

(1997) 05 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 4361 of 1996

Raghuvar (India) Ltd. and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 4 AD 425 : (1997) 67 DLT 471

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : G. Ramaswamy, Shyam Moorjani, Rakesh Tikku, A.K. Vali and Vijay Zareevi, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The petitioners have filed the present petition for issuance of a writ of certiorari or any other appropriate writ, order or direction for quashing Notice, Inviting Tender issuer vide Tender No. AIR/FM-1/96 published by the respondents in "Indian Express" dated November 1, 1996 and for issuance of a writ of mandamus to allot time slots to the tenderers who are successful highest bidders in Tender No. 2/95 earlier issued by the respondents.

(2) Petitioner No. 1 is a company registered under the Companies Act, 1956 at Calcutta and petitioner No. 2 is the Company Secretary of petitioner No. 1 as well as the shareholder of the company. Respondent No. 1 is Union of India. Ministry of Information and Broadcasting and respondent No. 2 is All India Radio under the control of respondent No. 1. The actions of the respondents, as referred to above are being challenged as arbitrary, illegal discriminatory and vocative of the principles of natural justice as well as vocative of the fundamental rights granted to the petitioners under Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India.

(3) The facts which are relevant for the decision of the questions as raised in this

petition are referred to in paragraphs 3.5 to 3.10 as incorporated in the writ petition may be reproduced as under :

"3.5 That the Fm Channel of the All India Radio was started sometimes in the year 1984. Though it was run by All India Radio for many years, however, the same did not receive any attention of the listeners and general public and could not gain any popularity. Sometimes in the year 1992-93 it was decided by the Government of India to privatise some hours of Fm Channel of All India Radio. This was an act simultaneous with the privatisation of the Metro Channel of Doordarshan. This was in order to invite the private bodies to participate in the process of telecasting and broadcasting obviously with predominated intention of creating a better and listener worthy atmosphere of Radio as well as the television and direct interaction of the public inter say. 3.6 That besides the aforesaid, sometimes in 1990 Prasar Bharati was also promulgated whereby providing privatisation by law to the Indian Public in respect of broadcasting and telecasting. However, the said act was certainly in conflict with and immense and unfettered powers provided to the Government, whereby the same has till date not been brought into operation despite enactment. : 3.7 That in the year 1993, the respondents invited the Indian Public to run the tune slots on the Fm channel. The aspect being absolutely new to the public the allotment of Channels was on the basis of "First Come First Serve". As there were very few takers who so ever applied was allotted the time slots, on Fm channel of All India Radio, Delhi & Mumbai. It is understood that initially the rates demanded by Air were much on the higher side and keeping in view the exorbitant cost and license fee involved in running of the Fm Channel and the enormous expenditure incurred by the Private broadcasters and having incurred huge losses, the Government of India reduced the amount of license fees charges to practically " and requested the private broadcasters to continue running the Fm Channel. On account of the same having made a real impression and having brought the Fm Channel to the notice and liking of the general public. 3.8 That thereafter in the year 1993 Fm Channel at Bombay, Calcutta, Madras and Goa were also thrown open to the Private broadcasters. Keeping in view a very high expenditure involved were were uncertain business and profit aspects not many people offered to run the said channels and, as such, respondents allotted the same to the applicants on First Come First Serve Basis. 3.9 That the Company namely, M/s. Shree Vishal Printers Limited, a Company, registered under the Companies" Act, having its registered office at 8, Camac Street, Calcutta was allotted the time slots on Fm Channel of All India Radio, Calcutta in the year 1994. The said company pumped in a lot of finances and put in hard labour, made channel operative as well as popular in Calcutta. The said Company i.e. M/s. Shree Vishal Printers Limited has since amalgamated with the petitioner-Company. The merger has been allowed vide the orders passed in Company's Petition No. 154/95 connected with Company Application No. 78/95 by the Hon"ble High Court at Calcutta. Pursuant to the amalgamation and merger all the assets and liabilities etc. of the said Company namely M/s. Shree Vishal Printers Limited have been taken over by the

petitioner No. 1. Hence this petition is being filed by the petitioner No.1. 3.10. That in view of the aforesaid, the Fm Channel of the All India Radio at Calcutta for allocated time slots was being run by the said M/s. Shree Vishal Printers Limited and after its amalgamation and merger is being run by the petitioner No. 1. The license granted by the respondents to the petitioners is effective till 24.7.97."

