

(1996) 04 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ Petition No's. 4601, 4686 and 4687 of 1995

S.N. Engineering Works

APPELLANT

Vs

Mahanagar Telephone Nigam Ltd.

RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1996) 37 DRJ 446

Hon'ble Judges : R.C. Lahoti, J; Lokeshwar Prasad, J

Bench : Division Bench

Advocate : E.X. Joseph, S.T. Siddiqui and A.K. Sikri, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) This order shall govern the disposal of CWP's 4686/95, 4687/95 and 4601/95. All the three petitions raising common questions of fact and law in the background of similar events were heard analogously.

(2) In C.W.P.No. 4686/95 M/S. S.N. Engineering Works, petitioner No.1, is the sole proprietary firm of Shri Harish Kumar Bagchi, petitioner No.2. The petitioner is on the approved list of contractors of Mahanagar Telephone Nigam Ltd (hereafter Mtnl, for short) from 1988 onwards. It has been getting annual rate contracts ever since 1988 in respect of the works of trenching and laying cables etc. The petitioner's elder brother - Shri M.K. Bagchi, is serving as Junior Telecom Officer in MTNL. On promotion he becomes Sub- Divisional Officer (Training Co-ordination). In all the tenders for the years from 1988 to 1991 the petitioner had made a mention of the fact of his brother working as Junior Telecom officer in MTNL. In subsequent years, from 1991 onwards also, the petitioner had declared that his elder brother was holding the post of Assistant Engineer (SDO, Training Co-ordination) in the Mtnl, as the petitioner's brother was promoted from the post of Junior Engineer to the Post of Assistant Engineer; the post of Sdo being equivalent to the post of Assistant Engineer.

2.1 On 15.9.95, a notice was issued to the petitioner requiring him to show cause why he be not blacklisted as the petitioner's elder brother Shri M.K. Bagchi was working as Sdo in the MTNL. The petitioner gave a reply stating that the said fact was not concealed by the petitioner but was rather made known to the respondent while submitting the tenders. It was also submitted that though Mr M.K. Bagchi the elder brother of the petitioner, was serving in Mtnl he was not in any way connected or associated with the contract of the petitioner; he had no role to play either in inviting or finalising the tenders or in the execution of work thereafter and so this fact had no relevance nor did it disqualify the petitioner from bidding the tenders, nor did it vitiate the contract entered into by him.

2.2 On 1.12.95, the Asstt General Manager (MM-II) of Mtnl has passed an order, Annexure P-7, directing the petitioner to be removed from the approved list of the contractors and further debarring him for further award of the works. His all the existing contracts have also been cancelled. The ground for the impugned action, as stated in the order, is that the petitioner had incurred disqualification as per CI.J of Nit as also as per declaration Appendix-5 of Nit according to which a "near relative" of an employee in any capacity of MTNL/DOT was disqualified from entering into contract with MTNL.

(3) In C.W.P. No. 4687/95 the petitioner No.1 M/S S.N. Construction is the sole proprietary concern of Nishith Kumar Bagchi, the petitioner No.2. Nishith Kumar Bagchi (Petitioner No.2), Harish Kumar Bagchi (petitioner No.2 in Cwp 4686/95) and M.K. Bagchi (the official in MTNL) are real brothers.

3.1 This petitioner had also made no secret and invariably declared in his tenders that his brother was serving as an official in the MTNL.

3.2 The petitioner was served with a notice dated 15.9.95 issued by DGM(MM-I) requiring him to show cause why his further business with Mtnl be not discontinued on account of his near relative working in MTNL. In spite of the petitioner having shown cause, the Gm (MM- II) has passed an order dated 1.12.1995, (Annexure P7), debarring the petitioner from further award of works, removing him from the approved list of contractors and cancelling all his existing contracts with MTNL.

