
(2007) 03 JH CK 0007
In the Jharkhand High Court
Case No : L.P.A. No. 173 of 2006

Ranisati Pipe Industries

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 2 BLJR 1248 : (2007) 3 JCR 345

Hon'ble Judges : M.K. Vinayagam, C.J.;Permod Kohli, J

Bench : Division Bench

Advocate : M.S. Mittal, A.K. Yadav and N.K. Pasari, Ram Balak Mahto, Delip Jerath, Indrajit Sinha and P.N. Ray, for the Appellant; S.B. Gadodia, A.G., for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Aggrieved of the order dated 04.04.2006 passed in W.P. (C) No. 1046 of 2006 dismissing the writ petition, the appellant has filed this Letters Patent Appeal challenging the order.

2. The appellant is a small scale manufacturing unit, registered with the Directorate of Industries in the State of Jharkhand having its industrial unit at Jamshedpur. The State of Jharkhand through the Department of Water Resources issued N.I.T., inviting tenders/quotations under No. 12/Pur-Pipes & Fittings for purchase of P.V.C. Pipes with ISI/ISO 9001:2000 Certification. This N.I.T. was for an Emergent Quotation Notice. The date for supply of documents was stipulated as 17.02.2006 to 21.02.2006 and the last date for receipt of the bid was 22.02.2006 upto 3:00 P.M. and the opening of the bid was on the same day i.e. 22.02.2006 at 3:30 P.M. in the Office of the Secretary, Water Resources Department (Government of Jharkhand), Nepal House, Doranda, Ranchi. The bids were to be submitted in two separate envelopes as "Technical Bid" and "Financial Bid". Some of the terms and conditions of the N.I.T. relevant for purposes of this Appeal are noticed hereunder:

8. Only manufacturer or their authorized representative or State Distributors are eligible for participation in quotations.

11. The quoted rates should be valid for all materials of I.S.I. mark and of standard make (as per details mentioned in Paragraph 7).

12. The attested photocopy of up to date income tax, sales tax clearance certificate, registration certificate, I.S.O. certificate, B.I.S. License etc. be submitted by the Quotationers.

16. The Quotationer should enclose attested photocopies of all certificates (Mentioned in sl. 12) Technical documents & catalogues in one envelope super scribed as Technical Bid & Financial Bid envelope will be opened only after "Technical Bid" envelope has been assessed and found to confirm to requirements.

17. Before opening of quotation all Quotations should submit specimen sample for their products in the office of Director, Purchase 7 Transport, W.R.D. Ranchi on date 22.02.06 up to 3.00 P.M.

19. The quantity of purposed supply may be increase or decreased for which no claim will be entertained.

20. Before supply of materials quality will be inspected by departmental officers authorized by departmental on the cost of the Quotationer and then material will be accepted.

3. Besides the above conditions, it was also stipulated that only such manufacturers, whose annual turn over is at least Rs. 250 crores and production capacity of 50,000 MT are eligible for tendering. It is this stipulation, which seems to have persuaded the appellant-petitioner to approach this Court, seeking annulment of these conditions. The petitioner-appellant, accordingly, sought following reliefs:

A. For issuance of an appropriate writ or a writ in the nature of certiorari for quashing the notice inviting tender, being N.I.T. No. 12/Pur-Pipes & Fittings, published in the Daily Newspaper "Prabhat Khabar" to the extent that only those manufacturers with annual turnover of at least Rs. 250 Crores and production capacity of 50,000 MT have been invited to submit their bids in respect of the said tender.

B. For issuance of an appropriate writ or a writ in the nature of mandamus directing the Respondents to allow the Petitioner to participate in the said bit after waiving the aforesaid two conditions and consider the bids submitted by the Petitioner on its own merit.