(4) In the year 1995 the respondents issued Notice Inviting Tender vide Tender No. 2/95 along with the guidelines for time slot allotment on the Fm Channels of Akashvani. The notice filed as Annexure P2 to the writ petition reads as follows:

"NOTICE Inviting Tender Government Of India : All India Radio Tender NO. 2/95 Tender available from : 17th July, 1995 (between 11.00 a.m. and 2.00 p.m. on working days) Due date for receiving : From 21st July to 28th July, 1995 tender (between 11.00 a.m. and 2.00 p.m. on working days) Tender opening date : 28th July, 1995 at 3 pm Sealed Tenders are invited for the allotment of additional slots on the Fm channel of All India Radio, Bombay, Calcutta, Delhi, and Panaji to private parties for broadcasting programmes with effect from 1st September, 1995. Tender documents, containing terms and conditions and guidelines, Along with other relevant details may be obtained from the respective Station Directors on payment of Rs. 1000.00 (Rupees one thousand only), which is non-refundable. Payment would be accepted in the form of crossed Account Payee Demand Draft on any scheduled Bank located in the respective cities, in favor of Sbi A/c; All India Radio, Bombay/Calcutta/Delhi/Madras/Panaji as the case maybe. This Invitation forbid is open to Indian citizens (for individuals) or companies registered bodies with majority Indian share-holding/ partnership firm, all of whose partners are citizens of India fulfilling other eligibility criteria spelt out in the Guidelines interested in obtaining license under this scheme. Agreement for leasing the slot(s) well be entered into when the bidder is selected. Maximum period of the contract is three years. Each bid should be accompanied by a bid bond amounting to Rs. 1,00,000.00 (Rupees one lakh) as well as Bank Guarantee for the requisite amount viz a minimum of Rs. 50,000/- and a maximum of Rs. 1,00,000 / - depending on the number of slots sought and the time-span. Director General reserves the right to reject or accept any tender in whole part thereof without assigning any reason."

(5) Respondent No. 2 also issued the guidelines for the slot allotment of Fm Channels on the Akashvani and the relevant clauses of the amended guidelines for time slot allotment on the Fm Channels may be reproduced as follows :

"2.Eligibility Criteria for Licence"s (a) Should be a citizen of India (for individuals/ Company/Registered bodies with majority Indian shareholding/partnership firm, all of whose partners are citizens of India. (b) Should not have been declared as insolvent or convicted in criminal case. (c) Should produce sufficient evidence of sound financial standing. (d) Must confirm in writing, willingness to abide by the guidelines spelt out in this scheme. (e) Should furnish a written undertaking to conform to all the conditions specified in the license or any subsequent directive

of the Government. (f) Should have experience in the operating and marketing of radio time slots for 365 hours during the last two years, as on 15th November, 1995. 3. Allotment of Time 3.1 Time Slots on the Fm Channel in chunks of one hour each shall hence forth be allotted on the highest bid principle through an open tender. 3.2 At present tender are invited for allotment of additional time slots on the existing Fm Channels at Delhi, Bombay, Calcutta and Madras. 3.3 Slots which may fall vacant in future from among those leased out under the earlier dispensation on the Fm Channels of the above mentioned stations, will also be allotted on the highest bid principle through an open tender. 3.4 There will be no ceiling on the number of slots per allottee. 4. Preference for allotment 4.1 Allotment of each one hour time slot shall be made to the applicants/ bidders subject to highest bid principle. In the event of a tie, that is, when the highest bid for a particular slot between 6.00 a.m. and midnight happens to be the same in respect of two or more bidders, preference shall be given to the bidder who seeks allotment of highest number of time slots in the time zone midnight to 5.00 a.m. 4.2 If the number of hours in the past midnight time zone also happens to be equal, preference shall be given to the bidder of offering larger amount, taking together into account the total number of hours for which bids have been made in the time zone from midnight to 5.00 a.m. 4.3 If the amount of bid after pooling the time slots in the time zone midnight to 5.00 a.m. also happens to be equal, preference shall be given to the bidder seeking slots for a longer time span, in terms of number of days and number of years, subject to maximum of three years."

