behind establishing the Nigam is to augment the industrial growth in backward areas and boost their marketability so that continued growth is sustained. The Rules, read as a whole, emphasize on quality, fair price, availability and alternative mode of purchase. When purchases are made for various Department public interest has to be given due weight age. To uplift the growth of Small Scale Industrial Units, the State cannot afford to purchase articles which do not meet the requirement of quality, or spend an exorbitant amount from the State Exchequer saddling the same on the tax prayer. That apart, the State is not expected to wait for an unreasonable period because the articles in question would be available by the Small Scale Industrial Units as that would affect the functioning of the concerned Departments which would eventually have immense impact on the public at large. We notice that the Rules and the policy are framed in such a manner that the public interest is absolutely protected.

Mr. Sanghi learned counsel for the petitioners has strenuously urged that the rules providing reservation of purchase of certain articles which are mentioned in Annexure - B only to be purchased form Small Scale Industrial Units of M. P. registered with the Director of Industries of M. P. are violative of the equality clause enshrined in Article 14 of the Constitution. The submission of the learned counsel is that the Small Scale Industrial Units which are registered in the State of Bihar are equal in all aspects with their counter parts in the State of M. P. and there is no justification not to entertain their offers and create a discrimination. As we have already indicated the State Government plays a pivotal role through MPLUNL in shaping, continuing and sustaining the Small Scale Industrial Units situated in M. P. and registered with Director of Industries. The State has framed the policy for growth of the Small Scale Industries Units engaged in the production and manufacture of Small items which have been catalogued in Annexure - B. A departmental patronage is shown to them so that they can thrive. Concept of equality has many facts and it does not prohibit to classify persons on certain acceptable grounds. In this context we may refer to the decision in the case of Mohanlal Hiralal. Itarsi Vs. Union of India and another (1) wherein it has been laid down as follows :-

The doctrine of equality before law does not command and it does not take away law making or rule making powers of classifying persons for legitimate purposes and therefore, the principle of equality does not mean that every law or every action of the Government has universal application for all persons who are not similarly situated in the same position or category. Therefore, the theory of equal protection, applying the principle of Article 14 of the Constitution, only means, the right to equal treatment to the persons placed in similar circumstances.

In the case in hand we notice that the State of M. P. through its industrial policy has established the Nigam and the Nigam has been given a specific role for the growth of Small Scale Industrial Units. Emphasis is also laid for establishing Industrial Units in backward areas of the State. By this policy the Small Scale Industries Units established in the State and registered with the Director of the Industries constitute a well defined class and the classification has reasonable nexus with the object sought to be achieved, object being industrial growth in backward areas. At this juncture we may refer to a Division Bench judgment of Allahabad High Court in M/s Artee Minerals, Faridabad., etc. Vs. State of Uttar Pradesh and others (2) wherein their Lordships held as follows :-

Learned counsel for the petitioner did not dispute the proposition that discrimination could be practiced on geographical ground but his argument was that even while practicing discrimination on geographical ground there has to be reasonable nexus with the object sought to be achieved. The obvious purpose of giving preferential treatment to State industry is to boost up the financial position of the State and this is a reasonable ground for practicing discrimination.

It is relevant to state here that to pass a test of reasonable classification, it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others which are left out and such differentia must have rational in relation to the object to be achieved. The uplifment of industrial growth at the small scale level in respect of units situate in the State of M. P. being the object and purpose the small industries units can constitute a different class altogether as the classification is based on a reasonable foundation and has laudable ration able behind it because of the factors which have been mentioned earlier as well as the geographical situation. In this regard we may refer to the decision rendered in the case of Budhan Choudhary and others Vs. State of Bihar (3) wherein their Lordships of the Apex Court held as follows :-

The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

Again the case of Goodwill Paint and Chemical Industry Vs. Union of India and another (1) it has been ruled as follows:-

The notification and its application to any area would depend on the necessity to declare the substance as poison on the particular facts and situation prevailing in that area and the need to regulate the possession and scale in that area. No question of discrimination can arise in such circumstances.

Recently in a Civil Appeal No. 4312/1997 (M. P. Oil Extraction & anr. Vs. State of Madhya Pradesh and Ors.) the Apex Court while scrutinizing the Industrial policy of State of M. P. giving special treatment to the industrial units situate in certain areas of the State held as under :-

It has been held by the High Court that the industrial units which were commissioned on the invitation of the State to undertake oil extraction operation on the assurance of supply of sal seeds by the State stand on a separate footing. Such decision of the High Court though challenged before this Court, has not been upset. The distinctive features between the industrial units set up at he instance of the State Government and old existing unit sare based on objective criteria. Therefore, the said two classes of industries are not similarly circumstanced. Article 14 prohibits discrimination amongst the equals but it should be appreciated that Article 14 has inbuilt flexibility and it also permits different treatment to unequals. It may also be noted here that Bastar Oil Mills is situated at Jagdalpur which is admittedly a backward and tribal area. The special treatment given to Bastar Oil Mill by assuring supply of 20,000 M.T. of sal seeds under the impugned agreement cannot be held to be per se illegal and arbitrary.

Classification on the basis of geographical situation has a rational basis and has been recognized by this Court.

