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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2474/2020, CM APPLs. 8630/2020, 12873/2020,  
41944/2021

ACCURATE AUCTIONEERS ..... Petitioner  
Through: Mr. Karan Aggarwal, Adv.

versus

UNION OF INDIA & ANR ..... Respondents  
Through: Mr. Zoheb Hossain, SC with Mr.  
Vivek Gurnani and Mr. Atharva  
Koppal, Advs. for UOI/R-1 & 2.  
Mr. Sanjoy Ghose, Sr. Adv. with  
Ms. Urvi Mohan, Mr. N. Rawat and  
Mr. Anil Kumar, Advs. for R-3.

**CORAM:**  
**HON'BLE MR. JUSTICE YASHWANT VARMA**

**ORDER**  
**05.09.2022**

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1. The instant writ petition lays challenge to a Circular dated 03 December 2018 issued by the Department of Revenue in the Ministry of Finance with reference to earlier circulars issued by the **Central Board of Indirect Taxes and Customs**<sup>1</sup>. The impugned Circular lays in place a procedure for disposal of unclaimed and uncleared cargo in terms of the provisions made in Section 48 of the Customs Act, 1962. The Circular adopts a revised procedure for disposal of such cargo. The petitioner who is an Auctioneer/Auction Agent is essentially aggrieved by the stipulation contained in that Circular which prescribes that unclaimed / uncleared cargo

shall be disposed of by way of an e-auction to be conducted by the **Metal Scrap Trade Corporation Limited**<sup>2</sup>. The grievance essentially is with respect to the exclusion of other auction agencies under the revised procedure.

2. The petitioner was registered with the Government of NCT of Delhi as an empanelled auctioneer. It is also stated to have provided its services to the respondents on earlier occasions acting as an auction agent. In terms of the procedure which held the field prior to the issuance of the impugned Circular, goods were to be disposed of by way of a public auction / e-auction / tender. Clause 3.1 (v) contained in Chapter 20 of the Customs Manual apart from prescribing the aforesaid as some of the modes which may be adopted for disposal of unclaimed or uncleared cargo, did not specify a particular agency which may be tasked with the aforesaid responsibility. However, upon promulgation of the Circular in question, private auctioneers came to be excluded. It is this which has led to the filing of the present writ petition.

3. In the impugned circular, the respondents have taken note of the following factors, which constrained them to consider revising the procedure for disposal of such cargo. Paragraph 2 of the said circular is extracted hereinbelow: -

“Despite the issuance of many circulars, the feedback relating to disposal of unclaimed/uncleared cargo at all Customs locations has not been fully satisfactory. Sometime back, Central Vigilance Commission had appointed a committee of Chief Vigilance Officers, to examine the reasons of delay in disposing of unclaimed/un-cleared cargo. The committee has observed inordinate delays, complete breakdown of system, substantial loss to the government revenue etc. Accordingly,

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<sup>1</sup> The Board

<sup>2</sup> MSTC

Board has reviewed the procedure with regard to disposal of un-cleared/un-claimed cargo under section 48 of the Customs Act, 1962 in consultation with CONCOR. The revised procedure for disposal of such cargo shall be as under:-”

4. Clause 8 which designated MSTC to be the identified agency for conducting auctions reads as follows:-

“Customs shall examine the list and within 15 days of receipt of such request, intimate to the custodian, details of the listed shipments which can straightway be taken up for auction as they do not require any regulatory clearances (NOC from FSSAI, Drug Controller, BIS etc.), or do not need any chemical analysis to identify the contents and fitness for consumption/usage. The consignments for which such unconditional NOCs are issued by Customs, shall be taken up for auction by e-auction through MSTC to ensure maximum outreach and participation. In order to ensure quick and regular turnover, the concerned custodian shall attempt to hold at least one auction each month. In case the list is incomplete and does not have the complete details for Customs to clearly pinpoint the regulatory requirements, Customs shall indicate the deficiencies in the list, within this period of 15 days.”

