

(2019) 07 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : LPA No. 183 Of 2019, CM 4695 Of 2019

M/s Vitasta Vision And Others

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 21

Citation : (2019) 07 J&K CK 0042

Hon'ble Judges : Gita Mittal CJ; Rashid Ali Dar, J

Bench : Division Bench

Advocate : Q. R. Shamas, Afroza Akhter, S. N. Ratanpuri

Final Decision : Dismissed

Judgement

Gita Mittal, CJ

1. The appellants before us have assailed the judgment dated 17th of May, 2019, passed by the learned Single Judge, rejecting the challenge by way of OWP No.871/2017 to the invitation of the Doordarshan dated

6th of June, 2017, inviting programme proposals for Doordarshan Kashir (DD-Kashir) from producers/ production houses.

2. The appellant was aggrieved by the changes in the policy guidelines issued by the Directorate of Doordarshan in so far as the prescription of the eligibility criteria laid down by the respondents for the applicants of

Jammu and Kashmir are concerned. Contending that the same was arbitrary and unreasonable, hence violative of Article 14 of the Constitution of India and that the same defeated the very purpose of resumption of

the DD-Kashir channel of Doordarshan, the petitioner, accordingly, filed OWP No. 871/2017 seeking the following prayer by way of the writ petition:

It is accordingly prayed that by an appropriate writ direction of order

including a writ in the nature of certiorari impugned conditions appearing in Guidelines notified by Prasar Bharati (2017) and Programme

Proposals for telecast on Doordarshan Kashir be quashed and the respondents be directed to accept the proposals as may be submitted by the petitioners without insisting on compliance with impugned conditions.â??

3. This writ petition was rejected by the learned Single Judge by way of the judgment dated 17th of May, 2019, holding that the challenge laid by the writ petitioners to the condition laid down by the respondents in

the invitation proposal was way beyond the permissible scope of judicial review. Reliance was placed on the pronouncements of the Supreme Court reported at (1994) 6 SCC 651 : Tata Cellular v. Union of India

and (2004) 4 SCC 19 : Directorate of Education and others v. Educomp Datamatics Ltd., and others. The learned Single Judge has held that judicial restraint in challenges to administrative actions was required and

that court did not sit as a court of appeal to review the manner in which the decision was made. Emphasizing that public authorities must be left with freedom in administrative functioning while laying down policies

and entering into contracts, the learned Single Judge has rejected the challenge laid by the writ petitioners and dismissed the writ petition by the judgment dated 17th of May, 2019.

4. Aggrieved thereby, the present appeal has been filed contending that the learned Single Judge had the jurisdiction to examine the challenge laid by the writ petitioners and writ petitioners were entitled to a

favourable consideration in view of the grounds on which the guidelines laid by the respondents were challenged.

5. We have heard, Mr. Q. R. Shamas, learned counsel for the appellants, on this appeal. The appeal has been opposed by Mr S. N. Ratanpuri, learned counsel for the respondents, who has appeared on advance

notice.

6. The appellants before us have claimed to be the registered producers/ production houses/ artists having 30 to 40 years of experience in production and directing content for commissioning/broadcasting for

television mainly Doordarshan.

7. Before us, the Doordarshan Kashir (DD-Kashir) has been described as a regional subsidiary studio of Doordarshan India. It was launched in the year 2003 by Doordarshan studios in Srinagar, Jammu and Leh

and was telecasting entertainment serials, infotainment programmes, news and

current affairs, social and cultural programmes and film programmes. The channel was available to 96% population of the Valley and,

with effect from 15th August, 2000, it became twenty four hour channel. Special programmes in Pahari, Ladakhi, Dogri, Sheena, Balti and Pashtu languages/ dialects were also produced catering to different

sections of society in the State. Thus, programmes in different languages spoken in the State were being telecast by DD Kashmir. In the year 2009, the Doordarshan had notified guidelines prescribing that 75% of

the notified programmes were earmarked for the J&K residents and the rest 25% for open competition on merit.

