

SUPREME COURT OF INDIA

Association of Registration Plates

Vs

Union of India

Writ Petition (Civil) 41 of 2003

(S. R. Babu and G.P.Mathur)

26/05/2004

JUDGMENT

G. P. MATHUR, J.

I had the advantage of reading the draft judgment prepared by my learned Brother Mathur, J. and I regret my inability to agree with him.

The object of the relevant provisions, which are under challenge before this Court is not to create a monopoly in favour of any person as has been held by my learned Brother. I cannot also agree that **Clause 4(x) of the Motor Vehicles [New High Security Vehicle Registration Plates] Order, 2001 issued by the Central Government on 22nd August, 2001 deserves to be quashed. I am not giving detailed reasons because in any event the matter will have to go to a larger bench for due appreciation of the matter. #**

In view of the disagreement between us, the matter is referred to a larger bench.

Hon'ble Justice G.P. MATHUR

1. The challenge in these Writ Petitions and Transfer Cases is to certain clauses in the Motor Vehicles (New High Security Vehicle Registration Plates) Order, 2001 issued by the Central Government and also to some conditions imposed in the Notice Inviting Tenders issued by various State Governments for supply of High Security Registration Plates. Writ Petition no. 41 of 2003 shall be treated as leading case.

2. It will be convenient to give the background under which the State Governments issued the Notice Inviting Tenders (for short NITs) for supply of High Security Vehicle Registration Plates (for short HSVRP). Section 2(28) of the Motor Vehicles Act, 1988 (for short 'the Act') defines "motor vehicle" or "vehicle". Section 2(32) defines "prescribed" and it means prescribed by rules made under the Act. Section 39 of the Act lays down that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with Chapter IV and the vehicle carries a registration mark displayed in the prescribed manner. Section 41 of the Act deals with registration of the vehicle and it lays down that on an application made by or on behalf of the owner of a motor vehicle for registration in the prescribed form and accompanied by prescribed fee, the registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in such form and containing such particulars and information and in such manner as may be prescribed by the Central Government. Sub-section (6) of this Section provides that the registering authority shall assign to the vehicle for display thereon, a distinguishing mark referred to as the registration mark consisting of one of the groups of such of those letters and followed by such letters and figures as are allotted to the State by the Central Government from time to time by notification in the Official Gazette, and displayed and shown on the motor vehicle in such form and in such manner as may be prescribed by the Central Government. In exercise of power conferred by Section 64 of the Act and after previous publication as required by Section 212, the Central Government made the Central Motor Vehicles Rules, 1989 (for short 'the Rules'). Rule 50 of the Rules deals with form and manner of display of registration marks on the motor vehicles. Sub-rule (1) of this Rule deals with motor vehicles and sub-rule (2) deals with motor cycles. Sub-rule (1) of Rule 50 in so far as it is relevant for the controversy in hand is being reproduced below:

"Section 50. Form and manner of display of registration marks on the motor vehicles - (1) On or after commencement of this rule, the registration mark referred to in sub-section (6) of section 41 shall be displayed both at the front and at the rear of all motor vehicles clearly and legibly in the form of security license plate of the following specifications, namely:-

(i) the plate shall be a solid unit made of 1.0 mm aluminium conforming to DIN 1745/DIN 1783 or ISO 7591. Border edges and corners of the plate shall be rounded to avoid injuries to the extent of approx. 10 mm and the plates must have an embossed border. The plate shall be suitable for hot stamping and reflective sheet has to be guaranteed for imperishable nature for minimum five years. The fast colouring of legend and border to be done by hot stamping;

(ii) the plate should bear the letters "IND" in blue colour on the extreme left centre of the plate. The letter should be one-fourth of the size of letters mentioned in rule 51 and should be buried into the foil or applied by hot stamping and should be integral part of the plate;

(iii) each plate shall be protected against counterfeiting by applying chromium-based hologram, applied by hot stamping. Stickers and adhesive labels are not permitted. The plate shall bear a permanent consecutive identification number of minimum seven digits, to be laser branded into the reflective sheeting and hot stamping film shall bear a verification inscription;

(iv) apart from the registration marks on the front and rear, the third registration mark in the form of self destructive type, chromium based hologram sticker shall be affixed on the left hand top side of the windshield of the vehicle. The registration details such as registration number, registering authority, etc., shall be printed on the sticker. The third registration mark shall be issued by the registering authorities/approved dealers of the license plates manufacturer along with the regular registration marks, and thereafter if such sticker is destroyed it shall be issued by the license plate manufacturer or his dealer;

(v) the plate shall be fastened with non-removable/non-reusable snap lock fitting system on rear of the vehicle at the premises of the registering authority;

The license plates with all the above specifications and the specified registrations for a vehicle shall be issued by the registering authority or approved license plates manufacturers or their dealers. The Central Road Research Institute, New Delhi or any of the agency authorised by the Central Government shall approve the license plates manufacturers to the above specifications.

