Balajee Electrosteels Company (P) Ltd. Vs Bokaro Steel Plant and Others

Court: Jharkhand High Court

Date of Decision: April 28, 2009

Acts Referred: Constitution of India, 1950 â€" Article 19(i)(g), 226(2)

Citation: (2011) 2 JCR 303

Hon'ble Judges: D.G.R. Patnaik, J

Bench: Single Bench

Judgement

D.G.R. Patnaik, J.
Heard Mr. M. S. Mittal, learned Counsel for the petitioner and Mr. Anil Kumar Sinha, learned senior counsel for the

Respondents and perused the counter affidavit filed by the Respondents.

2. Challenge in this writ application is to the Clause No. 1.3.2 (i) of the Tender No. SAIL/DSP-PUR/139/CP-FA/SiMn/I-Transmission Line-

JAN/2009, dated 16.01.2009, which relates to the eligibility criteria enclosing a condition therein, that ""in order to be eligible to participate in the

said Tender, the Tenderer must be a manufacturer of Silico Manganese and must have installed and supplied 2500 Silico Manganese per month

and the Tenderer must offer minimum 7500 MT to be supplied on monthly pro-rata basis during the contract period of three months i.e. at the rate

of minimum of 3750 MT or each one and half months sub cycle.

Besides praying for quashing the aforesaid Tender, the petitioner has also prayed for issuance of a writ of mandamus commanding upon the

Respondents to allow the petitioner to participate in the aforesaid Tender without insisting upon the eligibility criteria as laid down in Clause 1.3.2.

(i) of the terms and conditions for participating in the said Tender.

Pursuant to the interim order passed by this Court by which the Respondents have allowed the petitioner to participate in the Tender and to

consider Tender papers submitted by the petitioner alongwith other papers, the petitioner had submitted his Tender Papers and on considering the

same, the Respondents had rejected his Tender on the ground that it does not qualify according to the eligibility criteria and such information was

communicated to the petitioner by letter dated 05.02.2009 issued by the Senior Manager (Purchase) of the Durgapur Steel Plant. The petitioner

has made a further prayer to quash the aforesaid letter.

3. Petitioner''s case in brief is that the petitioner-Company is a manufacturer of Silico Manganese, TMT Bars as well as Iron Ingots, having its

manufacturing unit and plant at Koderma within the State of Jharkhand.

The Steel Authority of India has a Central Purchase Auction Scheme, (C.P.A.), whereby the goods are centrally auctioned for purchase of various

goods to be supplied at its various steel plants located all over India including Durgaur, Bhilai, Rourkela, Asansol, Vishakhapatnam and Bokaro

Steel City.

The Steel Authority of India Ltd., upon its requirement of Silico Manganese for all its Plants, issued a Tender Notice No. SAIL/DSPPUR/

139/CP-FA/SiMn/I-Transmission Line-JAN/2009, dated 16.01.2009 to procure 31,400 M.T. of Silico Manganese through open tender from the

manufacturers of Silico Manganese. In the Tender documents, it was declared that the S.A.I.L. will be requiring about 31400 MT of Silico

Manganese during the period February, 2009 to April, 2009 for supplying to Bokaro Steel Plant, Durgapur Steel Plant, Rourkela Steel Plant,

Bhilai Steel Plant and I.I.S.C.O. The last date for submitting of Tender was 30.01.2009.

The Tender documents was to be submitted within the time stipulated in the Tender notice, at 03rd Floor, Ispat Bhawan, Dugapur Steel Plant,

Durgapur or to be sent by post or courier to the Executive Director (MM) at the aforesaid address.

An earnest money of Rs. 10.00 lakhs in the form of Bank Guarantee or Bank Draft was to be submitted alongwith the tender documents. Request

for quotation (RFQ), was also enclosed to the tender, stating the details of the various terms and conditions, in relation to the procurement of

31400 MT through open tenders.

The eligibility criteria as stipulated in the Tender notice, included the impugned clause in the following terms:

1.3.2 - Eligibility/Criteria/Ground Rules for Participation.

(i) In order to be eligible to participate in this tender, the tenderer must be a manufacturer of Silico Manganese and must have installed capacity to

produce and supply 2500 MT of Silico Manganese per month. Also, the tenderer must offer minimum 7500 MT to be supplied on monthly prorate

basis during the contract period of three months i.e. @ minimum of 3750 MT or more for each 11/2 months sub cycle.

