

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Extraordinary Jurisdiction)

DATED : 15<sup>th</sup> APRIL, 2019

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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WP(C) No.37 of 2018

**Petitioners** : M/s. Kripa Indane and Others

**versus**

**Respondents** : The Chief Secretary, Government of Sikkim and Others

Petition under Article 226 of the Constitution of India

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**Appearance**

Mr. A. Moulik, Senior Advocate with Ms. K. D. Bhutia, Mr. Manish Kr. Jain and Mr. Ranjit Prasad, Advocates for the Petitioners.

Mr. Thinlay Dorjee Bhutia, Government Advocate and Mr. S. K. Chettri, Assistant Government Advocate for the Respondents No.1, 2 and 7.

None for Respondent No.3.

Mr. Tashi Raptan Barfungpa, Advocate with Mr. Ugang Lepcha, Advocate for Respondents No.4, 5 and 6.

Mr. Sudesh Joshi, Advocate for Respondents No.8, 9 and 10.

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**J U D G M E N T**

Meenakshi Madan Rai, J.

**1.** The dealings of the State have to be fair, objective, transparent, non-arbitrary and non-discriminatory, State largesse cannot be distributed at the whims of the State Government. On the bedrock of these principles, the Petitioners

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are decrying the State action in appointing Respondents No.8, 9 and 10 as transporters, by an Agreement, to carry Liquid Petroleum Gas (LPG) Cylinders from the LPG Bottling Plant at Bagheykhola, Rangpo, East Sikkim, to the godown of the distributors, within the State of Sikkim, sans open tenders.

**2.** The facts as can be culled out from the Petition are that, the Petitioners herein are distributors of LPG Cylinders in Sikkim appointed variously from the years 1997 to 2008 by the Indian Oil Corporation Limited (hereinafter, IOCL), a Government of India Undertaking, which operates an LPG Bottling Plant at Bagheykhola, Rangpo, East Sikkim. They transport LPG Cylinders from their godowns located in different places in the State to earmarked distribution points for collection by consumers.

**3.** Respondents No.8 to 10 deliver LPG Cylinders from the Bottling Plant to the distributors' godowns within the State. This arrangement emanated vide an Agreement, dated 07-12-1998 (Annexure R2), between the Secretary of the then Motor Vehicles Department, Government of Sikkim and the Respondents No.8 to 10, along with one M/s. Agarwal Carriers, who later on 31-10-2013 (Annexure R4), opted out of the arrangement. As per the terms of the said Agreement Respondents No.8 to 10 were to transport LPG Cylinders (bulk, packed and empty), within the State of Sikkim for a period of 15 years w.e.f. 01-01-1999 to 31-12-2013 and to pay a total sum

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of Rs.25,000/- (Rupees twenty five thousand) only, per annum, to the Sikkim Nationalised Transport (hereinafter, SNT) towards "Administrative and other cost charges", liable to increase @ 15% every five years. Before expiry of the first term of 15 years on 31-12-2013, Respondents No.8 to 10 vide separate letters, all dated 05-09-2013, [Annexure R3 (collectively)], requested renewal of the Agreement. The Respondent No.2 in consideration of the renewal Clause, being Clause 1 of the Agreement, renewed the Agreement (Annexure P3), on 23-12-2013 and required the Respondents No.8 to 10 to pay an enhanced total sum of Rs.50,000/- (Rupees fifty thousand) only, per annum, from such renewal. The contract was thus entrusted as before to the Respondents No.8 to 10 for another period of 15 years w.e.f. 01-01-2014 to 31-12-2029. The Agreement stipulated that the Respondents No.8 to 10 would carry LPG (bulk, packed and empty) Cylinders "*into and within the State of Sikkim*". The Respondent No.6 for its part allots contract works for transportation of LPG Cylinders within the State on Unit rate basis, Ex Rangpo Bottling Plant on tender floated by them to the successful party. However, in view of Clause 7 of the Agreement which provided that the Secretary, Motor Vehicles Department would not allow any other party to carry LPG in the State during the validity of the Agreement, the IOCL on the directions of the State Government has awarded such contract to the Respondents No.8 to 10. The Respondent No.6 consequently requires authorization from the Respondent No.2 to permit

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parties to participate in the tender process, without which, even the successful bidder will not be permitted to transport LPG Cylinders for the aforesaid reason.

**4.** In this prevailing situation, Respondent No.6, vide letter dated 05-03-2018 (Annexure P2), sought the assistance of the Respondent No.2 in preparation of departmental estimate for packed LPG transportation contract Ex Rangpo Bottling Plant as the existing contracts with the Respondents No.8 to 10 were to expire on 31-08-2018. Respondent No.6 also sounded the Respondent No.2 that presently only Respondents No.8 to 10 were allowed to participate in the tenders invited by the Respondent No.4 and sought a clarification as to whether other parties could also participate in the tender process if all norms of the Sikkim Government were followed. That, all over the country distributors are given priority for transporting LPG as they ensure smooth supply being owners of the trucks which they directly control.

**5.** In response, vide letter dated 10-05-2018 (Annexure P5), the Respondent No.2 informed the Respondent No.6, that, all local LPG distributors were permitted to participate in the said tender process and Respondent No.6 should permit only local distributors/transporters as per the State's norms, to the exclusion of transporters from outside the State. However, this permission stood withdrawn by the Respondent No.2 vide letter dated 05-07-2018 (Annexure P6), on grounds that the State

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Government was bound by the Agreement dated 23-12-2013 with the Respondents No.8 to 10 from 01-01-2014. Therefore, during the validity of the Agreement Respondent No.2 would disallow any other party to carry LPG Cylinders in the State. Aggrieved by the decision, the Petitioners submitted a representation to the Respondent No.2, dated 07-07-2018 (Annexure P7), while protesting the grant of contract to the Respondents No.8 to 10 sans auction/tender *inter alia* and stated that in view of the earlier stand of the Transport Department as communicated vide letter dated 10-05-2018, the Petitioners had availed loan, placed orders for trucks and were consequently prejudiced. They also brought to the notice of the Respondent No.2 that a Public Interest Litigation (PIL) being **WP(PIL) No.06 of 2017 : Prem Goyal vs. Union of India and Others** was filed by Prem Goyal pertaining to inordinate delay in supply of LPG to consumers and is pending adjudication before this Court.