(4) In Cwp No.4686/95, works and the materials as to which the petitioner (M/ s.S.N. Engineering Works) has been adversely affected are stated as under by the petitioner therein (vide Annexure P/8) :-

1. Value Of The Work EXECUTED/PAYMENTS Due A. Work : Trenching & laying of cables etc. S. No. Unit of Work Approx. value of work done Status for which payments due
1 COC-III(S) Rs.3,15,000.00 Work is almost completed & bills are to be submitted.
2. COC-IV(S) Rs.3,12,000.00 Bills submitted.
3. COC-VI(S) Rs.8,00,000.00 Work completed bills are to be submitted.
4. COC-XVI Rs.5,00,000 Work in progress bills not yet submitted.
5. COC-XVII(S) Rs.1,00,000 --do-
6. Ofc Rs.2,50,000 Work completed bill are to be submitted
Total Rs.22,77,000

II. Value Of The Materials Purchased And Stacked At The Sites Etc For Use In The Work In Progress A. Work : Trenching & laying of cables etc. S.No. Unit of Work Approx value of the materials Remarks Brick Red stone R.C.C.H/PLPC 1. COC-III(S) Rs.18,870/ Rs. 31,320.00 2. COC-IV(S) Rs.11,050 Rs. 7,830/ Rs. 39,150.00 3. COC-VI(S) Rs.13,049 Rs. 47,502.00 4. COC-IX(S) Rs.25,500 Rs. 62,640.00 5. COC-XVI(S) Rs.52,199 Rs. 63,684.00 6. COC-XVII(S) Rs.1,30,499 Rs. 1,06,140.00 Rs.55,420 Rs.2,03,577 Rs.3,50,436.00 TOTAL:Rs. 6,09,433.00

(5) In Cwp No. 4687/95 the details of the works and the material to which the petitioner (M/s.S.N.Construction) is likely to be affected adversely are stated as under by the petitioner therein (vide Annexure P/8) :-

1. Value Of The Work EXECUTED/PAYMENTS Due A. Work : Trenching & laying of cables etc. S.No. Unit of work Approximate value of Status work done for which payments due 1. C.O.C.- X(N) Rs.3,00,000 Bill submitted 2. C.O.C.- XII(N) Rs.3,50,000 Work is almost complete bills to be submitted 3. C.O.C.- XIV(N) Rs.7,00,000 Work complete bills to be made 4. C.O.C.- 1(S) Rs.6,00,000 Bills submitted .5. C.O.C.- IV(S) Rs. 75,000 Work completed bills to be submitted. 6. C.O.C.- V(S) Rs. 52.000 Bills submitted. 7. C.O.C.- XIV(S) Rs.8,10,000 Work is almost complete bills to be submitted. 8. C.O.C.- VIII(S) Rs. 8,000 Work complete bills to be submitted. 9. C.O.C.- XVI(S) Rs. 1,20,000 Bills to be submitted 10. C.O.C.- XVII(S) Rs.2,50,000 Work complete bills to be submitted - Total Rs.32,65,000.00

B. Work: Construction of Jn Duct at Tander Exchange S.No. Unit Of Work Approximate value of Status work done for which payments du 1. Jn Duct at Teke hand Rs. 8,00,000 Running works bills are Ex. Engineer (DCS) to be made Grand total Payment due for Rs.32,65,000.00 which work done Rs. 8,00,000 Total Rs.40,65,000

II. Value Of The Materials Purchased And Stacked At The Sites Etc For Use In The Work In Progress A. Work : Trenching and laying of cables etc. S.No. Unit of work Approximate value of the materials Remarks Bricks Red Stone RCC/H/PIPE Rs. Rs. 1. COC-X (N) 8,500 - 7,830.00 2. COC-XII(N) 11,322/ 6,980.00 3. COC-XIV(N) 78,300 53,070.00 4. COC-I(S) 16,983/ 39,150.00 5. COC-IX(S) 45,674 31,842 6. COC-XIV (S) 8,500/ 8,000.00 45,305 1,94,444 1,93,852 Total Rs.4,33,601.00