5. The respondents in the short affidavit that has been filed, have referred to the circumstance of the auction of goods being conducted by different agencies at various ports leading to inordinate delays and a breakdown of a cohesive system leading to substantial revenue losses being caused to the Government. According to the respondents, it is these factors, which compelled them to reconsider the procedure to be adopted and to identify a competent single agency, which may be entrusted with the task of auction of unclaimed and un-cleared cargo. Referring to the credentials of MSTC, it is pointed out by the respondents that it is a “Mini Ratna” Public Sector Undertaking functioning under the administrative control of the Ministry of Steel in the Union Government and which is engaged in conducting e-auction of goods valued at more than Rs. 4000 crores per year. The respondents have also disclosed that MSTC has more than one lakh

registered bidders. They have also referred to the fact that MSTC has been providing e-auction services to the Customs Department for more than a decade and that its services are also being availed by the Container Corporation of India and various other Container Freight Stations. In paragraph 10 of the short reply / affidavit, which has been filed, the respondents have set out the details with respect to the procedure, which is adopted by MSTC in order to ensure a transparent, fair and competent auction being held.

6. Having heard learned counsels for parties, the principal question which arises is whether the petitioner can claim an indefeasible or a constitutional right to be empanelled by the respondents for the purposes of auctioning of unclaimed and uncleared goods. The Court notes that while it is true that the State when it seeks to enter into the contractual field must comply with the mandate of Article 14 of the Constitution, neither Article 19 nor any other provision of our Constitution recognizes a right inhering in an individual to compel the Government to enter into a contract. The body of precedent which has evolved on this question has duly recognized this basic precept and has proceeded to hold that it is only when the State chooses to enter into a contract by inviting bids and offers that it must follow a fair and transparent process of selection and ensure that all eligible parties are placed on an even pedestal.

7. In the celebrated decision of **M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Another**<sup>3</sup>, the Supreme Court pertinently observed as follows: -

“14. The State can enter into contract with any person it chooses. No

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<sup>3</sup> (1975) 1 SCC 70

person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.”

8. More recently in **Association of Registration Plates v. Union of India and Others**<sup>4</sup>, the Supreme Court observed as under:-

“43. Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim a fundamental right to carry on business with the Government. All that he can claim is that in competing for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest. Undisputedly, the legal position which has been firmly established from various decisions of this Court, cited at the Bar (supra) is that government contracts are highly valuable assets and the court should be prepared to enforce standards of fairness on the Government in its dealings with tenderers and contractors.”

9. A Division Bench of this Court in **Jindal Steel v. Rail Vikas Nidam Ltd.**<sup>5</sup> succinctly explained the legal position as follows: -

“17. The terms of invitation to tender are in the realm of contracts. Indisputably, the respondent has the freedom to decide, as with whom and on what terms it should enter into a contract. No citizen has a fundamental right to enter into a contract with the state. It is now well settled that the terms of invitation to tender would not be amenable to judicial review unless the same have been actuated by malafides or are arbitrary and are such that no reasonable person could possibly accept the same as relevant for the purposes for which the conditions are imposed.”

10. The Allahabad High Court in **All U.P. Stamp Vendors Association v. Union of India and Others**<sup>6</sup> dealing with this issue observed as under: -

“38. In Ram Krishnan Kakkanth v. Government of Kerala, the Supreme Court dealing with a challenge raised by pump set distributors to a Government stipulation that farmers who had been extended financial

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<sup>4</sup> (2005) 1 SCC 679

<sup>5</sup> 2013 SCC OnLine Del 4417

<sup>6</sup> 2021 SCC OnLine All 266

assistance would purchase pumps only from accredited dealers, aptly observed: —

“28. Under clause (1)(g) of Article 19, every citizen has a freedom and right to choose his own employment or take up any trade or calling subject only to the limits as may be imposed by the State in the interests of public welfare and the other grounds mentioned in clause (6) of Article 19. But it may be emphasised that the Constitution does not recognise franchise or rights to business which are dependent on grants by the State or business affected by public interest (Saghir Ahmad v. State of U.P. [(1955) 1 SCR 707: AIR 1954 SC 728]).

32. It may be indicated that although a citizen has a fundamental right to carry on a trade or business, he has no fundamental right to insist upon the Government or any other individual for doing business with him. Any Government or an individual has got a right to enter into contract with a particular person or to determine a person or persons with whom he or it will deal.”