*(vi) ..(omitted as not relevant)" **

3. In Exercise of the power under Sub-section (3) of Section 109 of the Act the Central Government issued an order known as Motor Vehicles (New High Security Registration Plates) Order, 2001 on 22nd August, 2001 in order to notify certain standards in respect of new system of high security registration plates for motor vehicles and the process used by a manufacturer or vendor for manufacturing or supplying such plates with reference to the amendments made in the Central Motor Vehicles Rules, 1989 by the Central Motor Vehicles (Ist Amendment) Rules, 2001. Clauses 2, 3 and 4 of this Order are being reproduced below:-

2. It shall come into force on the 28th day of September, 2001 in case of new registered vehicles from that date. In case of already registered vehicles, two years from the date of publication of this Order in the official gazette.

3. Application- This Order shall apply to motor vehicles as defined in clause 28 of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

4. A manufacturer or supplier of new High Security Registration Plates shall comply with the following specification, namely:-

(i) The manufacturer or supplier shall have a certificate from the Central Road Research Institute, New Delhi or any one of the testing agencies authorised by the Central Government under Rule 126 of the Central Motor Vehicles Rules, 1989

(ii) The registration plate shall conform to the specifications spelt out in Rule 50 of the Central Motor Vehicles Rules, 1989 and shall conform to DIN 1745/DIN 1783 or ISO 7591, as updated from time to time. The Registration Plate has to be guaranteed for imperishable nature for a minimum of five years.

(iii) .. (omitted as not relevant)

(iv) To protect against counterfeiting, a chromium- based hologram of the size of 20 mm x 20 mm is to be applied by hot stamping on the top left hand corner of the plate in both front and rear plates. The hologram shall contain Ashoka emblem with "Bharat Sarkar" and "Government of India" on each side, on left and right side respectively on Ashoka emblem vertically, as specified in the sketch, as given in the Annexure annexed to this Order.

(v)...

(vi)...

(vii)...

(viii) The registration plates fitted in the rear of the vehicle shall be fastened with non-removable/non-reusable snap lock system, for the sake of better security, at least two such snap locks shall be fitted.

(ix) No high security plate shall be affixed outside the premises of the registering authority.

(x) The manufacturer or the vendor selected by the State Transport Department for supply of such registration plates may be for the State as a whole or for any region of the State

(xi) The registration plate will be supplied to the motor vehicle owners by the vendor against the authorization by the Road Transport Officer or any officer designated for the purpose by the State Transport Department.

(xii) The replacement for any existing registration plate may be made by the concerned transport authority only after ensuring that the old plate has been surrendered and destroyed.

(xiii) A proper record of the registration plates issued by the manufacturer or the vendor, authorised by the State Government, should be maintained on a daily basis and got tallied periodically with the records of the Transport Office.

(xiv) Periodic audit shall be carried out by concerned testing agencies to ensure compliance of the requirements of the High Security Registration Plates.

4. The aforesaid Order was amended by a notification dated 16th October, 2001 issued by the Central Government in exercise of power under Section 109(3) of the Act and the Order so issued is called Motor Vehicles (New High Security Registration Plates) (Amendment) Order, 2001. By this Order certain provisions of the earlier order were amended and in sub-clause (v) the following proviso was inserted:

*"Provided that the permanent consecutive identification number in Arabic number shall be preceded by two alphabets representing the name of the vendor or the manufacturer or the supplier, as the case may be, for whom the type approval certificate is issued by the test agencies." **

The Union Territory Administration of Daman & Diu issued a notice inviting bids for appointment of the manufacturer for supply of High Security Registration Plates for all types of vehicles and in order to implement Rule 50 of the Rules as amended up to date and the Orders issued by the Central Government in this regard. The opening part of the Notice Inviting Tenders (NITs) and para 1.5.3, 1.5.5 and 1.5.6 are being reproduced below:

"The appointment of the manufacturer shall be for the whole Union Territory.

The Director of Transport, Daman & Diu invites bids on behalf of the President of India for selection of an eligible manufacturer having type approval and requisite manufacturing capacity to produce the High Security Registration Plates in conformity with the specifications mentioned in the above mentioned amendments.

1.5 ELIGIBLE BIDDERS

This invitation for bid is open to all the bidders who fulfill all the following Criteria on cumulative basis.

1.5.3 The bidder or the Promoter or any of the members of Joint Venture should have sufficient experience in the field of Registration Plates and should be working in at least three countries for Registration Plates having Security Features worldwide or in minimum three such projects (necessary credentials from the Government of such country should be attached along with a proforma as per Annexure XI duly filled in).

