
(2006) 05 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12452 of 2004

Shailendra Nath

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Citation : (2006) 05 PAT CK 0039

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—This writ petition has been preferred to quash Clause 1 of the Memorandum of Instructions (Annexure-2), issued by the respondent Bank for empanelment of vendors of paper, loose leaf binders, stationery items etc. and printers, whereby prohibition has been imposed on the empanelment of persons whose near relatives as defined therein are working in the Bank.

2. According to the writ petition, the petitioner is the sole proprietor of a firm of printers engaged in the business of printing since the year 1986, and empanelled as printers with the respondent Bank, Local Head Office, Patna, since 1994. An advertisement was published in the local Hindi newspaper "Hindustan" on 26.9.2004 (Annexure-1), inviting applications for empanelment of vendors of paper, stationary items, printers etc. within 15 days. The applicants were required to conform to the general terms and conditions governing the empanelment incorporated in the impugned Memorandum of Instructions (Annexure-2). Clause 1 is the impugned portion and is set out herein below.

1. Near relative as defined by the Bank viz. (Spouse, Father (including step father), Mother (including step mother), Son (including step-son) and/or his wife, Grandsons, Daughter (including step-daughter) and/or her husband, Brother (including step-brother) and/or his wife, Sister and or her husband, father-in-law, Mother-in-law, Brother-in-law and/or his wife, Sister-in-law and/or her husband are barred.

2.1 It is further stated in the writ petition that the petitioner's brother

(Satyendra Nath) is posted as Assistant in the respondent Bank in Patna and, in view of the embargo created by the aforesaid instructions, he is prohibited from empanelment. The petitioner prays that the same may be struck down as invalid. Hence this writ petition.

3. While assailing the validity of the impugned action, learned Counsel for the petitioner submitted that the impugned action is hit by Article 19(6) of the Constitution, because such a restriction can be imposed by a legislation. The impugned order is a mere administrative instruction and restricts the petitioner's fundamental right to trade and business guaranteed by Article 19(1)(g) of the Constitution of India. He relied on the following reported judgments:

- (i) Baliram Prasad Vs. Union of India and others, .
- (ii) Lal Babu Prasad Vs. State of Bihar and Another,
- (iii) Tarsem Singh Vs. Bharat Sanchar Nigam Ltd. Etc., .
- (iv) Maa Dakshinakali Animal Feeds Vs. State of Orissa and Others, .

He next submitted that the impugned order is per se bad in law, and has no nexus with any rational object to be achieved. He relied on the judgment reported in M.R.F. Ltd. Vs. Inspector Kerala Govt. and Others, . The Bank is unable to control its internal affairs and outsiders like the petitioner can not be prohibited. He next submitted that the Bank's circular marked Annexure-3 provides the detailed procedure for award of such contracts, ensures transparency of procedure and decision-making and, therefore, the impugned clause is redundant. He also submitted that the petitioner's brother is a mere Clerk in the Bank and is in no position to affect the decision-making of the Committee comprised of senior functionaries and are inaccessible to the petitioner's brother. He lastly submitted that the impugned circular bars the petitioner at the threshold, whereas another circular of the Bank of 5.3.2003 (Annexure-R/A) does not bar the persons covered by the same at the preliminary stage. In other words, the petitioner alleges discriminatory treatment under similar circumstances.

4. The respondents have placed on record more than one set of counter affidavit and have supported the impugned action. Learned Counsel for the respondent Bank has submitted that the restriction is reasonable. In view of the general instructions of the Central Vigilance Commission, the Bank seeks to remedy the mischief which seems to afflict its contracts in the field covered by the impugned notification. He next submitted that the impugned order does not deprive the petitioner of his fundamental right to trade and business. It only prohibits him from dealing with the Bank in the areas covered by the notification so long any one of his relations is working in the Bank. The petitioner is already dealing with other Banks. He relies on the judgment of the Supreme Court reported in AIR 1981 SC 344 Fertilizer Corporation Kamagar Union (Regd.) Sindri and Ors. v. Union of India and Ors. (paragraph 14). He further submitted that Article 19(1)

(g) of the Constitution of India guarantees right to do business, but does not protect and guarantees right to do business with a particular organisation of his choice. He also submitted that Clauses (2) to (6) of Article 19 of the Constitution are enabling Clauses to legislate and to take away a fundamental right. He next submitted that it is an administrative act and its reasonableness may be judged by judicial review. The test of reasonableness has been explained by the Supreme Court in its judgment reported in *Tata Cellular Vs. Union of India*, . He next submitted that a restriction can be imposed by an executive instruction so long it does not take away the right. He relied on the following reported judgments:

(i) *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, .