B. Work: Construction of Jn Duct at Teke hand Exchange S. Unit of Work Approximate of materials value Remark No. rks Pvc Acce Ms Cement Badar Stone pipes sories rods pur chips Rs Rs Rs Rs Rs Rs 1. Jn Duct at 10,00,000 1,00,000 1,00,000 28,000 15,000 16,000 Teke hand Exch. Ex Engineer-DCS Total Rs. 12,59,000

(6) In Cwp 4601/95 M/S Gagan Traders is the sole proprietary firm of Shri L.R. Aggarwal. The petitioner firm has been having business dealings with the respondent since 1989. Pursuant to a notice inviting tenders, the petitioner submitted a tender on 3.1.1995 which was accepted and an agreement dated

21.2.1995 was entered into between the parties. The petitioner had made a declaration in the prescribed proforma Appendix 5 stating that neither the petitioner nor any employee working with him was a near relative of any officer of MTNL.

6.1 On 15.9.95, the Deputy General Manager (MM) issued a notice to the petitioner requiring him to show cause as to why the petitioner be not blacklisted and further business by the respondent with the petitioner be not banned for making a false declaration by the petitioner as it had been learnt that Shri Dalbir Aggarwal Construction Officer (South) working in Mtnl was petitioner's near relative. The petitioner gave a reply on 29.9.95 stating that the declaration given by the petitioner was correct. On 1.12.1995 the impugned order (Annexure-A) has been passed whereby the petitioner has been removed from the approved list of the contractors and debarred from further award of the works. All existing contracts with him have also been cancelled and security deposit forfeited. Vide para 3 (6) of Annexure-A it is stated- "Shri Dalbir Aggarwal who is working as construction officer with Mtnl is the son-in-law of Late Shri B.C. Aggarwal (brother of L.R. Aggarwal, proprietor of M/S Gagan Traders)"

6.2 On 5.12.1995 when the petition came up for hearing on the question of admission the court wanted the petitioner to make a clean breast of the fact if Dalbir Aggarwal referred to in the impugned order of Mtnl was a near relative of the petitioner. On 8.12.1995, an affidavit sworn in by the petitioner has been filed wherein it is stated that Dalbir Aggarwal was not the son in law of late Shri B.C. Aggarwal as held out by the respondent in its show cause notice dated 1-12-1995 but he was the son-in-law of Shri J.P. Aggarwal who is brother of the proprietor of the petitioner firm. A plea has also been raised in the affidavit that the brother's son-in-law does not figure in the term "relative"-the expression as used in law or the term "near relative" as defined by the respondent MTNL. It is further stated that Dalbir Aggarwal was in no manner connected with or responsible for award or execution of contracts. He was functioning as Pro and it was only in June-July, 1995 that he was transferred to this department whereas the tenders in question were finalised and agreement executed between the parties in the month of February, 1995.

6.3 Be that as it may, it is not in controversy at this stage that Shri Dalbir Aggarwal is real brother's son-in-law of the petitioner and working in MTNL.

(7) All the three writ petitions have been contested by the respondent Mtnl by filing its counter.

7.1 In Cwp 4686/95 and Cwp 4687/95 counters have been filed adopting a similar line of reasoning. It is submitted that the Nit clearly stipulated that if "near relative" of the contractor was working in Mtnl then neither the contractor can tender for the work nor can he be in the approved list of the contractors. The petitioners do have near relations working in Mtnl, If the two petitioners were not entitled to participate in the bid or be approved contractors or to get the work it

is clear that the petitioners were disqualified from tendering from the very beginning. Due to mistake or error on the part of Mtnl committed unconsciously the petitioners' tenders were considered and they were placed on the penal of approved contractors. On the error being detected it was always open to the respondents to remove the petitioners' name from the approved list as the petitioners were not eligible to handle the work. Merely because the petitioners had each made a declaration about his brother working in Mtnl it would not be a ground for suspending or overlooking the terms as to disqualification incorporated in the NIT/tenders. Restraining the near relatives of the employees of Mtnl from entering into contract with Mtnl is a valid restriction having a rational nexus with the object sought to be achieved, else such contractors are able to influence the grant of contract/award of works, execution of contract and payment of the work done, by exploiting the influence or good offices of the relations working in MTNL.