8. On 6th June, 2017, the respondent Doordarshan invited programme proposals for DD-Kashir from producers/ production houses with the last date for submitting the proposals as 27th June, 2017. Guidelines for

commissioning of programmes for being telecast on DD Kashmir 2017 were notified which prescribed the eligibility criteria. The appellants have contended that the criteria prescribed under the guidelines features in

both the notification inviting proposals as well as the Guidelines was totally arbitrary, unreasonable and violative of Article 14 of the Constitution defeating the purpose of resumption of Kashir Channel on

Doordarshan.

9. For expediency, we extract hereafter the criteria laid down in the Guidelines by which the appellants have claimed to be aggrieved :

3.1 The Producer should be an Indian entity (individual, proprietorship, partnership, company, society, trust etc.) incorporated/ registered/ recognized, as the case may be, under the respective applicable laws and

should have been in existence and working in the area of producing programmes/ films for the last 3 financial years excluding the current financial year. In the case of companies, they must be registered under the

Companies Act, 1956/ Companies Act, 2013. In case of a partnership, it should be registered under the India Partnership Act, 1932.

3.2.1 50% of the notified programmes are earmarked for Jammu-Kashmir residents and 50% are for open competition on merit. The residents of the J&K, to avail this benefit must submit documentary evidence to

show that the principal shareholding of the company/ firm is in the hands of persons domiciled in the J&K. An attested copy of the State Subject Certificate should invariably be furnished in support of the domicile

status. In case of partnership firm, State Subject Certificate should be given for

each partner.

3.2.2 In case application is under Jammu-Kashmir domicile status category, the Producer must have produced, for any broadcaster(s), at least 25 hours of general entertainment programming (including feature

films) in any Indian language that has been telecast in the last three calendar years excluding the current year.

4.2 The Producer must have produced, for any broadcaster(s), at least 150 hours of general entertainment programming (including feature films) in any Indian language that has been telecast in the last three

calendar years excluding the current year.

4.3 The Producer should have in regard to TV/film production an annual turnover of a minimum of Rs. 1 crore in each of the last three financial years.

10. In Clause 8.5, the respondents had clearly set down the criteria based whereon each proposal would be assessed.

11. So far as the pronouncement of the learned Single Judge is concerned, the learned Single Judge has rejected the writ petition at the very threshold in view of the limitations on the writ court's power of

judicial review. The boundaries within which judicial review could be undertaken of a challenge to the criteria laid down by an authority while inviting offers and invitation to contract, are well settled by authoritative

judicial pronouncements. We propose to briefly consider these hereafter.

Scope of judicial review of the change in the conditions regarding experience, turn over etc.

12. The appellants had assailed the notice dated 6th June, 2017 and the Guidelines laid down in Clauses 3.1, 3.2.1, 3.2.2, 4.2 and 4.3 by way of the writ petition and the learned Single Judge has turned down the

challenge on the ground that writ court had no power of judicial review into the prescription of the eligibility conditions in the notice inviting tender. The rejection on this ground is also contended before us as being

contrary to law.

13. In so far as the present challenge is concerned, Mr Q. R. Shamas, learned counsel for the appellants has contended that the appellants are pressing the appeal for the purposes of challenge only to the

requirement mandated in Clause 3.2.2 to the effect that producer must have produced, for any broadcast, at least twenty five hours of general entertainment programmes including feature films in any Indian

language that has been telecast in the last three calendar years excluding the current year. The submission is that no new programmes were being featured on DD-Kashir from 2009 till the change in this policy. It is

the petitioners grievance that those who were empaneled with the respondents as artistes and producers, were therefore rendered not eligible to submit proposals under the new policy and pursuant to the invitation

dated 6th June, 2017.