(ii) *Shriram Refrigeration Industries Ltd. and Another, etc. Vs. State Bank of India and Another*, .

He next submitted that the impugned clause really determines the terms and conditions of an advertisement which the Bank alone can determine. He relies on the following reported judgments:

(i) *Mahinder Kumar Gupta and Others Vs. Union of India (UOI), Ministry of Petroleum and Natural Gas*, .

(ii) *Vijay Chandra Prasad Singh Vs. Indian Oil Corporation Ltd. and Others* .

(iii) 2005(3) PLJR 97 SC Master Marine Services Pvt. Ltd. v. Metcalfe & Hodgkinson Pvt. Ltd. and Anr.

He lastly submitted that it is a policy decision.

5. I have perused the materials available on record and considered the submissions of learned Counsel for the parties. It appears to me that the impugned clause is based on the Bank's past experience, and it has taken a conscious, administrative policy decision. It has accordingly issued Corporate Centre letter No. NBG: P&HRD : IR : CIR : 93 dated 5.3.2003 (Annexure-R/A), wherein it is stated that with respect to the matters relating to contract for hiring of vehicles, generator sets, book binding, supply of furniture and coolers, printing, courier services, data entry work, catering at hostels/guest houses etc., are being given to individuals who are relatives of the staff members. In all such cases, the laid down procedure in regard to inviting applications through sealed tenders, newspapers advertisements, approval by the Rate Committee as required in Chapter 4 of Scheme of Delegation of Financial Powers General Matters 1997, are being by-passed and decisions to award such contracts are being taken at the level of Branch Managers/Controllers without prior scrutiny of offers in the prescribed manner. In the process, the letter goes on, malpractices have crept in resulting in benefits to individuals who are neither technically equipped nor are they in the profession of rendering above mentioned services. In some cases, the same individual is providing these services under different

names which is a criminal offence. Therefore, the Corporate Office imposed the prohibition. The Corporate Office itself and its offices including more than 9000 branches all over the country are uniformly following the same. In view of the Corporate letter, the impugned clause has been inserted as a follow-up measure by the Local Head Office, Patna, to suppress the mischief and promote transparency and fairness in award of contracts.

6. Section 8(h) of the Central Vigilance Commission Ordinance 1998, as well as Act No. 45 of 2003 (which followed as a sequel to the Ordinance) reads as follows:

exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government Companies, societies and local authorities owned or controlled by that Government.

In exercise of powers so conferred on the CVC, it issued its Circular dated 18.11.1998 (Annexure-R/E), wherein it has noted that improvement of vigilance administration is possible only if system improvements are made to prevent the possibilities of corruption and also encourage a culture of honesty. There is scope for patronage and corruption especially in matters relating to tenders, cases where exercise of discretion relating to out-of-turn conferment of facilities/privileges and so on.

One major source of corruption arises because of lack of transparency. It has, therefore, directed all those governed by the said Section 8(1)(h) that each Organisation may identify such items/areas which provide scope for corruption and where greater transparency would be useful. In deference to the instructions, the Bank has identified that relatives of its employees are bagging most of these contracts after violating or over-looking the established procedure. In other words, the impugned clause is intended to suppress a vital mischief eroding the Banks credibility, transparency, and fairness regarding distribution of largess. The Bank has learnt from its experience that the tenderers at large are getting defeated because the relatives of the employees are bagging the contracts, being insiders. It is very easy to imagine that such employees may be providing vital and confidential informations including the rates quoted by rivals. The role played by P.As. and personal secretaries in divulging the secrets for a price is well known. They are keepers of records and privy to confidential informations and discussions. It is a possible situation that such a relative may be an active member of the union and may seek to exert pressure. It is thus manifest that the impugned clause has a nexus with a rational object sought to be achieved. The Court should, therefore, be very reluctant to interfere with such acts which are meant to tackle corruption, to suppress the mischief so that the people at large are sure of transparency and their tenders are considered fairly and without any surreptitious contrivances.

