

# IN THE HIGH COURT OF SIKKIM

CIVIL WRIT PETITION NO.27 OF 2000

*Date of Decision : 27<sup>th</sup> September 2000.*

M/S Khurana & Co.,  
a registered partnership firm,  
having its head office at,  
27, Community Centre,  
Zamrudpur,  
New Delhi – 110 048. .... Petitioner.

Versus

1. State of Sikkim,  
Through the Principal Finance Secretary,  
Government of Sikkim,  
Tashiling Secretariat,  
Gangtok – 737 101,  
Sikkim.
2. The Director,  
Sikkim State Lotteries,  
Finance Department,  
Government of Sikkim,  
Gangtok,  
Sikkim. .... Respondents.



*Coram :*

The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.  
The Hon'ble Mr. Justice Anup Deb, Judge.

Present : Mr. T.B. Thapa, Advocate for the  
petitioner.

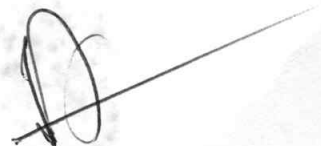
Mr. S.P. Wangdi, Advocate General with  
Mr. Karma Thinlay, Asstt. Govt.  
Advocate for the respondents.

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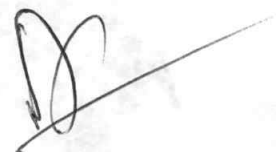
## **JUDGMENT**

**Deb. J.**

By filing this Writ Petition on the 30<sup>th</sup> May 2000, the petitioner challenged the letter No.985/Fin/DSSL dated 5<sup>th</sup> January 2000 by which the State Government in order to increase revenue from the State Government lotteries has decided to offer a package of incentives for sale of lottery tickets in excess of Rs.300 crore and prayed for quashing the same. Prayer was made for directing the respondents to forthwith float an open tender for distributorship of Sikkim Government Lottery tickets other than the 28 lottery schemes for which M/s. Martin Lottery Agencies Ltd., Coimbatore has been appointed distributor of the respondent State for sales beyond Rs.300 crore.

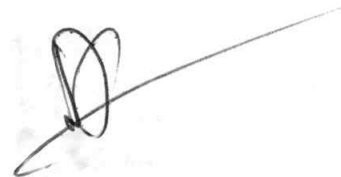


The petitioner's case is that the petitioner is a registered partnership firm engaged in organising lotteries, being sole selling agents or stockists for lotteries and such other activities relating to lotteries. The petitioner was originally the organising agent and subsequently the sole distributor of the lotteries of the respondent State for more than 18 years till 5<sup>th</sup> August 1999. During the pendency of Civil Writ Petition No.518 of 1998 and consequent upon the decision of the State Government "to enter into agreement of agency in future by inviting tenders," the State Respondent put to tender the distributorship for the sale of Sikkim Government lottery tickets of 28 lottery schemes which envisaged minimum turnover of Rs.300 crore as per the terms and conditions advertised and the petitioner was one of the bidders in the said tender floated by the State respondent and the distributorship for the 28 lottery schemes advertised and put to tender was awarded to M/s. Martin Lottery Agencies Ltd., Coimbatore at 5.30% as Government revenue. On 5<sup>th</sup> January 2000, the Director, Sikkim State Lotteries, respondent No.2 issued letter No.985/Fin/DSSL dated 5<sup>th</sup> January, 2000 (Annexure P1 and P3) to the petitioner, inter alia, stating: "In order to increase revenue from the State Government Lotteries, the Government had decided to offer a package of incentives for sale of Lottery tickets in excess of Rs.300 crores" and the petitioner was



also given an offer for the distribution of lotteries on the condition that if he liked to be considered for appointment of distributor under the terms and conditions formulated by the State Government as per incentives proposed, he would have to guarantee a minimum turnover of Rs.300 crore with Government revenue of 5.30% of the same. Sales beyond Rs.300 crore will be entitled to a package of incentives. On receipt of the impugned communication, the petitioner issued a legal notice dated 12<sup>th</sup> January 2000 to respondent No. 2 requesting respondent No. 2 to withdraw its impugned communication and further requested to invite fresh tenders for sale of Sikkim Government lottery tickets in excess of Rs.300 crore on legal, fair and equal terms from all prospective tenderers failing which the petitioner would be left with no other alternative but to take recourse to such legal measures.