C. For issuance of an appropriate writ or a writ in the nature of mandamus directing the Respondents to implement Clause 32 of the Jharkhand Industrial Policy and especially Clause 32.1.1 thereof which provides that the product of industries located within the State will be eligible for the facilities of preferential

purchase by State Government departments and the agencies under its control and that minimum 75% of the total order placed with respect to any such tendered item be supplied exclusively by the manufacturing industrial units located within the State.

D. For issuance of any other appropriate writ(s) or direction(s) or order(s) as Your Lordships may deem fit and proper in view of the facts & circumstances of the case for doing conscionable justice to the Petitioner

4. Challenge to the N.I.T. was two fold: (i) That the aforesaid condition of annual turn over of Rs. 250 Crores and manufacturing capacity of 50,000 MT per annum have been incorporated to exclude small and particularly local manufacturers and with a view to help the few large manufacturers. (ii) These conditions run contrary to the State's Industrial Policy, which, inter alia under Clauses 32.1, 32.1.1, 32.1.2, 32.1.3, 32.1.4 and 32.2 prescribe market support to the local industrial units with a clear stipulation that minimum 75% of the total order is to be placed with the local industries situated within the State though without compromising with the quality. Relevant extracts of the Industrial Policy are noticed hereunder:

MARKETING ASSISTANCE AND OTHER LINKAGES

32.1 Marketing of products has been recognized as the weakest link for the Tiny/ SSI Sector particularly those in the rural areas.

The following measures would be undertaken to facilitate assistance:

32.1.1 The Policy of the State Government is to ensure that State Government departments and various agencies under its control purchase their requirement of store items from industries located within the State.

In order to achieve this, the product of industries located within the State will be eligible for the facilities of preferential purchase by State Government departments and the agencies under its control. Various departments of the State Government and the various agencies under its control would ensure, without compromising the quality, that minimum 75% of the total order placed with respect to any such tendered item be supplied exclusively by the manufacturing industrial units located within the State.

It would also be ensured that 33% of the total annual purchase by any department/agency should be exclusively supplied by the manufacturing small scale industrial units located within the State.

In order to provide the price preference facilities, with respect to certain identified items) being manufactured by the Small Scale Industries located within the State, with the objective of providing competitiveness of such items), a High level Committee would be constituted by the State Government, which shall duly assess the competitiveness of such items as referred and make recommendations. The State Govt. shall ensure appropriate action with respect

to such recommendations to encourage such small scale industrial units. Price preference shall be admissible as per the provisions to the Industrial products of the small scale industrial units.

The Central Government, its various agencies and private/joint sector industries located within the State will be persuaded to accord similar facilities to the products of local industries. New industrial units coming up in the State will be persuaded to patronize local industries/firms for construction/supply of materials.

32.1.2 Local small scale industrial units registered with DIC/IADA shall have to deposit only 50% of the earnest money while submitting tenders with the State Government departments and various agencies under its control.

32.1.3 The problem of delayed payment to SSI units by the Govt. Departments/corporation"s/Boards or large industrial undertakings creates severe financial constraints to SSI. To tackle this problem, the State Government would constitute an "Industrial Facilitation Council" at Ranchi as per the provisions of the "Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertaking Act, 1993"

32.1.4. The State Government would additionally take the following initiatives:

Develop a strong data base to provide trade and export related information.

Purchase of ISO/ISI certified products will be given preference.

The government will assist NGOs and other such agencies, which facilitate marketing of products in rural areas.

Organizing Buyer - Sellers meet involving public sector/private sector enterprises.

Organizing Trade Fairs/Handicrafts Melas for marketing assistance inside and outside the country.

Encouraging E-Commerce.

32.2 PREFERENCE IN CASE OF PURCHASER OF RAW MATERIAL:

The raw material generating units shall be persuaded to give purchase preference to the local industries for supply of such raw material, whose production is dependent upon the supply of such raw materials. Similarly, the PSU"s/Private Sector large industries, located within the State would be persuaded to give purchase preference to the products of the local industries while making purchases of raw materials and other items required by it. Preference would also be given to the local industries in supply of forest produce available in the State.