14. The celebrated pronouncement of the Supreme Court reported at AIR 1979 SC 1628 : Ramana Dayaram Shetty v. The International Airport Authority of India and others, for the first time laid down the

parameters within which challenge could be laid to issuance of tenders by the State. The Supreme Court examined the challenge to the decision making by the authorities after inviting tenders for running a

restaurant and snack bars at the Airport. The Supreme Court had observed that the Government, in a welfare State, was a regulator and dispenser of special services and provider of large number of benefits

including jobs, contracts, licences etc., and therefore it could not act arbitrarily in the matter of granting largesse and that it does not stand in the same position as a private individual. The Supreme Court had said that

in view of the constitutional mandate of Article 14 and the judicially evolved rule of administrative law, the respondent no.1 was not entitled to act arbitrarily in accepting the tender of the fourth respondent and

was bound to conform to the terms and conditions laid down in the notice inviting tender.

15. So far as the power of judicial review is concerned, the contours thereof have been authoritatively laid down by the Supreme Court in the celebrated judgment reported at (1994) 6 SCC 651 : Tata Cellular v.

Union of India. The Supreme Court had observed that judicial power of review is exercised to rein in any unbridled executive function. It was further elaborated that judicial review was concerned with reviewing

not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. The power of judicial review is not an appeal from the decision and the court

cannot substitute its own decision. However, where the selection or rejection is arbitrary, the court would interfere.

16. In Tata Cellular v. Union of India, it was elaborated by the Court that the principles of judicial review would apply to the exercise of contractual powers by the Government Body in order to prevent arbitrariness

or favouritism. It was at the same time emphasized that, however, there are inherent limitations in exercise of this power.

17. So far as matters of tendering are concerned, the Supreme Court has observed that Government was the guardian of the finances of the State and was expected to protect the finances of the State. While the

right to refuse the lowest or any other tender was always available to the Government but, the principles laid down in Article 14 of the Constitution had to be kept in view while accepting or refusing a tender. The

Supreme Court had clearly stated that there can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an

arbitrary power. If, however, the said power is exercised for any collateral purpose the exercise of that power will be struck down. The Court has also explained that a tender was an offer which invites and

communicates acceptance.

18. In para 94, after an elaborate consideration, the Supreme Court laid down the following principles;

â??(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 (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.â??

(Emphasis by us)

19. The learned Single Judge has placed reliance on the above principles in concluding that the challenge by the appellants was beyond the scope of review and refused to interfere holding that public authorities must

have the liberties in framing policies and even while entering into contracts.

20. In support of the above conclusions, reliance has also been placed by the learned Single Judge on a later pronouncement of the Supreme Court reported at (2004) 4 SCC 19 : Directorate of Education and others

v. Educomp Datamatics Ltd., and others. In this case the requirement of having a turnover of Rs. 20 crores in order to be eligible for submitting the tender was assailed by way of writ petition. The High Court had

accepted the challenge holding that it was an arbitrary condition. The decision of the High Court was challenged before the Supreme Court which observed that it was for the authority to set-out the terms of the

tender. As a matter of policy, the Government took a conscious decision to deal with firms having a financial capacity to take up the big project for which tenders were invited instead of dealing with small multiple

companies which was a relevant consideration while awarding the contract of the magnitude which was awarded. It was held that it was for the authority to state the terms of the tender. The courts would not

interfere with the terms of the tender notice unless it was shown that it was arbitrary, discriminatory and actuated by malice. The Supreme Court, in para-13, further observed as follows:

â??13. â?|â?|â?|â?|â?|.. Moreover, it was for the authority to set the terms of the tender. The courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or

discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice the court cannot say that the terms of the earlier tender notice would serve the purpose sought to

be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by

maliceâ?|â?|â?|â?|â?|..â??

(Emphasis

by us)

21. In so holding, the Supreme Court has relied upon its prior pronouncements in the judgment reported at 2000(2) SCC 617 : Air India Limited v. Cochin International Airport Limited. The principles laid down by the

Supreme Court in para-7 of this pronouncement shed valuable light on the issue before us and may also usefully be extracted in extenso. The same reads as follows :

7. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are

commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before

finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such

a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and

procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated

by mala fides, unreasonableness and arbitrariness.