By filing counter-affidavit and additional affidavit, the State Respondents stated that in 1998, a writ petition, being writ petition No.518 of 1998 was filed by one K.C. Pradhan questioning the working of Sikkim State lotteries. During the pendency of the said writ petition the agreement of the distributorship of Sikkim State Lotteries between M/s K. & Co. and the State Govt. expired and the State of Sikkim decided that the 77 lotteries being run under the said agreement be put on tender.



The previous distributor, that is, M/s. K. & Co., claimed that as the trade names in respect of these Sikkim lotteries were the joint properties of the State of Sikkim and the Company, the decision to put the 77 lotteries was illegal and against the provisions of the Trade and Merchandise Act of 1956. The claim of M/s. K. & Co. was denied and disputed by the State of Sikkim and both the parties, M/s. K. & Co. and the State of Sikkim referred the dispute to a competent Arbitrator. It is further submitted that until the dispute was settled by the Arbitrator in terms of Arbitration clause the decision to put on tender the 77 lotteries could not be implemented, since the entire proceedings for settlement of the dispute was taking some time, thereby denying the State of Sikkim of much required revenue, the bulk of which came from the running of lotteries, the State of Sikkim decided to launch a new set of lotteries in the year 1999. It is further stated that since the matter was pending before this Court, these respondents placed the terms and conditions of the tenders for new set of 28 lotteries before this Court for its perusal and necessary orders and order dated 30<sup>th</sup> June 1999 was passed in terms of which notice inviting tenders was published. Since the lottery market is subject to frequent changes, a provision was made in the terms and conditions of the notice inviting tenders that the schemes are subject to changes as per



market conditions. Condition 8 of the terms and conditions reads as follows :-

“8. The schemes are, however, subject to change as per the market conditions in consultation with the Distributors.”

Consequent to the introduction of new lotteries the Sikkim State lotteries was an object of attack from various quarters including the former distributor of the Sikkim State lotteries who had floated similar lotteries as Sub-distributor of Mizoram State and also had filed a number of cases in various courts with a view to hampering the success of the new Sikkim State lotteries. The State Government felt it necessary to be competitive in order to retain the edge of the Sikkim State lotteries in the market. It was on the basis of sound business principle that the incentives were floated as a means to rise to the changing situation, otherwise the State of Sikkim and, therefore, the general public would have been the loser. It was, therefore, decided that while floating the incentives, there will be no compromise on minimum turnover of Rs.300 crore upon which the revenue would be 5.30%. Incentive will be provided for sale beyond Rs.300 crore which would be made applicable to all parties who had participated in the tender held on 17<sup>th</sup> July 1999 in respect of the new lotteries and who had floated rates above the minimum returns of 2.20%



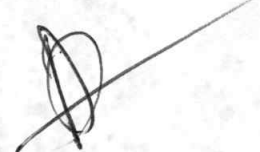
as being the lowest returns the State of Sikkim was offering. It was further decided by the Government that there will be no single distributor and any person conforming to the condition was free to start lotteries of the State Government.

Paragraph 3(g) of the counter-affidavit reads as follows :-

“3(g) Consequent to the introduction of new lotteries the Sikkim State lotteries was an object of attack from various quarters including the former distributor of the Sikkim State Lotteries who had floated similar lotteries as Sub-distributor of Mizoram State and also had filed a number of cases in various courts with a view of hampering the success of the new Sikkim State lotteries. Apart from this, other State Governments also entered into new contracts containing conditions which were lenient compared to the ones stipulated by these respondents, so much so that the revenue collected by them was as low as Rs.500/- per lottery in the case of State of Arunachal Pradesh, and 0.75% in the case of State of Meghalaya. In such circumstances the State of Sikkim came to a conclusion that it had become imperative to come out with incentives in order to retain the position of the Sikkim State lotteries in the market.”