5. It is further stated that in terms of the Office Memorandum dated 18th March, 1998, issued by the Government of India, Ministry of Industry, Department of Small Scale industries and agro and rural industries under Item No. 223, depicting small scale industries purchase policy, this item is reserved for

purchase from the small scale industries. It appears that during the pendency of the writ application, the supply orders were placed with two tenderers, namely, M/s Supreme Industries Ltd. and M/s. Finolex Industries Ltd. as per the decision taken in the Minutes of the meeting of the concerned authority dated 28th March, 2006, whereby the Pipe was sought to be purchased @ Rs. 122/- per meter. Appellant, herein, brought this fact to the notice of the Court alleging that the same material manufactured by the suppliers is available at much lower rate in the market. Based upon this information, the writ Court directed the concerned Secretary to enquire into the allegations. On receiving the Report of the Secretary, the writ Court by the judgment dated 04.04.2006 dismissed the writ petition primarily on the ground that the writ involves disputed questions of facts. This is how the appellant has preferred the present appeal. When the matter came up before this Court on 22nd June, 2006, while allowing the Respondents to file counter affidavit, the following direction was issued:

Till further order is passed, the price of the pipes @ more than Rs. 60/- will not be disbursed to the supplier.

Simultaneously the suppliers were also allowed to intervene.

Vide a subsequent order dated 07.07.2006 following further directions were issued:

After hearing the parties, we are of the view that in order to come to a right decision, we direct M/s. Supreme Industries Limited to produce before this Court the bills for the last two financial years in respect of the sale of the pipe of the same quality same standard so that we could know as to at which price they have sold the same pipe in those months.

The matter was again considered on 07.08.2006 and on the basis of certain material produced before the Court in respect to the rates of the pipes supplied by the suppliers, the Court prima facie formulated an opinion that the pipe of the same quality and specifications is being sold in the market on a price between Rs. 60/- to Rs. 70/- per meter and, accordingly, following direction was issued:

6. In the facts and circumstances, we direct the Superintendent of Police, Vigilance, Ranchi, to inquire into the matter and submit a report in the light of the facts and observations made hereinabove.

6. The Superintendent of Police, Vigilance Bureau, Ranchi initially submitted an interim Report dated 01.11.2006, which was followed by a final report dated 17.11.2006. In the interim Report, it has been stated that the pipes having the aforesaid specification is being sold in the market @ Rs. 68.35 ps, Rs. 57.33 ps, Rs. 65/-, Rs. 64/- and Rs. 61.64 per meter. The enquiry report further concluded that the overall basis of the rates of pipes of the same specification was taken @ Rs. 65/- per meter approximately, whereas, the Water Resources Department and Finance Department was furnished with the quotation of Rs. 118/- to Rs. 127 per meter. However in the final Report it was stated that the rates of M/s.

Supreme Industries Ltd. or M/s. Finolex Industries Ltd., in respect to pipes of the same specification comes between Rs. 60/- and Rs. 72/- per meter and is much lower than the rates at which the pipes with the same brand were purchased. It is also mentioned that if the transportation cost of the 15% is added over the rates on which the pipes are being supplied by the local dealers i.e. Rs. 60/- to Rs. 72/- per meter, the price would come to Rs. 70 to 85/- per meter, whereas, the rates quoted by these manufacturers were Rs. 120/- and Rs. 122.50 ps per meter. The final Report, however, stated that the Vigilance Department has not examined the quality of the pipes sold in the market and one purchased by the Department.

7. We have heard the learned Counsel appearing for the parties including the interveners-suppliers i.e. M/s. Supreme Industries Ltd. and M/s. Finolex Industries Ltd. at length.

8. Following three issues have come up for consideration:

(i) Whether the stipulation in the Tender notice requiring annual turn over of Rs. 250/- crores and production capacity of 50,000 MT. For the suppliers/manufacturers is legal and valid?

