
(2017) 01 OHC CK 0100

ORISSA HIGH COURT

Case No: 11817 and 12427 of 2016

M/s. Mohapatra Binders
and Ors

APPELLANT

Vs

State of Odisha and
Ors

RESPONDENT

Date of Decision: Jan. 13, 2017

Acts Referred:

- Constitution of India, Article 19(1)(g) - Protection of certain rights regarding freedom of speech, etc
- Customs Act, 1962, Section 25(1) - Power to grant exemption from d

Citation: (2017) 01 OHC CK 0100

Hon'ble Judges: Vineet Saran, A.K. Rath, B.R. Sarangi

Bench: FULL BENCH

Advocate: R.K. Mohanty, D. Mohanty, S. Mohanty, D. Baradwaj, A. Mohant, R.K. Rath, Digambara Mishra, S.K. Satapathy, S.P. Misahra, Sisir Ku. Das, A.K. Pandey

Final Decision: Dismissed

Judgement

1. The dispute involved in these writ petitions is whether the petitioners herein, who are small book binding units and cover/text printers of the State

of Odisha, would be entitled to exclusive right of State Government work of book binding and printing, under the provisions of Industrial Policy

Resolutions (for short "IPR") issued by the State Government, as well as the Micro, Small and Medium Enterprises Development Act, 2006 (for

short "MSMED Act"), and the Odisha MSMED Policy of 2009 (for short "OMSMED Policy) issued there under by the State Government; or

can such work be awarded by way of inviting national tender.

2. The petitioners claim benefit under the various IPRs issued from time to time, as well as the MSMED Act and the policy framed there under and

contend that in case the benefit of exclusive work/purchase (of book binding/printing) is not accorded to them, it would amount to frustrating the

objectives of the IPRs as well as the MSMED Act and the policy of the State Government issued there under.

3. The petitioners in the leading writ petition No. 11817 of 2016 are proprietors of small book binding units covered under the definition of ""micro

industries"" under the MSMED Act, and the petitioners in the other writ petition No. 12427 of 2016 are covers and text printers registered with the

District Industries Centres (for short "DIC") and carry on their business as Small Scale Industries (for short "SSI") defined under the IPR 1980

and subsequent IPRs issued by the State Government. The challenge in these writ petitions is to the tender call notice dated 09.06.2016 issued by

the Director, Textbook Production and Marketing, Bhubaneswar inviting national tender for ""Printing and Binding of Nationalised Textbooks for

the academic session 2017-18"".

4. In the State of Odisha, there are as many as 5000 printing press and binding units, which are set up under the approval of respective District

Industries Centres (for short ""DICs"") under the Industrial Policy framed by the Industries Department, Government of Odisha. Thereby, they are

all covered as SSI units as per IPR 1980 and subsequent IPRs issued from time to time by the Government of Odisha. The respective proprietors

of such units, as per the schemes, have modernized their printing and binding units by installing modern equipments by incurring huge loans from

different banks as well as non-banking organisations. Most of them are technicians, skilled and unskilled labourers, who are maintaining their

livelihood from the printing and binding work of nationalized text books. A large number of skilled workers/labourers are being engaged in such

type of micro industries so as to earn their livelihood.

5. The State Government continued to procure the nationalized text books from the small scale industrial (SSI) units of the State for a period not

less than 18 years, facilitating thousands of workers to maintain their livelihood. However thereafter, the opposite party no.1, deviating from the

said procurement policy of the Government, vide Resolution dated 25.08.2009, decided to procure nationalized text books through national tender

for the first time for the academic session 2010-11 and, accordingly, the national tender was floated on 11.02.2010.

6. For about two decades, till the academic session 2009-10, the benefit of exclusive purchase from small book binding and cover/text printing

units of the State was being given to such units, without open competitive tenders, which benefit, the petitioners were enjoying.

7. Then the nationalised tender, which was issued for ""Printing and Book binding"" for the academic session 2010-11, was challenged by the

petitioners in W.P.(c) No. 2862 of 2010. By judgment and order dated 19.05.2010 in the case of Orissa Printers and Binders Mahasangha v.

State of Orissa AIR 2010 Orissa 154, the said tender was quashed, which was not challenged and the same benefit of tender limited to SSI units

of the State, as given to the petitioners up to the academic session 2009-10, was continued till the year 2013-14.

8. Then on 07.06.2013, for the academic session 2014-15, the State Government again resorted to and issued a national tender. The same was

challenged by the petitioners and others in W.P.(C) No. 13203 of 2013. The Division Bench of this Court, vide its judgment and order dated

20.12.2013 passed in the aforesaid writ petition of Mohapatra Binders v. State of Odisha 2014 (Supp.1) OLR 490, quashed the tender dated

07.06.2013 after rejecting the view of the State Government relating to change of circumstances and held that ""there is no need to re-examine the

issue which has already been decided by this court vide its order dated 19.05.2010 passed in W.P.(C) No. 2862 of 2010 and has attained

finality."" However while parting with the case certain directions were issued, which are reproduced hereunder:

(i) Opposite parties shall entrust the Printing and Binding Works of Nationalized Text books to the petitioners like the preceding years;

(ii) For the purpose of negotiation of rate, the petitioners/their representatives shall present themselves before the competent authority, i.e.,

opposite party no.2-Director of Text Book Production and Marketing, Bhubaneswar on 26th of this month;

(iii) Opposite parties must ensure timely supply of papers to the Printers, who in turn complete their printing work in time. The binders must

ensure timely completion of their binding work.

(iv) It is open to the opposite parties to take necessary action as permissible if delay is attributable to any Printers and/or Binders in

completing their work in time.

As such, for the academic session 2014-15, the State Government decided to start the work with the petitioner at the previous year rates. For the

subsequent academic session 2015-16 also the State floated tender for SSI units only.

9. The judgment of this Court dated 20.12.2013 was challenged before the apex Court, and on 01.07.2015, the apex Court granted interim relief

in the SLP filed by the State, staying the implementation of the judgment of the High Court dated 20.12.2013 until further orders. Then on

22.08.2015, while the stay order granted by the Apex Court was in force, the State Government again floated National Tender for the year 2016-

17.

In the meantime, on 24.08.2015, another IPR 2015 was issued, which also provided for similar incentives for micro and small enterprises, enlisting

the items for purchase from such units, but the said list again did not include printing and binding.

Then on 22.09.2015, the SLP filed by the State was disposed of as having become infructuous, with the observation that ""However, it would be

open to the petitioner to reconsider its policy with regard to getting its text books printed and bound and to take appropriate decision after having

due deliberation on the subject matter of these petitions.