And paragraphs 2(a), (b), (c), (d), (e) and (f) of the additional affidavit are extracted below :-

“2(a) In paragraph 3(g) of the counter affidavit it has been submitted by me that consequent to the introduction of new lotteries, the Sikkim State Lotteries became an object of attack from various quarters including the former distributor of Sikkim State lotteries who had floated similar lotteries as Sub-Distributor of Mizoram



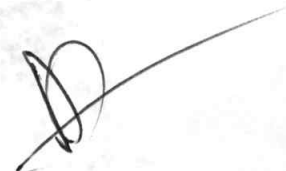
State, and also filed a number of cases in various courts with a view to hamper the success of new Sikkim Lotteries. I refer to and rely upon paragraph 3(g) of the counter affidavit and further to the said submission I submit the manner of such activities are as indicated hereunder :-

- i) Similar Lottery schemes have been floated in Mizoram State using our Black Hat Dance Logo. Copies of paper clippings showing such use are annexed herewith and marked as R-2 colly.
- ii) Issued damaging advertisements announcing schemes like :
  - a) Removal of deduction on higher denomination of prizes.
  - b) Higher incentives/bonus to the agents.
- b) Therefore, in order to compete with such competitors in the market and to retain the edge of Sikkim State Lotteries in the market to increase revenue, it was felt necessary and imperative to come out with a package of incentives. The Government of Goa has also considered similar package of incentives and offered it to their Sole Distributor whose turnover and percentage of revenue was much lower than that of the State of Sikkim. A copy of letter date 9<sup>th</sup> June 1995 and 25.6.96 are annexed herewith and marked as Annexure R-3.
- c) The incentive proposal was examined by the Tender Selection committee consisting of :-
  1. Controller of Accounts, Finance
  2. Director Budget.
  3. Director Lotteries.
  4. Deputy Secretary, Law Department.
  5. Accounts Officer, Lotteries.



- d) Accordingly, on the recommendation of the committee and clearance of Law Department, the Government approved and launched package of incentives on diminishing percentage.
- 1) upto 300 .....5.30%
  - 2) 301 to 1000 .....2.65%
  - 3) 1001 and above .....2.20%
- e) The package of incentives as above was offered to the present distributor M/S Martin Lottery Agency as well as all other parties who had participated in tender held on 17.7.1999 in respect of the new set of Sikkim State weekly lotteries including the petitioner.
- f) This offer was made mainly intending to appoint more distributors of Sikkim State lotteries which any partly duly fulfilling various terms and conditions like completing the turnover of 300 @ 5.30% in the first instance and then availing offer of the diminishing rate of percentage of revenue of an turnover of 301 and above.”

The respondents stated that tender was invited for 28 lotteries schemes having minimum turnover of Rs.300 crore. Beyond 300 crore package of incentive was considered by the Government to be given to M/s Martin Lottery Agencies Ltd., Coimbatore. The package of incentives was also offered to all tenderers who had participated in the earlier tender and quoted rates above 2.2% including the petitioner. The intention of the respondents was to give equal opportunity to the tenderers who had participated in the tender 28 lotteries to give fair opportunity for



appointment as Distributors provided they are willing to accept the offer of package of incentives considered by the Government. But due to negative approach of the petitioner to the respondents' communication dated 5<sup>th</sup> January 2000, the respondent thought it was not necessary to correspond with such uninterested party. Vide letter dated 25<sup>th</sup> May 2000, copy of the original letter dated 5<sup>th</sup> January 2000 along with the incentive scheme was forwarded and the petitioner filed the same as Annexure-P3 collectively in the affidavit-in-reply verified on 21<sup>st</sup> August 2000.

Heard Mr. T.B. Thapa, Advocate, appearing for the petitioner and Mr. S.P. Wangdi, learned Advocate General, appearing for the respondents.

Mr. Thapa argued that the communication/scheme dated 5<sup>th</sup> January 2000 was patently illegal, arbitrary and mala fide and liable to be quashed. In this communication of the scheme, respondent No. 2 is seeking to appoint distributor for the Sikkim State Lotteries on the basis of internal negotiations and not by open tender. The incentives were not communicated with the letter dated 5<sup>th</sup> January 2000 but the incentives were disclosed on 25<sup>th</sup> May 2000 during the pendency of the writ petition. The aforesaid scheme, inter alia, deviated from the decision of the