1.5.5 The Bidder or the Joint Venture partners together must have a minimum net worth equivalent to Indian Rupees 40 crores (Bank Solvency Certificate to be produced).

*1.5.6 The Bidders or the joint venture partners together must have a minimum annual turnover equivalent to Indian Rupees 50 Crores in the immediately preceding last year and at least 15% of this turnover must be from the Registration Plate business. Certificate confirming above and certification of minimum 15% turnover being from registration plate business will have to be provided duly attested by a Chartered Accountant/any Bank to be attached in support of fulfillment of this condition." **

5. In Writ Petition (C) No. 395 of 2003 (M/s. Signs India v. Union of India & Ors.) NITs issued by State of Pondicherry and State of West Bengal have been challenged which contain more or less similar clauses. The eligibility criteria of clause 1.5.3 of NIT issued by State of Pondicherry requires that the bidder or the promoter or any of the members of Joint Venture should have sufficient experience in the field of Registration Plates and should be working in minimum of five countries with Registration Plates having security features. Clause 1.5.6 requires that the bidder or the joint venture partners together must have a minimum annual turn over equivalent to Indian Rupees 75 crores in the immediately preceding last year and at least 15% of this turnover must be from the Registration Plates business. Similarly clause 1.5.5 of NIT issued by the State of West Bengal requires the bidder or the joint venture partners together must have a minimum net worth equivalent to Indian Rupees 50 crores and clause 1.5.6 requires the bidders or the joint venture partners together must have a minimum annual turn over equivalent to Indian Rs. 50 crores during preceding financial year i.e. 2002-2003 and 25% of this amount should have come from High Security Registration Plate business.

6. In compliance with the Motor Vehicles (New High Security Registration Plates) Order, 2001 the NITs further required that the bidders must have obtained "Type Approval Certificate" from the test agencies CRRI, ARAI or VRDE for the High Security Registration Plates as per the Gazette notification and the certificate must be valid on the date of opening of bid.

7. The writ petitioners feel aggrieved by and have challenged clause 4(x) of the Motor Vehicles (New High Security Registration Plates) Order, 2001 which provides that the manufacturer or the vendor selected by the State Transport Department for supply of such Registration Plates may be for State as a whole or for any region of the State. They have also challenged the procedure adopted by various State Governments in inviting bids for the purpose of selecting and appointing only one manufacturer of HSVRP for supplying the registration plates for all the motor vehicles and two-wheelers in the whole State.

8. Shri S. Ganesh, learned senior counsel for the petitioners has submitted that under Section 41 of the Act the registering authority, on the application moved by the owner of the vehicle, has to assign a registration mark to a vehicle for display thereon. The form of the license plates and the manner in which it has to be fastened to the vehicle has been provided in Rule 50 of the Rules. In view of clause 2 of Motor Vehicles (New High Security Registration Plates) Order, 2001 not only the new

vehicles are to have HSVRP but all the old and existing vehicles are also required to replace their number plates with HSVRP within a period of two years. But, clause 4(x) of the said Order empowers the State Government to select a single manufacturer or vendor for the whole State. The State Governments have also issued NITs for the purpose of selecting a single manufacturer or vendor for their respective States. The affect of such a provision is that all other manufacturers or suppliers who may have a Type Approval Certificate from the Central Road Research Institute, New Delhi or from any one of the testing agencies authorised by the Central Government under Rule 126 of the Rules, like the writ petitioner, would be totally deprived of an opportunity to carry on trade or business in HSVRP. Learned counsel has submitted that clause 4(x) of the Order and also the notices issued by the various State Governments inviting tenders for selection of one manufacturer or vendor for whole of the State clearly violates the fundamental right of the writ petitioner guaranteed under Article 19(1)(g) of the Constitution as a monopoly is being created in favour of a single private operator, who will get a huge business of Rupees four to five thousand crores.

9. Shri S. Uppal who appeared for the petitioner in writ petition no. 77 of 2003 has submitted that the selection of a single supplier for the whole of the State goes against the preamble of the Constitution which lays emphasis on securing to all its citizens equality of opportunity and also violates Article 39(b) and (c) of the Constitution by creating a monopoly in favour of a single individual. Shri M.L. Verma, while supporting the writ petitioners has submitted that in terms of the Order issued by the Central Government on 22nd August, 2001 or the amended Order issued on 16th October, 2001 anyone having a Test Approval Certificate from one of the bodies mentioned in second para of Rule 50(1)(v) of the Rules is fully entitled to supply HSVRP. Therefore neither any such Order can be issued by the Central Government nor any such procedure can be laid down by the State Governments wherein the right to supply HSVRP to the owners of the vehicle may be given to a single individual. Shri Verma has further submitted that the NITs do not show that a manufacturer or supplier so selected will charge a fixed amount from the owner of a motor vehicle towards the cost of HSVRP and as the person so selected will have a monopoly business for a long period of 15 years, he may enhance the amount in an arbitrary manner to the detriment of owner of the vehicle.