**6.** Following this correspondence, a letter dated 09-07-2018 (Annexure P4) was addressed by the Respondent No.5 to the Respondent No.7 (referring to the letter dated 10-05-2018 of the Respondent No.2) and informing that as a standard protocol followed by the IOCL, irrespective of locations, the job of transportation is outsourced through public tender with preference accorded to LPG distributors who own trucks to ensure seamless and better services to customers. In view of difficulties faced by them in procuring LPG Cylinders from the Bottling Plant, the Sikkim based distributors had shown interest

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in the job. Further, field visits to propagate Central Government Schemes by the Respondent No.5 revealed that services of the Respondents No.8 to 10 was deficient on account of aging vehicles and frequent breakdowns thereof.

**7.** In view of the non-action by the Respondent No.2 to their representation, the Petitioners issued a lawyer's notice dated 20-07-2018 (Annexure P8) to the Respondents No.1, 2, 4, 5, 7, 8, 9 and 10 which was responded to only by the Respondent No.7.

**8.** The Respondent No.7 in his reply dated 27-07-2018 (Annexure P9) to the lawyer's notice communicated that the matter required thorough examination hence the Respondent No.5 was requested by the Respondent No.7 to extend the last date of submission of tender by one month which was duly complied. Vide another letter dated 03-08-2018 (Annexure P10) the Respondent No.7 informed Respondent No.5 that two proposals placed before the State Government, viz., (i) seeking permission to allow the existing transporters to participate in the tender process from Raninagar Jalpaiguri to Depot at Bagheykhola, Sikkim and (ii) within Sikkim to allow local transporters to participate in the present tender process, were approved by the State Government.

**9.** However, over and above this communication and approval of the Government, Respondent No.3 vide letter dated 07-08-2018 (Annexure P11) informed the Respondent No.5 that

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in view of the existing contract with the Respondents No.8 to 10, the Transport Department would not entertain any no objection certificate from other Government Department in connection with carriage of LPG Cylinders as it would lead to a breach of contract. That, only Respondents No.8 to 10 are authorized to carry LPG Cylinders in Sikkim and advised the Respondent No.6 to finalise the transport contract with them. Hence, the instant Petition with prayers *inter alia* seeking quashing and cancellation of the Agreement dated 23-12-2013, to allow the local distributors to participate in the tender process and to stay the tender process until Petitioners are allowed to participate.

**10.** In response to the Petition, Respondents No.1 and 2 jointly filed Counter-Affidavit and *inter alia* averred that the reason for the grant of the contract for another 15 years to the Respondents No.8 to 10 was the renewal Clause in the previous Agreement dated 07-12-1998 which was considered binding. Resultant, no new contract could be entered into with others.

**11.** Respondent No.3 filed no Counter-Affidavit.

**12.** Respondents No.4, 5 and 6 jointly filed their Counter-Affidavit, in sum and substance reiterating facts *inter alia* as averred in the Writ Petition. That, customers are faced with shortage of LPG Cylinders on account of the monopoly and inefficiency of the Respondents No.8 to 10, consequent to their Agreement with the Government. The Respondents No.4 to 6 as a result are unable to induct additional trucks to deal with

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increase in the sales volume and maintain ease in distribution apart from which competitiveness would ensure better services.

**13.** The Respondent No.7 also filed her Counter-Affidavit and averred *inter alia* that as per the Government of Sikkim (Allocation of Business) Rules, 1994, the Department is the Nodal Department to supervise the procurement, distribution, fixation of prices and control of essential commodities and civil supplies through the public distribution system in the State as prescribed under the Second Schedule Serial No.XIII of the said Rules. That, efforts were made by the Respondent to allow the Petitioners to enter their bids also by requesting the Respondent No.6 to extend the date of the bid scheduled on 31-07-2018 to 31-08-2018.

**14.** Respondents No.8, 9 and 10 each filed their separate Counter-Affidavit *inter alia* assailing the *locus standi* of the Petitioners to file the Writ Petition as they had not participated in the tender in question, hence no cause of action had arisen. That, the Petition suffers from delay and laches as the contract was renewed in 2013, thus the Petition filed now is belated. That, there is no requirement for the participants to produce letter authorizing them to participate in the tender since it is only after the bids are received that the successful bidder is to produce such letter of authorization. As the Petitioners chose not to participate in the tender process they cannot now assail it. That, in the year 1998 on account of dearth of experienced

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transporters with necessary specifications for transportation of LPG Cylinders in Sikkim, the State Government requested them to take up such works. The Agreement dated 07-12-1998 was thus entered into towards which the Petitioners raised no objection. That, huge expenditure was incurred by them for carrying out the works and thereafter providing untiring and seamless services. On account of their efficient services the contract was renewed on 23-12-2013 in terms of the renewal Clause in the Agreement of 1998. Hence, the Writ Petition deserves to be dismissed.

**15.** In the aforesaid backdrop, Learned Senior Counsel for the Petitioners would contend that Clause 7 of the Agreement is advantageous for the Respondents No.2, 3 and Respondents No.8 to 10 but is detrimental to the interest of the Petitioners who despite fulfilling all eligibility conditions are excluded from participating in the tender process. Consequently, in every tender invited by the IOCL only Respondents No.8 to 10 have participated and monopolized the work by quoting their own rates rendering losses to the exchequer. Despite profits earned by them from the aforesaid contract works, a sum of Rs.50,000/- (Rupees fifty thousand) only, per annum, in totality is paid to the Respondent No.2. Scant attention is paid to the requirements of the consumers with delayed distribution of LPG Cylinders in vehicles which are old and unfit for transporting the Cylinders. The letter of the Respondent No.2 in no uncertain terms clarifies that the State Government will not entertain the