(6) M/S. Shree Vishal Printers Limited which has since merged with petitioner No. 1 submitted its tender pursuant to the aforesaid notice for allotment of time slots for all the four stations, namely, Delhi, Bangalore, Calcutta and Madras. The tenders were opened and the bid submitted by the petitioner, company was highest for Delhi Station in respect of the slot at 5.00 p.m. to 6.00 p.m., 11.00 p.m. to 12.00 p.m., 1.00 a.m. to 2.00 a.m., 2.00 a.m. to 3.00 a.m., 3.00 a.m. to 4.00 a.m., 4.00 a.m. to 5.00 a.m., respectively. In respect of Bombay, the petitioner-Company has learnt that its bid was highest in respect of 5.00 p.m. to 6.00 p.m. 11.00 p.m. to 12.00 p.m. 12.00 O'clock to 1.00 a.m. and for Calcutta it was highest in respect of Time Slot of 5.00 p.m. to 6.00 p.m., 11.00 p.m. to 12.00 p.m. and 12.00, O'clock to 1.00 a.m. where as in respect of Madras it was highest in respect of 5.00 p.m. to 6.00 p.m., 10.00 p.m. to 11.00 p.m., 11.00 p.m. 12.00 p.m and 12 O'clock to 1.00 a.m. respectively.

(7) On the above basis it is contended that the petitioner-Company was highest in respect of the aforesaid slots and the respondents for unknown reasons have till date not allotted time slots to the petitioner while the said Tender 2/95 and the bids made there under are alive to be brought into action. The respondents illegally and unlawfully without affording any opportunity to the petitioner-Company issued another Notice Inviting Tender No. AIR/FM-1/96 published in "Indian Express" dated November 7, 1996. The subsequent Notice may be reproduced as follows :

"GOVERNMENT Of India Directorate GENERAL; All India Radio Notice Inviting Tender Tender NO. AIR/FM-1 /96 Subject : Allotment Of Additional Slots On The Fm Channels Of All India RADIO. 1. In supersession of all public notices issued earlier on the above subject, sealed tenders are invited afresh for the allotment of additional slots on the Fm Channel of all India Radio, Bombay, Calcutta, Delhi and Madras to private parties for broadcast of programmes with effect from 12th January, 1997, for a period of three years. 2. Tender documents, containing elaborate guidelines, as well as terms and conditions Along with other relevant details may be obtained from the respective Station Directors on payment of Rs. 2500.00 Rupees two thousand five hundred only) which is non-refundable, towards processing fee including price of the tender document. Payment would be accepted in the form of crossed Account Payee Demand Draft on any scheduled Bank located in the respective cities, in favor of Sbi A/c, All India Radio, Bombay/Calcutta/ Delhi/Madras, as the case may be. 3. This invitation for bid is open to companies, cooperative societies/societies, partnership firms. Association of persons and Body of individuals duly registered and in existence at least for a period of one year on the last date for submission of bids and fulfilling other eligibility criteria spelt out in the Guidelines. 4. The bids shall be submitted under the two-bid system, in two separate sealed envelopes marked "Pre-Qualification Bid" and "Price Bid", separately for each station, to the respective Station Directors. 5. On scrutiny of the requisite information furnished by bidder in respect of the pre-qualification bid, if All India Radio has reasons to believe that two or more bidders/applicants on the same Station are either associated with each other or in effect not separate entities, the bids of such applicants are liable to be rejected at the pre-qualification stage itself. 6. Contract for leasing the time slot(s) will be entered into by the respective Station Directors as and when the bidders are selected. 7. No applicant will be allowed to get more than one time plot during prime time and more than two slots during non-prime time on any channel. Prime Time 5.00 p.m. to 6.00 p.m. 10.00 p.m. to 11.00 p.m. 11.00 p.m. to zero hour. Non-prime Time Zero hour to 5.00 a.m. (5 slots) This capping on the number of slots shall be applied taking into consideration the existing slots, if any, already held by the applicant. 8. license fee for each one hour time slot on the Fm Channel will be determined- on the basis of the highest bid, over and above the floor fee per hour fixed for prime time and non-prime time. The floor fee shall be as follows : Prime Time : Rs. 8000 per hour Non-Prime Time : Rs. 3000 per hour. Offers Below Floor Fee Will Be Summarily REJECTED. 9. The period of contract would be three years at the end of which "fresh bids" will be invited. In other words, non extension shall be granted on expiry of the term of three years. 10. Each did should be accompanied by Earnest Money Deposit, amounting to Rs. 1,00,000.00 (Rupees one lakh) only. Without Earnest Money the tender shall be summarily rejected. 11. The successful bidders will be required to submit, at the time of entering in to agreement. Bank Guarantee for Rs. 1,00,000.00 (Rupees one lakh) only, per slot. 12. Director General reserves the right to reject or accept any tender, in whole or part thereof, without assigning any reason. Tender Schedule Issue of tender