(ii) Whether the State-respondent is bound by its industrial Policy of 2001 to purchase the pipes from the local manufacturers like the appellant to the extent of 70% of the order and 33% of the annual demand on preferential basis?

(iii) Whether the prices i.e. @ Rs. 120/- and 122/- per meter agreed to be paid to the suppliers i.e. the intervenes M/s. Supreme Industries Ltd. and M/s. Finolex Industries Ltd. is reasonable and market price of the pipes or is exorbitant so as to cause loss to the State exchequer warranting interference by this Court in public interest?

9. Question No. 1:

In terms of the N.I.T., the quality of the material (pipes) sought to be purchased is clearly indicated. It also provides for I.S.I. mark with I.S.O. certification. The quantity of the material sought to be purchased through the N.I.T. as stipulated is 600 x 1500 meters and for supply of P.V.C. fittings different quantities were mentioned. 600 x 1500 meters comes to about 9 lakh meters of pipes. According to the appellant, the average pipe is available in 6 meter length and the average weight of 6 meter length is about 5.5 K.G., which comes to about 1090 meters per tonnes and if 9 lakh meter quantity is to be manufactured, the industrial unit should have the production capacity of about 825 MT. It is stated that the unit of the appellant has the capacity to manufacture this much quantity of pipe. It is, accordingly, stated that when the quantity required was only 825 MT, the incorporation of conditions of minimum manufacturing capacity of 50,000 MT and 250 crores of annual returns are totally unwarranted, illegal and aimed at excluding the small scale industrial units, particularly the local units from the competition with the sole object of providing buffer to the few chosen industries.

The State in its counter affidavit has stated that for construction of Microlift Schemes for irrigation, 1500 nos. of BHP Diesel Pump sets, 9 Lac meter of 4" dia, PVC pipes and fittings as issued vide Notice No. 12/PUR-Pipes and Fittings and published in the newspapers was needed. In response to this Emergent Quotation Notice, five parties including the suppliers, purchased the Tender documents, whereas, only three of them i.e. the two suppliers and one M/s. Jain Irrigation System Ltd., Jalgaon submitted their quotations. The Technical Bid was to be opened on 22.01.2006. However, the meeting was adjourned to 25th February, 2006 and on the said date, the Technical Bids of all the three Quotationers were scrutinized. The two Technical bids of M/s. Supreme Industries Ltd. and M/s. Farmer Tractor (authorized representative of Finolex Industries Ltd.) were found in order. Decision regarding the Technical bids of M/s. Jain Irrigation System Ltd. was deferred to the next meeting to be held on the same day at 1.30 P.M. On examination, the third bid was rejected. It was decided that two Quotationers should be called for negotiation on 27th February, 2006 and the negotiation was held on 27th February, 2006. Based upon the negotiation, the meeting of the Central Purchase Committee was held on 28th February, 2006 and the bids were finalized. It has also been mentioned that the representative of the Industries Department referred to the order of the Hon''ble High Court and wanted 70% of material to be purchased from the local industries situated in Jharkhand in terms of the Jharkhand State's Industrial Policy, 2001. Since none of the bidders in this quotation had industries situated in the State of Jharkhand, this observation was found irrelevant. As regards the stipulations of at least 250 crores annual turn over and production capacity of 50,000 MT is concerned, it is stated that these conditions were inserted in the Emergent Quotation Notice with a view that only renowned and reputed manufacturers having adequate capacity to supply the quality products in the required quantity within 30 days may take part so that high quality PVC pipes could be supplied to the beneficiaries.

10. Reliance has been placed by the Respondents on the judgment reported in Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, wherein, in Paragraph 12 of the judgment, the Hon''ble Supreme Court has observed as under:

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.

Again in Para 9 of the same judgment, the apex Court also observed.