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request of any party for transportation of LPG Cylinders during the subsistence of the Agreement with Respondents No.8 to 10, which thereby violates the mandate of Articles 14, 19, 21 and 300A of the Constitution of India as State largesse cannot be distributed at the whims and pleasure of the Officials of the Government in an arbitrary manner. Strength was garnered on this aspect from ***Indian oil Corporation Limited and Others*** vs. ***Shashi Prabha Shukla and Another***<sup>1</sup> and ***Sachidanand Pandey and Another*** vs. ***State of West Bengal and Others***<sup>2</sup>. That, contracts ought to be awarded through open public tender by wide publicity as laid down by this Court in ***Miss Tshering Diki Bhutia*** vs. ***State of Sikkim and Others***<sup>3</sup>. That, the Agreement between the State Government and Respondents No.8 to 10 is averse to public good, public policy and public interest and exploitation of State revenue by blocking the Petitioners and other eligible bidders from participating in the tender process. The Agreement dated 23-12-2013 is liable to be cancelled on account of lack of transparency and illegalities. That, every legitimate citizen has a fundamental and legal right to tender for allotment of State largesse but the arbitrary terms of the Agreement have deprived the Petitioners of their rights, when their participation would increase State revenue by fair competition and transparency. That, the Respondent No.2 and Respondent No.7 despite being two wings of the State Government are in conflict with each

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<sup>1</sup> (2018) 12 SCC 85

<sup>2</sup> (1987) 2 SCC 295

<sup>3</sup> AIR 1999 Sikkim 1

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other as apparent from the correspondence exchanged contrary to the interest of the Petitioners and public good. Contending that the Agreement ought to be set aside, Learned Senior Counsel placed reliance on ***Ajar Enterprises Private Limited*** vs. ***Satyanarayan Somani and Others***<sup>4</sup>. That, when State largesse is granted there has to be transparency. On this count, reliance was placed on ***Akhil Bhartiya Upbhokta Congress*** vs. ***State of Madhya Pradesh and Others***<sup>5</sup>. Hence, the prayers in the Writ Petition be granted.

**16.** Learned Government Advocate for the Respondents No.1 and 2 while drawing the attention of this Court to the averments made in the Counter-Affidavit submitted that consequent upon the renewal of the Agreement on the request of the Respondents No.8 to 10, the administrative and other charges were enhanced by 100% thereby raising it to Rs.50,000/- (Rupees fifty thousand) only, per annum, as against Rs.25,000/- (Rupees twenty five thousand) only, per annum, payable previously. That, infact the letter permitting participation in the tender by the Respondent No.2 was erroneously issued losing sight of the existing Agreement between the Respondent No.2 and Respondents No.8 to 10 and stood withdrawn on such realization. While putting forth the reasons for granting the contract to the Respondents No.8 to 10, it was submitted that this was on account of a dearth of

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<sup>4</sup> (2018) 12 SCC 756

<sup>5</sup> (2011) 5 SCC 29

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transporters to transport LPG in specifically constructed goods carriers at the relevant time and the wherewithal being with Respondents No.8 to 10. As they fulfilled the conditions required for carriage of such hazardous consignment the Respondents No.4 to 6 granted them authorisation. The IOCL awarded the contract work to the transporters in the year 1996 on the recommendation of the Secretary, SNT. Following this, in the year 1998, the transporters applied for long term authorization in continuation of that of 1996. As the SNT was primarily engaged in the business of transportation of goods and passengers and purchasing new trucks would require fresh investment they entered into the Agreement. Thus, the question of granting State largesse bypassing the Rules of the Government would not arise as the contract work was given on account of the peculiar circumstances at the relevant time. That, the grounds set out in the Writ Petition are not tenable in the eyes of law and liable to be rejected.

**17.** None appeared for the Respondent No.3.

**18.** Learned Counsel for the Respondents No.4, 5 and 6 contended that on the clarification given by the Respondent No.2 and the go ahead by the Respondent No.7, the date for submission of tender was also extended till 31-08-2018, but the participation of the Petitioners was withdrawn by the Respondent No.2. It is the contention of the Learned Counsel for the Respondents that since the Petitioners have also evinced interest

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in participating in the tender, this would indeed mitigate the difficulties pertaining to the LPG Cylinders including delay in delivery at the godowns which has a cascading effect on distribution to consumers. The Agreement between the Respondents No.8 to 10 and the Government Department excludes participation of equally placed parties and affects the supply of essential commodities to the customers which have increased in numbers. Moreover as the Petitioners are owners of trucks there could be more control in the supply of replenished LPG Cylinders to consumers. Hence, the Respondents are in agreement with the grievances of the Petitioners. It was also clarified by Learned Counsel that although in the concluding Paragraph of the Counter-Affidavit, it has been averred that the Writ Petition is mis-conceived, devoid of merit and deserves to be dismissed, this is a typographical error and requires to be ignored.

**19.** Learned Counsel for the Respondent No.7 would in sum and substance agree with the submissions made by Learned Counsel for the Respondents No.4 to 6 and reiterated that the Respondent as the Nodal Department who controls essential commodities had made necessary efforts to include participation of the Petitioners in the tender process.

**20.** Learned Counsel for the Respondents No.8, 9 and 10 in the first instance challenged the locus of the Petitioners in view of their non-participation in the tender. That, the contract

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was given to them in the year 1998 when the Government was at sea with regard to the transportation of LPG Cylinders. Relying on the decision in ***Natural Resources allocation, In Re, Special Reference No.1 of 2012***<sup>6</sup> Learned Counsel put forth that the Hon'ble Supreme Court has not shut out contracts by negotiation. It was also urged that the Respondents No.8 to 10 have legitimate expectations as they were the only persons to mitigate the Government circumstance in 1998 and to make investments and assist the State Government to bring in the requisites to the IOCL Bottling Plant. Considering these factors and the efficient working of the Respondents No.8 to 10 the Agreement was entered into and also renewed with the assurance that their investment would be safeguarded by a long term contract. It is also the contention of Learned Counsel that the distributors were appointed much later, between the years 2005 to 2008, apart from one distributor who was appointed in 1997, thus, they cannot endeavour to belatedly challenge the Agreement. Moreover, there is substantial delay in approaching the Court as 1/3<sup>rd</sup> of the period covered by the second Agreement has already lapsed since the Petitioners were presumably aware of the Agreement and its renewal. In this context, reliance was placed on ***Chhattisgarh State Industrial Development Corporation Limited and Another*** vs. ***Amar Infrastructure Limited and Others***<sup>7</sup> and ***Nadia Distt. Primary School***

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<sup>6</sup> (2012) 10 SCC 1

