

(2005) 10 DEL CK 0065

Delhi High Court

Case No: LPA No. 2448 of 2005

HBL Nife Power Systems Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Oct. 27, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2006) 89 DRJ 97

Hon'ble Judges: Markandeya Katju, C.J; Madan B. Lokur, J

Bench: Division Bench

Advocate: Ashok Desai, Sanat Kumar and Sanjay Sharma, for the Appellant; Rajeeve Mehra, for the Respondent

Final Decision: Allowed

Judgement

Markandeya Katju, C.J.

This Letters Patent Appeal has been filed against the impugned judgment dated 5.10.2005 passed by the learned Single Judge. We have perused the the impugned judgment and record and have heard learned counsel for the parties.

2. The petitioner had prayed for mandamus directing the respondents to issue RFP (Request For Proposal) to the petitioners in respect of Submarine Batteries Type 1, Type II & Type III which has been developed by the petitioner.

3. Petitioner is a company incorporated in India. All its shareholders and Directors are citizens of India. The petitioner company was established in 1977 and is engaged in the business of developing, manufacturing and supplying advanced technology batteries used in military applications. The current turnover of the company is around Rs. 350 crores. In para I of the writ petition the writ petitioner has referred to various technologies developed by it for the Indian Armed Forces. In recognition of the petitioner's infrastructure facilities and technological capabilities for manufacturing advanced batteries for military application, the Directorate

General of Quality Assurance, Controllerate of Quality Assurance (Electronics), Ministry of defense registered the petitioner as an approved/capable manufacturer and supplier. A copy of the registration certificate is annexed as Annexure P-I. A non-exhaustive customer list of petitioner is annexed as Annexure-2 which speaks refers to the word wide acceptance of the petitioner's products and technologies. The petitioner has employed about 400 Engineers, besides other skilled and semi-skilled technicians and staff. It has set up overseas offices in Hong Kong, Malaysia and UK and for its overseas operations it has agents in USA, Canada, Brazil, Austria, Bangladesh, Egypt, Greece, Korea, Kuwait, Mexico, Netherlands, Nepal, Oman, Qatar, Saudi Arabia, Spain, Sri Lanka, South Africa, Italy, Taiwan, UAE etc.

4. It is alleged in para 3 of the writ petition that encouraged by successful indigenisation of most strategic and critical batteries for Ministry of defense, i.e. for Army, Navy and Air Force, Ministry of defense encouraged and requested the petitioner to develop submarine batteries as MOD was dependent on only one source which was charging exorbitantly high prices without any quality check or competition. Petitioner has vast experience in manufacturing and supplying Silver Zinc Batteries for torpedoes, etc. The petitioner took up the design and development of Submarine storage batteries in a comprehensive manner. Petitioner made heavy investments in this connection and successfully developed the critical cells for submarine batteries.

5. The petitioner has alleged in para 4 of the petition that it has developed cells for the system and is capable to manufacture and supply complete Submarine Battery Type I, Type II and Type III. The petitioner is already registered with DGQA organisation for manufacture and supply of various items including silver zinc batteries, but sensing opposition from the only source supplier the petitioner has applied for additional registration in respect of submarine batteries specifically, which is merely a formality, particularly when the petitioner was already supplying advanced batteries and cells for submarine batteries having been successfully developed as per the specifications of the user Directorate. After successfully designing, developing and manufacturing sample cells of Submarine Batteries which are required by Indian Navy, the petitioner made a detailed representation to the Respondents vide letter dated 6.6.2004 about its built up facilities and capability for manufacture of Submarine Batteries and requested Ministry of defense to evaluate the sample cells manufactured as per specifications of the user Directorate. However, the samples were not tested and evaluated by the respondents and it is alleged that this was apparently done under pressure from the lobby which wanted to maintain the single vendor situation/monopoly of M/s Exide Batteries.

6. In para 6 of the petition, it is alleged that petitioner had submitted a detailed proposal for alternative indigenous source for submarine batteries to the Principal Director-Submarine Operations, Principal Director-Submarine Acquisition and the Principal Director-Electrical Engineering. Based on the petitioner's proposal, a

high-powered team was deputed to the petitioner's works and a detailed presentation was given at the petitioner's works on 19th and 20th February, 2004. It is alleged that the team was highly impressed and satisfied with the presentation and assured to issue Request For Proposal (RFP) to the petitioner for the requirement of submarine batteries so as to break the monopoly and get quality product at competitive price.