7.2 The respondents have illustrated and demonstrated the laudable object sought to be so achieved by enacting the above said rule in Nit / tenders as also the adverse influence which such contractors were in a position to wield in MTNL. A statement (Annexure R1 in Cwp 4686/95 and Annexure R-3 in Cwp 4601/95) has been enclosed with the counter showing figures of the work awarded and payment made to various contractors since 1-2-95 To 30-9-95 of DGMCC(S) Organisation. During the course of hearing Mr Arjun Sikri the learned counsel for respondent Mtnl produced an up-to-date chart showing the same facial situation for the period 1-2-1995 to 30-11-1995. The later chart is reproduced hereunder :-

Details Of Amount Paid To Approved Contractors From 1.2.95 To 30.11.1995

S.No.	Name of firm	Amount Paid (in Rs.)
1	M/S Murlidhar & Sons	1,92,90,998.00
2	M/S Gagan Traders	82,26,527.00
3	M/S S.N. Engg. Works	1,08,32,210.00
4	M/S S.N. Construction	1,03,79,517.00
5	M/S Pawan Kumar Jain & Sons	39,70,996.00
6	M/S Anupam Construction	14,52,185.00
7	M/S United Engineers	68,74,993.00
8	M/S Hindustan Trading Corporation.	29,75,425.00
9	M/S Sudhir Associates	42,07,431.00
10	M/S Blue Star Travels	1,05,90,175.00
11	M/S Mathian Constn. Engg.	32,92,660.00
12	M/S Gorkhi Construction	92,47,305.00
13	M/S Vaishali Enterprises	53,67,531.00
14	M/S Bharat Cont & Engrs.	54,42,018.00
15	M/S R.L. Const.	11,27,970.00
16	M/S S.K. Mittal & Co.	14,27,202.00
17	M/S Geeta Construction	11,36,104.00
18	M/S Swastic Hitech	21,26,950.00
19	M/S Radha Ballabh & Sons	27,50,317.00
20	M/S Cil Constn. & Traders	30,76,680.00
21	M/S R.K. Co.	25,67,933.00
22	M/S Aman Contractors	37,60,933.00
23	M/S H.S. Construction	9,54,465.00
24	M/S Sangam Associates	51,27,463.00
25	M/S Vichitra Const.	26,94,125.00
26	M/s Reliable Telecom	17,52,902.00
27	M/S Prakash & Co	27,01,738.00

7.3 A chart Annexure-R2 has been filed in Cwp 4601/95 by the respondent which shows inter- relationship of several firms belonging to one group and carrying on

business with the respondent. The chart shows that B.C. Aggarwal, L.R. Aggarwal, Murlidhar Aggarwal and J.P. Aggarwal are all real brothers. Gagan Aggarwal is the son of Shri B.C. Aggarwal who is proprietor of M/S Anupam Construction. Shri L.R. Aggarwal himself is the Proprietor of Gagan Traders. Shri L.R. Aggarwal's brother-in-law's wife by name Anita Singhal is the proprietor of United Engineers. Shri L.R. Aggarwal's wife Smt P. Aggarwal is the proprietor of Hindustan Trading Corporation. Murlidhar Aggarwal is the proprietor of Murlidhar & Sons.

7.4The same chart shows that Shri L.R. Aggarwal's another brother-in-law's wife Smt Madhu Singhal is Sde in MTNL. His brother Shri J.P. Aggarwal's son-in-law Dalbir Aggarwal is Construction Officer (South) in MTNL.