<sup>7</sup> (2017) 5 SCC 387

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**Council and Another vs. Sristidhar Biswas and Others**<sup>8</sup>. Reliance was also placed on **Shiv Dass vs. Union of India and Others**<sup>9</sup>. While inviting the attention of this Court to the ratio in **Bakshi Security and Personnel Services Private Limited vs. Devkishan Computed Private Limited and Others**<sup>10</sup>, Learned Counsel would submit that judicial review is to check whether decision or choice was made lawfully and not to check as to whether the choice or decision is sound. Hence, this Court must be circumspect when interfering in decisions made by the Government. That, the power of judicial review cannot be invoked to protect private interest over public interest or to decide contractual disputes. That, Respondents No.8 to 10 are depositing at least a sum of Rs.50,000/- (Rupees fifty thousand) only, to the State Government which cease if the Petitioners are selected as the contract would be between the IOCL and the Petitioners. That, although it is the allegation of the Respondents No.4 to 6 that the lorries used by the Respondents No.8 to 10 are old, the documents on record clearly indicate to the contrary. The IOCL at no stage complained to the Government that the Respondents No.8 to 10 were unable to deliver the goods, neither was notice of any shortcoming issued to them. That, the tender process was to be completed by 31-08-2018 and on the Petitioners' failure to participate they cannot raise the issue that they were

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<sup>8</sup> (2007) 12 SCC 779

<sup>9</sup> (2007) 9 SCC 274

<sup>10</sup> (2016) 8 SCC 446

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not allowed to participate. Hence, the Petition deserves to be dismissed.

**21.** Learned Senior Counsel for the Petitioners in response would submit that the Agreements of 1998 and 2013 clearly indicate that it was the Respondents No.8 to 10 who had approached the Government and not vice-versa and the Agreements *per se* are illegal.

**22.** The rival assertions of Learned Counsel were heard *in extenso* and given careful consideration. I have also perused the pleadings, all documents on record and decisions cited at the Bar.

**23.** The question before this Court is whether the process adopted by the State-Respondents in entering into an Agreement with the Respondents No.8 to 10 is arbitrary and irrational, creating a monopoly right in their favour?

**24.** The question of delay and laches raised by Learned Counsel for Respondents No.8 to 10 is taken up in the first instance, for which reliance was *inter alia* placed on **Shiv Dass** (*supra*). In the said matter, the Appellant was out of service since 1982 being 80% disabled. In 1983, he claimed disability pension, this was rejected by the concerned Authority. It was only in the year 2005 he chose to file the Writ Petition for grant of disability. The High Court dismissed the Writ Petition on grounds that it was highly belated. The Supreme Court while

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being in agreement with the High Court that if the Petition is filed beyond a reasonable period, say three years, normally the Court would reject the same or restrict the relief. In the peculiar circumstances the matter was remitted to the High Court to hear the Writ Petition on merits and to mould the relief, but in no event was any relief to be granted for a period exceeding 3 years from the date of presentation of the Writ Petition. The Supreme Court in Paragraph 7 held as follows;

**"7.** What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co.v. Prosper Armstrong Hurd* [(1874) 5 PC 221 : 22 WR 492], PC at p. 239 was approved by this Court in *Moon Mills Ltd. v. M. R. Meher* [AIR 1967 SC 1450] and *Maharashtra STRC v. Balwant Regular Motor Service* [AIR 1969 SC 329]. Sir Barnes had stated:

"Now the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy." "

**25.** Thus, the said matter can be distinguished from the instant one. The former was clearly a case of negligence as the

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Appeal was dismissed in 1985 with due intimation to the Appellant about the rejection of the Appeal. In the matter at hand, the Respondents No.8 to 10 have not been able to show by any proof whatsoever that the Petitioners were aware of the Agreement between the Respondent No.2 and the Respondents No.8 to 10. Learned Counsel for the Respondents No.8 to 10 admitted that it was 'presumed' that they were aware of the Agreement since LPG was being transported only by the said Respondents. Evidently the Petitioners came to learn of the Agreement only on account of the tender having been floated and the Respondent No.2 having issued vacillating correspondence already discussed *supra*. In any event the contention of the Respondents No.8 to 10 that it was presumed that the Petitioners were seized of the Agreement is untenable in the absence of proof thereof. Hence, the argument of Learned Counsel of the Respondents No.8 to 10 with regard to delay and laches has no legs to stand.

**26.** The next argument was with regard to the *locus standi* of the Petitioners on grounds that in view of their non-participation in the tender no cause of action arose. This apparently is an unreasonable argument. To address this, it would be essential to firstly examine the relevant terms of the Agreement entered into between the State-Respondent and the Respondents No.8 to 10 and one M/s. Agarwal Carriers. The first Deed of Agreement was made on 07-12-1998. Clauses 1 to 7 of the Agreement are extracted hereinbelow for easy reference;

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“ .....

This deed of agreement made on this 7th day of December one thousand nine hundred ninety eight between the Governor of Sikkim through the Commissioner-cum-Secretary, Motor Vehicles Department, Government of Sikkim (hereinafter referred to as the first Party) which expression shall, unless excluded by or repugnant to the context mean and include his successor in Office, representative or assigns of the one part and the following parties,

(1) M/S Agarwal Carriers, Govt. Carrying Contractors and Order Supplier, H.O. Namchi Bazar, South Sikkim represented by Shri Baijanath Agarwal;

(2) M/S Om Prakash Goyal, Agent : Indian Oil Corporation Limited, H.O./Sukhia Pokhri, Darjeeling, B.O. P.O. Rangpo, East Sikkim represented by Shri Om Prakash Goyal;

(3) M/S Liladhar Goyal and Bros; Transporters and Order Suppliers, H.O. Sukhia Pokhri, Darjeeling, B.O. P.O. Rangpo, East Sikkim represented by Shri Liladhar Goyal;

(4) M/S Hill Top Carriers, H.O. Burdwan Road, Siliguri 734 401, B.O. 31A National Highway, Gangtok, East Sikkim represented by Shri Nirmal Kumar Agarwal Proprietor/Partner/Managing Director of the said firm/(s) (herein matter referred to as the Second Party/ies) which expression shall, unless excluded by or repugnant to the context mean and include his/their successor in office, heir, representative, assignees or agent of the other.