The factual matrix of the present case can be tested on the anvil Of the principal laid down in the aforesaid decisions. Small Scale Industries Units situate in the State M.P. and registered with the Director of the Industries stand in a different footing because the State has a role in shaping of the industries. The said industries units are brought into existence by State patronage to augment the industrial growth and that is why they constitute a different class. M.P. Laghu Udyog Nigam a Government Undertaking has conferred a role on itself to supervise their establishment, sustenance and growth. The decision to confer a privilege on them by reserving to purchase certain items exclusively from them while safeguarding the public interest cannot offend the equality clause as evisaged under Article 14 of the Constitution. In the passing we may refer to a decision of the Bombay High Court rendered in the case of Maharashtra Asbestos Private Limited and another Vs. State of Maharashtra and others. (1), wherein their Lordship upheld the validity of reservation in favour of Small Scale Industrial Units in the State of Maharashtra vis-a-vis medium scale and large scale industries of that State. From the said decision we notice that the reservation was made in respect of Small Scale Industrial Units situate only in the State of Maharashtra. We may quote with profit:

The impugned tender condition itself mentions that reservation of purchase from the small scale industry is only up to the pipes of the size of 250 mm and for the pipes above 250 mm size, other units shall be considered. In other words, by virtue of this condition, small scale industrial units have been given an opportunity to give their tenders for purchase of pipes up to certain limited size, and all pipes beyond the said dimension are open to the entire market. It is true that the petitioners contend that they also manufacture pipes of similar dimensions and to that extent they would not be allowed to offer their tenders. But, it cannot be said that thereby a monopoly has been created of small scale industrial units. If no such protection is given obviously small scale industrial units will not be able to compete with medium or large scale units themselves will be eliminated from the field. Though, in theory all might get an equal chance, but, in reality having regard to the fact that we are in an unequal society the weal is bound to be eliminated by the stronger and in the present context, a monopoly would, then result in favour of the stronger viz., medium and large scale industrial units. This, is, precisely to remedy such a situation, the Government came with a policy which is rational and certainly cannot be described as irrelevant. It cannot be said that the appellants'' right to trade under Art. (19) (a) (g) of the Constitution has been infringed at all.

(Quoted from the Placitum)

The next submission of Mr. Sanghi is that by confining and reserving the purchase from the small scale industries of the State a monopoly is created in favour of those units and the same amounts to total prohibition which causes violence to the spirit of Article 19 (1) (g) of the Constitution. From the facts enumerated in the petition and the stand taken in the return, we find that no monopoly is created in favour of the units. It is also plain as day that any entrepreneur including the petitioners can trade in the State M. P. in respect of the said items. There is no prohibition for trading. Their right to trade in respect of similar articles is no way infringed. At this juncture we may refer to the decision rendered in the case of Brijbhushan and others Vs. State of Jammu and Kashmir and others (2) wherein the Apex Court While considering the State Government''s orders assuring uninterrupted supply of plea resin of specified quantity and at specified rate to respondent entrepreneur for feeding the factories to be set up by them for manufacturing resin and turpentine derivative in the State pursuant to industrialization programme in the State held that when only a part of the total'' annual production of also resin in the State having been assured to certain entrepreneurs with a view to encourage them to set up factories in the State that would not violate the constitutional provisions engrafted under Articles 14 and 19 (1) (g) of the Constitution. Tested by the aforesaid enunciation of law it can safely be concluded that in the present factual matrix Rules do not offend the constitutional ethos. We would also hasten to add that as per Rule 14 read with Clause 50 if MPLUNL is unable to supply, the Departments can purchase from open market following the due procedure as has been envisaged. On consideration of the totality of the circumstances we are of the firm view that the Rules do not come within the inhibition of Article 19 (1) (g). Mr. Sanghi, learned counsel has placed reliance on the case of The State of

Maharashtra Vs. Himmatbhai, Narbheram Rao and others, (1). On a fair reading of the aforesaid decision we are of the considered opinion that the same does not render any assistance to the petitioner.

The last submission of the learned counsel for the petitioners is that the present set of Rules cause impediment in the free flow of trade. The question of causing of any kind of obstruction in the free flow of trade as has been understood in the context of Article 301 of the Constitution does not arise in the present case. In this regard we may refer to the decision rendered in the case of Amrit Banaspati Co. Ltd.. Vs. Union of India and others (2), wherein their Lord ships of the Apex Court held as follows :-

Suffice it to say that it is only when the intra-State or inter-State movement of the persons or goods are impeded directly and immediately as distinct from creating some indirect or inconsequential impediment of the freedom envisaged by Article 301 can arise. Without anything more, a tax law, per se, may not impair the said freedom. At the same time, it should be stated that a fiscal measure is not outside the purview of Article 301 of the Constitution.

Tested on the anvil of the aforesaid principles, we are of the considered view that the submission does not merit consideration and is accordingly rejected.

Before parting with this case we would like to observe that economic backwardness most of the time creates social and educational backwardness. It gives rise to situation where citizens ostensibly drift away from life''s liveliness and progress. A welfare state has to provide a backbone to the undeveloped and under developed by giving them certain special treatment for their collective amelioration. In fact, absence of such incentive, would be a constitutional anathema.

In view of our preceding analysis the writ application in devoid of merit and the same deserves to be and is hereby dismissed. There will be, however, no order as to costs.