7. It is alleged in para 7 of the petition that the Department of defense Production and Supply, Ministry of defense recommended to the Joint Secretary (Ordnance/JNavy), Ministry of defense, vide letter No. MOD ID No. 1302/Director (S-II)/2004 D(S-III) dated 7.1.2005 stating as follows:-

"The representation of M/s HBL NIFE Power Systems Ltd. has been examined in this Department and it has been observed that presently these batteries are procured on PAC basis by Indian Navy from M/s Exide Industries Ltd. This Department recommend that to avoid monopolistic situation a 2nd source may also be developed to ensure healthy competition and timely supplies. M/s HBL NIFE Power Systems Ltd. is already manufacturing various type of batteries required for the Indian Navy. They have informed that Submarine batteries and extension of its large Lead-Acid battery manufactured by them and they have already developed prototype cells for the battery, which have been evaluated and meets the required specification.

This issues with the approval of Joint Secretary (Supplies.):

8. A copy of the said letter dated 7.1.2005 is annexed as Ann.P/3. After considering the representation made by the petitioner and receiving the recommendations from the Division of Joint Secretary, the Dy. Secretary (N-IV), Ministry of defense addressed a communication to various officials of Naval Headquarters, directing that to avoid monopolistic situation a 2nd source may be developed to ensure healthy competition and timely supplies. A copy of the said communication bearing No. 3536/04/D(N-I) dated 8.2.2005 is annexed and marked as Annexure P-4.

9. It is alleged in para 9 that each submarine battery currently supplied by the single source supplier is at the price of approx.Rs.11 crores and by virtue of being the only source they also enrich themselves by 10% price escalation per annum, though competition drives the prices in international market down ward year after years. It is alleged that the petitioner is technically sound, has built up the necessary infrastructure, has developed and manufactured the critical cells (which constitute the Submarine Battery) as per the specifications of the user directorate, the petitioner is being prevented by the said monopoly player, who is in collusion with some officials in Ministry of defense and wielding political influence, from being considered by the Ministry of defense for issuance of RFP (Request For Proposal) for supply of Submarine Battery.

10. The petitioner again highlighted the relevant facts to various officials of MOD for breaking the monopoly, but of no avail. The details have been given in para 10 of the writ petition.

11. The issue is limited to issuance of RFP of submarine batteries to the petitioner. The denial of RFP to the petitioner leads to single vendor situation and would block the petitioner for five years. The proposal by the respondents for procuring its recurring requirement of Submarine Batteries for the period up to 2009/2010 from a single vendor, thereby shutting out the petitioner and continuing with the monopolistic play of the said single vendor is actuated by mala fides and is opposed to the public policy.

12. Learned Single Judge in para 3 of the impugned judgment has accepted that for almost two years a final decision on the quality of the petitioner's product has not been taken despite carrying out a detailed presentation on 19th and 20th February, 2004. And despite letter dated 18.3.2005 and representation made to the Ministry of defense on its behalf by Members of Parliament.

13. Counter affidavit has been filed by the respondents and we have perused the same. In para 12 of the same the steps as envisaged under the DGQA Standing Orders through which an alternate source is proposed to be developed qua the submarine batteries has been mentioned. Meanwhile till the successful development of the second source it is provided by MOD Office Memorandum No. 7(76)/73/D(S-III) dated 11.10.1999 that:

"pending successful development of a new source, the order should be placed on the developed source(s) for the required quantity as indented by the Services by following the usual procedure laid down in this regard in order to ensure that the requirement of services and of production are met fully and without delay."

14. A copy of the said Ministry of defense Office Memorandum No. 7.(76)/73/D(S-III) dated 11.10.1999 is annexed as Annexure R-3.

15. In paragraph 29 of the counter affidavit it is stated that the total process for developing alternative source is approximately 34 months. Hence petitioner could be registered and RFP could be issued only in 2008. In para 35, it is stated that the present demand does not justify the existence of multiple vendors.