Whereas the first party has desired to authorize the second party/(ies) referred to hereinabove under Serial No.1 (one) to 4 (four) for the carriage of Liquid Petroleum Gas ( hereinafter referred to as the LPG( Bulk, packed and empty cylinders) in the State of Sikkim;

And whereas, the Second Party/(ies) has agreed to carry LPG (bulk, packed and empty cylinders) in the State of Sikkim;

Now, therefore, it is hereby agreed by and between the parties as follows:-

**1. This deed of agreement shall commence from the 1st day of January 1999 and shall subject to the terms and conditions hereinafter contained, continue for a period of 15 (fifteen) years. Thereafter, the deed of agreement may be**

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**renewed for such period as may be agreed upon by both the parties.**

2. The second party/(ies) shall carry the LPG (bulk, packed and empty cylinders) in the State of Sikkim and ensure uninterrupted supply.

3. The second party/(ies) shall pay Rs.25,000/- (Rupees twenty five thousand) per annum to the Sikkim Nationalised Transport within first month of the every calendar year in the form of 'Administrative and other cost charges' irrespective of whether the trucks operate or not.

4. The Second party/(ies) shall pay on an interval of five years an increased fee at the rate of 15% on Rs.25,000/- (Rupees twenty five thousand).

5. The Second Party/(ies) shall pay all the fees and taxes levied by the Government of Sikkim from time to time under the provisions of the Motor Vehicles Act, 1988, Central Motor Vehicles Rules, 1989, The Sikkim Motor Vehicles Rules, 1991 and The Sikkim Motor Vehicles Taxation Act, 1982.

6. The first party reserve the right to withdraw this agreement after inviting one month's notice to the second party/(ies) if the conditions agreed herein above is violated.

**7. The first party shall not allow authorization to carry LPG to any other party/(ies) except the four parties referred to herein above in the State of Sikkim during the currency or validity of these presents.**

.....”

**27.** The Agreement dated 07-12-1998 was valid for a period of 15 years. On expiry thereto the second Agreement was entered into on 23-12-2013, also for a period of 15 years. The Clauses of the Deed of Agreement *supra* are lucid and need no further explanation. Although Learned Counsel for the Respondents No.8 to 10 would emphasise that the Agreement was entered into by the State Government in view of the fact that the Respondents No.8 to 10 had helped the State Government when it had no wherewithal, nothing of this nature

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is reflected in the Agreement. Neither was it established that discretion was vested on the Authority. Even if such discretion was vested it cannot be unregulated and arbitrary. It was next contended by the Respondents No.8 to 10 that the State Government offered to make an Agreement, nothing obtains in this regard on the face of the Agreement. The Respondents No.4 to 6 who are the agency which the Respondents No.8 to 10 have to deal with are aggrieved with the services of the Respondents No.8 to 10 pointing out that it leaves much to be desired. Clause 7 of the first Agreement was reiterated in the second Agreement as well. It is in this background that the Respondent No.6 had sought a clarification from the Government vide its letter dated 05-03-2018 whether distributors of Sikkim could also participate in the tender process which was invited by the Respondent No.4 on 03-07-2018 with last date of submission on 31-08-2018. The vacillating correspondence of the Respondent No.2 firstly allowing and then again disallowing participation by the Petitioners in the tender process aggrieved them. Admittedly the IOCL is not a party to the Agreement between the Commissioner-Cum-Secretary, Motor Vehicles Department, Government of Sikkim and the Respondents No.8 to 10, but it is evident that the IOCL is also bound by the Agreement in view of the Clause 7 which in no uncertain terms indicates that no other party except the Respondents No.8 to 10 would be authorized to carry LPG in the State during the validity of the Agreement. On the face of such a Clause it was but

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apposite for the Respondents No.4 to 6 to seek a clarification pertaining to participation of other transporters. It was pointed by the Respondents No.8 to 10 that the Petitioners had delayed in submitting their bids to the tender and nothing or no one had debarred their participation. That, the decision to participate was arrived at belatedly when the last date of tender fixed on 31-08-2018 had expired. In this context, it may be remarked that the exercise of participation by the Petitioners would indeed be one in futility, considering that even if they succeeded in the competitive bid, Clause 7 of the Agreement stands sentinel for the Respondents No.8 to 10, debarring transportation of LPG by any other party except the said Respondents in the State of Sikkim during the validity of the Agreement, viz., for 15 years from the date of Agreement. It is precisely for this reason that the earlier permission issued by the Respondent No.2 allowing participation of the Petitioners was withdrawn by them subsequently.

**28.** It is now well-settled that every executive action which operates to the prejudice of any person must have the sanction of law. Although Article 14 of the Constitution of India does not guarantee identical treatment it envisages similarity of treatment. There cannot be distinction between persons who are substantially in similar circumstances. Thus the question of the *locus standi* of the Petitioners being non-existent is not tenable.

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**29.** Learned Counsel for the Respondents No.8 to 10 would tangentially contend that it is unfathomable as to how the Petitioners are privy to the correspondence between the State Government and the IOCL and how they have relied on it in the instant matter. In this regard, it would appropriate to refer to the decision in ***Pooran Mal vs. The Director of Inspection (Investigation), New Delhi and Others***<sup>11</sup>. More recently, the Hon'ble Supreme Court in ***Yashwant Sinha and Others vs. Central Bureau of Investigation through its Director and Another***<sup>12</sup>, cited with approval ***Pooran Mal (supra)***, authored by Ranjan Gogoi, CJI, in a Bench consisting of Ranjan Gogoi, CJI, Sanjay Kishan Kaul, J. and K. M. Joseph, J. The concurring Order authored by K. M. Joseph, J., also reflected the decision in ***Pooran Mal (supra)*** and it was held respectively as follows;

**Ranjan Gogoi, CJI**

“.....

**7.** An issue has been raised by the learned Attorney with regard to the manner in which the three documents in question had been procured and placed before this Court. In this regard, as already noticed, the documents have been published in 'The Hindu' newspaper on different dates. That apart, even assuming that the documents have not been procured in a proper manner should the same be shut out of consideration by the Court? In ***Pooran Mal vs. Director of Inspection (Investigation) of Income Tax, New Delhi*** [AIR 1974 SC 348] this Court has taken the view that the “test of admissibility of evidence lies in its relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out.

.....”