10. After the disposal of SLP by the apex Court, the petitioners and others challenged the National Tender dated 22.08.2015 (issued for the

academic session 2016-17) before this Court in W.P.(C) No. 19062, 19099 and 20138 of 2015. On 26.10.2015, this Court, as an interim

measure, directed that in view of the earlier decision of this Court dated 20.12.2013, the tender process may continue, but it shall not be finalised

without leave of the Court. However, for just and proper adjudication, the matter was referred to Larger Bench of three Judges. The Larger

Bench, vide its order dated 18.01.2016, vacated the interim order dated 26.10.2015, assigning reasons in paragraphs 14, 15 and 16 of its order,

which are extracted below:

14. It is accordingly submitted that as the policy decision to procure the Nationalised Text Books through process of tender on All India

basis is bona fide and in the interest of the students, the interim orders be vacated and the State be permitted to finalise the tender, to ensure

supply of books to the concerned schools before beginning of the academic session 2016-17.

15. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its

purpose is to check whether choice or decision is made ""lawfully"" and not to check whether choice or decision is ""sound"". When the power

of judicial review is invoked in matters relating to tenders or award of contracts certain special features should be borne in mind. A contract

is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural

justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of

power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power

of judicial review, will not be permitted to be invoked to protect private interest at the cost of public interest or to decide contractual

disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with

imaginary grievances wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some

prejudice to self and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either

interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost

manifold. Therefore, a Court would interfere in a tender or contractual matters in exercise of its power of judicial review, only if the process

adopted or decision taken by the authority is found to be mala fide or arbitrary or irrational, which affects public interest. (See- Jagdish

Mandal v. State of Orissa and others, (2007) 14 SCC 517.

16. In the present case, in spite of repeated opportunities, the petitioners have not been able to show as to what is the basis of their claim to

be awarded the work of printing and binding of text books, especially when they are admittedly not rate contract holders. Merely because

they have been issued with the work orders for printing and binding of text books for last many years, which may have been due to the

judgments of this Court, the same does not give them a vested right to claim that the work of printing and binding of text books should be

exclusively awarded to them, without inviting tenders. The petitioners having failed to establish that the issue of the impugned Tender Notice

is in any way arbitrary or unreasonable or contrary to any statutory rules or policy of the State Government, we do not find any prima facie

case to allow continuance of the interim orders, to the detriment of the students.

However, writ petitions remained pending and the National Tender dated 22.08.2015 for the academic session 2016-2017 was given effect to.

After the work for the academic session 2016-17 was completed and a fresh National Tender for the academic session 2017-18 was issued on

09.06.2016, the petitioners moved an application for withdrawal of the aforesaid three writ petitions, which were pending before the larger Bench,

as having become infructuous. Larger Bench of this Court vide its order dated 05.08.2016 allowed the prayer of the petitioners and dismissed the

writ petitions.

11. By means of this writ petition, the petitioners have now challenged the fresh National Tender Call Notice dated 09.06.2016 for printing and

binding of nationalized text books for the academic session 2017-18.

12. By order dated 09.08.2016, a Division Bench of this Court passed an interim order to the effect that ""tender process may go on, but no final

decision with regard to awarding of contract shall be taken till the next date."" The said interim order was extended from time to time and is still

continuing.

These petitions were then heard by Division Bench of this Court and considering the earlier judgments of this Court passed on 19.05.2010 and

20.12.2013 in the cases of Orissa Printers (supra) and Mohapatra Binders (supra) as well as the order dated 18.01.2016 of the Larger Bench

passed in W.P.(C) No. 19062 of 2015 and 2 other petitions, the Division Bench of this Court, by detailed order dated 27.9.2016, framed three

questions and referred the matter to a Larger Bench for consideration.

13. It is in the aforesaid facts and circumstances that this matter has come up before this Bench. During the course of hearing, learned counsel for

the parties had urged that the writ petitions may themselves be heard and disposed of by this Bench after deciding the questions which were, with

the consent of the learned counsel for the parties, reframed as below:-

(i) Whether the ratio decided by this Court in Orissa Printers and Binders Mahasangha and M/s. Mohapatra Binders still holds the field or requires reconsideration?

(ii) Whether the petitioners, which are the binders and printers of the books and registered under the District Industries Centre as Small

Scale Industries are entitled to get any benefit under the IPRs of the State vis-a-vis MSMED Act, 2006 and Policy framed thereunder in 2009?

(iii) If any relief can be granted to the petitioners?

14. We have heard Mr. R.K.Mohanty, learned Senior Counsel appearing along with Mr. D.Mohanty for the petitioners in W.P.(C) No. 11817 of

2016 and Mr. R.K.Rath, learned Senior Counsel appearing along with Mr. D.Mishra for the petitioners in W.P.(C) No. 12427 of 2016; as well

as Mr. S.P.Mishra, learned Advocate General appearing along with Mr. Sisir Kr. Das, learned Senior Standing Counsel and Mr. A.K.Pandey,

learned Standing Counsel, for all the opposite parties.

Mr. R.K.Mohanty, learned Senior Counsel appearing for the petitioners has submitted that the case of the petitioners is covered by the various

IPRs issued by the State Government, which are statutory in nature, and the petitioners would be entitled to the benefits under such IPRs, even

though the petitioners may not be in the "rate contract list" or "exclusive purchase list". It has been contended that because of not being enlisted in

the rate contract or exclusive list, the petitioners, at best may not be entitled to the prescribed benefits attached to the listed items, but would still be

entitled to the benefits provided to the SSI unit under the IPRs, which benefits are applicable to the industries not so listed. It is contended that the

marketing support or benefit would be distinct from fiscal benefits, and to deprive the petitioner of the marketing benefit would frustrate the very

purpose of IPRs as well as the Legislative intent behind the MSMED Act, 2006 and Policy framed there under in the year 2009. The purpose of

the said Policies and the Act is to promote the SSI/MSM units and thus, if the benefits provided under the IPRs are limited only to the enlisted

industries/units, it would be against the State Policy so loudly proclaimed in all the IPRs.

Learned counsel has contended that such objection of non-inclusion of printers and binders was first raised in the case of Orissa Printers (supra),

but did not find favour of the Court and the writ petition was allowed after quashing the nationalised tender for the academic session 2010-2011

challenged in the said writ petition. The said decision was followed by another Division Bench in the case of Mohapatra Binders (supra) wherein

the nationalized tender for the academic session 2014-15 was under challenge, and the same was also quashed, with certain directions.