7. The impugned clause forms part of the terms and conditions of an

advertisement inviting tenders which the person or the organisation inviting tenders alone can fix provided the same is not irrational, arbitrary or discriminatory. It is manifest from the materials on record that the prohibition has been imposed by the Bank in all its offices including its 9000 branches all over the country. This Court is, therefore, convinced that the impugned clause has been applied with inexorable uniformity and none has been subjected to hostile discrimination. The category of tenderers whose relatives are employed in the Bank, form a separate and distinct group, all of whom are being uniformly treated, and have uniformly been excluded. Such tenderers form a class by themselves and are dissimilarly circumstanced and cannot, therefore, claim to be similarly treated. It seeks to achieve a rational object.

8. The impugned clause really determines the eligibility criteria, which the Bank is alone entitled to fix provided it is not irrational, arbitrary or discriminatory. The Government Companies dealing in petroleum products, in their tender notices inviting applications for grant of dealership or licenses, generally incorporate a clause whereby a person is disentitled from submitting his application if his relative (as defined therein), is already holder of such a dealership/license. The validity of such a clause fell for consideration of the Supreme Court in the case of Mahinder Kumar Gupta and Others Vs. Union of India (UOI), Ministry of Petroleum and Natural Gas, . Repelling the attack, the Supreme Court has observed as follows:

As a part of its policy of the distribution of its largesse Government have prescribed the eligibility criteria to the persons to obtain dealership for distribution of petroleum products. The distribution of the largesse of the State is for the common good and to subserve the common good of as many persons as possible. The Government of India intended to group together certain near relations as a unit and one among that unit alone was made eligible to apply for and claim for grant of dealership. Further, economic and social justice as envisaged in the Preamble of the Constitution is sought to be achieved. Therefore, there is a reasonable nexus between the object and the prescription of the eligibility criteria envisaged in the guidelines. All those who satisfy the eligibility criteria alone are entitled to apply for the consideration of the grant of dealership. It is true that in case of physically handicapped persons, only three classes of persons were made ineligible. Physically handicapped persons have been treated as a class by themselves. Under these circumstances, any other person other than PH, cannot claim parity with PH persons. As far as partnership is concerned, if one of the persons either have a dealership or relations who were found to be eligible under the relationship criteria, and had the dealership, then Clause 10 of the said guidelines gets attracted and such partnership also did not become eligible to apply for dealership/distributorship. The object of Clause 10 appears to be that for those partners who either one among themselves or any of the relations of one of the partners had a dealership, the other partner or the specified relations also not be eligible to apply for grant of dealership individually or as a member of the partnership. Therefore, the guidelines are based on public

policy to give effect to the constitutional creed of Part IV of the Indian Constitution.

8.1 I had the occasion to follow the judgment in Mahinder Kumar Gupta (supra) in the case of Vijay Chandra Prasad Singh Vs. Indian Oil Corporation Ltd. and Others .

9. The judgment of the Supreme Court reported in Union of India and others Vs. Smt. V.P. Parukutty, also supports the case of the respondent Bank.

10. Such Government Oil Companies generally insert another clause in their notices inviting tenders for grant of dealership/licenses that the applicant should be a resident of the area for which the dealership/license is being granted excluding the rest. Validity of the clause has been upheld by the Supreme Court in its judgment in the case of Bhagwan Dass and Another Vs. Kamal Abrol and Others, . The relevant portion of paragraph 12 of the judgment is set out herein below for the facility of quick reference:

12. In the present case, the necessary eligibility criterion requires the applicant to be a resident of Kangra District. The advertisement inviting the applications has not defined the same and hence it would be necessary to see the intention of the framers of the eligibility criteria to understand the true meaning or the sense for which the word "resident" is used or as to why the criterion of resident is put as an eligibility criterion for allotment of LPG dealership/distributorship. In the present case the intention of the framers appears to be to provide employment or source of earning for the residents of Kangra District in the form of LPG dealership/distributorship....

11. It further appears to me that it is a policy decision. The Courts are always reluctant to interfere with policy decisions provided it does not violate the constitutional guarantees. A circular of the Indian Railways was challenged before this Court by preferring C.W.J.C. No. 6736 of 2005 and C.W.J.C. No. 7018 of 2005 (Singh Caterers and Vendors and Ors. v. The Railway Board and Ors.). The railways had enhanced/raised the eligibility criteria, whereby tenderers with an annual turn-over of Rs. five crores could alone apply for mobile catering on Rajdhani/Shatabdi Express Trains, and tenderers with annual turn-over of Rs. three crores or more could apply for mobile catering and the other mail/express trains. Repelling the attack, this Court stated as follows in paragraph 3 of the judgment dated 21.2.2006:

3. Law is well settled by a long line of cases that the Court should desist from interfering with the policy decisions of bodies which are "State" within the meaning of Article 12 of the Constitution of India. Subject to the recognized exceptions, it should be left to the policy-makers to formulate the policies so long it applies uniformly to all the people who are governed by the policy decision. Mr. Venkatramani, learned Counsel for the Indian Railways, has rightly relied on the judgment of the Supreme Court in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , wherein it has been held as follows:

29. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy of any action of the government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See *Ramana Dayaram Shetty v. International Airport Authority of India* and *Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir*). In *Col. A.S. Sangwan v. Union of India* while the discretion to change the policy in exercise of the executive power, when not tramelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.