10. Shri Mukul Rohtagi, learned Addl. Solicitor General appearing for Union of India has submitted that the conditions set out in the Order are in addition to the requirements of Rule 50 and it lays down how the new policy will be implemented. He has further submitted that sub-clauses (ix) and (x) of clause 4 of the Order ensures full proof implementation of the Scheme and the Scheme cannot be implemented if there are several persons who are doing the work of supply of HSVRP to the owners of motor vehicle. Shri Kapil Sibbal, learned senior counsel appearing for respondent no.5 has submitted that Rule 50(1)(v) lays down only the eligibility criteria for a manufacturer or dealer of HSVRP. It is fully open for the Union of India or for the State Governments to impose further conditions in the tender document and in exercise of such a power the States are competent to select only one manufacturer. Shri Harish Salve, learned senior counsel appearing for respondent no.11 has submitted that the nature of activity namely supply of HSVRP is such that there are inherent limitations in the same. He has submitted that like mobile phone operators and TV Channel operators the Government cannot give licence to everyone and has to make a selection. So is the case with HSVRP and the scheme would fail, if there are many players in the field who are either manufacturing or supplying the HSVRP.

Shri R. F. Nariman, learned senior counsel appearing for respondent no.6 and Shri Rajiv Dhawan, learned senior counsel appearing for respondent no.8 have supported the aforesaid contention. Learned senior counsel have submitted that it is not possible to read second para of Rule 50(1)(v) in a literal manner otherwise the very purpose of achieving security would be defeated. In such circumstances there has to be a selection of a manufacturer or supplier and consequently clause 4(x) of the Order issued by the Central Government and also the procedure adopted by the State Governments cannot be faulted in any manner. Shri Dhawan has further submitted that Article 19(6) of the Constitution does not in any manner prohibit giving of a contract to a single individual and selection of a person does not create a monopoly. Shri Dipankar Gupta who has appeared for respondent no.2 (West Bengal Transport Infrastructure Development Corporation Ltd.) an Undertaking of Transport Department, Government of West Bengal has submitted that the Motor Vehicles Act and the Rules framed thereunder require High Security Number Plates and the respondent no.2 has no choice in the matter and has to implement the Scheme. He has further submitted that Scheme cannot be successfully implemented if there are number of persons who are manufacturing or supplying number plates and having too many manufacturer or suppliers would defeat the Scheme itself.

11. Before considering the legal submissions made by learned counsel for the parties it is necessary to bear in mind that HSVRP by itself has nothing to do with the security of the vehicle. HSVRP cannot in any manner help in preventing the theft or the use of the vehicle by an unauthorised person. It does not contain any mechanism by which it may ensure that the door of the vehicle would not be open or the ignition will not work or engine will not start or the steering would not work which may either deter or prevent a person from committing theft of the vehicle or using the same in an unauthorised manner. HSVRP is only confined to the number plates and the only aspect which has been pointed out by learned counsel for the respondents is that they will be so designed or manufactured that it will not be possible for a third person to either prepare a duplicate or to replace them without damaging the chromium based hologram which would be affixed on the left hand inner side of windshield of the vehicle. The Number Plates on the rear of the vehicle shall be fastened with snap lock fitting system which, it is said, would break, if an attempt is made to replace the same.

12. Section 39 of the Act enjoins that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place unless the vehicle is registered and the vehicle carries a registration mark displayed in the prescribed manner. Section 41 of the Act gives the procedure for the registration of vehicle and sub-section (6) thereof provides that the registering authority shall assign to the vehicle a registration mark which has to be displayed and shown on the vehicle in a manner prescribed by the Central Government. Rule 50 lays down the form and manner of display of registration mark on the motor vehicles. The second para of clause (v) of Sub-rule (1) of Rule 50 is important and it lays down that the license plates with all the specifications contained in clauses (i) to (iv) shall be issued by the registering authority or approved licence plates manufactures or their dealers. It further lays down that the Central Road Research Institute, New Delhi or any of the agency authorised by the Central Government shall approve the license plates manufacturers to the specifications contained in clauses (i) to (iv). The effect of these provisions is that no motor vehicle can be driven in a public place without a registration mark displayed in the prescribed manner and this registration mark is such which is assigned to the vehicle by the registering authority. The registration mark has to be displayed in the form of licence plates which shall be issued by the registering authority or approved licence plates manufacturers or

their dealers. Therefore it is open for the registering authority itself to issue a licence plate after charging an appropriate fee or consideration. In addition to the registering authority, licence plates may also be issued by a licence plates manufacturer who has been approved by the Central Road Research Institute, New Delhi (CRRI) or any other agency authorised by the Central Government and also by dealers of such manufacturers.