<sup>11</sup> (1974) 1 SCC 345

<sup>12</sup> Review Petition (Criminal) No.46 of 2019 in Writ Petition (Criminal) No.298 of 2018 dated 10-04-2019

**K. M. Joseph, J.**

“ .....

26. I may also notice another aspect. Under the common law both in England and in India the context for material being considered by the court is relevancy. There can be no dispute that the manner in which evidence is got namely that it was procured in an illegal manner would not ordinarily be very significant in itself in regard to the courts decision to act upon the same (see in this context judgment of this Court in Pooran Mal v. Director of Inspection (Investigation) of Income Tax AIR 1974 SC 348). Therein I notice the following statements:

“25. So far as India is concerned its law of evidence is modeled on the rules of evidence, which prevailed in English law, and courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. In Barindra Kumar Ghose and others v. Emperor (1910) ILR 37 Cal 467 the learned Chief Justice Sir Lawrence Jenkins says at page, 500 :

"Mr. Das has attacked the searches and has urged that, even if there was jurisdiction to direct the issue of search warrants, as I hold there was, still the provisions of the Criminal Procedure Code have been completely disregarded. On this assumption he has contended that the evidence discovered by the searches is not admissible, but to this view I cannot accede. For without in any way countenancing disregard of the provisions prescribed by the Code, I hold that what would otherwise be relevant does not become irrelevant because it was discovered in the course of a search in which those provisions were disregarded. As Jimutavahana with his shrewd common-sense observes-"a fact cannot be altered by 100 texts," and as his commentator quaintly remarks : "If a Brahmana be slain, the precept 'slay not a Brahmana' does not annul the murder." But the absence of the precautions designed. by the legislature lends support to the argument that the alleged discovery should be carefully scrutinized.

.....

It would thus be seen that in India, as in England, where the test of admissibility of

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evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out."

*(Emphasis supplied)*

....."

Consequently, in view of the above authority there is nothing in law which debars the Petitioners from relying on correspondence between the State Governments and the IOCL.

**30.** That having been said, I now turn to address the question of dissemination of State largesse by concerned authority. The Supreme Court while dealing with the grant of dealership of Petrol Pump in ***Shashi Prabha Shukla*** (*supra*) observed that the dealership of the Respondent had been cancelled being vitiated by favouritism due to exercise of fanciful discretion of the departmental Minister. The Indian Oil Corporation (IOC) did not act in terms of the Judgment and Order of the Delhi High Court in initiating the fresh process for auction and the Respondent was permitted to continue with the dealership. In a subsequent proceeding, it was noticed that the proposed auction had not taken place and the Respondent had been permitted to run the retail outlet since 1998. The Allahabad High Court directed IOC in view of its new policy dated 12-02-2004 to award fresh dealership to the Respondent thereunder. The Supreme Court held that the award of new dealership to the Respondent would wholly undermine the purpose of cancelling her earlier dealership and annihilate the

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very objective of securing transparency, fairness and non-arbitrariness in the matter of distribution of public contract. Therefore, the order of the High Court so far as it entitled the Respondent to a new dealership at her locations under the new policy was set aside. While deciding the matter the Supreme Court held that -

**"23.** It is no longer res integra that a public authority, be a person or an administrative body is entrusted with the role to perform for the benefit of the public and not for private profit and when a prima facie case of misuse of power is made out, it is open to a court to draw the inference that unauthorised purposes have been pursued, if the competent authority fails to adduce any ground supporting the validity of its conduct."

**31.** In *Natural Resources Allocation* (*supra*) the Supreme Court observed that -

**"80.** Dealing with Questions (*iii*) and (*iv*) in paras 94 to 96 of the judgment, this Court opined as follows: (2G case [(2012) 3 SCC 1], SCC pp.59-60)

**"94. There is a fundamental flaw in the first-come-first-served policy inasmuch as it involves an element of pure chance or accident. In matters involving award of contracts or grant of licence or permission to use public property, the invocation of first-come-first-served policy has inherently dangerous implications. Any person who has access to the power corridor at the highest or the lowest level may be able to obtain information from the government files or the files of the agency/instrumentality of the State that a particular public property or asset is likely to be disposed of or a contract is likely to be awarded or a licence or permission is likely to be given, he would immediately make an application and would become entitled to stand first in the queue at the cost of all others who may have a better claim.**

**95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible**

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**persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.**

**96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.”**

[emphasis supplied]

**32.** In *Sachidanand Pandey* (supra) the Supreme Court held as follows;

**“40.** On a consideration of the relevant cases cited at the Bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.”

**33.** Undoubtedly as stated by Learned Counsel for the Respondents No.8 to 10 the Supreme Court has not shut out

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distribution of State largesse by negotiation as held *supra* and in ***M. P. Oil Extraction and Another vs. State of M.P. and Others***<sup>13</sup> but the latter Judgment can be distinguished from the instant one as can be gauged from the extract below. The Supreme Court at Paragraph 45 held as follows;

**"45.** Although to ensure fair play and transparency in State action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiation is permissible. In the instant case, as a policy decision protective measure by entering into agreements with selected industrial units for assured supply of sal seeds at concessional rate has been taken by the Government. The rate of royalty has also been fixed on some accepted principle of pricing formula as will be indicated hereafter. Hence, distribution or allotment of sal seeds at the determined royalty to the respondents and other units covered by the agreements cannot be assailed. It is to be appreciated that in this case, distribution by public auction or by open tender may not achieve the purpose of the policy of protective measure by way of supply of sal seeds at concessional rate of royalty to the industrial units covered by the agreements on being selected on valid and objective considerations."

[Emphasis supplied]

**34.** It is trite to reiterate that the circumstances in the instant matter differ from those at *supra*. Moreover the rate of award in the said matter had been fixed on some accepted principle of pricing formula, hence it was observed that distribution by public policy or by open tender may not achieve the purpose of the policy of protective measure by way of supply of sal seeds at concessional rate of royalty to the industrial units covered by the agreements, on being selected on valid and

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<sup>13</sup> (1997) 7 SCC 592

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objective consideration. In the matter at hand, the Agreement reflected no such consideration or the rationale behind the Agreement. In the absence of any reasons for entering into the impugned Agreement herein, it can well be presumed that unauthorized purposes were pursued to grant the agreement.