31. ...The extent of permissible judicial review was indicated by saying that "actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose.

3.1) The Supreme Court has held as follows in the recent judgment reported in *Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another*, :

12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. 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. The Government must have freedom of contract. In other words, 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 principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94).

13. In *Sterling Computers Ltd. v. M & N Publications Ltd.* it was held as under: (SCC p. 458, paras 18-19)

18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the "decision-making process".... By way of judicial

review the court cannot examine the details of the term of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time...the courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract.

14. In *Raunaq International Ltd. v. I V R Construction Ltd.* it was observed that 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 of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of the ability to deliver the goods or services as per specifications.

15. The law relating to award of contract by the State and public sector corporations was reviewed in *Air India Ltd. v. Cochin International Airport Ltd.* reported in (2002) 2 SCC 617, and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation. It was further held that the State, its Corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

12. The judgment of this Court reported in *Vijay Kumar Mandal and Others Vs. The National Thermal Power Corporation Ltd. and Others*, , may be noticed. Lands had been acquired for the National Thermal Power Corporation Limited to set up a power plant at Kahalgaon (Bhagalpur), in the State of Bihar. Apart from payment of compensation under the Land Acquisition Act, the State of Bihar and the Corporation had taken the policy decision that all the posts of Class IV employees in the Kahalgaon Project shall be filled up by such land-oustees as per the formula indicated therein. In view of the position that the number of vacancies were limited to the extent of sanctioned posts in the Kahalgaon Project, every land-oustees could not have been given a class IV post. A formula was, therefore, indicated in the policy decision to distribute the largess. Repelling

the attack on behalf of those of the land-oustees who could not get appointment, It was held as follows in paragraph 14 of the judgment:

14. Granting relief to the petitioners may amount to interference with the policy decision of the respondent authorities which, subject to the recognised exceptions, is impermissible in law. The judgment of the Supreme Court in the case of State of Orissa and Ors. v. Gopinath Dash and Ors. reported in Judgments Today 2005 (10) S.C. 484, is relevant in the present context. The State of Orissa had framed a policy for allotment of Government accommodation on rotation basis in view of shortage of accommodation. The Orissa High Court set aside the policy decision holding that it was contrary to and inconsistent with justness and fair play and hence illegal. The Supreme Court did not agree with the judgment of the High Court, allowed the appeal, and restored the policy. Paragraphs 6 and 9 of the judgment are relevant in the present context and are set out herein below for the facility of quick reference:

6. While exercising the power of judicial review of administrative action, the court is not the appellate authority and the Constitution does not permit the court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Asif Hameed and others Vs. State of Jammu and Kashmir and Others, , State of Bihar and others Vs. Ramjee Prasad and others, . The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the government does not appear to be agreeable to the Court it cannot interfere.

9. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theatre Company v. City of Chicago (1912) 57 L Ed 730. "The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review.

14.1) The judgment of the Supreme Court In U.P. Kattha Factories Association Vs. State of U.P. and others, , may also be noted. The State Government had decided to ban completely the registration of small-scale units based on forest produce due to its non-availability from a particular date while entitling those registered prior to that date to be considered for allotment of the said produce, being a policy decision of the State. The Supreme Court declined to interfere with the policy decision.

14.2) The Supreme Court in its judgment in the case of State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., held that the right of the State to

change its policy from time to time under the changing circumstances cannot be questioned, though the changed policy deviated from the judicial pronouncements of the Supreme Court.

14.3) The Supreme Court has held in its judgment reported in *Krishnan Kakkanth Vs. Government of Kerala and others*, that the Government policy is not subject to judicial review unless it is demonstrably arbitrary, capricious, irrational, discriminatory or violative of constitutional or statutory provisions.

No such case has been made out by the petitioner calling for interference by this Court in exercise of writ jurisdiction.