documents : 12th to 20th November, 1996 between 11.00 a.m. to 2.00 p.m. on any working day. Last date for submission of : 21st November, 1996 (between 11.00 a.m. to 2.00 p.m. tender (both prequalification to 2.00 pm on any working day. and price bids) Opening date for : 22nd November, 1996 (3.00 p.m.) prequalification bid Opening date for price bid : 6th December, 1996 (3.00 pm) Intimation to successful : By 12th December, 1996 bidders Commencement of broadcast : w.e.f. 12th January, 1997 cast by the licencees"

(8) Along with the said tender the respondents have also issued fresh detailed guidelines for the time slot allotment on the Fm Channel. Copy of the same is filed as Annexure P-6 to the writ petition. The clauses which are relevant for the present purpose may be reproduced as follows :

"2. Eligibility Criteria for Licencees 2.1 One applicant should submit only one bid per channel/station 2.2 The applicant should be (a) a Company registered under Indian Companies Act, 1956, with not less than 75 per cent of the shares held by Indian Nationals; (b) a society registered under any of the Cooperative Societies Acts or Societies Registration Act, of which all shareholders or members are Indian Nationals; (c) a partnership firm, of which all partners are Indian nationals; (d) an Association of Persons (AOP) or Body of Individuals (BOI) duly registered all the members of which are Indian nationals. 2.3 The applicant (a) should not have been declared as insolvent or convicted in a criminal case; (b) should produce sufficient evidence of sound financial standing; (c) must confirm in writing willingness to abide by the guidelines spelt out in this scheme; (d) should furnish a written undertaking to conform to all the conditions specified in the license or any subsequent directive of the Government. 2.4 The companies/firms/societies/AOP/BOI associated with an applicant Company or a Company already holding a license shall not be eligible. For this purpose, a company/firm/society/AOP/BOI would be considered to be associated with another firm/company/society/AOP/BOI if the near relatives (spouse, children including step-children, parents, brother or unmarried sister) of the Directors/partners of the latter hold interest in the former. 2.5 If the applicant is a Company, whether private limited or not, its (a) holding company, subsidiary company or related companies; (b) Companies in which its Managing Director (MD), Chairman-cum-Managing Director (CMD) or Executive Director (ED) or Director is a Director or is substantially interested shall not be eligible. 2.6 Only a firm, company, society, Aop or Boi duly registered which has been in existence atleast for a period of one year on the last date of submission of the bids, shall be eligible to apply, 2.7 The above conditions of ownership/share-holding should continue through out the period of agreement. In the event it changes adversely, the license can be revoked. 3. Allotment of Time. 3.1 Time slots on the Fm Channel in chunks of one hour each shall henceforth be allotted on the highest bid principle through an open tender. 3.2 At present tenders are invited for allotment of additional time slots, eight in all, on the Fm Channels at Delhi, Bombay, Calcutta and Madras. These slots are: Prime Time 5.00 p.m. to 6 p.m. One slot 10.00 p.m. to zero hour Two slots Non-Prime Time Zero hour to 5.00 a.m. Five slots 3.3 No

applicant can get more than one time slot during prime time and more than two slots during non-prime time, per day/channel. This capping will be applied taking into consideration the existing slots if any, already held by the applicant. 3.4 Allotment of time will be displayed on a Public Notice Board at the office of the respective Station Directors. 3.5 Ten minutes of advertisement will be available per time-slot of each hour, out of which one minute will have to be used for mandatory social advertisements. Details for social advertisement will be given by the Management from time to time. Akashvani will, however, not pay any amount to the licensee for the utilisation of the time for the socially relevant advertising."