respondent to enter into agreement of agency in future by inviting tenders. The said scheme has been contemplated with the sole motive to enable the said M/s Martin Lottery Agency Ltd. to further expand its business in the State of Sikkim. The petitioner will have to guarantee a minimum turnover of Rs.300 crore with Government revenue of 5.30% of the same and the sales beyond Rs.300 crore will be entitled to a package of incentives, will tantamount to eliminating the petitioner at the threshold. The scheme suffers from inherent and purposeful vagueness in as much as it implies that only those who had submitted an offer for the distribution of 28 lottery schemes advertised and which envisaged a minimum turnover of Rs.300 crore, may be considered for appointment of distributor under the terms and conditions formulated by the respondents for sales of Sikkim Government Lottery tickets beyond Rs.300 crore. The scheme is unequal and arbitrary as M/s. Martin Lottery Agencies Ltd. will not be required to meet the precondition of assuring and doing a business of a minimum of Rs.300 crore turnover at 5.3% as Government revenue and will therefore be entitled to the said package of incentives straight away. The petitioner and other previous bidders would be required to meet the first precondition to be able to get the benefit of the said package of incentives. Mr. Thapa's last argument was that tender was invited for



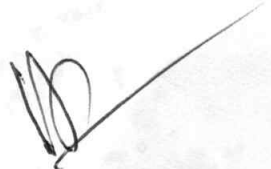
appointment of distributor in respect of 28 new State lotteries with a fixed turnover of Rs.300 crore and package of incentive has been given to M/s Martin Lottery Agency Ltd. during pendency of the writ petition.

Mr. S.P. Wangdi, learned Advocate General appearing for the State argued that the government has taken a policy decision to launch package of incentives at diminishing rate of percentage which is as follows :-

INCENTIVE PACKAGE

<u>TURNOVER PER ANNUM</u> (in crores)	<u>PERCENTAGE</u>	<u>REVENUE</u> (in crores)
01. Upto Rs.300 crores	5.30%	15.90
02. From Rs.300 crores to 1000 crores	2.65%	18.55
03. Above Rs.1000 crores	2.20%	

The State's primary object and aim is to increase its revenue. State lotteries with no investment and little overhead cost is the ideal vehicle for generation of revenue for the State and remains the highest source of income for the State. It is in this endeavour that the State has done away with sole distributorship and appointment of distributors remains open to all. Incentives are a response to the changing market conditions and any failure to respond to the same will be detrimental to the State. The principal source of revenue for the state is the revenue accruing from the



conduct of Sikkim lotteries. For the financial year 1999/2000 this was almost to the tune of Rupees thirty crore. It is in this context that the smooth, efficient and regular conduct of State lotteries assumes special importance. The State lotteries have acquired a special goodwill and reputation of their own in the very fiercely competitive and often unregulated lottery market in the country. As State Government takes great care and pride in maintaining rigorous standards, the State lotteries have been regarded as well managed, fair, regular and properly conducted with stringent Government controls. Sikkim being the smallest State in the Country is primarily dependent on the sale of its tickets in the other states of the country as it does not have the population to achieve any economical turnover. Hence the common aim is to capture as much of the outside as possible. This apart from other issues involves business strategy and a constant response to the changing markets as manifested in the prize structure, commission and network of sale outlets. As the rates were finalised at 5.30% State Government was aware of the stiff competition ahead. The problem was compounded when their trade rivals unleashed a series of measures to thwart their growth. A number of states fixed their rates as low as Rs.500 per draw and as many as 250 draws per day. Being put in such a disadvantageous position, the state lotteries

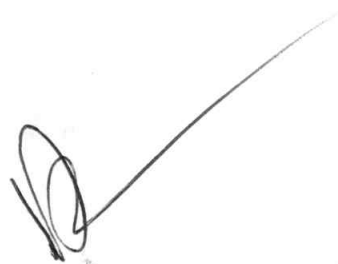


could not grow as they could not respond to the realities of the trade and market conditions. As a result, the State lotteries began to lose market share as lotteries conducted by Bhutan as well as other states made inroads in the market. Sikkim State lotteries distributor found it extremely uneconomical and difficult to push the sale of lottery tickets in the changed and hostile environment. It is in this context that the state decided to bring about a set of incentives to meet the challenges of the market to foster sales growth and to retain as much of its earlier share of the market. The incentive scheme was worked out by a special committee set up for the purpose and after close examination by the relevant authorities was approved by the government. The incentive scheme was available to all those who had participated in the tender and they were communicated of the same accordingly. As approved by the government, anybody fulfilling the basic eligibility conditions of the tender notice can be appointed as a Distributor of Sikkim lotteries as the State Government has decided to do away with sole agency sales. The incentive scheme is therefore also available to all distributors as will be appointed.