16. It may be mentioned that Government of India, Ministry of defense, Department of defense Production and Supply issued Office Memorandum on development of second indigenous sources on 11th October, 1999 which is as follows:

"No.7.(76)/73/D(S-III), Government of India, Ministry of defense, Department of defense Production and Supply New Delhi, the 11th October, 1999

OFFICE MEMORANDUM

Subject :Development of second indigenous sources.

In terms of the instructions contained in the Office Memorandum No. 7(67)/73/D(S-III) dated the 13th March, 1990 issued by the Department of defense Production and Supplies, procurement of items which are of a developmental nature is to be handled by the Technical Committees/Supplies Wing of the Department of defense Production and Supplies. One of the mandates given to the Department of defense Production and Supplies is to locate and develop indigenous supply sources, both in the public and private sector for procurement of defense equipments and stores. Indigenisation of a defense store is not complete until atleast two sources are fully developed which would ensure not only price competition but also avert Government's dependence on any single source."

17. By letter dated 6.1.2004 the petitioner had pointed out that at present there is only one indigenous manufacturer for the strategically important submarine batteries. Petitioner as the second source would not only ensure continued supply to the Navy but also promote competitively driven improvement of performance and reliability. In the said letter which is at page 198 of the petition details have been given of the petitioner's experience and capabilities. In that letter it has been mentioned that to fill in the void of a second source of this strategic military equipment, petitioner has invested in the development of batteries for submarines, as this is a logical extension of their design and manufacturing capability.


18. In the letter of Director (S-II), Ministry of defense, Department of defense Production dated 7.1.2005 it is stated:

"Ministry of defense

(Department of defense Production)

Subject : Development of alternate indigenous source for submarine batteries.

Please find enclosed herewith a copy of representation of M/s HBL NIFE Power System Ltd., Hyderabad on the above subject.

The representation of M/s HBL NIFE Power Systems Ltd. has been examined in this Department and it has been observed that presently these batteries are procured on PAC basis by Indian Navy from M/s Exide Industries Ltd. This Department recommend that to avoid monopolistic situation a 2nd source may also be developed to ensure healthy competition and timely supplies. M/s HBL NIFE Power Systems Ltd is already manufacturing various type of batteries required for the Indian Navy. They have informed that Sub-marine batteries and extension of its large Lead  " Acid battery manufactured by them and they have already developed prototype cells for the battery, which have been evaluated and meets the required specification.

This issues with the approval of Joint Secretary (Supplies)

Sd/-

(R.K.Jain)

Director (S-II)

Shri Gauram Chatterjee,

JS (O/Navy), Ministry of defense, South Block

MoDIDNo.1302/Director(S-II)/2004/D (S-III) dated 07.1.2005.

19. The letter of Deputy Secretary, Ministry of defense dated 8.2.2005 reads as under:

"Ministry of defense

Subject : Alternate indigenous source for submarine batteries.

NHQ/DQAN may please refer to their Note No. 610420/DQAN/L Dated 19th November, 2004 and 5th January, 2005 on the above mentioned subject. In this connection copies of the representations received from M/s HBL NIFE Power System Ltd. dated 12.11.2004 and 27th January, 2005 addressed to this Ministry are enclosed. The representation dated 12th October, 2004 has been examined in the Division of JS(S) wherein they have recommended that to avoid monopolistic situation a 2nd source may be developed to ensure healthy competition and timely supplies. In this connection, a copy of MoD/IDNo.1302/Dir9S-II/2004/D(S.III) No. 1302/Dir9S-II/2004/D(S.III) dated 7.1.2005 is enclosed.

In view of the representation submitted by M/s HBL NIFE and recommendations of Dir.(S.II) NAQ/DQAN etc. are requested to furnish their revised comments in this matter to this Ministry urgently.

Sd/-

(A.K.Ailawadi)

Dy. Secretary (N-IV)

Tele No. 23016099

NHQ/DQAN

MoD of DiD No. 3536/04D(N-I) dated 8.2.2005"

20. In our opinion, while we cannot direct the respondents to issue RFP to the petitioner in respect of the submarine batteries in question. It is certainly entitled to contracts and its product be considered by the respondents.

21. We may mention that if the Government wants to produce some defense products by itself it can certainly shut out private parties. However, when it decides to give contracts to private parties for defense related equipments, then Article 14 of the Constitution will apply. It is well settled that public contracts are not largesse

and must be advertised in well known newspapers having wide circulation.