The petitioner is aggrieved with the aforesaid condition which places a restriction upon the petitioner''s participation in the Tender process, since

the petitioner does not have the installed capacity to produce and supply 2500 MT of Silico Manganese per month. Such a condition, according to

the petitioner, has been imposed only with a mala fide intent to oust the petitioner and similarly situated other small scale manufacturers from

entering into contract with the Respondent-SAIL.

4. Assailing the impugned eligibility clause, Mr. M. S. Mittal, would submit that the insertion of the impugned restrictive clause is solely intended to

deny the petitioner of the opportunities of participating in the Tender and is a mala fide action on the part of the Respondents-authorities. In order

to demonstrate the alleged mala fides, learned Counsel submits that it is not the first time that the petitioner had offered to participate in the contract

with the Respondents-SAIL. Rather, on so many previous occasions, the Respondents have granted work order to the petitioner and on each

occasion, the petitioner had satisfactorily completed the work. Discord with the petitioner, arose when in the month of August, 2008, a Tender

was floated and an order was issued to the petitioner for supply of Silico Manganese @ Rs. 80,000 per MT. Thereafter, the price had

considerably fallen by half the earlier price. The Respondents arbitrarily cancelled the contract and against such cancellation, the petitioner had

initiated legal proceedings by filing a writ petition before this Court. The matter was ultimately settled by the Respondents agreeing to purchase the

product @ Rs. 70000/- per MT, though at the relevant time, the market rate was around Rs. 40000/- per MT. Learned Counsel explains further

that on earlier occasions when there was huge price fluctuation the petitioner had quoted the rate of Rs. 40000/- per MT and when subsequently

the price rose to Rs. 60000/- per MT, the petitioner was compelled to supply at the originally quoted price of Rs. 40000/- per MT and thereby

entailing the petitioner to suffer a loss of Rs. 25 Crores. The contention of the learned Counsel is that on account of such controversy and the fact

that the petitioner had resorted to legal proceedings against the Respondents, the concerned authorities of the Respondents have borne grudge and

malice against the petitioner and it is only on account of such malice that the Respondents have inserted the impugned restrictive clause in the

Tender Notice to eliminate the petitioner from participating in the Tender bid.

5. Learned Counsel explains further that though by the impugned restrictive clause, the Respondents had wanted to insist upon inviting such

manufacturers who have the installed capacity to supply 2500 MT Silico Manganese per month and able to offer supply of minimum 7500 MT

Silico Manganese on a monthly pro rata basis during the contract period of three months but the supply orders as made by the Respondents to the

various units including M/s. Maithan Alloys Ltd and M/s Sharp Ferro Alloys Ltd. is for a total quantity of only 1392 per MT and 2330 MT

respectively. Learned Counsel explains that it is apparent from such nominal quantity orders, that the Respondents do not actually require the

quantity of 2530 MT on average per month and their actual requirement would be satisfied by a much lesser quantity of supply. Learned Counsel

adds that the petitioner has declared that it does possess the requisite capacity to supply the actual quantity required by the Respondents at the

Bokaro Steel Plant and had in fact supplied more than 5900 MT of the product in the past to the Respondents at the Bokaro Steel Plant.

6. In reply to the stand taken by the Respondents, that since the same rate was quoted by four different Companies and the supply was to be

made within a short period, therefore purchase order of short quantity was given to all the Companies, learned Counsel would argue that it appears

to be a very strange coincidence that the rate of four different Companies, situated in four different State have tallied and thereby giving a pretext to

the Respondents to distribute the work order to the various Companies. Learned Counsel argues that such a coincidence could not possibly

happen and it only demonstrates that the four Companies and the concerned officers of the Respondents are hand in glove and have thereby

indulged in the most unfair trade practices.

Obtaining support to his arguments from the judgment of the Supreme Court in the case of Ramana Dayaram Shetty v. International Airport

Authority of India and Ors. (1979) SCC 489 learned Counsel would submit that the Respondents have to demonstrate that the change which, they

would have brought in their Tenders, by incorporating the impugned clause, was bona fide and was strictly in the interest of their business. Learned

Counsel adds further that the equality of opportunity, applies to Government contracts and the Respondents, which is a ""State"", cannot choose to

exclude, by discrimination, the petitioner who has been dealing in commercial contracts with the Respondents for over a number of years and has a

legitimate interest and expectancy and the Respondents cannot be allowed to act to the prejudice of the petitioner and other manufacturers similarly

situated like it.