The contention thus is that the earlier two decisions of this Court do not suffer from any legal infirmity requiring correction or review of the same,

whatsoever. Learned counsel also submitted that the order dated 18.01.2016 passed by the Larger Bench, while vacating the interim order, would

not be binding as it was not a final decision, and the Larger Bench only considered the application for vacation of the interim order, and the issues

involved in the said writ petitions had not been finally adjudicated. Learned counsel also contended that the apex Court, while disposing of the

SLPs preferred by the State Government against the judgment dated 20.12.2013 in the case of Mohapatra Binders (supra), had vide its order

dated 22.09.2015, directed the State Government to reconsider its policy and take appropriate decision after due deliberation, which has not been

complied with by the State, and instead it acted contrary to the said order by issuing impugned national tender call notice dated 09.06.2016. The

State Government, having withdrawn the SLP before the apex Court, actually accepted the Division Bench judgments of this Court in the cases of

Orissa Printers and Mohapatra Binders (supra), and that now the State Government could not have issued national tender in teeth of the two

Division Bench decisions of this Court.

Learned counsel has relied on the various provisions of IPRs, as well as the MSMED Act, 2006 and Policy of 2009 framed there under, in

support of his submission that national tender could not have been issued in the present case, as the same would defeat the very purpose of the Act

and the Policies.

Mr. Mohanty, learned Senior Counsel has further urged that by virtue of the impugned tender call notice, small entrepreneurs, like the petitioners,

would not only become absolutely ineligible to participate in the same, but at the same time, they would not be able to compete with units outside

the State, which would frustrate the purpose of the IPRs, the Act of 2006 and Policy of 2009. As regards the apprehension of delay in supplying

books by the petitioners (which has been raised by the State in its counter affidavit), because of which nationalized tender is said to have been

floated, Mr. Mohanty has submitted that the same has no basis, as the paper for printing is supplied by the State, and that in fact in the past there

had been delay on the part of the State authorities in providing paper to the successful tenderers, and thus delay, if any, in printing (which may have

been there) cannot be attributed to the petitioners. He thus submitted that in the interest of justice and fair play, the impugned tender call notice is

liable to be quashed.

In support of his submission, he has relied on the judgments of the apex Court in *Parappa Ningappa Khaded v. Mallappa Kallappa*, AIR 1956

Bombay 332, State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694.

15. Mr. R.K. Rath, learned Senior Counsel appearing for the petitioners in the second writ petition, while adopting the submissions advanced by

Mr. R.K. Mohanty, further contended that the IPRs issued by the Government of Odisha from time to time are with the objective of extending

opportunities to the persons of Odisha and to protect the micro, small and medium scale industries located in the State. He submitted that the units

of the petitioners are employing thousands of persons belonging to lower economic strata, who would suffer if the exclusive right to carry on the

work of the State for printing and book binding is not assigned to the petitioners. It is submitted that the IPRs have been issued for giving purchase

preference, price preference and marketing preference to the small scale industries of Odisha and, for nearly two decades, the protection under the

said IPRs had been given to the units of the petitioners. It is thus urged that a practise which has been adopted by the State for such a long period

would lay the foundation for legitimate expectation of the petitioners. It has further been submitted that the petitioners would be entitled to the

benefit of the judgments passed by this Court in Orissa Printers and Mohapatra Binders (supra).

It is contended that book binding and printing press, which are included in the list of IPR 2007, are entitled for fiscal incentives and policy

protection of reserving the goods and services. The basic objection of the State is that printing press and book binding have been allegedly

excluded from the exclusive purchase list and that the State Government, in its clarificatory letter dated 08.01.2010 issued by the Director of

Industries, Odisha clarified that the book binding and printing press are not in exclusive purchase list. Consequentially, the policy of protection

imparted to SSI units of the State is no longer available to such type of industries. Learned counsel has raised a preliminary question with regard to

the jurisdiction/competence of the Director to issue such type of clarificatory order, when the State Government in Clause-13.1(a) of IPR 2007,

specifically states that comprehensive review of rate contract list, exclusive purchase list and open tender purchase list shall be undertaken by a

committee consisting of Secretary, Industries Department; Director, Export Promotion and Marketing (EPM); Director, Industries and

representatives of Industries Association, which shall submit its recommendation for Government approval in the Industries Department. But, no

such committee has been constituted at any point of time, either for exclusion of printing press and book binding from the exclusive purchase list or

to be treated in a different manner, and no such decision has been taken by the authority. More so, there is no Cabinet approval or approval of the

State Government of such exclusion, as indicated in the clarificatory letter dated 08.01.2010 or letter dated 25.06.2013. Apart from the same,

both the letters dated 08.01.2010 and 25.06.2013 are not based on the recommendation made by the committee, as contemplated under Clause-

13.1 of the IPR 2007/OMSMED Policy, 2009. The stakeholders, like the Printers and Binders Mahasangh (which is an association recognised by

the opposite parties), has never been given any opportunity of hearing, as has been mandated in the IPR 2007.

It is further urged that certain information had been called for under the Right to Information Act, more particularly to provide

documents/notesheets/ordersheets indicating whether any committee has been constituted to exclude printing press/book binding from exclusive list

or from EPM contract list, and what was the decision of the said committee, has never been informed, rather it has been stated that ""no such

information is available in the Directorate"". From the above, it can be construed that exclusion of book binding and printing press from exclusive list

has never been notified.

Mr. Rath, learned Senior Counsel further contended that the Industry Department, vide order No.14835 dated 06.07.1998 notified the exclusive

list of "store items". Against Sl. No.11-"Paper and Paper Products (excluding paper bag)" has been notified. The Additional Secretary to

Government, MSME Department issued letter dated 17.03.2015 to the Director, Export Promotion and Marketing (EPM), Odisha that the

exclusive list of store items be updated, since it was made way back in 1998. The State Government, after consideration included 22 more items in

this exclusive list of store items, making total 39 items vide letter dated 19.05.2015. Therefore, the exclusive list of the "store items", vide Industry

Department letter dated 06.07.1998, has not been varied in any manner and holds the field till date. Consequence thereof, based on the Industry

Department order dated 06.07.1998, Government has been consistently giving printing orders to the SSI units of the State, except for a period of one year.

It is further contended that the books are prepared from ""paper and paper products (excluding paper bag)"" as mentioned in Sl. No.11 of exclusive

list of "store items" indicated in letter dated 06.07.1998 of the Industries department. As per Rule 96 of the Orissa General Financial Rules

(OGFR) (Volume-1), under the heading ""Rules and Instructions Governing the Purchase of Stores"", all purchase of stores for use in the public

service should be regulated in strict conformity with the Store Rules given in Appendix 6. The Appendix 6 of OGFR deals with Rules for the

purchase and supply of articles (including Printing and Stationery Stores) for the Public Service. As per the preamble, the policy of the Government

of Orissa is to make their purchase of articles required for the State Service in such a way as to encourage the development of the industries of the

Indian Union to the greatest possible extent, consistent with economy and efficiency. In order to give effect to this policy, preference in making

purchase will be given as per the order mentioned therein. It is stated that preference will be given to the articles produced or manufactured in

Orissa, over those produced in any other State of the Indian Union. In view of such provision, the petitioners, being the SSI units, preference will

be given to the articles produced or manufactured in Orissa, over those produced in any other State of the Union of India.