22. It was held by a Division Bench of Madras High Court in [S. Selvarani Vs. The Commissioner, Karaikudi Municipality and Another,](#)

"The law is well-settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public-auction or inviting tenders should be advertised in well known dailies having wide circulation in the locality, with all relevant details such as date, time and place of auction, subject-matter of auction, estimated cost, Earnest Money Deposit, etc. The award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is available from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed and such contracts may be awarded through "private negotiations". (See [Ram and Shyam Company Vs. State of Haryana and Others,](#) In [Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation,](#) , the Supreme Court observed:-

"It is needless to state that the Government or public authorities should make all attempts to obtain the best available price while disposing of public properties. They should not generally enter into private arrangements for the purpose. These principles may be taken as well established by the following decisions of this Court:

(i) [K.N. Guruswamy Vs. The State of Mysore and Others,](#) ; (ii) [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,](#) (iii) [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,](#) ; (iv) [Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another,](#) (v) *Fertilizer Crpn. Kamgar Union v. Union of India*, AIR 1981 SC 344; (vi) [Ram and Shyam Company Vs. State of Haryana and Others,](#) ; and (vii) [Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others,](#)

In [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,](#) , Bhagwati, J. speaking for the court observed:

"Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes as its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

This rule also flows directly from the doctrine of equality embodied in Art.14. It is now well settled as a result of decisions of this Court in [E.P. Royappa Vs. State of Tamil Nadu and Another](#), and [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle, which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Art.14 and it must characterize every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, Therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory"

In [Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another](#), , Bhagwati, J, again speaking for the Court reiterated what he said earlier in R.D.Shetty"s case. The learned Judge went on to state:

"Every action taken by the Government must be in public interest. The Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if fails to satisfy either test, it would be unconstitutional and invalid."

The learned Judge continued (at p.1357) of SCR) : (at p.2001 of AIR):

"But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because

as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action, and Therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is not so satisfied it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law."

In Fertilizer Corporation case, AIR 1981 SC 344 at p.350 this Court speaking through Chandrachud, C.J., observed:

"We want to make it clear that we do not doubt the bona fides of the authorities, but as far as possible, sales of public property, when the intention is to get the best price, ought to take place publicly. The vendors are not necessarily bound to accept the highest or any other offer, but the public at least get the satisfaction that the Government has put all its cards on the table. In the instant case, the officers who were concerned with the sale have inevitably, though unjustifiably attracted the criticism that during the course of negotiations the original bid was reduced without a justifying cause. We had willy-nilly to spend quite some valuable time in satisfying ourselves that the reduction in the price was a necessary and fair consequence of the reduction in the quantity of the goods later offered for sale on March, 31, 1980. One cannot exclude the possibility that a better price might have been realized in a fresh public auction place but such possibilities cannot vitiate the sale or justify the allegations of mala fides.

In [Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others](#), , O.Chinnappa Reddy, J. after considering almost all the decisions of the Court on the subject summarized the propositions in the following terms:

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

"The public property owned by the State or by an instrumentality of the State should be generally sold by public auction or by inviting tenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should

undoubtedly act fairly. Their actions should be legitimate. Their dealings should be above board. Their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favoritism or nepotism. Ordinarily, these factors would be absent if the matter is brought to public auction or sale by tenders. That is why the Court repeatedly stated and reiterated that the State owned properties are required to be disposed of publicly. But that is not the only rule. As O.Chinnappa Reddy, J. observed, "that though that is the ordinary rule, it is not an invariable rule." There may be situations necessitating departure from the rule, but then such instances must be justified by compulsions and not by compromise. It must be justified by compelling reasons and not by mere convenience."

In [Committee of Management of Pachaiyappa's Trust Vs. Official Trustee of Madras and Another](#), the Supreme Court observed:

"In [K.N. Guruswamy Vs. The State of Mysore and Others](#), the Court was dealing with the sale of a liquor contract. It was observed that matters of "consequence to the State revenue cannot be dealt with arbitrarily and in the secrecy of an office". The Court has emphasized the need for publicity so that people at large have notice. It was held that "the furtive method adopted of settling a matter of this moment behind the backs of those interested and anxious to compete is unjustified"

In [Fertilizer Corporation Kamgar Union \(Regd.\), Sindri and Others Vs. Union of India \(UOI\) and Others](#), it has been observed (per Chandrachud, C.J.): vide p.579, para 21)

"We want to make it clear that we do not doubt the bona fides of the, but as far as possible, sales of public property, when the intention is to get the best price, ought to take place publically. The vendors are not necessarily bound to accept the highest or any other offer, but the public at least gets the satisfaction that the Government has put all the cards on the table."