(Emphasis by us)

These are the principles on which the present challenge needs to be examined.

22. This very principle was restated by the Supreme Court in the judgment reported at (2000) 5 SCC 287 : Monarch Infrastructure (P) Ltd. v. Commr. Ulhasnagar Municipal Corp.n In this judgment, it was held that

terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters, authority calling for the tenders is the best judge to prescribe the terms and conditions

of the tender. It is not for the Court to say that the conditions prescribed in the tender under consideration were better than the one prescribed in the earlier invitation.

23. In support of his submission that the challenge by way of writ petition was maintainable, Mr Shamas has placed reliance on the following observations in para 170 of the concurring judgment of J.S.Khehar, as his

Lordship then was, in the pronouncement of the Supreme Court reported at

(2012) 10 SCC 1 : Natural Resources Allocation In Re, Special Reference No.1 of 2012, whence it was observed as follows;

170. The legal propositions laid down in the instant judgment in *Shrilekha Vidyarthi* case [(1991) 1 SCC 212] may be summarized as follows:

170.1. Firstly, State actions in the contractual field are meant for public good and in public interest and are expected to be fair and just.

170.2. Secondly, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 of the Constitution of India in contractual matters.

170.3. Thirdly, the fact that a dispute falls in the domain of contractual obligation, would make no difference to a challenge raised under Article 14 of the Constitution of India on the ground that the impugned act is

arbitrary, unfair and unreasonable.

170.4. Fourthly, every State action must be informed of reason and it follows that an act unguided by reason is arbitrary.

170.5. Fifthly, where no plausible reason or principle is indicated (or is discernable), and where the impugned action *ex facie* appears to be arbitrary, the onus shifts on the State to justify its action as fair and

reasonable.

170.6. Sixthly, every holder of public office is accountable to the people in whom the sovereignty vests. All powers vested in a public office, even in the field of contract, are meant to be exercised for public good

and for promoting public interest.

170.7. And seventhly, Article 14 of the Constitution of India applies also to matters of governmental policy even in contractual matters, and if the policy or any action of the Government fails to satisfy the test of

reasonableness, the same would be unconstitutional.

24. There can be no dispute to the above well settled legal principles. The issue before us is as to whether the appellant in the instant case had laid down the factual background to support its challenge to the

conditions notified by the respondents, as being violative of any facet of the Article 14 of the Constitution of India.

25. It has been pointed out by Mr S. N. Ratanpuri, learned counsel for the respondents, that the objective of the *Prasar Bharti* is to provide quality programmes to the viewers of the DD-Kashir channel. It is an

endeavour to provide quality programmes that the requirement of experience

has been provided for. In order to encourage the local producers/ production houses of the State, the reservation to the extent of 50% for

residents of the State has been provided. It is keeping in view the local conditions that the respondents have stipulated that the producer must have produced for any broadcast(s) at least twenty five hours of general

entertainment programme in any Indian language that has been telecast in last three years. Furthermore, the telecast does not have to be only on the DD Kashir or Doordarshan but could be on any channel. The

respondents would, therefore, take into consideration programmes which could be in any Indian language and productions do not have to be restricted to any language spoken in the State of Jammu and Kashmir

alone. The criteria also do not restrict experience to a particular story or channel on which it would have been telecast but is completely open and wide. The respondents have not confined the requirement to

telecasts on DD-Kashir only. It is clearly intended to give maximum benefit to the State subjects of Jammu and Kashmir both those residing within the State or outside it.

We are, therefore, of the view that the submission premised on the non-running of DD-Kashir from 2009 is also completely fallacious inasmuch as there are scores of channels on which the producers could have

telecast programmes.

26. Before us, the appellants have also pressed that they were required to be given the same treatment by the respondents as has been accorded to Doordarshan-Arunprabha which telecast in the North East.

27. The respondents have explained that there can be no comparison between Doordarshan Kashir which primarily caters to the audiences in Jammu and Kashmir, and Arunprabha which caters audiences in the

North East. The target audiences are different and their requirements have also no parity.