9. It is well settled now that the courts can scrutinize the award of the contracts by the Government or its agencies in exercise of their powers of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters.

11. No doubt, it is the prerogative of the purchaser to fix the terms and conditions for purchase, however, a welfare State when decides to make purchases from private individuals which is in the nature of State largesse, it has to act fairly and with utmost transparency, so that its action can be judged on the touch stone of Article 14 of the Constitution of India.

12. In the celebrity judgment of the apex Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , the apex Court observed as under:

10. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

11. Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive front relationships to Government are of many kinds.

The power of giving licences means power to withhold than and this gives control to the Government or to the agents of Government or the lives of many people. Many individuals and many more business enjoy largesse in the form of Government contracts. These contracts often resemble subsidies.

The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily.

12. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is nor 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.

13. It is in this context, the conditions incorporated in the NIT are required to be examined.

14. It is not in dispute that the only quantity required was 825 MT, which is equivalent to 9 lakh meters, then why does it incorporated the condition of production of 50000 MT, which comes to monthly capacity of 4166 MT. Similarly the condition of annual turn over of Rs. 250 Crores has no nexus with the object sought to be achieved. The only ground for inserting these conditions is desire to have quality product from renowned and reputed manufacturers. It goes without saying that reputation is not the possession of only the renowned persons. Even a small manufacturer can command reputation on the basis of its quality products. The condition No. 17 of the N.I.T. requires Quotationer to submit a sample of its products before the opening of the quotation. Similarly the condition No. 20 also provides for inspection of the material before acceptance. These two conditions clearly provide for ensuring quality of the product from the supplier both at the stage of placing the order and at the stage of accepting the material. If the aim of the State was to ensure the quality, it would have been more useful to have allowed a wider competition irrespective of the fact whether the manufacturer has a small unit or a large unit. A large unit by itself does not provide a guarantee for quality so is the case with the small unit. By incorporating aforesaid conditions, the State-Respondent has restricted the competition to only three competitors. The manner of conducting the scrutiny even amongst three competitors also leaves much to be said. Even when the scrutiny was conducted on 25th of February, 2006, quotations of the two suppliers were cleared and for the third supplier, it was postponed to be considered later on the same day and finally rejected.

15. In the counter affidavit, no ground for rejection of M/s Jain Irrigation System Limited is disclosed. We have noticed this fact only for purposes of examining the manner of taking a decision by the Central Purchase Committee. Above two conditions straightway excluded the Small Scale Industries, even from participation without providing an opportunity to them to show their capacity as also the quality of their products. When the N.I.T. itself provided for sample and inspection of the material to ensure quality, the condition, which tends to exclude other competitors, appears to be not only arbitrary but may be motivated. One can understand, where high level expertise is needed, the competition can be restricted, to only the experts in the field but in the case of supply of P.V.C Pipes, which is a common product, imposing such restrictions so as to avoid competition are nothing but unnecessary and arbitrary exercise of power. We cannot rule out the validity of the allegations made by the appellant in this

regard. Since the appellant has been prevented from participating in the Tender process and demonstrate his capacity as also the quality of the product, the stringent conditions of 50000 MT capacity and 250 Crores annual turn over incorporated in the N.I.T. does not seem to be justified.