To substantiate his contention, Mr. Rath, learned Senior Counsel has placed reliance upon the judgments of the apex Court in Maharaja Book

Depot v. State of Gujarat, 1979 (1) SCC 295; Scientific Engineering House (P) Ltd. v. Commissioner of Income Tax, Andhra Pradesh, 1986 (1)

SCC 11 and Commissioner of Customs (General), New Delhi v. Gujarat Perstorp Electronics Ltd. etc., 2005 (7) SCC 118.

16. Mr. S.P. Mishra, learned Advocate General, while justifying the action of the State-opposite parties in issuing the tender call notice dated

09.06.2016, has submitted that the earlier judgments rendered by this Court in the cases of Orissa Printers (supra) and Mohapatra Binders (supra)

would not be binding, inasmuch as, the said judgments have not decided the issues involved in the present writ petition and, even though the

submission of the State may have been recorded in the said judgment of Orissa Printers (supra), but said submission or issues have not been dealt

with, and the judgment rendered is on the basis of sympathy for the workers and the owners of the units of the petitioners, without taking into

consideration the legal aspects of the matter, and without considering the provisions of the IPRs. In the subsequent judgment in Mohapatra Binders

(supra), the Division Bench has simply followed the decision in the case of Orissa Printers (supra) and decided the matter.

The submission is that the petitioners are not doing government works exclusively, but are entitled to, and are actually doing other private works,

and filing of the present writ petitions is not for survival of the units but for creating monopoly. It is contended that under the IPRs, certain benefits

are to be given to the SSI units of the State, but only to such units which are under the "rate contract list" or "exclusive purchase list" and,

admittedly, the petitioners do not fall in such category. Thus the petitioners would not be eligible for ""fiscal incentives"" under the IPRs, but only to

investment facilitation"", such as allotment of land and recommendation to financial institutions for term loan and working capital or power facility.

The benefit given to the petitioners for nearly two decades was not on the basis of the IPRs, but at the discretion of the Government which, with

the change in time and circumstances, has rightly been withdrawn. Right from the IPR 1980 and the subsequent IPRs, the Government

organisations were required to purchase the enlisted products from the SSI units of the State without inviting tender, but only where rate contract

agreement had been entered into. Such benefit was not to all SSI units, which may be otherwise entitled to certain specified facilities or preferences

but not "fiscal incentives". It is contended that benefit once given for certain period cannot be perpetuated in the absence of any specific policy in

that regard.

The contention is, that even though Schedule I of the Industries (Development and Regulation Act, 1951 (for short "IDR Act") at Sl.24 "paper and

pulp including paper products" may find place, but "printing" and "book binding" cannot be covered under the classification of "paper and pulp

including paper products". The latter cannot be related to the business of "printing" or "book binding", because in any case the paper for printing is

supplied by the Government.

It is contended that Section 11 of the MSME Act, 2006 speaks about procurement preference policy, which would mean that only preference is

to be given, but not reservation. Even otherwise, the IPRs, which have been issued specifically for such small scale industries, would continue to

have force in the case of the petitioners, even after issuance of the OMSMED Policy, 2009.

The further submission is that since binding and printing have never been included in any list under any IPR, Act or policy, thus, the question of

exclusive right in favour of the petitioners would not arise.

As regards the submission of the learned Senior Counsel for the petitioners relating to the "store items" as mentioned in the OGFR Rules, it is

contended that even though books may be prepared out of the "paper and paper products (excluding paper bag)", but the same cannot be

applicable in the present context, as Rule 96 of the OGFR does not provide for purchase of "store items" for use in public service which

specifically includes books, which is the subject matter of the tender itself. It is further contended that the printing and book binding would not be

included as "store items" so as to bring within the fold of the provisions contained in Rule 96, read with Appendix 6 of OGFR. As such "paper

would not include ""books"", so far as paper products are concerned. It is further contended that the words ""book"", ""paper"" and ""binding"" have been

explicitly defined in Press and Regulation Books Act, 1967, which still holds the field. Thereby the word ""book"" may have different meaning under

different Act, on different context, and it would be wrong to adopt the meaning to the word ""book"" or ""paper"" in a particular context, to the

meaning of the same terms in the present case.

It is further contended that the judgments in the cases of Orissa Printers and Mohapatra Binders (supra) relate to purchase for specific years, i.e.,

2010-11 and 2013-14 and would not be binding for challenge to the policy for the year 2017-18. It is contended that if that be so, and the same

was binding, then the petitioners would not have withdrawn the writ petition whereby they had challenged the policy for the academic session

2016-17 after the interim order for the said year was vacated on 18.01.2016 by the Larger Bench.

Learned Advocate General has thus contended that the writ petitions are devoid of merits and liable to be dismissed. In support his submissions,

he has relied on the decisions in Arnit Das v. State of Bihar, (2000) 5 SCC 488; Sarguja Transport Service v. State Transport Appellate Tribunal,

M.P., Gwalior, (1987) 1 SCC 5; Shimnit Utsch India Private Limited v. West Bengal Transport Infrastructure Development Corporation Limited,

(2010) 6 SCC 303; Michigan Rubber (India) Limited v. State of Karnataka, (2012) 8 SCC 216 and Maa Binda Express Carrier v. North-East

Frontier Railway, (2014) 3 SCC 760.

17. We have carefully examined the submissions made by the learned counsel for the parties and perused the record.

18. Keeping in mind that the learned counsel for all the parties have stated that, besides answering the questions referred to this Larger Bench, the

writ petitions themselves may be disposed of, we now proceed to consider the submissions of the learned counsel for the parties to decide the

matter on merits, and also answer the questions referred.

19. For proper appreciation of the issues involved in these cases, a brief reference to the various IPRs, as well as the relevant provisions of

MSMED Act, 2006 and the OMSMED Policy of 2009 and other provisions, as also a brief history of the litigation is given hereunder.

Industries (Development and Regulation) Act, 1951 (for short "IDR Act") was enacted by the parliament to provide for development and

regulation of certain industries. Section 2 of the said Act declares that the Union Government shall take under its control the industries specified in

its First Schedule. Entry 24 of the said Schedule relates to ""Paper and Pulp including Paper Products"". In 1980, the State Government, in order to

ensure accelerated growth in industrial sectors, issued the industrial policy known as Industrial Policy Resolution, 1980 (IPR 1980). Clause-L of the

said Policy relates to ""Price Preference"", and it was provided that small scale industrial units registered with the Director of Industries shall be

eligible to get a price preference up to 15 per cent for their products supplied to Government and semi-Government organisations. An additional

price preference of 3% was provided for small scale industrial units having ISI certification for their products. Certain exemptions were also

provided for, like payment of earnest money and also 50% of the security deposit.