28. We note that the respondents have carefully even earmarked the weightage to be given in the selection to the components of the prescribed criteria and the manner in which scores would be awarded. In this

background the pleas of arbitrariness and discrimination pressed before us for laying the challenge to the criteria which has been prescribed by the respondents, even if was tenable, is not supported by the factual

background.

29. Mr Shamas, learned counsel for the appellants, has also placed reliance on

the pronouncement of the Supreme Court reported at (2009) 6 SCC 171 : Meerut Development Authority v. Association of

Management Studies and another.

30. This judgment in our view does not support the appellants. The appellant has relied upon paragraphs 26 and 27 of the said judgment. However, paras 28 and 29 of the said judgment are also relevant. We extract

hereafter this portion of the judgment in extenso which reads thus :

26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be

able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may

be available in cases where it is established that the terms of the invitation to tender were so tailor made to suit the convenience of any particular person with a view to eliminate all others from participating in the

bidding process.

27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice

inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to

tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such

negotiations.

28. It is so well-settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal

of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process.

29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market

price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favoritism.

(Emphasis by us)

31. The principles laid down in the above judgments have been reiterated in the later pronouncements reported at (2016) 8 SCC 622 : Central Coalfields Ltd. and another v. SLL-SML (Joint Venture Consortium)

and others, as well as in (2016) 16 SCC 818 : Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and another. Inasmuch as these judgments were concerned with the decision making

regarding acceptance of tenders which is not in issue before us, we are not dwelling on these judicial pronouncements in detail.

32. In view of the above, we are of the view that the appellants are unable to lay down the factual matrix essential for examining a challenge to the conditions laid down in the notice inviting tender.

Whether the writ petition laid a challenge to a policy decision or a notice inviting tender?

33. Mr Q. R. Shamas, learned counsel for the appellants, has vehemently contended that the learned Single Judge has erred in treating the case as a case involving a challenge to change in condition of notice inviting

tender. The submission is that the respondents have effectively changed the policy based whereon they were going to select broadcasters for telecasting programmes. Mr Shamas, has placed reliance on

pronouncement of the Supreme Court reported at (1969) 1 SCC 414 : Rashibihari Panda ETC v. State of Orissa, in support of his submission.

34. We are, therefore, called upon to consider as to whether the instant case involve a challenge only to a condition of a notice inviting tender or was concerned with a challenge to a change in policy?

35. Let us first consider the reliance placed on Rashibihari Panda ETC v. State of Orissa. In this case, the Government had abandoned its method of sale of kendu leaves to selected producers or of accepting

tenders only from a specified class of purchasers. The Supreme Court held that the change in the scheme evolved by the Government was violative of fundamental rights under Article 14 and 19(1)(g) because the

scheme gave rise to a monopoly in trade in kendu leaves to certain traders and singled out other traders and new entrants for discriminatory treatment.

There is no such thing in the case before us.

36. Before the Supreme Court, the challenge to the classification which was based on the specified circumstance was held to be not based on real and substantial distinction bearing a just and reasonable relation to

the object sought to be achieved i.e., effective execution of the monopoly in the public interest. Exclusion of all persons interested in the trade, who were not in the previous year licensees was held to be ex-facie

arbitrary. It had no direct relation to the object of preventing exploitation of pluckers and growers of kendu leaves, nor had it any just or reasonable relation to the securing of the full benefit from the trade to the

State. It is not so in the present case.

37. In a pronouncement of the Supreme Court reported at AIR 2003 SC 3983 : Union of India and another v. International Trading Co. and another, the Supreme Court has emphasized that a change in policy must

satisfy the test of reasonableness and be made fairly in the following terms:

“16. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Art. 14 is that a change in

policy must be made fairly and should not give impression that it was so done arbitrarily or by any ulterior criteria”.