**35.** In *City Industrial Development Corporation through its Managing Director vs. Platinum Entertainment and Others*<sup>14</sup> while the Supreme Court was considering the allotment of properties by the State/Development Authority it would hold as follows;

**"49.** State and its agencies and instrumentalities cannot give largesse to any person at sweet will and whims of the political entities or officers of the State. However, decisions and action of the State must be founded on a sound, transparent and well-defined policy which shall be made known to the public. The disposal of the government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favouritism or nepotism influences the exercises of discretion. Even assuming that if the rule or regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the rule of law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt a pick and choose method while allotting government land."

**36.** In *Akhil Bhartiya Upbhokta Congress* (*supra*) the Supreme Court was considering the allotment of land, grant of quotas, permits, etc. While holding that the policy should be made known to the public by publication in Official Gazette and other recognized modes of publicity it emphasized on necessity

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<sup>14</sup> (2015) 1 SCC 558

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of fairness and non-discrimination and non-arbitrariness in policy implemation/ execution. It was held that;

**“65** What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

**66.** We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

**67.** This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent

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authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.

**68.** The allotment of land by the State or its agencies/instrumentalities to a body/organisation/institution which carry the tag of caste, community or religion is not only contrary to the idea of secular democratic republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organisations/institutions on political considerations or by way of favouritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible.”

[Ed.: Paras 65, 66 and 68 corrected vide Official Corrigendum No. F.3/Ed.B.J./23/2011 dated 3-5-2011 and para 67 corrected vide Official Corrigendum No. F.3/Ed.B.J./28/2011 dated 7-5-2011.]

**37.** In *Common Cause, A Registered Society vs. Union of India and Others*<sup>15</sup> the Hon’ble Supreme Court again dealt with the distribution of State largesse and held as follows;

**“24.** The orders of the Minister reproduced above read: “the applicant has no regular income to support herself and her family”, “the applicant is an educated lady and belongs to Scheduled Tribe community”, “the applicant is unemployed and has no regular source of income”, “the applicant is an uneducated, unemployed Scheduled Tribe youth without regular source of livelihood”, “the applicant is a housewife whose family is facing difficult financial circumstances” etc. etc. There would be literally millions of people in the country having these circumstances or worse. There is no justification whatsoever to pick up these persons except that they happen to have won the favour of the Minister on mala fide considerations. None of these cases fall within the categories placed before this Court in *Centre for Public Interest Litigation v. Union of India* [1995 Supp (3) SCC 382] *but even* if we assume for argument sake that these cases fall in some of those or similar guidelines the exercise of discretion was wholly

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<sup>15</sup> (1996) 6 SCC 530

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arbitrary. Such a discretionary power which is capable of being exercised arbitrarily is not permitted by Article 14 of the Constitution of India.

.....

**25.** This Court in *Centre for Public Interest Litigation case* [1995 Supp (3) SCC 382] has endorsed the guidelines submitted by the Attorney General for allotment of petrol pumps, gas agencies etc. The Court in that case did not have before it the actual manner of exercise of discretion by the Minister in the allotment of pumps/agencies. The allotment orders which are now before the Court clearly indicate that leaving the authorities to enjoy absolute discretion even within the guidelines would inevitably lead to gross violation of the constitutional norms when the persons for allotment are picked up arbitrarily and discriminatorily.

**26.** This Court as back as in 1979 in *Ramana Shetty case* [(1979) 3 SCC 489] held "it must, therefore, be taken to be the law..." that even in the matter of grant of largesses including award of jobs, contracts, quotas and licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of the land. ...."

The plethora of ratiocination of the Hon'ble Supreme Court extracted hereinbefore reveals that the method of distribution of State largesse is no more *res integra*.

**38.** In the instant case while perusing the Agreement as already pointed out nothing emerges to indicate as to what considerations emanated for distribution of largesse to the Respondents No.8 to 10 by the Respondent No.2. There is no rate of royalty or pricing formula that was adhered to by the Respondent No.2. A random amount of Rs.25,000/- (Rupees twenty five thousand) only, was required to be paid in the year 1998 which continued for a period of 15 years and on completion of 15 years and renewal of Agreement again the State

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Government put forth an amount of Rs.50,000/- (Rupees fifty thousand) only, payable for providing the services. No logic has been attributed to the calculations so made. Neither is there any specific contention that only Respondents No.8 to 10 were found to be eligible for the task. It was pointed out that in 1998 there was no one competent for the task, however, the Petitioners contend that Petitioner No.3 was awarded distributorship as far back as in 1997. Nothing obtains to reason as to why this Petitioner was also not afforded the same consideration by the Respondent No.2 when the first Agreement was entered into. Although the Petitioners now are similarly circumstanced as the Respondents No.8 to 10 the Agreement was entered into for the second time without opportunity extended to them, without publication of the same and there is no classification on the basis of reasonable distinctions.

**39.** Although a perusal of the e-tender (Annexure P1) indicates no bar upon any person in participating in the tender process and it is only the successful bidder who is issued the Letter of Intent (LoI) by the IOCL who is required to produce such authorization from the Transport Department within a stipulated time, in my considered opinion, herein lies the essence of the objection of the Petitioners as it is clear from the Agreement at Clause 7 that regardless of who the successful bidder is the Transport Department will not issue authorization during the validity of the existing Agreement, i.e., up to 31-12-2029.

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**40.** In this context, it is relevant to examine "The Government of Sikkim (Allocation of Business) Rules, 1994". Before delving into that aspect it may be noticed that vide Notification bearing No.55/HOME/2000, dated 06-06-2000, the Sikkim Nationalised Transport Department and the Motor Vehicles Department, were amalgamated into one Department known as the "Transport Department", the Respondent No.2 herein.

**41.** The Government of Sikkim (Allocation of Business) Rules, 1994 (as amended up to 30-06-2000), 18-07-1994, in Second Schedule, at Rule XIII and XXXI, allocates business to various Departments of the Government *inter alia* as follows;

**"XIII. FOOD & CIVIL SUPPLIES AND CONSUMERS' AFFAIRS DEPARTMENT.**

- 1. Procurement, distribution, fixation of prices and control of essential commodities and civil supplies through the Public Distribution System in the State.

....."

**XXXI. SIKKIM NATIONALISED TRANSPORT DEPARTMENT**

- 1. Control and Transportation of all goods on nationalised routes within the State and also to and from outside the State under Inter-State agreement.