State Government has taken a policy decision that while floating the incentives, there will be no compromise on turnover of Rs.300 crore upon which the revenue would be 5.30% and incentives would be



provided for sale beyond Rs.300 crore which would be made applicable to all parties who had participated in the tender held on 17<sup>th</sup> July 1999 in respect of the new lotteries and who had floated rates above the minimum returns of 2.2% as being the lowest returns of the Sikkim lottery. The Government has decided that there will be no single distributor and any person conforming to these conditions was free to start lotteries of the state of Sikkim. An offer has been given to the petitioner also. During course of the argument, Mr. Wangdi submitted that the aforesaid incentives will be made available to any party who wants to participate and who will give guarantee a minimum turnover of Rs.300 crore with the revenue of 5.30% of the same and sales beyond Rs.300 crore will be entitled to package of incentives. Mr. Wangdi further made it clear that since there is dispute about 77 lotteries for which the petitioner was the distributor, the State will float new lotteries other than 77 lotteries under dispute for the aforesaid parties till the disputes are finally resolved. Mr. Wangdi's last argument is that the policy decision of the State Government could not be subject to a challenge in the writ petition and the Court shall not enquire the same unless the policy decision is against the fundamental right or any law and arbitrary.



In paragraph 2.II. of the writ petition, the petitioner stated that "the State Respondent put to tender the distributorship for the sale of Sikkim Government Lottery tickets of 28 lottery schemes which envisaged minimum turnover of Rs.300 crore as per terms and conditions advertised". Clause 10 of the terms and conditions mentioned in the Tender Notice reads as follows :-

"10. The minimum turnover as per the above Schemes shall be 300 (three hundred) crores approximately, including Bumper Schemes."

In view of such statement of the petitioner himself in the writ petition, as specific clause in the terms and conditions as aforesaid, the argument of Mr. Thapa is that the tender was invited for appointment of distributor in respect of 28 new State lotteries with a fixed turnover of Rs.300 crore cannot be accepted.

Mr. Thapa's another argument that the package of incentive will be given to M/s. Martin Lottery Agency Ltd. during the pendency of writ petition cannot be accepted in as much as there is no order of stay passed by the Court by which the State Respondents were restrained from giving package of incentives to M/s. Martin Lottery Agency Ltd. M/s. Martin Lottery Agency Ltd. was not impleaded as a party. The new lottery will



be floated in the market and anybody can become a distributor after achieving a minimum turnover of Rs.300 crore and paying 5.30% revenue to the Government. The petitioner has been given an opportunity to participate and therefore, the petitioner has not been discriminated.

Since the learned Advocate General has submitted that the terms and conditions of the proposed scheme would be widely publicised so that there is transparency in the new deal, the State Government shall make wide publicity for appointment of distributor to market Sikkim State lottery tickets on the same terms and conditions. Earlier tender notice was floated and the petitioner took part. M/s. Martin Lottery Agency Ltd. having achieved the turnover in excess of Rs.300 crore became eligible and was given the incentives.

It is clear that the State Government of Sikkim has taken a policy decision to launch package of incentives of diminishing rate of percentage as stated in the additional affidavit filed on behalf of the respondent Nos. 1 and 2 and in the affidavit-in-reply of the petitioner to the aforesaid additional affidavit it has been stated that said statements are denied and disputed for want of knowledge. It is also clear that in pursuance of the policy, M/s. Martin Lottery Agency Ltd. accepted the offer of incentives



and package of incentives has been given to M/s. Martin Lottery Agency Ltd. The learned Advocate General made it clear that whoever will fulfil the minimum guarantee of Rs.300 crore turnover towards sale of Sikkim State lottery tickets will be given incentives and for this purpose they will float new lotteries in the market to increase the State revenue. Since now the State Government has decided to give the incentives to everyone who is willing to market new lotteries and who will fulfil the eligibility criteria, the policy of the Government does not suffer from arbitrariness.