13. The statutory provisions namely, the Act and the Rules do not lay down that there has to be only one manufacturer for the entire State. The question which requires consideration is whether in view of these statutory provisions is it permissible for the Central Government, while exercising power under Section 109(3) of the Act, to issue an Order to the effect that the manufacturer or the vendor selected by the State for supply of such registration plates may be for whole of the State or any region of the State which in effect means selection of a single manufacturer for supply of registration plates in the entire State. Similarly the competence of the State Government to select a single manufacturer for supply of licence plates for the whole State has to be judged in that light. It is important to emphasise that in the cases in hand the registration authority of the State Government has not undertaken to supply the licence plates. It is not a case where the State Government is either granting a largesse or selling its property where it can do so in favour of a single individual by inviting tenders. Similarly it is not a case where the State Government maybe buying some property which it may do so from a single individual by inviting tenders. Here the job of supplying HSVRP to all the existing owners of vehicles and new buyers for a period of 15 years is being entrusted to a single licence plates manufacturer. Such HSVRP have to be bought by all those who own a vehicle. By selection of a single manufacturer a monopoly is sought to be created in his favour and all the owners of vehicles would be compelled to purchase HSVRP from that single manufacturer or his dealers even though in the matter of purchase of vehicle they have a wide range of choice without any kind of compulsion by the Government. This action of the State Government whereby all other licence plates manufacturers, who are satisfying the statutory requirement, namely, of second para of clause (v) of sub-rule (1) of Rule 50 of the Rules, (have got Type Approval Certificate from the Central Road Research Institute or authorised agency) are totally excluded clearly violates the fundamental right of the writ petitioner as guaranteed under Article 19(1)(g) of the Constitution.

14. The first decision touching the creation of a monopoly in favour of a private individual to carry on business to the exclusion of all others was rendered by Six Judges of this Court (the Court then consisted of six Judges only) in *Rasheed Ahmed v. Municipal Board Kairana*, In this case the Municipal Board, on the basis of an auction gave the exclusive contract, for carrying on whole sale business in vegetables, in favour of one H. The writ petitioner Rasheed Ahmad, who was earlier carrying on wholesale business as commission agent in vegetables applied for a licence but his application was rejected and the stand of the Municipal Board was that except for H, no one else can carry on the said wholesale business. It was held that the action of the Municipal Board in granting monopoly rights in favour of H violated the fundamental right of the writ petitioner guaranteed under Article 19(1)(g) of the Constitution.

15. Clause 6 of Article 19 of the Constitution was amended by the Constitution (First Amendment) Act, 1951 which came into force on 18th June, 1951 and it reads as under:

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, -

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

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16. In view of Article 19(6)(ii) the carrying of any trade, business, industry or service by the State, would not be questionable on the ground that it infringes the right guaranteed by Article 19(1)(g) even though by law the State excludes the citizens, wholly or partially, from the trade or business entered upon by the State. The State is, therefore, free to create a monopoly in favour of itself. In *Akadasi Padhan v. State of Orissa* the vires of Orissa Kendu Leaves (Control of Trade) Act came up for consideration. Section 3 of the Act provides that no person other than (a) the Government; (b) an officer of government authorised in that behalf; (c) an agent in respect of the unit in which the leaves have grown shall purchase or transport Kendu leaves. Section 4 empowers the government to fix the price at which Kendu leaves shall be purchased by any officer or agent from the growers of Kendu leaves and section 8 empowers the government to appoint agents for different units to purchase Kendu leaves. Section 10 provided that "Kendu leaves purchased by government or by their officers or agents under the Act shall be sold or otherwise disposed of in such manner as government may direct". Agents were appointed by the government to purchase Kendu leaves and they were authorised under the agreements to purchase Kendu leaves and also to trade in the Kendu leaves so purchased.

After examining the provisions of the Act this Court held that sections 3 and 4 of the Act were valid but declined in substance to give effect to the monopoly because the agents appointed were not agents of the government merely for purchasing Kendu leaves but were authorised to carry on trade in leaves purchased on their own account. It was held that the operation of the State monopoly was also to give rise to a monopoly in favour of the agents which did not have the protection of Article 19(6)(ii). It was further held that the law cannot be used by the State for the private benefit of agents, it must only be administered for the benefit of the general public and any arrangement in which under the guise of monopoly the State permitted a set of persons to make profit for themselves by carrying on business in Kendu leaves on their own behalf was invalid. After the decision in *Akadasi Padhan*