7.5Although as per terms of the contract each approved contractor was to be given work of Rs. 50 lakhs in a year but the statement referred to in para 7.2 shows that between 1.2.95 and 30.11.95 works of Rs.-1,08,32,210.00 were awarded to Sn Engineering Works (CWP-4686/95) and works worth Rs. 1,03,79,517.00 were awarded to S.N.Construction (CWP 4087/95).

7.6So is the case with works secured by M/S Murlidhr & Sons, M/S Gagan Traders, M/S Anupam Construction, M/S Hindustan Trading Corporation, all belonging to family members or close relations of Shri L.R.Aggarwal (Cwp 4601/95). They could secure works amounting to Rs. 3,88,20,128.00 (the five firms taken together).

7.7There are various firms on the approved list of contractors such as Telecommunication Consultants India Pvt Ltd and M/S Star Construction who have not been awarded any work. Few others were given very marginal work. Such firms had raised grievance about non-award of adequate work to them. The learned counsel for Mtnl made a statement during the course of hearing that some of such contractor had even gone to the Court, filing writ petitions complaining of violation of rule of equality by Mtnl awarding works unequally. It is clear that the firms of the family group of the petitioners herein have been able to get work due to their connections at least possibly so" and thereby unjustly enriching themselves by getting lion's share in the total work depriving others to that extent. When the facts were exposed and brought to the notice of concerned authorities, action has been taken against the petitioners as per terms and conditions of the contract.

(8) On the pleadings and in view of the contentions advanced by the parties the following questions arise for consideration :

(1)Whether total exclusion of such persons as have relations employed in Mtnl without regard to the place where they are working and the capacity in which they are posted amounts to an unreasonable restriction on the fundamental right to trade guaranteed by Article 19(1) of the Constitution ?

(2)Whether such a restriction can be said to be arbitrary and unreasonable and

offensive of Article 14 of the Constitution ?

(3) Whether brother's son-in-law can be said to be a near relative ?

(4) What is the affect of the petitioners in Cwp 4686/95 and 4687/95 having made a disclosure of relationship while filing their tenders ?

(9) Before we may proceed to deal with the questions stated hereinabove we may notice a few relevant terms and conditions of the NIT.

9.1 Clause (J) and (K) of Nit provide as under :

"(J) The contractor shall not be permitted to tender for works in Mtnl (responsible for award and execution of contracts) in which his near relative is posted as JAO/AAO/AO or an officer in any capacity between the grades of S.E. and A.E. both inclusive. He shall also intimate the names of the persons, who are working with him in any capacity or are subsequently employed by him, and who are near relatives to any officer in MTNL. Any breach of this condition by the Contractor would render him liable to be removed from the approved list of contractors of this department

(K) The contractor shall give a list of Mtnl employees related to him."

9.2 Every tender has to be accompanied by a declaration to be signed by the contractor in the following proforma which has a footnote defining the term "near-relative":-

APPENDIX-V(DECLARATION) APPENDIX-V

I WE here by declare that none of my/our relatives are employed in any capacity in any of the units of M.T.N.L./D.O.T. I/We shall also intimate the names of persons who are working with us in any capacity or are subsequently employed by us and who are near relatives to any officer in the M.T.N.L./D.O.T. I/ We am/are aware that any breach of this condition would result in immediate termination of contract/cancellation of the existing contract/cancellation of the existing contract/contracts and also forfeiting of my/our security deposit held by Mtnl, Delhi.

NOTE: "The term "near relatives" means wife/husband/parents and grand parents/children/ grand children/brothers/ sisters/ uncles/ aunts/cousin and their corresponding in-laws."

Name of The CONTRACTOR

CAPACITY in which signing)

Station

Date

(10) With the above said terms in view, we now proceed to deal Seriatim with the questions arising for decision .