13. Learned Counsel for the respondents is right in his submission that the impugned clause does not take away the petitioner's right to trade and business. Article 19(1)(g) does not guarantee to any citizen the right to trade and business with any particular individual or organisation or Government or Public Sector Undertaking. It is free to distribute it largess in awarding contracts on uniform basis and bereft of arbitrariness. It does not confer any right at all In favour of the petitioner to deal with the Bank so long the restriction in the nature of an eligibility clause is enforced uniformly, and has a rational nexus with the object sought to be achieved. As stated hereinabove, the respondent Bank has, on the basis of its experience and the problem within its organisation and in view of the instructions of the CVC, carved out a group of persons to be excluded from consideration to suppress the mischief. The petitioner is dealing in same or similar items with other Banks. If the impugned clause were tantamount to deprivation of the petitioner's fundamental right to trade and business, he could not have been dealing with other Banks in similar items. The Supreme Court has held as follows in paragraph 14 of its judgment reported in AIR 1981 SC 344 *Fertilizer Corporation Kamagar Union (Regd.) Sindri and Ors. v. Union of India and Ors.* :

14. Secondly, the right of petitioners 3 and 4 and of the other workers to carry on the occupation of industrial workers is not, in any manner, affected by the impugned sale. The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in a particular post under a contract of employment. If the workers are retrenched consequent upon and on account of the sale, it will be open to them to pursue their right and remedies under the Industrial Laws. But the point to be noted is that the closure of an establishment in which a workman is for the time being employed does not by itself infringe his fundamental right to carry on an occupation which is guaranteed by Article 19(1)(g) of the Constitution. Supposing a law were passed preventing a certain category of workers from accepting employment in a fertilizer factory, it would be possible to contend then that the workers have been deprived of their right to carry on an occupation. Even assuming that some of the workers may eventually have to be retrenched in the instant case, it will not be possible to say that their right to carry on an occupation has been violated. It would be open to them, though undoubtedly it will not be easy, to find out other avenues of employment

as industrial workers. Article 19(1)(g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice. Even under Article 311 of the Constitution, the right to continue in service falls with the abolition of the post in which the person is working. The workers in the instant case can no more complain of the infringement of their fundamental right under Article 19(1)(g) than can a Government servant complain of the termination of his employment on the abolition of his post. The choice and freedom of the workers to work as industrial workers is not affected by the sale. The sale may at the highest affect their locum, but it does not affect their locus, to work as industrial workers. This is enough unto the day on Article 19(1)(g).

14. The Supreme Court has observed in its judgment reported in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, that, where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is with regard to the terms on which largess may be granted, and the other in regard to the persons who may be recipients of such largess. Unlike a private individual, the State cannot act as it pleases in the matter of giving largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested as to its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid. The Supreme Court has further observed that there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is reasonable and in public interest. One basic principle which must guide the Court in arriving at its determination of this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material.

15. The impugned action is an entirely administrative act. Law is well settled that the ground for interference with an administrative action are extremely narrow and well recognised. The judgment of the Court of appeal in England in the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* reported

in 1947, Vol.2, All England Reports page 681, has become classical in legal literature. That was a case where the respondent Corporation had, under the provisions of the Cinematograph Act, vested the respondent Corporation with the duty and function of the licensing authority. The Corporation in its wisdom issued an executive order that children up to the age of 15 years shall not be admitted to any entertainment, whether accompanied by an adult or not. The plaintiffs challenged the condition on the ground that it was unreasonable, they should have limited it to cases where the children were not accompanied by their parents or a guardian or some adult. The argument was that the imposition of that condition was unreasonable, and that, in consequence, it was ultra vires the corporation. The matter reached the Court of Appeal, Lord Greene, M.R., speaking for the Court, rejected the contention stating that it was not a judicial act, but an executive act; secondly, that the conditions which, under the exercise of that executive act, may be imposed are in terms put within the discretion of the local authority without limitation; and thirdly, that the statute provides no appeal. The distinguished Master of the Rolls proceeded to explain the powers of the Court to interfere in such matters. When an executive discretion is entrusted by the Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the Courts in a very limited class of cases. It must always be remembered that the court is not a court of appeal. The law recognises certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any court of law. The limited ground of interference by the Courts is confined to ground of bad faith, dishonesty, unreasonableness, attention given to extraneous circumstances, disregard of public policy. The authority must exclude from his consideration matters which are irrelevant to the matter that he has to consider. Similarly, if the action complained of is so absurd that no sensible person could ever dream that it would lay within the powers of the authority, for example, if a red-haired teacher was dismissed because she has red hair. Once it is held that the subject-matter of the impugned condition was one which it was competent for the authority to consider then the corporation is the ultimate arbiter of what is and is not reasonable and not the Court. If the local authority were entrusted by the Parliament with the decision on the matter in which the knowledge and experience of the authority can best be trusted to be of value, it would need overwhelming proof for the plaintiffs to establish that if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere. The Courts may very well have different view from those of a local authority on matters of high public policy of this kind. Some Court may think that no children should be admitted on Sundays at all, some Courts may think reverse. The effect of the legislation is not to set up the Court as an arbiter of the correctness of one view over another. It is the local authority who are put in that position and, provided they act, as they have acted here, within the four corners of their jurisdiction, the Court can not interfere.