(supra) the Government of Orissa made some changes in the machinery for the implementation of the monopoly and entered into an agreement of sale of Kendu leaves after inviting tenders from traders. This was again challenged and in *Rashbihari Panda v. State of Orissa* which was decided by a Constitution Bench. It was held that the validity of the law by which the State assumed the monopoly to trade in a given commodity has to be judged by the test whether the entire benefit

arising therefrom is to endure to the State, and the monopoly is not used as a cloak for conferring private benefit upon a limited class of persons. It was also held that the action of the government if conceived and executed in the interest of the general public is not open to judicial scrutiny but it is not open to the government thereby to create a monopoly in favour of third parties from their own monopoly. It was accordingly held that both the Schemes evolved by the government were violative of the fundamental right of the writ petitioners under Article 19(1)(g) and Article 14 because the schemes give rise to a monopoly in the trade in Kendu leaves to certain traders, and singled out other traders for discriminatory treatment. This principle was more succinctly stated in *State of Rajasthan v. Mohan Lal Vyas* in the following words:

" (i) There cannot be any law in violation of the provisions of the Constitution. A monopoly right cannot be conferred on a citizen under the Constitution nor can it be justified under the Constitution. The State can enter into monopoly but if the State conferred any monopoly right on a citizen it would be indefensible and impermissible and would be an infraction of the inviolable provision of the Constitution.

*(ii) The Constitution forbids grant by the State to a citizen of monopoly right to carry on the business of plying buses undertaken in the agreements. The manner in which the agreements were to be performed became illegal as a result of the Constitution. The agreements were therefore incapable of enforcement. The Constitution struck at the root of those agreements." **

17. Shri Mukul Rohtagi has submitted that the single manufacturer who will be selected for supply of HSVRP would pay five percent royalty to the State Government. This fact is not very clear from the tender document. Even assuming it to be so, in order to satisfy the requirement of Article 19(6)(ii) the entire benefit arising from creation of monopoly must go to the State. In view of this legal position sub-clause (x) of clause 4 of the Order issued by the Central Government and also the procedure adopted by the State Governments in selecting a single manufacturer for supply of HSVRP violates the fundamental rights of the writ petitioner guaranteed under Article 19 (1)(g) of the Constitution and are invalid and consequently they are liable to be struck down.

18. In *Administrative Law* by David Foulkes (Butterworths - 1990 Ed.) in Chapter XIV dealing with *The Contracts Of Public Authorities* on page 427, the author has said that there would certainly be no impropriety in a local authority acting on a policy, in awarding contracts, of favouring local firms just as it may, in exercising development control functions. There are requirements of European Economic Community relevant to contracting procedures. Directives EEC 71/304 (concerning construction contracts) and 70/32 (concerning supply contracts) seek to ensure that public authorities do not discriminate on the grounds of nationality against contractors from other member States. EEC Directive 71/305 and 77/62 contain, respectively, detailed requirements about both categories of contract. On page 428 it is said that criteria on which authority is to award the contract have been laid down in the directives, but these directives are largely ineffective. This shows that even members of European Economic Community adopt a policy of favouring local contractors and, therefore, some directives have been issued. But, in the present case, the conditions mentioned in the NITs by different State Governments are just the reverse and have been purposely so designed so as to completely oust an Indian manufacturer and to ensure that the contract is awarded to such a company which must have a joint venture with a foreign company already

dealing in such kind of business. The award of contract for a period of 15 years would mean that not only the doors for Indian companies or the Government would be shut for such a long period but even if a better or cheaper technology is developed, either here or abroad, the same cannot be implemented.

19. Shri S. Ganesh, learned senior counsel has also assailed the eligibility conditions mentioned in the NITs issued by some of the State Governments as wholly arbitrary, irrelevant and discriminatory against the Indian manufacturers of HSVRP. As mentioned earlier the eligibility criteria in the NIT issued by the Union Territory of Daman and Diu contains a clause that the bidder or the promoter or the joint venture partner should have experience in at least three countries in the field of registration plates having security features, their minimum net worth should be Rs. 40 crores, annual turnover in the immediately preceding last year should be Rs.50 crores and at least 15 per cent of this turnover must be from the registration plates business. The eligibility condition in the NIT issued by the State of Tamil Nadu requires the bidder, promoter or any member of the joint venture should have sufficient experience of working in at least five countries; must have a minimum net worth of Rs.50 crores; and must have annual turnover of Rs.100 crores in the immediately preceding last year. Similar is the case for State of Pondicherry which requires working experience in five countries; minimum annual turn over of Rs.75 crores in the immediately preceding year and at least 15 per cent of this turn over must be from registration plates business. The State of West Bengal requires minimum net worth of Rs.50 crores; must have a minimum annual turn over of Rs.50 crores during the year 2002-2003; and 25 per cent of this amount should have from the High Security Registration Plates business.