16. Question No. II:

It is admitted case of the parties that the State had notified its industrial policy in the year 2001. Industrial Policy of State is one of its basic developmental programme aimed at economic development of the State besides providing employment opportunities to its local populace. The State's industrial policy clearly indicate and require not only the Government Departments but even various agencies under its control to purchase the product from the local SSI and tiny industries. It further provides for price preference facilities. The objective of such a policy is clearly indicated in the Clause 32 of the State's Industrial Policy and is aimed at providing marketing assistance to the local industries for the overall economic development of the State. Not only this, various other benefits have been allowed to the local industries like deposit of only 50 per cent of the earnest money required, organizing buyers for the sale of the products of the local industries, organizing Trade Fairs, Handi Crafts Melas for marketing assistance inside and outside the country. If this is the State's policy towards its local industry, one fails to appreciate how a Purchase Committee constituted by the State for making the purchases for the Government can deviate from such a policy and incorporate conditions, which deprive the local industry from competing with the industry from the other States or big industries within and outside the State. The industrial policy is a well considered decision of the Government and is always approved by the Cabinet. How a Purchase Committee of few Officers constituted by the Government can override the Government's Policy and ignore the same with impunity. A subordinate authority has no right or jurisdiction to overthrow a well thought State's Policy by its subordinate executive action. From perusal of Clause 32 of the Industrial Policy, it is evident that the endeavour of the State is to promote its local industry particularly tiny and small scale sector but the action of the Respondents amounts to killing the local industry by preventing its participation. If the appellant and other local manufacturers have not been provided any opportunity, how can the State plead that their product is not of the required quality and they have no capacity to supply. Such a plea is preposterous. We are not convinced with the stand of the Respondents and we are of the considered opinion that the Central Purchase Committee had no authority to deviate from the State's Industrial Policy and deprive the local industry from its participation.

17. Question No. III:

The Purchase Committee has placed the orders with the intervenes @ Rs. 120/- to 122/- per meter of 4" Dia PVC Pipes. Petitioner has placed on record the transportation documents of M/s. Supreme Industries Ltd., whereby the stocks were transported to Ranchi to one of its stockist and the rate mentioned in the

transport document clearly shows that the rate is almost half of the price fixed for supply of the material of the same manufacturer and of the same specifications. Two reports of Superintendent of Police, Vigilance are also sufficient indicators regarding the price. In its interim report, it has been shown that the Pipe of the same specification is available in the market @ 60/- to 72/- per meter. The interveners have not been able to place on record any material to show that the Pipe available in the market manufactured by them of the same specifications is of inferior quality and the one supplied/sought to be supplied is of superior quality. It is also not the case of the interveners that they are manufacturing two types of materials of the same specifications but of different qualities, one which is available in the market and the other, which is supplied to the Respondent-State. It has also come on record that the material was supplied in the Deputy Commissioner's Office in the district of Simdega on 25th February, 2006 @ Rs. 72/- per meter of the same specification and make. This is sought to be justified on the ground that the Pipes supplied in the said district was of smaller length and thus there is variation in price.

18. In the counter affidavit filed by M/s. Farmer Tractors (the authorized agent of M/s. Finolex Industries Ltd.), it is also mentioned that the ex-factory price of the Pipe was Rs. 80.10 ps per meter and after adding freight and other taxes etc., the price comes to Rs. 130.24 ps. If the price of the pipe is worked out at Rs. 130.24 ps., it is not believable that it will be sold at a lesser price or at loss. There is also no explanation as to how the Pipe manufactured by the same Company available in the market is being sold by the local dealers at almost half of the price.

19. Similarly, the counter affidavit filed by M/s. Supreme Industries reveals that the ex-factory price is 80.10 ps. Per meter and after addition of freight and other taxes and charges, the price comes to Rs. 137.20. It is important to note that the in the calculations given, none of these parties have added component of the profit, therefore, if the price of their products is Rs. 130.24 and Rs. 137.20 respectively, it is unimaginable that they will sell at loss. This clearly indicates that there is some hidden methodology in fixing the price.