The learned Counsel for the petitioners contends that the guidelines of 1996 will clearly show that the same have been issued with an intention to eliminate allotment of time slots to the petitioner-Company for which it has been found successful in respect of Tender No. 2/95 and it is clear that the impugned action is an attempt on the part of the respondents to eliminate the petitioner-Company specially from Calcutta where it has made huge investment and has also gained experience and by virtue of its quality programmes has become immensely popular channel for the people of Calcutta. The petitioners, accordingly, represented to the respondents calling upon them to refrain from taking the impugned action and to allot the Fm Channel to the successful bidders under Tender No. 2 of 95. As no relief was granted by the respondents the petitioner-Company approached this Court by means of this writ petition. Notice to show cause was issued on 19th November, 1996 and the petitioner-Company was permitted to participate in the subsequent tender of 1996 and the guidelines, as referred to above, were not to be treated as Bar and disqualification. The petitioner-Company, as a consequence, has participated in the subsequent tender and submitted its bids.

(9) The learned Counsel for the petitioners has argued that: (a) respondent No.2 had no jurisdiction in law to scrap the first tender i.e., 2 of 1995 and float a fresh tender without any sufficient cause as this exercise is clearly arbitrary, discriminatory and violative of the fundamental rights of the petitioners, as guaranteed under Articles 14,19(1)(a) and 19(1)(g) of the Constitution of India; and (b) the subsequent amendment of the guidelines which will prima facie exclude the petitioner-Company from participation is mala fide, arbitrary and an act in colourable exercise of powers and, Therefore, the amended guidelines are liable to be quashed. Specific challenge is made to Clauses 2.4, 2.5 and 3.3.

(10) The respondents have filed their reply affidavit wherein the following facts are pleaded:

(A)It would be seen from details regarding existing licences as given in Annexure R-1 that M/s. Bennett Coleman and Company Limited (Times F.M.) is operating eight slots on Delhi P.M. and six slots on Bombay P.M., out of nine slots thrown open to private parties on each station. When slots were being allotted on F.M. Calcutta respondents had imposed a condition that no party can seek more than

one slot during the prime time namely 7.00 a.m. to 10.00 a.m. and 6.00 p.m. to 10.00 p.m. but such "capping" failed to break their monopoly. M/s. Shri Vishal Printers and M/s. Sahu Jain, known to be Associated with M/s. Bennett Coleman and Company Limited had captured between themselves 5 of the 9 slots at Calcutta. M/s. Shri Vishal Printers has now merged with Raghuvar India Limited (the petitioner herein).

(B)M/s. Shri Vishal Printers in known to be associated with M/s. Bennett Coleman and Company Limited. It may be added that the license of M/s. Vishal Printers was superseded in September, 1994 for acting as the surrogate of M/s. Bennett Coleman and Company Ltd. It was noticed that they were using not only the programmes put out by Bennett Coleman and Company Limited (Times F.M.) but also the signature tune of Times F.M. Subsequently, however, the suspension was revoked when they gave an undertaking that they will not be using the programmes and signature tune of Bennett Coleman and Company Ltd.

(C)A curious feature of the bids was that the three among themselves had emerged highest bidder in 15 out of 32 slots and the apprehension of the department became true that they were acting as a Cartel entailing in respondents cancelling the entire tender.

(11) The learned Counsel for the petitioners has vehemently contended that the law is well settled that the State has to act fairly, justly and reasonably even in contractual matters and where the Authority or the Government chooses to invite tender, it must abide by the result of the tender and cannot arbitrarily or capriciously call of the same. Therefore, the main grievance of the petitioner-Company is that it has been successful on the basis of issuance of the first tender No. 2 of 95 and the respondents had no jurisdiction to do away with the same and issue fresh tender notice. Reference is made to the judgments in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, : Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, ; Ram and Shyam Company Vs. State of Haryana and Others, ; Harminder Singh Arora Vs. Union of India (UOI) and Others, ; Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, ; Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others, : Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, ; Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, : Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, and Tata Cellular Vs. Union of India, .

(12) The judgments as cited by learned Counsel for the petitioner have laid down the law but the same have to be applied on the basis of the facts arising for consideration in this petition.