39. In the considered opinion of the Court the dictum laid down in Krishnan Kakkanth succinctly enunciates the nature and the extent of the right that the petitioners can possibly assert with reference to Articles 19, 21 and 38 of the Constitution. As held in that decision, the petitioners cannot claim an indefeasible right to the grant of a franchise in their favour nor can they claim a license of exclusivity to deal in stamps. It is within the limits of the licensing provisions alone that they can claim a right to an equal opportunity to apply, not to be treated unfairly or be discriminated in the issuance of the grant and the freedom to pursue that occupation and trade subject to valid statutory restrictions that may be imposed and those which may otherwise be applied by law in larger public interest. While it is true that Krishnan Kakkanth speaks of the ‘freedom’ of the Government to enter into a contract”, all that may be observed in light of the law as it has developed on that issue, is that as and when the Government does decide to enter into a contract or invite persons to engage with it, its actions must be in accord with the principles of fairness as flowing from Article 14 of the Constitution.

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41. In fact, if the submission addressed on behalf of the petitioners be accepted in literal terms, it would essentially mean recognizing a right vesting in them to compel the Government to necessarily engage in business or enter into a contract with the petitioners for the sale of physical stamps in posterity to the exclusion of all other modes. As a necessary corollary, the Court would also have to recognise a right inhering in the petitioners to compel parties to instruments to purchase physical stamps. Neither of the above can be countenanced as a right which can be legitimately traced to Articles 19(1)(g), 21 or 38.”

11. Proceeding to deal further with the concept of reasonable restrictions, as placed by Article 19(6) of the Constitution, the Court in the aforesaid decision pertinently observed as follows: -

“50. A brief discussion on the concept of a reasonable restriction that may be imposed under Article 19(6) is necessitated in light of the submission that the impugned measures are also violative of Articles 21 and 38 of the Constitution and that they deprive the petitioners of a right to livelihood. That the right to eke out a livelihood is an integral part of the right to life is indisputable. The question here is whether the petitioner and its constituents are in fact being deprived of that right. The second question is whether the right of the petitioners to practice or carry on a trade or business has been arbitrarily restricted. Undisputedly, the rights conferred by Article 19 of the Constitution are neither absolute nor unfettered. They are entitled to be exercised subject to just restrictions that may be imposed by the Government “in the interest of general public”. The validity of such a restriction as and when imposed and assailed is liable to be tested on the anvil of reasonableness with the Courts striving to strike a balance between the freedom that is guaranteed and the larger public interest that the restriction seeks to subserve. While adjudging the validity of a restriction so enforced, the Court must evaluate its reasonableness not standing in the shoes of the person upon whom that restriction operates but from the viewpoint of the community as a whole. In all such situations the question to be posed would be whether the restriction has come to be imposed to preserve and protect the larger interests of the community, its social and economic welfare, public order or health.

51. Explaining the interplay between Article 19(1)(g) and the scope of Article 19(6) of the Constitution, the Supreme Court in Krishnan Kakkanth had observed as follows:—

“26. After giving our careful consideration to the facts and circumstances of the case and submissions made by the learned counsel for the parties, it appears to us that the fundamental right for trading activities of the dealers in pumpsets in the State of Kerala as guaranteed under Article 19(1)(g) of the Constitution has not been infringed by the impugned circular. Fundamental rights guaranteed under Article 19 of the Constitution are not absolute but the same are subject to reasonable restrictions to be imposed against enjoyment of such rights. Such reasonable restriction seeks to strike a balance between the freedom guaranteed by any of the clauses under Article 19(1) and the social control permitted by clauses (2) to (6) under Article 19.

27. The reasonableness of restriction is to be determined in an objective manner and from the standpoint of the interests of general public and not from the standpoint of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected be petty traders (Mohd. Hanif v. State of Bihar [AIR 1958 SC 731]). In determining the infringement of the right guaranteed under Article 19(1), the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, enter into judicial verdict (Laxmi Khandsari v. State of U.P. [(1981) 2 SCC 600 : (1981) 2 SCC 600 : AIR 1981 SC 873]; D.K. Trivedi and Sons v. State of Gujarat [1986 Supp SCC 20] and Harakchand Ratanchand Banthia v. Union of India [(1969) 2 SCC 166 : (1969) 2 SCC 166 : AIR 1970 SC 1453]).”