To buttress his arguments further, learned Counsel would refer to and rely upon the judgments of the Supreme court in the following cases:

(i) Reliance Energy Limited and Another Vs. Maharashtra State Road Development Corporation Ltd. and Others,

(ii) Ranisati Pipe Industries, Jamshedpur, Singhbhum East v. State of Jharkhand and Ors. 2007 (2) J.L.J.R. 316.

7. As regards the stand taken by the Respondents that the Contract, pursuant to the Tender notice, under reference, has already been completed

and therefore, this writ application has become infructuous, learned Counsel submits that the Court had passed an interim order that the action of

the Respondents would be subject to the result of the writ application. Learned Counsel argues further that if this Court is satisfied that the action

of the Respondents incorporating the restrictive eligibility clause in the Tender Notice is mala fide, and resulting in grave injustice and loss of

business to the petitioner, then the Respondents should be liable to pay exemplary cost to the petitioner.

8. In reply to the Respondents objection on the ground of maintainability of this writ application, as being beyond the jurisdiction of this Court,

learned Counsel would submit that such objection was taken at the time of arguments at the stage of admission and notwithstanding such

objections, this Court had admitted this writ application for hearing. Therefore, the Respondents cannot now agitate the same ground of

maintainability. Learned Counsel would argue further by inviting attention to the terms of the Tender Notice dated 16.01.2009, and by referring to

the Sub Clause VI of Clause 1.6.3 of the "Price Bid Evaluation", that as per the stipulation contained therein, in order to be eligible to participate in

the Tender, the tenderer had to quote separately for B.S.L., B.S.P., R.S.P., or D.S.P. If this is so, then the participants in the Tender had the

option to quote for any of the Steel Plants of their choice and the writ petition could be maintainable before the Court within whose jurisdiction,

such Steel Plant is situated. Referring further to Clause 2.17, of the Tender Notice which specifies the legal jurisdiction, learned Counsel submits

that even as stipulated in this clause, suits and legal proceedings or in any matter arising out of the Tender shall be triable only by the appropriate

Civil court at the place where the Steel Plants are located. Learned Counsel submits that since in this case, like in all the previous Tenders, the

petitioner would have participated for supply of product to the Bokaro Steel Plant, the present writ application is certainly maintainable within the

jurisdiction of this Court, since the B.S.L. is situated within the State of Jharkhand.

9. The Respondents through their counter affidavit, have denied and disputed the entire claim of the petitioner. A preliminary objection has been

taken by the Respondents on the maintainability of this writ application, on the ground that no part of the cause of action has accrued to the

petitioner within the jurisdiction of this Court.

10. Mr. Anil Kumar Sinha, learned Senior Advocate arguing for the Respondents, would submit that the Tender, which is subject to challenge in

this writ application, has admittedly been floated by the Durgapur Steel Plant, Durgapur, which is in the State of West Bengal. The entire Tender

process including submission of Tender papers and opening thereof, is to be done at Durgapur in West Bengal. Referring to Clause 2 of Article

226 of the Constitution of India, learned Counsel would explain that the powers conferred by Article 226 to issue directions, orders or writs can

be exercised by the High Court exercising jurisdiction only in relation to the territories within which the cause of action wholly or in part arises for

the exercise of such power and since no part of the cause of action accrues to the petitioner within the State of Jharkhand, it would not be within

the competence of this Court, on account of lack of jurisdiction, to entertain this writ application and to pass any order thereon.

11. As regards, the petitioner''s challenge to Clause 1.3.2 (i) of the Tender, which stipulates, the eligibility criteria, learned Counsel explains that the

scope of judicial review of the decision taken by the ""State"" or public authorities, in respect of commercial contracts, is limited. The terms and

conditions of the contract are based on the policy decisions of the Respondents and in absence of any unreasonableness or arbitrariness, the

impugned clause cannot be challenged. Learned Counsel adds that the petitioner has not been able to point out any unreasonableness, in the

impugned clause. Such clause has been introduced only to ensure that the supplier should be capable enough to supply the required quantity of

31,400/- MT of Silico Manganese within a limited period between February, 2009 to April, 2009. This is only to ensure that the production of the

various units of the Respondents does not suffer on account of lack of adequate supply of the product.