20. Shri Ganesh has submitted that the respondent nos. 5, 6, 7 and 8 have entered into some kind of agreement with two German companies, namely, M/s. Kurz India Pvt.Ltd. and M/s. Eric UTSCH Ltd. who are manufacturers of HSVRP of the type which is mentioned in the Order issued by the Central Government on 22nd August, 2001 and also in the NITs issued by various State Governments and these two companies also have experience of selling these kind of number plates in 3 to 5 countries. The condition requiring certain percentage of turn over in registration plates business and experience in three to five countries, it is submitted, has been deliberately introduced in order to oust all Indian companies at the threshold and to ensure that the contract is awarded only to respondent nos. 5, 6, 7 and 8 to the exclusion of all others as they alone would be able to meet the eligibility qualification.

21. In my opinion there is substance in the contention raised on behalf of the writ petitioners. The legislature has taken care in making a specific provision regarding eligibility of manufacturers of licence plates. The second para of clause (v) of sub-rule (1) of Rule 50 of the Rules says that the Central Road Research Institute, New Delhi or any of the agency authorised by the Central Government shall approve licence plates manufactures to the specifications given in clauses (i) to (iv) of the sub-rule. Therefore in terms of the Rules once approval is given to a licence plates manufacturer by Central Road Research Institute, New Delhi or any other agency authorised by the Central Government, it becomes eligible to supply HSVRP (licence plates). The HSVRP are sought to be introduced for the first time in the country after Rule 50 had been amended on 28.3.2001. Any clause in NIT which requires that the tenderer or bidder or joint venture partner should have a turnover of Rs.50 crores in the immediately preceding last year and at least 25 per cent of this turnover must be from the licence plates business, inevitably means that it would be a foreign

company. The HSVRP having not been introduced in India so far it is obvious that no Indian company can have a turn over of that magnitude in the preceding year. The clear impact of this condition is that all Indian companies must be ousted even though they may be technically competent to manufacture HSVRP and have the requisite approval from the body or agencies mentioned in second para of clause (v) of sub-rule (1) of Rule 50 of the Rules. The petitioners have placed on record the reply given by Hon.

Minister for Road Transport and Highways in the Rajya Sabha on 29th November, 2001 in response to a question put to him regarding the details of the countries where holographic vehicle number plates have been made mandatory and the names of such countries are as under:

(a) Armenia (b) Columbia (c) Congo (d) Curacao (e) Ethiopia (f) Georgia (g) Iraq (h) Mali (i) Maalta (j) Oman (k) Palestine (l) Srilanka (m) Tanzania (n)Uganda (o)Uruguay (p) Zambia.

22. The names of the countries having holographic number plates demonstrates the sheer futility of having a condition in the tender document regarding experience in 3 to 5 countries. Some of these countries are tiny States and most of them are backward and poor as compared to India. The number of vehicles therein must be very small. The experience of supplying HSVRP in these countries is hardly a guarantee of the quality of the products supplied. When India is capable of making most sophisticated missiles and rockets and passenger cars manufactured in India are being exported to highly advance countries of Western Europe like U.K. and Germany and commercial vehicles to many countries all over the world facing stiff competition, it does not at all appeal to reason that to ensure quality of the product, experience in three to five other countries (which would be amongst those described earlier) should be necessary. Similarly the condition in the NITs regarding a particular quantum of turnover in number plates business in immediately preceding year cannot be met by any Indian company which is exclusively dealing with HSVRP as the said product (number plates) is being introduced in the country for the first time.

It can be met only by those whose joint venture partner is a foreign company and is already dealing with such type of licence plates. This condition again has the affect of completely ousting Indian companies. The Government of India, Ministry of Road Transport and Highways had sent a letter dated 13th November, 2002 to the Secretary/Commissioner (Transport) of all States wherein it was clearly mentioned that earlier guidelines circulated on 6th March, 2002 and 14th June, 2002 were merely suggestive in nature and they do not stipulate details about experience/capacity of bidder/collaborators. It was also mentioned therein that experience in 5 countries is not a mandatory requirement. This letter has been completely ignored while laying down the eligibility criteria.

23. It may be mentioned here that the Order issued by the Central Government on 16th October, 2001 by which a proviso was appended to clause (v) of the Order issued on 22nd August, 2001 requires that permanent consecutive identification number shall be preceded by two alphabets representing the name of vendor or manufacturer or the supplier. This itself contemplates existence of several manufacturer or supplier otherwise there was no necessity of mentioning their name and that several manufacturers can simultaneously operate.