52. More recently in Karnataka Live Band Restaurants Assn. v. State of Karnataka the Supreme Court held:—

46. As and when the question arises as to whether a particular restriction imposed by law under clause (6) of Article 19 is reasonable or not, such question is left for the court to decide. The test of reasonableness is required to be viewed in the context of the issues, which faced the impugned legislature. In construction of such laws and while judging their validity, the court has to approach the

issue from the point of furthering the social interest, moral and material progress of the community as a whole. Likewise, while examining such question, the Court cannot proceed on a general notion of what is reasonable in its abstract form nor can the court proceed to decide such question from the point of view of the person on whom such restriction is imposed. What is, therefore, required to be decided in such case is whether the restrictions imposed are reasonable in the interest of general public or not.

47. This Court has laid down the test of reasonableness in *State of Madras v. V.G. Row* [*State of Madras v. V.G. Row*, AIR 1952 SC 196 : 1952 Cri LJ 966] and very succinctly said that it is important, in this context, to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial mind.

48. This Court has further ruled that the expression “in the interest of general public” occurring in clause (6) of Article 19 is an expression of wide import which comprehends in it public order, public health, public security, morals, economic welfare of the community, and lastly, objects mentioned in Part IV of the Constitution. (See *Municipal Corpn., Ahmedabad v. Jan Mohammed Usmanbhai* [*Municipal Corpn., Ahmedabad v. Jan Mohammed Usmanbhai*, (1986) 3 SCC 20] and *Deepak Theatre v. State of Punjab* [*Deepak Theatre v. State of Punjab*, 1992 Supp (1) SCC 684].”

53. At the outset it may be noted that the petitioner and its members have not been deprived of the right to engage in the trade of physical stamp paper. The Court has also not been shown any decision of the State Government expressly barring or discontinuing the sale and distribution of physical stamp paper. The agreement proposed by SHCIL and the 2013 Rules additionally empower the petitioner to engage in the sale and distribution of e stamps. The argument of a system of livelihood being totally effaced is thus without substance. The petitioners have also failed to establish that the business of distribution of e stamp is wholly unviable

or unprofitable. The arguments addressed on this score, as was noted hereinabove, were wholly conjectural and based on assumptions which were not backed by any reliable material or data. In any case the functioning of more than 3000 ACC's in the State is stark testimony of this contention being bereft of substance. It is equally important to note that the 2013 Rules themselves require the CRA to enter into an agreement with ACC's who would be paid a commission on mutually acceptable terms. The Court also bears in mind the submission of Sri. Shailendra that the rate of commission which is fixed is not sacrosanct and that it is open to parties to arrive at a mutually agreeable rate of commission. The agreement also puts in place a dispute redressal mechanism which would clearly take care of situations where a dispute as to the rate of commission arises. In any case the rate of commission which is presently proposed has not been established on the strength of cogent material to be wholly uneconomical or bound to cause a loss. While the petitioner may perceive the arrangement proposed by SHCIL to be unviable, that cannot possibly constitute an infringement of a right to carry on trade or business.”

12. In light of the aforesaid legal position, this Court is of the considered opinion that the petitioner can claim no fundamental right which may compel the respondents to necessarily enlist the petitioner for the purposes of auctioning of uncleared or unclaimed goods. All that Articles 14 and 19 of the Constitution mandate is to place the respondents under an obligation to ensure that as and when they do decide to invite tenders or bids or invite persons to enter into a contract with an organ of the State, it adopts a fair and non-arbitrary criterion for award of contract. The Court thus finds that the challenge as raised in the instant writ petition is misconceived and consequently must fail.

13. Accordingly, and for all the aforesaid reasons, the writ petition shall stand dismissed.

**YASHWANT VARMA, J.**

**SEPTEMBER 5, 2022/bh**