Relying on the said observations the Court in [State of Uttar Pradesh Vs. Shiv Charan Sharma and Others](#), has held that, "public auction with open participation and a reserved price guarantees public interest being fully subserved."

In [Ram and Shyam Company Vs. State of Haryana and Others](#), it has been laid down:(vide p.277, para 12)

"On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. The welfare State may be able to expand its beneficent activities by the availability of larger funds. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose it of at a current market

price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property.

23. Thus, the laws is very clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well known newspapers having wide circulation, so that all eligible persons will have opportunity to bid in the bid.

24. In the present case the petitioner claims that it has already produced a developed product and it wants this product to be considered by the respondents. In our opinion in this situation the respondents should have issued a public advertisement in well known newspapers having wide circulation inviting tenders from all parties having product with the technical specifications mentioned in the said advertisement and thereafter the respondent could have proceeded to select the best offer from the point of view of price, quality etc. In the said advertisement the respondent could have mentioned the detailed technical specifications required by it and could have rejected the bid of the petitioner or other parties who did not made these technical specifications. Even though petitioner's product did meet the specifications mentioned in the advertisement, respondents were still free to reject the same if it was not the best offer from the point of view of price, quality etc. However, whatever the respondents have done is to shut out the petitioner and they have refused even to consider that either.

25. In our opinion, this is clear violation of Article 14 of the Constitution. It appears that the reason given by respondents for not even considering petitioner's offer is that according to the respondents the process for developing the alternate source would take about 34 months. In our opinion the stand of the respondents is wholly arbitrary and illegal. Firstly, as stated by the learned Single Judge in the impugned judgment in para 3 of the impugned judgment, the respondents have in fact taken more than two years and have not considered the petitioner's presentation of 19th and 20th February, 2004. It is the respondents who are responsible for that delay.

26. Moreover, we think it necessary to mention that if a party can develop a product in say six months, how can that party be shut out from having its product being considered merely because it has not taken 34 months to develop that product. With Science and technology so advanced products can be developed in a shorter period. Someone may develop the product in 34 months while other party may develop the same high product with a better scientific techniques in six months. Hence, the party who has developed that product in a six months cannot be ignored because it has not taken 34 months to develop that product.

27. In our opinion, the respondents have acted clearly arbitrarily and in violation of Article 14 of the Constitution. Petitioner alleged that he had already developed the

product which should be considered.

28. No doubt, the respondents could refuse to consider as it may have urgent requirement, but if there is a developed product that must also be considered when a bid is offered for the same. As to what is the meaning of developed product that is of course for the respondent to decide and they could specify the detailed technical requirements of the developed product as required by them in the advertisement in the well known newspapers having wide circulation and if the petitioner does not meet those technical specifications, its bid can be rejected. But in the present case, the respondents have not bothered to see whether petitioner meets those technical specifications or not and have rejected his offer on the ground that he did not take 34 months to develop the product. This is a strange kind of logic which the respondents have adopted which cannot be countenanced in any way.

29. For the reasons given above, the appeal is allowed and impugned judgment of the learned Single Judge is set aside and respondents are directed to issue an advertisement in well known newspapers having wide circulation giving details about their requirements for the submarine batteries in question mentioning the detailed technical specifications and they should consider all the products which meet the technical specifications and thereafter proceed to select the best product in accordance with law.

30. Learned counsel for the respondents submitted that there is an urgent need of the submarine batteries. In our opinion, there is not war going on between India and any other country which could justify any emergency requiring breach of the constitutional provision in Article 14. We cannot accept this submission at all. It is well known that in defense contracts there are a lot of complaints that there are under hand deals and the best way to remove those apprehensions is to have transparency and open public tenders so that all who are eligible can bid.

31. Appeal is allowed.