12. Sri Anil Sinha explains further, that even as indicated in the Tender Notice, the requirement of Silico Manganese is of 31,400 MT to be

distributed to the various Plants under the SAIL as per their requirement during the aforesaid period. The petitioner cannot therefore argue that

since the requirement of the Bokaro Steel Plant, is limited to much lesser quantity, the petitioner''s matching capacity to supply such required

quantity to Bokaro Steel Plant, should be taken into consideration to permit him to participate in the Tender. Learned Counsel adds further that the

petitioner has been transacting business with the Respondents-SAIL for the past number of years and has been allowed to participate in the

Tenders floated from time to time, since in all such previous Tenders, the quantity of the Product required was comparatively less. In the present

Tender, the requirement has been assessed at a considerably higher quantity of 31,400 MT, in view of the expected production by the various

Steel plants between February, 2009 to April, 2009 and considering such requirement, the impugned clause had to be inserted in the Tender.

Learned Counsel would assure that the petitioner has not been blacklisted and neither have the Respondents any intention to foreclose business

transactions with the petitioner and the petitioner would certainly be entitled to participate in future Tenders, where the required quantity would be

of a lesser quality than what has been called for in the present Tender.

13. From the rival submissions, the issues which arise for consideration are:

(i) Whether this Court has jurisdiction to entertain the writ application of the petitioner?

(ii) If so, whether the impugned clause in the Tender Notice (Annexure-1), is unreasonable, arbitrary, discriminatory and violative of the

petitioner''s fundamental rights under Article 19(i)(g) of the Constitution of India?

14. Referring to the first question, the issue of territorial jurisdiction as raised by the Respondents is on the ground that no part of the cause of

action accrues to the petitioner within the jurisdiction of this Court. This has been explained by reference to the Tender Notice itself, stating that the

Tender has been floated by the Durgapur Steel Plant, Durgapur, which is in the State of West Bengal and the entire Tender process including the

submission of Tender Papers and the opening of the Tender documents is to be done only in Durgapur, West Bengal and as such, no part of the

cause of action in respect of the Tender arose in the State of Jharkhand.

15. As against this, the petitioner would invite attention to the various clauses of the Tender Notice, by referring to the specific clauses, Sub-clause

VI of Clause 1.6.3 and Clause 2.17.

16. ""Explaining the meaning of the expression ""territories within which cause of action wholly or in part arises"" as appearing in Clause 2 of Article

226 of the Constitution of India, the Supreme Court in the case of Om Prakash Srivastava Vs. Union of India (UOI) and Another, has observed

as follows:

8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction,

order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of

action wholly or in part had arisen within the territories in relation to which it exercises the jurisdiction notwithstanding that the seat of the

Government or the authority or the residence of the person against whom the direction, order or writ is issued, is not within the said Territories.

14. The expression ""cause of action"" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court

or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in

court from another person.

7.The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has

to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a

writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the

Respondent within the territorial limits of the Court"s jurisdiction and such infringement may take place by causing him actual injury or threat

thereof.

17. Sub Clause 2.17 of the Tender Notice which deals with the legal jurisdiction declares as follows:

All suits and legal proceedings by or against steel plants in any matter arising out of the tender shall be triable only by the appropriate civil court at

the place where the steel plants are located.

The above declaration is eloquent enough to inform that since one of the Steel Plants, namely, the Bokaro Steel Plant is located within the State of

Jharkhand and within the territorial jurisdiction of this Court, the legal proceedings arising out of the Tender is very well maintainable within the

jurisdiction of this Court.

Furthermore, sub clause VI of the Clause 1.6.3 also stipulates that in order to be eligible participate in the Tender, the tenderer must quote

separately for each of the Steel Plants under the Respondent-State. This amply suggests that the Tenderer had a choice to quote for supply of the

product to anyone of the various Steel Plants including the Bokaro Steel Plant and in the event of such supply, part of the cause of action would

certainly be deemed to have accrued within the jurisdiction of the Courts where the Bokaro Steel Plant is located, namely within the State of

Jharkhand and within the territorial jurisdiction of this Court.

Objection of the Respondent on the ground of Jurisdiction is therefore, not accepted.