....."

**42.** Respondent No.7 controls essential commodities as delineated in the Schedule to Section 2A of the Essential Commodities Act, 1955, of which indubitably LPG forms a part. On the other hand, the Respondent No.2 is in-charge of

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controlling and transporting of all goods on the nationalized routes within the State and also to and from outside the State under Inter-State Agreement. It is not the case of the Transport Department that LPG is not an essential commodity. Respondent No.7 is to procure distribute and fix prices for essential commodities. Distribution is done by the Respondent No.7 by way of public distribution system approved by the State Government. Evidently the SNT is only to ensure control and transportation of goods it does not deal with either the procurement or distribution which is within the ambit of the Respondent No.7.

**43.** Sections 77, 78 and 79 of the Motor Vehicles Act, 1988, may also beneficially be adverted to which provides as follows;

**“77. Application for goods carriage permit.**—An application for a permit to use a motor vehicle for the carriage of goods for hire or reward or for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a goods carriage permit) shall, as far as may be, contain the following particulars, namely:—

- (a) the area or the route or routes to which the application relates;
- (b) the type and capacity of the vehicle;
- (c) the nature of the goods it is proposed to carry;
- (d) the arrangements intended to be made for the housing, maintenance and repair of the vehicle and for the storage and safe custody of the goods;
- (e) such particulars as the Regional Transport Authority may require with respect to any business as a

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carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant;

- (f) particulars of any agreement, or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region;
- (g) any other particulars which may be prescribed.

**78. Consideration of application for goods carriage permit.**—A Regional Transport Authority shall, in considering an application for a goods carriage permit, have regard to the following matters, namely:—

- (a) the nature of the goods to be carried with special reference to their dangerous or hazardous nature to human life;
- (b) the nature of the chemicals or explosives to be carried with special reference to the safety to human life.

**79. Grant of goods carriage permit.**—(1) A Regional Transport Authority may, on an application made to it under section 77, grant a goods carriage permit to be valid throughout the State or in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any area or route not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a goods carriage permit, may grant the permit and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—

- (i) that the vehicle shall be used only in a specified area, or on a specified route or routes;

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- (ii) that the gross vehicle weight of any vehicle used shall not exceed a specified maximum;
- (iii) that goods of a specified nature shall not be carried;
- (iv) that goods shall be carried at specified rates;
- (v) that specified arrangement shall be made for the housing, maintenance and repair of the vehicle and the storage and safe custody of the goods carried;
- (vi) that the holder of the permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may, from time to time, prescribe;
- (vii) that the Regional Transport Authority may, after giving notice of not less than one month,—
  - (a) vary the conditions of the permit;
  - (b) attach to the permit further conditions;
- (viii) that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority;
- (ix) any other conditions which may be prescribed.

(3) The conditions referred to in sub-section (2) may include conditions relating to the packaging and carriage of goods of dangerous or hazardous nature to human life.”

The extent and parameters prescribed in these provisions are to be adhered to by the Respondent No.2 for their functioning and to exercise the powers vested on it rationally, devoid of discriminatory decisions which are unsubstantiated by reason. They are ofcourse not debarred from collecting revenue in terms of the mandate of law and not over and above such provision.

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**44.** In *Monarch Infrastructure (P) Ltd. vs. Commissioner, Ulhasnagar Municipal Corporation and Others*<sup>16</sup> it was held that (i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest. (ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate. (iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons. It was further held that broadly stated the Courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is *mala fide*. The Supreme Court would further hold that if these principles are to be borne in mind, the High Court was justified in setting aside the award of contract in favour of Monarch Infrastructure (P) Ltd. because it had not fulfilled the conditions relating to Clause 6(a) of the Tender Notice.

**45.** Reverting to *Natural Resources Allocation (supra)* it was *inter alia* stated therein that the State is duty bound to adopt the method of auction by giving wide publicity and a transparent and fair method must be adopted. I hasten to add that the same Judgment also lays down that there can be exceptions from auction, but the ultimate test is only that of

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<sup>16</sup> (2000) 5 SCC 287

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fairness of the decision-making process and compliance with Article 14 of the Constitution of India. The Supreme Court in this context referred to the ratio in *M. P. Oil Extraction* (*supra*) and *Netai Bag and Others* vs. *State of W.B. and Others*<sup>17</sup>.

**46.** From the catena of decisions extracted hereinabove, it is evident that distribution of State largesse should not be marred by any arbitrariness and public interest should be paramount in the matter of award of contracts. All participants in a tender process should be treated alike and similarly circumstanced individuals cannot be treated as pariahs, apart from which larger participation will invite more attractive bids.

**47.** Hence, on the touchstone of the aforestated principles and the discussions *supra*, it is quite evident that the process adopted by the Respondent No.2 is arbitrary and irrational denuded of any manifestation of fairness.

**48.** Consequently,

- (i) The Agreement dated 23-12-2013 (Annexure P3) is hereby quashed and set aside;
- (ii) Notice Inviting E-Tender floated by the Respondent No.4, dated 03-07-2018 (Annexure P1) is also set aside, as also any bids submitted in consequence to the said e-tender.
- (iii) Fairness and equal treatment require that the process of tender should be carried out afresh. The IOCL is at liberty to invite a fresh e-tender for the

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<sup>17</sup> (2000) 8 SCC 262

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purpose of "Transportation of Indane LPG Cylinders in vertical position on unit rate basis Ex Rangpo LPG Bottling Plant" as set out in the tender dated 03-07-2018. The Petitioners shall be permitted to participate and submit their bids, if they so desire.

- (iv) The entire process should be completed within a period of eight weeks from today.
- (v) In the interregnum, the IOCL shall permit the Respondents No.8 to 10 to continue carrying LPG Cylinders within the State as before, sans the Agreement or enter into any other suitable arrangement.
- (vi) The amount payable to the Respondent No.2 by the Respondents No.8 to 10 in terms of the impugned Agreement be calculated and paid as shall be determined between the said parties.

**49.** The Writ Petition stands disposed of with the above directions.

**50.** No order as to costs.

Sd/-  
( **Justice Meenakshi Madan Rai** )  
**Judge**  
15-04-2019

Approved for reporting : **Yes**

Internet : **Yes**