(13) The following passage which is relevant may be cited from the case of Barium Chemicals Ltd. and Another, (supra) which will indicate the grounds of

challenge for impugning the order passed by the Authority :

"THOUGH an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

(14) In *Ramana Dayaram Shetty*, (supra) the Supreme Court held that the decision of the Government in such matters cannot be arbitrary, irrational or irrelevant. The operative part of paragraph 12 may be reproduced as follows :

"IT must, Therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts of issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

(15) In *M/s. Kasturi Lal Lakshmi Reddy, etc. v. The State of Jammu & Kashmir and Another*, (supra) it has been held that the Government action must be held to be unreasonable or lacking in the quality of public interest or based on mala fide and irrelevant consideration before it is struck down.

(16) The judgment in *M/s. Dwarkadas Marfatia and Sons*, (supra) lays down the following propositions:

(A) There is always a presumption that a governmental action is reasonable and in public interest. It is for the party challenging its validity to show that the action is unreasonable, arbitrary or contrary to the professed norms or not informed by public interest, and the burden is a heavy one;

(B) In judicial review, the Court cannot really substitute a decision reached by a fair procedure keeping the polity of the Authority in mind by a different decision

only on the ground that the decision which appeals to the Court is a better one. Otherwise, the Court would under the guise of preventing the abuse of power, be itself guilty of usurping power which does not belong to it.

(C)Judicial review is not concerned with the decision, but with the decision making process. It is, Therefore, necessary to bear in mind the ways and means by which the Court can control or supervise the judicial action of any authority which is subject to judicial control, it is not within the purview of a Court to substitute a decision taken by a constituted authority simply because the decision sought to be substituted is a better one.

(17) The Supreme Court in Kumari Shrilekha Vidyarthi etc. (supra) has held that the Constitution does not envisage or permit unfairness or unreasonableness in State action in any sphere and exclusion of Article 14 in contractual matters is not permissible in Constitution scheme. Paragraphs 21 and 22 of this judgment may be reproduced as under :

"21.The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part Iv of the constitution contains "Directive Principles of State Policy" which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part Iii for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14 - non arbitrariness which is basic to rule of law - from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals. 22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the

domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non arbitrariness at the hands of the State in any of its actions."

(18) In Food Corporation of India, (supra) the Supreme Court has laid down the proposition that where State or its Instrumentality invites tenders they have right in terms of the tender to ignore the highest bid if inadequate and instead negotiate with all the tenderers by giving them equal opportunity to revise their bids within the stipulated period of acceptance of the Tender in order to fetch higher price. Paragraph Ii of this judgment may be reproduced as follows :

"11.In the present case, the last date up to which the offer made in the tender was to remain open for acceptance was July 17, 1992. After opening the tenders on May 18, 1992, the appellant decided to negotiate with all the tenderers on June 9, 1992 when a significantly higher amount, as indicated earlier, was offered above the amount quoted in the highest tender. In such a situation, if the negotiations did not yield the desirable result of obtaining a significantly higher price, the appellant had the option to accept the highest tender before the last date, viz July 17, 1992 up to which the offer made therein was to remain open for acceptance. In this manner, the respondent's -highest tender was superseded only by a significantly higher bid made during the negotiations with all tenderers giving them equal opportunity to compete by revising their bids. The fact that it was a significantly higher bid obtained by adopting this course is sufficient in the facts of the present case to demonstrate that the action of the appellant satisfied the requirement of non-arbitrariness, and it was taken for the cogent reason of inadequacy of the price offered in the highest tender, which reason was evident to all tenders invited to participate in the negotiations and to revise their bids. This High Court was in error in taking the contrary view."

(19) Lastly, the law laid down by the Supreme Court in Tata Cellular, (supra) reiterates the settled position that the duty of the Court is to confine itself to the question of legality and its concern should be Whether a decision making Authority exceeded its powers, committed an error of law, committed breach of rules of natural justice or abused its power.