(11) The Mtnl inviting tenders and entering into contracts pursuant thereto is an activity in the realm of contracts. What is expected of the MTNL- an "authority" within the meaning of Article 12 of the Constitution ? What is the freedom which it enjoys and what are the limitations to which it is subject ?

(12) In C.K. Achuthan Vs. The State of Kerala and Others, , their Lordships have held:

"IT is perfectly open to the Government, even as it is to a private party, to choose a person to their liking, to fulfill contracts which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot claim the protection of Art.14, because the choice of the person to fulfill a particular contract must be left to the Government. Similarly, a contract which is held from Government stands on no different footing from a contract held from a private party."

(13) In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , the tender notice stated in clear terms "sealed tenders in the prescribed forms are hereby invited from registered second class hoteliers having at least five years experience for putting up and running a second class hotel". The validity of condition as to class and five years experience was challenged. Their Lordships of the Supreme Court held vide para 7 of the judgment that by using the expression "registered II class hotelier" the respondent intended to delineate a certain category of persons who alone should be eligible to submit a tender. The respondent was not acting aimlessly or insensibly in insisting upon this requirement nor was it indulging in a meaningless and futile exercise. It had a definite purpose in laying down this condition of eligibility. Their Lordships of the Supreme Court upheld the condition of eligibility as valid and legal and as it laid down an objective test and not a subjective one.

(14) In Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , their Lordships have held that the Government while dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largess cannot act arbitrarily. The State cannot act as it pleases like a private individual. In view of the public element involved in every activity of the Government its every action must be informed with reason and guided by public interest. The Government cannot act in a manner which would benefit a private party at the cost of the State. Their Lordships have further held:

"THEIR 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 on 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. The court cannot lightly assume that the action taken by the " Government is unreasonable or without public interest."

(15) In *Re: Sant Ram*, , constitutionality of a rule prohibiting engagement of an advocate through a person included in the list of touts was challenged. The challenge was turned down by their Lordships of the Supreme Court because the rule was "made with a view to ensuring purity of soundness of the profession of law" and it could not Therefore be said that it was not "in the interest of general public" to exclude touts from the precincts of the court.

(16) In *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, , the petitioners were carrying on the business of printing and publishing books including text books used in the schools of Punjab. The Executive Government of Punjab State decided in furtherance of their policy of nationalisation to approve the text books, purchase their copyright and then themselves print and publish the books. The policy decision was challenged as ultra virus the Article 19(1)(g) and 19(6) of the Constitution. Their Lordships held:

"A trader might be lucky in securing a particular market for his goods but if he loses that field because the particular customers for some reason or other do not choose to buy goods from him, it is not open to him to say that it was his fundamental right to have his old customers for ever. On the one hand, Therefore, there was nothing but a chance or prospect which the publishers had of having their books approved by the Government, on the other hand the Government had the undisputed right to adopt any method of selection they liked and if they ultimately decided that after approving the text books they would purchase the copyright in them from the authors and others provided the latter were willing to transfer the same to the Government on certain terms, the right of the publishers to carry on their trade or business cannot be said to be affected by it."

"NOBODY is taking away the publishers" right to print and publish any books they like and to offer them for sale but if they have no right that their books should be approved as text books by the Government."

(17) The law laid down in *Rai Sahib Ram Jawaya's* case (supra) has been reiterated reported in *Naraindas Indurkha Vs. The State of Madhya Pradesh and Others*, .

(18) It is pertinent to note that the petitioners are not prohibited from carrying on business activity of the nature involved in the contracts which they wish to enter with the MTNL. All that has been said is that Mtnl would not deal with such contractors as have their relations of a defined category serving in the MTNL. The fundamental right to trade or business of the petitioners is not at all affected.

The validity of the restriction so imposed has to be tested not reference to clause (6) of Article 19 of the Constitution but on the anvil of Article 14 of the Constitution. Since entering into the contract is not an employment the applicability of Article 16 of the Constitution is also not attracted.