In the case of the State of Maharashtra and another v. Lok Shikshan Sansatha and others reported in 1971 (2) SCC 410 the Supreme Court held that the question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment.

In the case of M/s. Kasturi Lal Lakshmi Reddy, etc. v. The State of Jammu & Kashmir and another reported in AIR 1980 SC 1992, it has



been held that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts of granting other forms of largess, the Government cannot act arbitrarily at its sweet will. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other, in regard to the persons who may be recipients of such largess. 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 Supreme Court further held that the action of the State in making the impugned Order in favour of the party could not also be said to be arbitrary merely because no advertisements were issued inviting offers for setting up a factory and taking the tapping contract as an integral part of the transaction. It was not a tapping contract simpliciter which was intended to be given to the party. It was really by way of allocation of raw material for running the factory that the impugned Order was passed. In such a case the State was



not bound to advertise and invite tenders. It is further held that the State did not commit breach of any constitutional or legal obligation if it negotiated with any party and agreed to provide resources and other facilities for the purpose of setting up the industry. The impugned Order was therefore unquestionable and without doubt, in the interest of the State and there was nothing in it which could possibly incur the reproach of being condemned as arbitrary or irrational.


In the case of *Premium Granites and another v. State of T.N. and others* reported in (1994) 2 SCC 691, it is held by the Supreme Court that it is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right.

In the case of *State of U.P. v. U.P. University Colleges Pensioners' Association* reported in (1994) 2 SCC 729, it is held that the policy



contained in the G.O. of April 28, 1980 cannot be said to be either unreasonable or against public interest, which are the only two grounds available to a court to interfere with a policy matter while reviewing the same judicially.


In the case of *Tata Cellular v. Union of India* reported in (1994) 6 SCC 651, it is held that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of that power of judicial review. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. It is thus different from an appeal. Where the selection or rejection is arbitrary, certainly the Court would interfere.



It is not the function of judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

In the case of All India Ex-Emergency Commissioned Officers and Short Commissioned Officers' Welfare Assn. And another v. Union of India and another reported in 1995 Supp (1) SCC 78, Supreme Court held that in the recent case, it is not correct to say that the impugned rules classify the officers into two categories : holders of reserved posts and non-reserved posts. In fact a policy decision was taken to give some benefit to those servicemen who had stood with the people when the country was invaded and had rendered useful service during the emergency in question. How much benefit and in what shape it ought to have been given are not matters on which courts can have any say, these are exclusively for the executive to decide. The courts come into picture in such policy matters if the same be either illegal or irrational or were to suffer from procedural impropriety.

In the case of Asia Foundation & Construction Ltd. v. Trafalgar House Construction (I) Ltd. and others reported in (1997) 1 SCC 738, it is held that though the principle of judicial review cannot be denied so far as



exercise of contractual powers of government bodies are concerned, but it is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the court that in the matter of award of a contract power has been exercised for any collateral purpose. It is not within the permissible limits of interference for a court of law, particularly when there has been no allegation of malice or ulterior motive and particularly when the court has not found any mala fides or favouritism in the grant of contract in favour of the successful bidder. The direction of rebidding in the facts and circumstances of the present case instead of being in the public interest would be grossly detrimental to the public interest.


In the case of *M.P. Oil Extraction and another v. State of M.P. and others* reported in (1997) 7 SCC 592, it has been held that although to ensure fair play and transparency in State action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiation is permissible. It is further held that the executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be

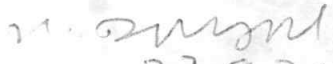


clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. Policy decision is in the domain of the executive authority of the State and the court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism. The democratic set-up to which the policy is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.



On considerations of the pleadings of the parties and arguments of Mr. Thapa and Mr. Wangdi and legal position as discussed above, we are of the view that there is no merit in the writ petition and the writ petition is dismissed. However, there will be no order as to costs.

  
(ANUP DEB)  
JUDGE  
27-09-2000

  
(RIPUSUDAN DAYAL)  
CHIEF JUSTICE  
27-09-2000