18. As regards the second question as to whether the impugned Clause in the Tender Notice (Annexure-1) is unreasonable, arbitrary and

discriminatory and violative of the petitioner"s fundamental rights and also as to whether the insertion of the Clause of the Tender suffers from the

vice of mala fides, this has to be addressed from various angles.

19. The Respondents would take the stand that since it is a matter of policy of the Respondents, concerning their commercial contracts, it is within

the absolute discretion of the Respondents to impose any condition in the Tender Notice as would be deemed appropriate in its commercial

interest and the same cannot be challenged or judicially reviewed.

To emphasize that the restriction by the impugned clause in the Tender Notice does not suffer from unreasonableness, nor is it arbitrary in any

manner, the Respondents would want to explain that such a clause had to be inserted in the light of the requirement of a comparatively higher

quantity of a product and the Respondents'' anxiety to ensure that the requisite quantity could be made available to it within the limited period of

four months from February, 2009 to April, 2009 and therefore, it was felt appropriate that only such parties, who had the capacity to produce and

supply the requisite quantity within the stipulated period, should be invited to participate in the Tender.

20. Explained in this manner, the impugned clause though restrictive in nature, would appear to be reasonable. However, the intentions behind

imposing such restrictive clause, as stated by the Respondents have to be shown by their specific conduct and unless followed up by convincing

conduct, there would be room to question the reasonableness.

21. There can be no dispute to the principle of law that in cases of commercial contracts either private contracts or contracts by public bodies, the

parties are left free to decide upon the terms and conditions of the contracts.

Laying down guidelines in matters concerning judicial scrutiny of Administrative decisions of the Government or its Agencies, the Supreme Court in

its judgment in the case of Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, , has observed as under:

12. It has clearly been held in these decisions, that the terms of the invitation to Tender are not open to judicial scrutiny, the same being in the realm

of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary

concomitant for an administrative body in an administrative sphere....

The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory or mala fides or actuated by bias....

In the same judgment, the apex Court has also observed:

9. It is well settled now that the courts can scrutinize the award of the contracts by the Government or its agencies in exercise of their powers of

judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such

matters.

In the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, the Supreme court observed as under:

10. It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions

to be judged and it must scrupulously observe those standards on pain of invalidation of an action in violation of them.

22. In the light of the principles enunciated by the Supreme Court relating to the scope of judicial review of commercial contracts entered into by

the Government bodies, it cannot be said that the purported policy decision of the Respondents in inserting the impugned restrictive clause in its

tender, cannot be subject to judicial review even when the petitioner has taken a definite stand that the impugned clause is an act of a restrictive

trade practice, arbitrary, unreasonable and suffers from the vice of mala fides.

23. Whether the impugned restrictive clause is reasonable and justified in terms of the requirements of the Respondents as the learned Counsel for

the Respondents would want to impress, or whether the same is unreasonable and arbitrary and intended to prevent the petitioner and other

similarly situated manufacturers from a ""level playing field"", has to be adjudged from the adjoining circumstances and the follow up action of the

Respondents pursuant to such policy decision. The intentions behind the imposing of the impugned restrictive clause as stated by the Respondents

have to be shown by their specific conduct and unless followed up by a reasonably convincing conduct, there would be rule to question its

reasonableness.

24. As pointed out by the petitioners, though the Tender would declare that the Respondents would require more than 31400 MT of the Product

and an assured supply of 3750 MT during each 1 and 1/2 months sub cycle within four months between February to April, 2009, the actual

quantity for which the orders were placed to the four different suppliers ranges from 928 MT to 2330 MT per stipulated 1 and 1/2 months sub

cycle, which is comparatively much less than the purported required quantity of 3750 MT per 1 and 1/2 months sub cycle.

The Respondents would explain that since the four different parties to whom the orders were given, have quoted the same rate, therefore, the total

requirement of each of the Plants was distributed amongst each of the four parties. As pointed out by the counsel for the petitioners, the quoting of

the same rate by four different manufacturers of different States, is certainly a strange and unusual coincidence and normally this could happen only

if the individual parties were pre-informed about the rates quoted by each of them.

25. Be that as it may, the Respondents have not explained as to how the orders for supply to the four parties individually could be far below the

minimum required quantity of 3750 MT as declared in the impugned clause of the Tender. The obvious inference is that though in the impugned

clause of the notice, a declaration was made that the Respondents would need a minimum quantity of 3750 MT per every 1 and 1/2 months sub-

cycle but the actual quantity required by them was far less than what was declared.