(20) The Explanation for issuance of fresh tender has been offered by the respondents in reply to the show cause issued by this Court wherein it is clearly stated, as has been referred to in earlier part of the judgment, that the petitioner Shree Vishal Printers Ltd. in whose shoes the petitioner-Company stepped in had

emerged as the highest bidders in 15 out of 32 slots and cartel had been established which was one of the reasons necessitating the issuance of the subsequent tender and scrapping the first one to prevent monopoly. It is further stated that on scrutiny of tenders earlier submitted, it was found that Clause 2(f) in effect led to restrict the field to the existing bidders to the detriment of others and even genuine experienced parties could not participate. Therefore, Clause 2(f) i.e., "should have experience in the opening and marketing of radio time slots for 365 hours during the last two years, as on 15th November, 1995", had to be dispensed with in the latest tender notice and the revised guidelines. It is also stated that the petitioner- Company Raghuvar (India) Limited nor Shree Vishal Printers Ltd. had any experience in broadcasting before they commenced their operations in the field. The following paragraph from the reply affidavit may be cited as below :

"M/S. Bennett Coleman and Company had captured 8 of the 9 slots on P.M. Air, Bombay as no capping was prescribed at that time. Realizing the need to plug these loophole capping principle was introduced when bids were invited for allotment of slots on P.M. Air Calcutta with effect from 25th of July, 1994. However, respondents noticed that M/s. Shree Vishal Printers, M/s. Suhujain Services Limited, M/s. Bennett Coleman and Company Ltd., between the three of them, secured 5 of the 9 slots offered at that time. Respondents misgivings that these three parties for all practical purposes belong to the same group were confirmed when the former two were not only utilising the software of Times P.M. of M/s. Bennett Coleman and Company but also their credit line and identity. As such, Air was constrained to suspend their license for violating the terms and conditions of the agreement which, inter alia, stipulates that no licensee can sublet the slot allotted to him. Subsequently, on an assurance that they would not commit the mistake once again the suspension was revoked. To contain attempts to circumvent the capping through surrogates, Air in the present guidelines has sought information concerning the composition/complexion of the companies, firms, societies etc. The Tender Evaluation Committee which would scrutinise the pre-qualification bids, it is hoped, will identify surrogates or attempts to defeat the very purpose of capping by "related" and "associated" companies."

(21) The record has also been produced which indicates that a conscious decision has been taken after due application of mind and the respondents rightly went ahead with the issuance of fresh Public Notice Inviting Tenders deleting the experience clause in supersession of the earlier Tender Notice and Guidelines.

(22) The respondents on the basis of the above have acted in public interest to float a fresh tender and discard the earlier tender issued in 1995. The matter has been carefully examined by the Authorities and the decision does not require any judicial review on the basis of the settled law by various judgments of the Supreme Court which have been cited above. The case of Tata Cellular, (supra) clearly establishes that mere power to choose cannot be termed arbitrary,

discriminatory and violative of the Constitutional provisions as enshrined in Article 14 of the Constitution of India. The following passage from the judgment of *Tata Cellular*, (supra) may be referred to :

"THEREFORE, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly" will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under : (i) Illegality, this means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. (ii) Irrationality, namely, *Wednesbury* unreasonableness. (iii) Procedural impropriety. The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind*, Lord Diplock referred specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the Court should, "consider whether something has gone wrong of a nature and degree which requires its intervention."

(23) For the aforesaid reasons, it cannot be said that the subsequent decision of the respondents to float a fresh tender and discard the first one is based on extraneous considerations and is arbitrary. The decision seems to have been taken in public interest and no interference is called for on the facts of the present case.

(24) The petitioner, however, was permitted to participate in the tender issued in 1996 on the basis of an interim order passed by this Court on November 19, 1996. The revised guidelines, particularly 2.4 and 2.5, debarred the petitioners from participating. Firstly, Clause 2.4 which lays down that the companies/firms/ societies/AOP/BOI associated with an applicant-Company or a Company already holding a license shall not be eligible will debar the petitioner-Company in case this guideline is permitted to operate. Secondly, Clause 2.5 which relates to the non eligibility of "Companies in which its Managing Director (MD), Chairman-cum- Managing Director (CMD) or Executive Director (ED) or Director is a Director or is "substantially interested" will also be detrimental to the interest of the petitioner. This guideline is rather vague and no proper method or criteria has been framed to determine the substantially interested Managing Director/Director etc. as no specific shareholding is prescribed. The application of the above clauses will amount to an arbitrary and discriminatory exercise of power. Faced with this situation the, learned Counsel for the respondents has fairly stated that the above said Guidelines which are rather vague will not operate qua the rights of the petitioner Company in respect of the bid or bids which have already been submitted for the 1996 tender. The present writ petition is disposed of in above terms. There will be no order as to costs.