Sub-clause (iv) of the clause-L further provided that ""The

Government and semi-Government organisations have been directed to purchase their requirement of products of S.S.I. units without inviting

tenders wherever rate contract agreement has been entered into by the concerned units with the Directorate of Export Promotion and Marketing"".

20. In furtherance of the aforesaid policy, in the year 1986, another IPR 1986 was issued with the objective to give adequate incentives to

entrepreneurs and to introduce the administrative measures for quickening industrialisation. Clause-I of the IPR 1986 deals with ""Marketing

support"". The said clause makes it clear that protection was given during the initial phase of industrialisation to the nascent SSI units for which rate

contract arrangement had been made, so as to prevent them from outside competition. However, it was felt that the ""perpetuation of a secured and

sheltered market would not provide the incentive to S.S.I. units to improve the quality of their products, their overall competitiveness and explore

outside markets"". It was thus felt that for enhancing the competitiveness, there was need for revising the policy of rate contract, and taking

measures which would be more conducive to improvement of quality and competitiveness. It was also provided that items for which rate contract

had been fixed, would be purchased by the Government departments and State controlled agencies at prescribed rates without inviting tenders,

and also that efforts would be made to encourage industrial units to produce at all-India market price, so that their products could find market

outside the State.

21. Looking to the encouraging response from entrepreneurs to the IPRs announced in 1980 and 1986, the State Government issued the IPR

1989 with a twin objective of encouraging new industries and providing support to industries which had come up in the State during the last few

years. The said policy was to remain in force for five years. Clause 25 of the IPR 1989 relates to ""Marketing support"", which provides that State

Government departments and agencies under its control shall ensure purchase of their requirements of "store items" available from industries

located inside the State. Clause 25.2 relates to ""Purchase from exclusive list"" and clause 25.3 relates to ""rate contract"". Annexure-1 of the said IPR

1989 defines ""industrial unit"" and paragraph 3 of the said Annexure also provides for the units which would not be eligible for incentives as

industrial units, and "book binding" was at Sl. No. 15 of such list.

Thereafter, the State Government issued IPRs of 1992 and 2001 on similar lines.

22. Then in the year 2006, the Central Government enacted the MSMED Act with an object to facilitate the promotion, development and

enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. Section 11

thereof, which provides for ""Procurement preference policy"", reads as under:

11. Procurement preference policy.- For facilitating promotion and development of micro and small enterprises, the Central Government or

the State Government may, by order notify from time to time, preference policies in respect of procurement of goods and services,

produced and provided by micro and small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and

public sector enterprises.

23. Then in the year 2007, the State Government issued IPR 2007. Clause 13 of the said policy relates to ""Marketing support to micro and small

scale enterprise in government procurement"". Clause 13.2 provides for the State Government to ensure that requirement of ""store items"" of

Government departments and agencies under its control are procured from industries located within the State, and such local units shall get price

preference for the purpose, and efforts would be made to ensure that local products are cost effective and meet overall quality requirement for

competitiveness.

Annexure-II of the said IPR 2007 provided for Industries listed under the First Schedule of the IDR Act, 1951 to be included as industrial units.

However, paragraph 3 of the said Annexure-II of the Schedule provided for the units which shall not be eligible for "fiscal incentives" as industrial

units, but shall only be eligible for "investment facilitation" such as allotment of land under normal rules and recommendations to the financial

institutions for term loan and working capital and, if necessary, for recommendation to the Power Distribution Corporation. Items No. 29 and 32

of the list are ""Book binding"" and ""Printing Press"" respectively, which units would be ineligible for "fiscal incentives" but eligible for "investment

facilitation".

24. On 17.02.2009 the State Government issued the Orissa MSME Development Policy, 2009 (OMSMED Policy, 2009), which was in

conjunction with IPR 2007. Clause 7 of the said Policy provided for ""Marketing"". Clause 7.2(d)(i) thereof provided that goods and services, other

than those in the "rate contract list" or "exclusive purchase list", may be purchased by the State Government departments and agencies under the

control of State Government through open tender. Price preference of 10% was given to certain units and additional price preference of 3% was

also provided for, as was provided under the IPR 1980.

It is not disputed that the units of the petitioners have never been under the "rate contract list" or "exclusive purchase list" under the said policies.

Then, on 24.08.2015, another IPR 2015 was issued, which also provided for similar incentives for micro and small enterprises, enlisting the items

for purchase from SSI units, but the said list again did not include printing and book binding units.

25. The primary contention of learned counsel for the petitioners is that the petitioners are entitled to the benefit of various IPRs issued by the State

Government from time to time, and such benefit, which was provided to them for nearly two decades, has now wrongly been withdrawn. The

anchor sheet of their submission is the judgment of this Court in the case of Orissa Printers (supra) wherein, it is submitted that after considering the

provisions of the IPRs, the petitioners were found entitled to the benefit of the same, and the nationalized tender issued for the academic session

2010-11 was thus quashed, still holds the field, and thus the nationalized tender issued again now on 09.06.2016 for the academic session 2017-

18 is also bad in law, and liable to be quashed.

26. We have gone through the said judgment of the Division Bench in the case of Orissa Printers (supra). What we notice is that only the

contention of the petitioners therein, that they were covered under the IPRs, was recorded in the said judgment, but no finding in this regard has

been given in the said judgment. It is admitted by the parties, and also recorded in the said judgment, that the petitioners were not in the "rate

contract list" or "exclusive purchase list" under any of the IPRs. The benefit which was being provided to the petitioners up to the academic session

2009-10, was not because they were in the "rate contract list" or "exclusive purchase list" of any of the IPRs, but on independent decisions taken

by the State Government in that regard, as the policies framed by the State Government were applicable only to such units which fulfilled the

conditions of the IPRs, which alone were entitled to its benefits as of right.

27. The objections taken by the State in the said writ petition were duly recorded in para-6 of the said judgment of Orissa Printers (supra).

However, the said objections, though noted, had not been considered in the judgment. It was specifically contended by the State that under the

IPRs and the OMSMED Policy of 2009, issued under the MSMED Act of 2006, it was mandatory for the State Government departments and

the agencies under its control to procure all the goods and services only from ""EPM Rate Contract Holders"" or from the list of goods and services

reserved for ""Exclusive Purchase"" from Micro and Small Enterprises, located within the State. ""Printing press"" and ""book binding"" were neither

included in the "rate contract list" nor "exclusive purchase list". It was also the case of the State that Schedule of Annexure-II of IPR 2007

excluded such ""printing press"" and ""book binding"" industries from the eligible list of industries which could claim any kind of "fiscal incentives". It

was also contended that the cost of outsourcing of private printing/book binding had gone up to nearly Rs.6.00 crores and since the spending of

such a large amount of public money was involved, it was decided to go for a composite printing and binding nationalized tender.