(19) The policy decision taken by the respondent Mtnl of not entering into dealing with such persons as have relations of the specified categories serving in the Mtnl has nothing unreasonable or arbitrary about it. Such exclusion is neither aimless nor insensible. There is a public purpose sought to be achieved. It aims at achieving high standard of public morality in contractual dealings of the MTNL. Nepotism and favorite is sought to be avoided, both at the stage of choosing the contractors while finalising the tenders and during the course of implementation of the work under the contract. Quality of work would be of higher standard if there be no one in the Mtnl to favor the contractor performing the contractual obligations. Those relations who are serving in the Mtnl would also be protected and would be able to serve the Mtnl freely and fearlessly as there would be no possibility of their being accused of having shown favours or exercised their influence or misused their presence in Mtnl in extracting favours for their relations. The policy would also ensure equitable distribution of work amongst the contractors. The category of relations has been defined. The restriction imposed on dealing with the relations of the employees of the Mtnl is, Therefore, neither arbitrary, nor unreasonable nor excessive.

(20) What is reasonable ? The test of reasonableness has been laid down by their Lordships of the Supreme Court in the State of Madras Vs. V.G. Row, in the following terms, which though in the context of Article 19 yet can be useful and well used even in the context of Article 14 of the Constitution :-

"THE context of reasonableness, where ever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict."

(21) We may now proceed to examine what relations would be covered within the scope of the clause forming part of the declaration and clauses (J) and (K) of the Nit referred to in para 9.1 and 9.2 supra.

(22) Clause (J) of the Nit prohibits such contractors as have a near relative posted as JO/AAO/AO or an officer in any capacity between the grades of Se and Ae (both inclusive) in the MTNL. It was submitted by the learned counsel for the petitioner that this clause is arbitrary inasmuch as relatives of lower or middle level employees are prohibited from entering into contract with Mtnl but the same prohibition does not apply if a similar relationship may exist between the contractor and high officials or top brass of MTNL. Learned counsel for the

respondent has explained that the categories of the officers referred to in the said clause are of those who have involvement in the process of accepting tenders and finalising the contracts and also thereafter in the process of the execution of work and payment of the bills. Explanation so offered appears to be reasonable. For the moment suffice it to observe that the Mtnl may become wiser by experience and if at any point of time it is found that the officials other than those listed in clause (J) are required to be included with in the degree of prohibition then it would always be open to Mtnl to take a decision in that regard and modify its policy accordingly.

(23) The prohibition which is spelled out from the language of the declaration referred to in para 9.2 above does give rise to some scope for confusion because of the use of the expression "and their corresponding in-laws" at the end of the declaration. The language is susceptible to two meanings. It may mean each and every 460 laws of the relations listed in the declaration situated howsoever remotely or it may mean the relations listed and each of that relation prelisted with "in-law" suffixed to it such as parent- in-law, grand parent-in-law, children-in-law &c. Prima facie it appears that if all the in-law of the relations listed in the declaration were to be included in the prohibited degree without defining the extent and distance of relationship of the "in-laws", then a remotest possible relationship which may not even be in the knowledge of the contractor would fall within the prohibition. That would be unreasonable. It is a settled canon of interpretation that if a language be susceptible of two meanings then one which would render it arbitrary and unreasonable and ultra virus has to be avoided and the other which would render it reasonable and intra virus has to be accepted. An expression can also be read down or suitably restricted in its meaning if it would enable its constitutionality being upheld. In our opinion, the expression "their corresponding in -laws" should be assigned a restricted meaning so as to make it reasonable, sensible and definite. The expression "their corresponding in laws" must be read to mean in-laws of first degree only.

(24) A brother would undoubtedly, and a brother's son-in-law in view of the construction placed on the expression - "their corresponding in-laws" by us in para 23 above would also, be included within the meaning of the term "near relatives".