20. In the supplementary affidavit dated 20th April, 2006, the appellant has placed on record the quotations of the same products and specification from a dealer at Bhuvaneshwar and the rate mentioned is 68.26 per meter for 10,000 MT. Again another quotation is placed on record, whereby 6 meters of Pipe of same specification was purchased @ Rs. 111 per meter with the discount of 30 %, and the net price comes to Rs. 77.70 Ps. Per meter. If this could be the rate for small quantity definitely the rate for 9 lakh meters i.e. bulk purchase should be much less. The appellant has also placed on record quotations of dealers from Maharashtra, Asansol (West Bengal) of M/s. Supreme Industries Ltd. in respect to Pipe of the same specification with the rates quoted at Rs. 65.72 ps. Per meter and against the pipe manufactured by M/s. Finolex Industries Ltd. the rates quoted by dealer from Jamshedpur is Rs. 70.72 ps. Per meter, which includes

VAT. These facts have not been controverted by the Respondents in any manner, though various supplementary affidavits have been filed by them. Apart from the State's industrial Policy, the petitioner-appellant has also placed on record a copy of the Office Memorandum dated March, 18, 1998 issued by the Ministry of Industry, Government of India, Department of Small Scale Industries and Agro and Rural Industries, wherein the item No. 223 "PVC Pipes" upto 110 MM is reserved for small industrial sectors. It is, accordingly, contended that not only the State Government's Industrial Policy but even the Government of India's Industrial Policy also require the promotion of small scale sector and the item in question having been reserved for SSI sector, it is the obligation of the State to implement the Government of India's as also the State's Industrial Policy at least for Government Departments. It is relevant to state that 110 MM Dia is equivalent to 4" Pipe, which is subject matter of purchase in the present competition. Even when the decision was taken by the Central Purchase Committee, the representative of the Industries Department referring to a decision of High Court raised question regarding ignoring the local small scale industries but his objection was overruled. The Director of Industries also informed the Secretary, Water Resources vide his Communication dated 16th February, 2006 regarding the State's Industrial Policy and asked for the share of the local industries under the Industrial Policy. It is also relevant to mention writ petition being W.P. (C) No. 4076 of 2004 before the High Court seeking a direction for implementation of the Industrial Policy to ensure 75 per cent of the total orders from the State's purchases for the local SSI industries. This writ petition was disposed of vide order dated 15th October, 2004 and after discussing the State's industrial Policy, the High Court passed the following order:

The respondents, in their counter affidavit, have not disputed the existence and validity of the industrial policy. In that view of the matter, if there is no legal impediment, the respondent-State is under obligation to ensure that 75% of the total order placed with respect to any item under the tender notice shall be allotted to manufacturing industrial unit located within the State of Jharkhand but in no case the departments of the State Government will compromise with the quality.

21. Consequent upon the aforesaid order, the Industries Department issued a Circular dated 01st April, 2005 to all its heads of Departments and other blocks etc. for implementation of the judgment of the Court.

22. In view of our answer to three questions, we have no hesitation in holding that the supply orders placed with the interveners are not only contrary to the State's Industrial Policy but also in contravention of Government of India's Industrial Policy meant for the Small scale sector. We are also of the considered opinion that the two conditions inserted in the N.I.T. i.e. 250 crores annual turn over and 50000 MT capacity of the supplier are totally unwarranted, keeping in view the nature of the material to be supplied as also the quantity and the quality. We have also arrived at the conclusion that the rates quoted and

accepted by the Central Purchase Committee are on the higher side. If the same supplier has supplied the material @ Rs. 72/-, to the Deputy Commissioner, Simdega, how the rate for large quantity can be double. By interim order dated- 22nd June, 2006, this Court had allowed the Respondents to accept the supplies and pay not more than Rs. 60 per meter. We are informed that after the interim order, no further supplies have been made. In this view of the matter, we direct the payment of material already supplied to the interveners @ Rs 72/- per meter i.e the rate at which supply has been made to the Deputy Commissioner, Simdega and for the balance quantity, which is required by the State afresh N.I.T. be issued without the two conditions of turn over of Rs. 250/- crores and manufacturing capacity of 50000 MT. The State will implement State's Industrial Policy and ensure participation of local industries to the extent of and ensure their share of course without compromising the quality in any manner. We set aside the judgment of the learned Single Judge and allow this appeal with the above directions. In the facts and circumstances of the case, no order as to costs.