28. Although the said contentions were recorded in the judgment of the Division Bench in the case of Orissa Printers (supra), but nowhere have the

same been dealt with, and instead the Court allowed the writ petition and quashed the nationalized tender, primarily on the ground that such

marketing support was being given to the petitioners for last 18 years, and that by virtue of national tender, the small entrepreneurs, as well as

those workers who earn their livelihood by printing and binding of books, will lose their jobs, and that the small entrepreneurs could not be

expected to compete with big industries, which will come forward to participate in the national tender. Without considering the contentions raised

by the State Government, the Court assumed that several incentives were given to the SSI units under the IPRs for grant of marketing support,

which included facility of preferential purchase of the products manufactured by such industries, and that incentives given under the IPRs had never

been withdrawn by the State Government, and thus the national tender issued for the academic session 2010-11 was quashed.

29. Perusal of the said judgment would show that the Bench was swayed by the fact, that if such benefit given to the petitioners was withdrawn,

then thousands of workers would be rendered jobless. On a plain reading of the said judgment, it is apparent that the case was decided on ground

of sympathy, and not on legal issues which had been raised by the State.

30. Benefit which may have been given to certain class of persons, without they being covered under any policy of the Government for grant of

such benefit, can be withdrawn with the change of time and circumstances. It is well settled law that what may have been reasonable at one stage

or point of time, may, with the change in circumstances and passage of time, become unreasonable, and thus need to be changed. The Supreme

Court has, in the case of *Malpe Vishwanath Acharya v. State of Maharashtra* (1998) 2 SCC 1, in paragraph 8, held that ""with the passage of time

a legislation which was justified when enacted may become arbitrary and unreasonable with the change of circumstances."" Earlier also, the Apex

Court in the case of *State of M.P. v. Bhopal Sugar Industries* AIR 1964 SC 1179, while dealing with a question whether geographical

classification due to historical reasons would be valid, observed that ""by the passage of time, considerations of necessity and expediency would be

obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid.

31. In the present case, the benefit or protection was not given to the petitioners on the basis of any policy of the State Government. The same

appears to have been independently given to provide impetus to such units to establish themselves. About two decades back, when the State

Government had decided to supply books and other materials to schools of the State, then the demand for books may not have been much. With

the passage of time, the quantum of work, as well as cost of the same has, over the past about two decades, increased manifolds. Besides the

financial aspect, timely supply of the books would also be a material consideration. Thus, it was within power and discretion of the State

Government to take a decision to issue open nationalized tender, in which the petitioners as well as the others would compete. If advantage had

been given to one set of industries for some time, which may have been for certain reasons other than under any policy of the State, the said

advantage cannot be allowed to be perpetuated, and with change in time, providing a level playing field to all similar industries may be in the

interest of the State, financially, and also otherwise, to maintain proper supply. Thus protection once given to the petitioners for certain reasons

about two decades back, cannot be permitted to continue for all times to come, especially after circumstances for grant of such protection may

have changed.

32. While dealing with a case where the existing transport operators had challenged the grant of fresh transport permits, the Supreme Court in the

case of *Mithilesh Garg v. Union of India* AIR 1992 SC 443 has in paragraph 47, held that-

.....As mentioned above the petitioners are permit holders and are existing operators. They are plying their vehicles on the routes assigned

to them under the permits. They are in the full enjoyment of their fundamental right guaranteed to them under Article 19 (1) (g) of the

Constitution of India. There is no threat of any kind whatsoever from any authority to the enjoyment of their right to carry on the occupation

of transport operators. There is no complaint of infringement of any of their statutory rights. Their only effort is to stop the new operators

from coming in the field as competitors. We see no justification in the petitioners' stand. More operators mean healthy competition and

efficient transport system.....

What we notice is that the petitioners herein also want to have their upper hand in business by getting the benefit and protection of exclusive

purchase, without any competition. It is not the case of the petitioners that they are not permitted to, or cannot do private printing and book binding

works, and that they are only supposed to exclusively do Government works. The fact remains that the petitioners are at liberty to do private

works, and by insisting on such protection to be continued, they are actually not fighting for the survival of their units, but for creating their

monopoly in business.

33. Unless the petitioners are found to be covered under any policy framed by the State Government for grant of certain benefits, they would not,

as of right, be entitled for the same, only on the ground that such benefit was given to them earlier for some years. With change in circumstances,

such benefits can always be withdrawn, unless the petitioners are found entitled to the same under the provisions of any policy of the Government.

Admittedly, the benefit of "fiscal incentives" is to be granted under the IPRs only to those who are covered under the "rate contract list" or

"exclusive purchase list", which is not so in the case of the petitioners. It needs to be reiterated here that the judgment in the case of Orissa Printers

(supra) has nowhere held that the units of the petitioners would be covered by the IPRs.

34. In the case of Mohapatra Binders (supra), what we notice is that the Division Bench has simply followed the judgment in the case of Orissa

Printers (supra) and quashed the national tender call notice for the academic session 2014-15, but with certain directions. By issuing such

directions in the judgment, the Division Bench had accepted that there were certain shortcomings in the performance of the petitioners, which

required rectification.

35. The constitution Bench of the apex Court in *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647 held as follows:

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found

therein nor what logically follows from the various observations made in it.

Applying the above principle to the case in hand, neither the case of *Orissa Printers* (supra) nor *Mohapatra Binders* (supra) has decided the

questions which arose before the Court, and in our view, benefit has been extended to the petitioners therein on the basis of the misplaced

sympathy, which is not in conformity with the provisions of law.

36. In *Parappa Ningappa Khaded v. Mallappa Kallappa*, AIR 1956 Bombay 332, the Division Bench of Bombay High Court held as follows:

A decision of a Full Bench, or of any Court for the matter of that, is binding provided it is a considered decision. But when a decision has

been given without the pros and cons of the question being considered, it cannot possibly be urged that such a decision acquires a finality

which cannot be interfered with by any subsequent decision.

In *Arnit Das* (supra) the apex Court held that where a particular point of law is not consciously determined by the Court, that does not form part of

ratio decidendi and is not binding, and the same is hit by rule of sub silentio.

In view of such position, we are of the considered opinion that the judgments of this Court in *Orissa Printers* (supra) and *Mohapatra Binders*

(supra) cannot be stated to be binding judgments, as these are not considered decisions, because the questions which had been raised before the

Court were not answered in proper perspective.

37. Further, we are unable to accept the submission of learned Counsel for the petitioners that ""paper and paper products"" which are included in

the exclusive list at Sl. No. 11 of IPR 2001 would cover the units of the petitioners. It is not understood as to how, under the said heading of

paper and paper products", "printing" and "book binding" could also be included. There can be no dispute of fact that printing work is distinct

from "paper and paper products", hence, there could be no question of printing units being covered under the aforesaid clause. The contention that

book binding" is directly concerned with "paper and paper products", and thus the same would be included in the exclusive list, also cannot be

accepted. "Book" or "book binding" both would be distinct from "paper and paper products", as paper may be used for book binding or for

preparing a book, but book binding would be a separate business, and even though it may be related to paper, it would not mean to cover book

binding unit as small scale industries related to "paper and proper products".