(Emphasis by us)

38. The scope of judicial review in policy matters is extremely limited and well settled. It is trite that courts would not interfere with the policy decision taken by the executive unless the same can be faulted on the

grounds of malafides, unreasonableness, arbitrariness or unfairness, in which case the policy would render itself to be declared unconstitutional. In the pronouncement of the Supreme Court reported at (1998) 4 SCC

117 : State of Punjab and others v. Ram Lubhaya Bagga and others, it was held thus:

“When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. it would be dangerous if court is

asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this

matrix that it is to be seen whether the new policy violates Article 21 When it restricts reimbursement on account of its financial constraints.”

39. In a subsequent judgment reported at (2001) 3 SCC 635 : Ugar Sugar Works Ltd. v. Delhi Administration and others, the Supreme Court clarified the applicable principle further holding as follows:

“The challenge, thus, in effect, is to the executive policy regulating trade in

liquor in Delhi. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy

decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy

unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation

cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a

particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.â??

(Emphasis by us)

40. The same issue arose for consideration in the judicial pronouncement reported at (2002) 2 SCC 333 : Balco Employees Union (Regd.) v. Union of India and others. The Supreme Court cautioned the courts from

liberally undertaking a judicial review into matters relating to policy decisions in the following terms:

â??92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change

may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be

interfered with by the Court.

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98. In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgement of the experts who

may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself.

41. So far as the challenge to a change of policy is concerned, this issue came up for consideration in the pronouncement of the Supreme Court reported at 2010 (6) SCC 303 : Shimnit UTSC India Private Limited

& an. v. Development Corporation Limited and others. In this case, the Supreme Court held that â??Government has a discretion to adopt a different policy or

alter or change its policy calculated to serve public

interest and make it more effective in the context of tender conditions.â? In para-52 of the pronouncement, the Supreme Court observed â??choice in the balancing of the pros and cons relevant to the change in

policy lies with the authority. But like any discretion exercisable by the government or public authority, change in policy must be in conformity with Wednesbury reasonableness and free from arbitrariness,

irrationality, bias and malice.â??

42. We may usefully also refer to recent pronouncement of the Supreme Court reported at (2015) 9 SCC 657 : Parisons Agrotech Private Limited and another v. Union of India and other,s wherein the Supreme

Court observed as follows ;

â??14. No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within

the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be

more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not

arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the Executive as the policy making is the domain of the Executive and the decision in question has passed the test of

the judicial review.â??

(Emphasis by us)

43. In (2004) 4 SCC 19 : Directorate of Education and others v. Educomp Datamatics Ltd., and others, the Supreme Court considered this issue and authoritatively laid down the following binding principle :

â??12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny the same being in the realm of contract. That the government must have a free hand in

setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy

decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular

circumstances. The courts cannot strike down 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. The courts can interfere only if the policy decision is arbitrary, discriminatory or

mala fide.â??

(Emphasis by us)

44. Therefore, even if this writ petition were to be examined from the perspective of a challenge to a change of policy, we hold that before us, the appellant has been unable to support the challenge on grounds of

arbitrariness or irrationality. We find that there is also no allegation at all that the decision of the Government in prescribing the eligibility conditions were actuated by bias or malice. Therefore, even if the challenge

was examined from the perspective of justifiability of the variation/modification in the conditions as a change in policy, no grounds for its challenge have been laid in the writ petition.

45. In the case in hand, the appellant has laid a challenge only to the criteria prescribed by the respondents for eligibility for submitting tenders. We agree with the learned Single Judge that the same was a change in

the tender conditions only and nothing more. These conclusions are supported by the several judicial pronouncements considered by us heretofore which render the challenge unsustainable.

Result

46. For all these reasons, the judgment of the learned Single Judge, rejecting the writ petition on the ground that no ground for limited permissible judicial review stands made out, cannot be faulted on any legally

tenable ground.

This appeal is found to be devoid of any merit and is hereby dismissed.

CM No. 4695/2019

In view of the order passed in the appeal, this application does not survive for adjudication and is hereby dismissed.