16. I must now deal with the submissions advanced on behalf of the petitioner. It has been submitted that the impugned action deprives the petitioner of his fundamental right to carry on trade and business. The submission is based on a complete misconception. As stated hereinabove, the petitioner's right to trade and business has not been taken away. The impugned clause is part of the terms and conditions of the advertisement, it fixes the eligibility clause, and is meant to achieve a distinct and worthwhile object of transparency in grant of contracts in the field in question and to suppress a mischief which, in the estimation of the Bank, has been afflicting such grants. It is of great importance to note in the present context that the petitioner's disability would be automatically removed the moment his relative employed in the Bank ceases to be in such employment, for example, on his superannuation.

17. In view of the foregoing discussion that the impugned clause is really provides the eligibility clause and does not curb the petitioner's fundamental right, the provisions of Article 19(6) of the Constitution are not attracted, and a legislation is not needed to achieve the object.

18. Learned Counsel for the petitioner has next contended that the Bank has prescribed a detailed procedure to ensure transparency to arrive at a just and proper decision and, therefore, the impugned clause is redundant. He has further submitted that the entire apprehension is at the hands of the employees of the Bank. The Bank is not able to ensure discipline and integrity among its employees and, therefore, an outsider like the petitioner can not be prevented from applying for the contract. The contention is stated only to be rejected. The issue has already been discussed hereinabove. As held hereinabove, this forms part of the terms and conditions of an advertisement and prescribes the eligibility clause which the Bank alone is entitled to determine, the petitioner cannot dictate terms thereof to the Bank, particularly in a situation where this Court is in no doubt that the same is just and reasonable and seeks to achieve a worthwhile object in a most non-discriminatory manner. In view of its experience and the instructions of the CVC, and in its wisdom, the Bank has thought it fit to introduce the impugned clause to take care of the problem. This Court will always be reluctant to interfere with such reformatory measures to tackle corruption and the like.

19. The reliance placed by the learned Counsel for the petitioner on a Division Bench judgment of the Punjab and Haryana High Court reported in Tarsem Singh Vs. Bharat Sanchar Nigam Ltd. Etc., , merits serious consideration. That was a case where the respondent Corporation had incorporated an identical clause in its advertisement. The writ petition was allowed and the clause impugned therein was set aside. The judgment squarely covers the petitioner's case. With great respect to the Hon'ble Judges who delivered the judgment, I express my inability to agree with the views expressed therein for the reasons assigned hereinabove. The aforesaid aspects of the matter were not canvassed at the Bar and were, therefore, not considered.

20. I must deal with last contention advanced on behalf of the petitioner. Learned Counsel for the petitioner invited my attention to the following clause occurring in the said Corporate letter dated 5.3.2003 (Annexure-R/A):

All applicants/bidders shall have to disclose relationship with a member of staff in their competitive bids alongwith experience they have in the line of activity supported by certificates from the organisations where such jobs were done. No contract should be extended to a relative or a firm where the relative is a partner, without specific approval from the Controller. In such cases, a Committee headed by Dy. General Manager and 2 Asstt. General Managers (including Controller) will grant/reject the proposal.

(emphasis added)

He submits that the same has not been incorporated in the impugned memorandum of instructions (Annexure-2). In other words, there is a contradiction between the two. Whereas the Corporate Office by the mother circular has reserved to itself the authority to grant contracts to such tenderers whose relations are working, after specific approval from the Controller, but the same has not been incorporated in the impugned memorandum of instructions. It is, therefore, submitted that this is capable of great mischief and discrimination at the instance of the Controller, Let the Corporate Office, which has issued the said letter dated 5.3.2003 (Annexure-R/A), consider the matter and make necessary corrections, if necessary.

21. I do not find any merit in this writ petition. It is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.