(25) It follows that the petitioners were not entitled to bid tenders with the Mtnl . Even at the risk of repetition we may state and sum up that the petitioners have not been totally prohibited from carrying on the activity of digging ducts, trenching, laying cable lines and pulling cables through ducts and allied works. All that the respondent has done is to restrain itself from entering into the contract with such contractors as have their relations of defined category serving in the MTNL. As the test of eligibility is to be applied on the date of bidding the tenders and maintained throughout the execution of the work under the contract, the question whether such relation in the Mtnl has actually influenced the tender or the work is immaterial. What is sought to be achieved is avoiding the

possibility of such influence being exercised and maintaining fairness and neatness in the dealings of MTNL. The restriction can be imposed by an executive fiat and is neither arbitrary nor unreasonable. It does not offend Art. 14 of the Constitution. It satisfies the test laid down by the Supreme Court in the State of Madras vs V.G. Rao (supra).

(26) It is true that the petitioners in Cwp No. 4686/95 and 4687/95 had made a disclosure of their relationship with Shri M.K. Bagchi, an official in the employment of MTNL. Shri Bagchi being a real brother the two petitioners is clearly "a near relative" and this relationship admits of no doubt or confusion in the matter of interpretation of the term as defined. The petitioner knew it fully well that they were not entitled to bid their tenders with Mtnl and yet they did so. Merely because they had made a declaration of this relationship and they cannot be accused of having made a concealment, the situation would not improve and would not condone the consequences flowing from the breach of the prohibition. However, the respondent Mtnl is equally to blame and has to bear the brunt of the consequences flowing. The officials of the Mtnl charged with the responsibility of scrutinising the tenders were aware of the relationship yet they accepted the tenders Filed by the two petitioners and made the Mtnl enter into contracts with them. In our opinion, the twin circumstances should weigh with us in constructing the relief to be allowed ultimately. While we are upholding the validity of the policy decision of the respondent and also maintaining the decision of the respondent to debar the petitioners from further dealing with the respondent Mtnl, it would be unfair and inequitable to debar the petitioners even from finalising the works which had already been issued to them by the Mtnl with the eyes wide open and which works are either at an advanced stage of completion or are nearing completion. This would also not be in public interest as the remaining work shall have to be handed over to someone else and the possibility of legal complications arising and the parties being compelled to go for litigation cannot also be ruled out.

(27) The case of M/S. Gagan Traders (Cw 4601/95) stands on a different footing. The petitioner therein has not raised any pleadings, nor brought in any material on record to persuade us in allowing him any relief, guided by consideration of equity, same as is being allowed to petitioners in other two petitions as stated hereinabove. The petitioner has not raised any pleadings and shown how many works are pending and what is the stage of execution at which they are. Moreover, from the facts stated in the earlier part of this order, it is clear that this petitioner has tried his best to conceal his relationship with his brother's son-in-law Dalbir Aggarwal serving in the MTNL. He tried to take advantage of the name of the brother through whom he is related to Dalbir Aggarwal having been erroneously mentioned in the notice to show cause. He persisted in his attempt even while filing the petition. It is only when the court called upon him to file an additional affidavit then he disclosed his relation with the said Shri Dalbir Aggarwal and raised an additional plea that the "brother's son-in- law" could not be deemed to, be a relation of the petitioner.

(28) For the foregoing reasons, Cwp 4601/95 is directed to be dismissed though without any order as to costs. The impugned order dated 1.12.1995 Annexure-A debarring the petitioner from the approved list of contractors and further award of works and cancelling his contracts is upheld.

(29) So far as CWPs 4686/95 and 4687/95 are concerned, the impugned orders, to the extent to which they debar the respective petitioners from further award of works and remove the petitioners from the approved list of contractors, are maintained. The decision of the respondent to cancel the contracts is also maintained but it is directed that the petitioners shall be allowed to complete the existing works which are in the process of completion. The payment against the works which are in the process of completion and are successfully completed as also the payment against the works which have already been completed shall not be withheld. No order as to costs.