38. Reliance has been placed by the learned Advocate General on the definition given to "Book", "Paper" and "Printing" under The Press and

Registration of Books Act, 1867, to support his contention that the units of the petitioners would not be covered under "paper and paper

product". The definitions given in Section 1 of the said Act are reproduced below:

Book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan

separately printed.

Paper" means any document, including a newspaper, other than a book.

Printing" includes cyclostyling and printing by lithography.

39. In our view, such submission has force. Even if we consider that the definition of a word or phrase given in one context could be different in

another context, but in our opinion, under no definition or meaning, "printing" and "book binding" units can be considered to be covered as "paper

and paper product" units.

40. Under the various policies of the State Government, marketing support and price preference has been provided for to SSI units, but it was also

recorded in the said policies that:

perpetuation of a secured and sheltered market would not provide the incentive to S.S.I. units to improve the quality of their products, their

overall competitiveness and explore outside markets".

As such, it was never the intention of the Government to guard all the SSI units from the open market competition but only to certain SSI units

which were in the "exclusive purchase list" or "rate contract list" of the IPRs, which provide that:

The Government and semi-Government organisations have been directed to purchase their requirement of products of S.S.I. units without

inviting tenders wherever rate contract agreement has been entered into by the concerned units with the Directorate of Export Promotion

and Marketing".

41. It may be noted that "fiscal incentives" or "marketing support" of exclusive purchase from such SSI units, may have been provided to such units

which were enlisted, but the rest of the SSI units could, at best be only eligible for "investment facilitation", under which facilities such as allotment

of land, recommendation for terms loan and working capital loans etc. is contemplated. Annexure II of the Schedule of IPR 2007 gives the list of

units which shall not be eligible for "fiscal incentives", and "book binding" and "printing press" are at item no. 29 and 32 of such list. As such, when

there is a specific provision or a direct clarification given in the policy itself, then there would be no question of reading something more than what is

there, or to take indirect support to bring in something within its fold, which item is not there.

42. Further, clause 7.2(d)(i) of the OMSMED Policy 2009 also clearly provides that goods and services, other than those in the "rate contract list"

or "exclusive purchase list", may be purchased by the State Government departments and agencies under the control of State Government through

open tender. Thus, the units of the petitioners which are admittedly not covered under the "rate contract list" or "exclusive purchase list" would also

not be entitled to any protection under the OMSMED Policy. It may also be noted here that even the Director of Industries, Odisha has clarified,

vide communication dated 08.01.2010, that "printing press" and "book binding" units are not included in the "rate contract list" or "exclusive purchase list".

43. Much reliance has been placed on judgment of the apex Court in Scientific Engineering House (P) Ltd. v. Commissioner of Income Tax,

Andhra Pradesh, (1986) 1 SCC 11 wherein, while answering the question of acquisition of depreciable assets under the Income Tax Act, the

definition of ""book"" has been taken into consideration, taking into account the dictionary meaning of that word. But, the context of using the word

book"" in the said judgment has no application to the present case.

Similarly, in Commissioner of Customs (General), v. Gujarat Perstorp Electronics Ltd, (2005) 7 SCC 118, while considering the provision of

Section 25 (1) of the Customs Act, 1962, the word ""book"" occurring under the exemption notification and scope thereof was considered by the

apex Court, wherein the meaning of ""book"" has been considered in paragraphs 44 to 49. The apex Court observed that, when the expression of

word ""book"" is not defined in the Act, natural and ordinary meaning of the said expression must be kept in view. So far as the meaning of ""book

mentioned in the said judgment, there is no dispute at all with regard to its natural and ordinary meaning, but the same has to be considered in the

facts and circumstances of a particular case. For the case in hand, considering the provisions of IPRs and MSME Act, read with OGFR, as

discussed above, we are of the considered view that the reference made to the judgments by the learned Senior Counsel for the petitioners has no

bearing.

44. Learned counsel for the petitioners has also contended that under para-13.2 of the IPR 2007, the State Government was required to ensure

that the "store items" for the State Government and its agencies should be procured from the SSI and other local units at "price preference".

Firstly, we are of the opinion that the printing press items and book binding would not be covered under the various products of the "store items".

Secondly, even if included, it is only the "price preference" which has to be given (and not the right of exclusive purchase) in case of the "store items".

45. As per the Industry Department Order No.14835 dated 06.07.1998, the list of "store items" have been notified wherein at Sl. No.11 ""paper

and paper products (excluding paper bag)"" has been mentioned. The Additional Secretary to Government, MSME Department issued letter dated

17.03.2015 to the Director, Export Promotion and Marketing (EPM), Odisha that the exclusive list of "store items" be updated, since it was made

way back in 1998. Subsequently, pursuant to letter dated 19.05.2015, the State Government, after consideration, included 22 more items in this

exclusive list of store items, making it total of 39 items. Therefore, the exclusive list of the "store items" vide Industry Department letter dated

06.07.1998 has not been varied in any manner and holds the field till date. But, that ipso facto cannot be construed that the petitioners are covered

under the "store items" and entitled to get protection under the OGFR. Rule 96 under the heading ""Rules and Instructions governing the purchase

of stores"" clearly deals with all purchase of stores for use in the public service and should be regulated in strict conformity with the ""Store Rules

given in Appendix 6. The Appendix 6 of OGFR deals with Rules for the Purchase and Supply of Articles (including Printing and Stationery Stores)

for the Public Service. In the preamble, it has been clearly mentioned that preference will be given to the articles produced or manufactured in

Odisha, over those produced in any other State of the Indian Union. Therefore, the policy preference in making purchase of goods is being given

under Rule 96 and Appendix 6 of OGFR. The item of printing and binding of books has been indicated in the said Rules. Merely policy preference

is to be granted, and that in itself cannot be said that the printing and binding are covered under the said policy, when it has not been specifically

prescribed in the said Rules under the heading of "store items".

In our considered view, in absence of any specific exclusive list items, "printing press" and "book binding" cannot be included as "store items

under OGFR, as urged before this Court. Consequently, we are not able to accept the argument so advanced by learned Senior Counsel for the

petitioners.

46. The judgments in Mohapatra Binders and Orissa Printers (supra), and subsequent order passed by the Larger Bench of this Court, while

vacating the interim order, cannot be termed as precedent, as these decisions have not decided any question which had been raised before this

Court.