It is not disputed by the Respondents that under the earlier contracts for the same product, the petitioner was able to supply upto 5900 MT within

a period of six months to January, 2007. It amply indicates that the petitioner did have the capacity to supply the product to meet the actual

requirements of the Respondents of at least at one of its units, namely, the Bokaro Steel Plant. The contention of the Respondents that it had only

wanted to be doubly assured that the supplier would not fail in making the supply of the required quantity of the product, does not apparently

correspond to the actual need of the quantity of the product as declared in the impugned clause of the Tender. If this was so, then what other

purpose of the Respondents could the restrictive clause have served? The only possible answer to this question could be that by inserting the

impugned restrictive clause in the impugned Tender Notice, the Respondents had intended to eliminate the Small scale manufacturers from

participating in the Tender bid.

Such elimination could have been made only by subscribing a reasonable basis and the decision must not indicate by any means, arbitrariness. The

need for the Government Agencies to maintain absolute fairness and transparency in their commercial dealings is all the more imperative.

26. In the case of Reliance Energy Ltd. and other (Supra), the Supreme Court while referring to the observations recorded by it in the case of

Union of India v. Indian International Trading Company (2005) 4 SCC 547 has observed as follows:

14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the Policy or any action of the

Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what

is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done

arbitrarily by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this

touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State,

and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the

extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of

arbitrariness, is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately

answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible

principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

27. Admittedly, in none of the earlier Tender Notices, issued by the Respondents prior to the instant Tender notice, was there any such restrictive

clause. It is for the first time that the Respondents have introduced the restrictive clause and it is to be explained that such change in policy is within

the discretion of the Respondents in exercise of their executive power.

The explanation given by the Respondents in absence of follow up action by it in consonance with the requirement, in my opinion, fails to satisfy the

test of reasonableness. Had the Respondents followed up their intentions as per the declarations contained in the Tender Notices regarding the

minimum quantity of the product required within the stipulated period, by ordering for supply of such quantity of products, there would have been

some meaning to the restrictions imposed in the Tender notice. The post tender action of the Respondents does not reflect their intentions behind

imposing the impugned restrictive clause. On the other hand, it gives a reasonable impression of an arbitrary action denying a ""level playing field"" to

the petitioner and other small scale manufacturers similarly placed as the petitioner. It is one thing to insist in the Tender Notice that the suppliers

must assure to supply a minimum quantity of the product, within a stipulated time frame. In such a case only those parties would come forward to

offer, who are confident of supplying the minimum required quantity, lest they should be rejected. On the other hand, imposing a condition that the

supplier must certify that he has a minimum installed capacity to produce and supply, would amount to undue elimination of manufacturers from

bidding in the Tender.

28. The doctrine of ""Level Playing Field"" is a significant aspect of the fundamental right under Article 19(i)(g) of the Constitution of India, as has

been explained by the Supreme Court in the case of Reliance Energy Ltd. (Supra). The apex Court in that context has observed as follows:

When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of ""Level Playing

Field....

This is because the said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public

interest....

Decisions or acts which result in unequal and discriminatory treatment, would violate the doctrine of ""level playing field"" embodied in Article 19(1)

(g).

29. By failing to satisfy the test of reasonableness, as observed above, the insertion of the impugned restrictive clause deprives the petitioner of a

legitimate opportunity to participate in the Tender bid. Such action of the Respondents is arbitrary, since there is apparently no discernible principle

emerging from the change in policy by the introduction of the impugned restrictive clause.

30. Both the questions as raised, having been answered, the fact which still remains to be considered is that the supply of the product pursuant to

the Tender Notice has already been made and the work has been completed. Under such situation, this application would appear to have been

rendered infructuous. However, considering the facts and circumstances of the case, it has to be recorded that by inserting the impugned restrictive

clause in the Tender Notice, the petitioner and other small manufacturers similarly situated like the petitioner, have been arbitrarily deprived of

participating in the tender bid. Nevertheless, considering the assurance given by the Respondents that the petitioner would be given due

opportunity to participate in the future Tender bids in respect of the product, there appears no need for issuing any further direction against the

Respondents.

31. With these observations, this writ application is disposed of.