24. In *Tata Cellular v. Union of India* it was 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. It was also held that the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. After review of large number of earlier decisions on the scope of judicial review of administrative decisions and exercise of contractual powers of Government bodies one of the principles enunciated therein is as under:

*"The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facets) but must be free from arbitrariness not affected by bias or actuated by mala fides." **

25. In *Union of India v. Dinesh Engineering Corporation*, 41 the Court ruled as under:

*"But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law, especially Article 14 of the Constitution" **

26. I am of the opinion that in the fact situation of the present case especially having regard to the requirement contained in second para of clause (v) of sub-rule (1) of Rule 50 of obtaining approval from Central Road Research Institute or from any of the authorised agencies, the further condition in the NITs regarding turn over of a particular amount in the preceding year coupled with 15 or 25 per cent of the said turn over in the business of manufacturing licence plates and also the condition regarding experience in 3 to 5 countries are wholly arbitrary and have no rationale basis. The said condition is accordingly struck down.

27. Shri Ganesh has also submitted that clause 4 (x) of the Motor Vehicles (New High Security Registration Plates) Order, 2001 which lays down that the manufacturer or the vendor selected by the State for supply of such registration plates may be for the State as a whole or any region of the State is ultra vires as no such order can be made in the exercise of power conferred by sub-section (3) of Section 109 of the Act. Section 109 finds place in Chapter VII of the Act and the title of the said Chapter is Construction, Equipment and Maintenance of Motor Vehicles. Section 109 of the Act reads as under:

Section 109: General provision regarding construction and maintenance of vehicles:

(1) Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

(2) Every motor vehicle shall be so constructed as to have right hand steering control unless it is equipped with a mechanical or electrical signaling device of a prescribed nature.

(3) If the Central Government is of the opinion that it is necessary or expedient so to do, in public interest, it may, by order published in the Official Gazette, notify that any article or process used by a manufacturer shall conform to such standard as may be specified in that order.

28. Section 2 (21-A) defines "manufacturer" and it means a person who is engaged in the manufacture of motor vehicles. Section 2(28) defines "motor vehicles" or "vehicle" and it means any mechanically propelled vehicle adapted for use upon roads. A motor vehicle manufactured by a manufacturer is sold without a registration plate. Thereafter the dealer sells the motor vehicle to a customer again without the registration plate. This position will be clear from the proviso to Section 39 of the Act which says that nothing in the section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government. Section 41 also points to the same position as it enjoins an application on behalf of the owner of a motor vehicle for its registration.

The question of issuing a certificate of registration and assigning it a registration mark arises only after sale of a motor vehicle. Therefore until the motor vehicle has been sold to a person by a dealer, the registering authority would not come into picture and there is no occasion for assigning it a registration mark. A manufacturer of vehicle is not at all concerned with registration thereof by the registering authority or assignment of a registration mark as contemplated by section 41 of the Act. Under sub- section (3) of section 109 the Central Government can prescribe the standards for any article or process used by a manufacturer. The power under this provision can, therefore, be exercised by the Central Government for prescribing the standard of the materials or articles or any process used as such in the manufacturing of the vehicle. Reading of sub-section (3) along with sub-sections (1) and (2) will show that it basically deals with the mechanical construction of the vehicle and to ensure safety both of the passengers travelling therein and also of others who are on the road. No order concerning a number plate simplicitor can, therefore, be issued by the Central Government in exercise of power conferred by sub-section (3) of section 109 of the Act. Shri Rohtagi has submitted that power to issue such kind of notification can be traced to sections 41(6) and 64 (b & d) of the Act. It is not possible to accept the submission made. Section 41(6) empowers the Central Government to allot group of letters and figures to a State for the purpose of assignment of registration mark by making a notification in the Official Gazette. Therefore, there is no scope for issuing the impugned notification in exercise of power conferred by this provision.

Section 64 confers rule making power upon the Central Government but in view of section 212 the power to make rules under the Act is subject to the condition of the rules being made after previous publication. It is not the case of the respondents that the previous publication of the notification dated 22nd August, 2001 had been made. The Central Government has also never treated it to be a

rule. Consequently the impugned notification cannot be held to have been made by the Central Government in exercise of power under section 64 (d) of the Act. In fact the Central Government has always treated it to be an Order issued under sub-section (3) of section 109 of the Act. The inevitable conclusion is that clause 4 (x) of the notification dated 22nd August, 2001 could not be issued by the Central Government in exercise of the power conferred by section 109(3) of the Act and therefore the said notification is ultra vires.

29. For the reasons mentioned above the Writ Petitions and Transfer Petitions are allowed with costs. Clause 4(x) of the Motor Vehicles (New High Security Vehicle Registration Plates) Order, 2001 issued by the Central Government on 22nd August, 2001 is quashed. The eligibility conditions mentioned in the NITs issued by various State Governments regarding; (1) turn over of Rs.50 crores or so with 15 to 25 per cent thereof in the business of manufacture of registration plates in the immediately preceding year, and (2) experience of manufacturing registration plates in 3/5 countries are also quashed.