47. In Kapila Hingorani (I) v. State of Bihar, (2003) 6 SCC 1, the apex Court while dealing with meaning of "precedent" has held as follows:

A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order

which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim

order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary

arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait

accompli before the final hearing.

Similar view has also been taken by the apex court in State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694 wherein,

it is further clarified that an interim order cannot be said to be a precedent. The interim directions issued on the basis of prima facie findings, are

temporary arrangements to preserve the status quo, to ensure that the matter does not become either infructuous or a fait accompli before final

hearing. This being the position, while vacating the interim order, no decision has been rendered by the Larger Bench of this Court, there by the

order so passed cannot be taken into consideration as no ratio decidendi to characterise as precedent for the present case. Therefore, to set at

naught the issue for all times to come, this Court proceeded to delve into the matter in detail and decide the same by laying down the principle of

law which will remain guiding force for the parties to this litigation.

48. Mr. S.P.Misra, learned Advocate General for the State, vehemently urged before this Court that policy of the Government, relating to printing

and binding having changed, and it being well within the domain of the State authority, the same cannot be interfered with by the Court in exercise

of its power of judicial review. The said submission has force.

In *Shimnit Utsch India Private Limited* (supra) the apex Court held that in exercise of power of judicial review, the Court cannot interfere with the

policy or policy decision, or change of any policy framed by the Government.

In *Michigan Rubber (India) Limited* (supra) the apex Court held that the Government and their undertakings must have a free hand in setting terms

of the tender and only if they are arbitrary, discriminatory, mala fide or actuated by bias, then alone the Court would interfere in exercise of its

power of judicial review.

None of the conditions have been satisfied in the present case, so as to call for interference by this Court in exercise of power under judicial

review.

49. In *Maa Binda Express Carrier* (supra) the apex Court held that submission of a bid or tender in response to a notice inviting tender is only an

offer, which the State or its agencies are under no obligation to accept. Bidders participating in the tender process cannot insist that their

bids/tenders should be accepted simply because a bid is the highest or lowest. All that participating bidders are entitled to is a fair, equal and non-

discriminatory treatment in evaluation of their bids/tenders. When the power is vested with the Government to fix its modalities, the same cannot be

challenged before this Court, unless it comes within the parameters of arbitrariness or unreasonableness and, as such, in a matter of contract, it is

within the complete domain of the Government to frame its own policies. In view of that, the Government has to be given a free hand to act fairly,

reasonably and non-discriminatorily, so as to achieve the avowed objective of tender process.

50. We are of the considered opinion that the scope of the Court, for interference in a tender process in exercise of power under judicial review

being limited one, as such, in the present context, as discussed above, we have to examine the question as to whether any arbitrary exercise of

power has crept in while issuing notice inviting tenders for printing and binding of books.

51. The IPRs and the Policy of 2009 have been issued by the State Government with the objective to give adequate incentives to entrepreneurs,

and to introduce the administrative measures for quickening industrialisation in the State. Protection is to be given to nascent SSI units during the

initial phase so as to encourage new industries. Even though not covered under the policy for such protection, the units of the petitioner were given

the benefit, so as to protect them from outside competition, which was at the discretion of the Government, and not under any policy. The same

was not as of right, but only to help the units establish themselves. Such protection, which is not as of right under any policy, and meant only for

encouraging new units, cannot be perpetuated, and can be withdrawn with change of time.

52. Sympathy may be a ground for grant of benefits in certain cases, but not in commercial transactions. The magnitude of work of printing and

binding which is now to be awarded by the State Government runs in crores of rupees. Books are now to be distributed by the Government to the

schools in large numbers, within a specified time. The Government has taken a specific stand that for proper distribution of books, and in the

interest of the economy of the State, nationalized tender should be issued. Such decisions are essentially commercial decisions, and principles of

equity and natural justice would stay at a distance in such cases.

53. In our view, a judgment passed on sympathy, in such a matter, would be a case of misplaced sympathy, and not in accordance with law. The

submission that, if the protection which was given earlier was not continued, the units of the petitioners would close down, and the workers

engaged in such units would be rendered jobless, does not have much force. It is not the case of the petitioners that they are not free to do private

business, or that they are not doing so, and that they are obliged to do the works of the Government exclusively. In a competitive world of

business, some protection can be given to a certain class of industry for some time, so as to enable it to establish itself. If the same is perpetuated

and the units are not allowed to compete in the open market, they would, in fact, be kept away from making progress and the need of improving

their quality, as well as their efficiency, to make their products and prices competitive. If, after having been given protection for nearly two

decades, the small scale industries of the petitioners have not come up to stand on their own and compete with the outside market, then what they

are actually wanting is, not preference but reservation of exclusive purchase from their units, which cannot be permitted in the facts of the present

case.

54. We are of the firm view that the protection given to the petitioners at an earlier point of time was because of discretion exercised by the

Government in their favour, and not under any policy of the Government. Such discretion, which was enjoyed by the petitioners for a long period

of time, cannot be perpetuated. If perpetuated, the small scale industries would become totally dependent and would not be able to rise and be a

part of the general industrial progress and development. It is like a child, who is given protection by his guardian during his growing years, and then

after he grows up and matures, he is to be left to fend for himself and face the world, and make his own place in the society. If not so allowed, and

always kept under the protective umbrella of his guardian, no man will ever be able to be self reliant or be independent in life. Similarly, a small

scale industry may be given protection and support for some time, which may be a few years, but not for all times to come. Thereafter, unless

required in law, no further protection, concession or preference should be continued.

In the present case, the petitioners have not been able to establish that the law requires continuation of such protection or concession, which was

earlier given at the discretion of the Government, and not under any policy of the Government.

55. We have already clarified herein above that the judgments in the cases of Orissa Printers (supra) and Mohapatra Binders (supra) have not

been pronounced on principles of law, after considering the legal objections raised by the State Government, but on the basis of misplaced

sympathy. The same would, thus, not be binding. Even otherwise, said judgments relate to the tenders of particular years and would not be binding

for subsequent years, unless any ratio has been laid down which would bind the parties on the legal principles, which is not so. It is, however, also

true that the order of the Larger Bench dated 18.01.2016, wherein observations have been made against the interest of the petitioners, was only

with regard to vacation of interim order and since the writ petitions were not decided by the said order, the same would not have binding force.

56. In view of the aforesaid, we answer all the three questions in favour of the State-opposite parties and against the petitioners, and hold that the

ratio decided by this Court in the cases of Orissa Printers (supra) and Mohapatra Binders (supra), would not have binding force and the petitioners

would not be entitled to the protection of the IPRs issued by the State Government, as well as MSMED Act, 2006 and the OMSMED Policy

framed there under in 2009. We also hold that the petitioners would not be entitled to grant of any relief in these writ petitions. The writ petitions

are, accordingly, dismissed. No order as to cost.

Writ petitions dismissed.