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NAGAR NIGAM, MEERUT

v.

AL FAHEEM MEAT EXPORTS PVT. LTD. AND ORS.

DECEMBER 7, 2006

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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*Uttar Pradesh Municipal Corporations Adhinyam, 1959—ss. 422 and 423—Slaughter house—Licence granted to a party to run the slaughter house of Municipal Corporation for 1 year—On expiry of the licence, advertisement inviting tenders for running the slaughter house—Advertisement challenged by the party—High Court allowed the party to run the slaughter house for 10 years on certain terms and conditions—On appeal, held: High Court not justified in interfering with the advertisement as the same were not illegal, arbitrary or discriminatory—The question of taking a policy decision and to fix terms and conditions of a contract is for the concerned authority to decide and it is not a matter in the domain of the Courts—This normal rule can be departed from and contracts may be awarded by private negotiation only in rare and exceptional cases—Award of Government contracts through public auction/tender is to ensure transparency and this is required by Article 14 of the Constitution—Constitution of India, 1950—Article 14—Contract—Government Contract.*

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*Constitution of India, 1950—Article 226—Jurisdiction under—Scope of—Held: Though scope of such jurisdiction is wide—High Court ordinarily would not interfere in an administrative action unless it is inter alia found to be contrary to a legislative policy or arbitrary attracting the wrath of Article 14—Judicial Interference.*

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**Appellant-Corporation had issued an advertisement for modernizing the existing slaughter house - First respondent had submitted a project report in response. The same was not approved by the Corporation. In the meantime the first respondent was granted a licence for a period of one year to run a slaughter house owned by the appellant-Corporation. First respondent made a representation to the State Government to modernize the slaughter house. As the same was not considered, he filed a Writ Petition. High Court directed the State Government to consider the**

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representation. Appellant-Corporation instead of deciding the representation, issued an advertisement inviting applications for tenders for running of the slaughter house in question. In the meantime the licence granted to first respondent had also expired. First respondent filed Writ Petition challenging the advertisement. High Court allowed the Writ Petition directing that respondent No. 1 should be allowed to run the slaughter house for 10 years on terms and conditions stipulated therein. Hence the present appeal.

Allowing the appeal, the Court

**HELD:** 1.1. The directions issued by the High Court were totally unwarranted. The High Court undoubtedly exercises a wide jurisdiction under Article 226 of the Constitution of India. The jurisdiction of the High Court to entertain an application in the nature of a public interest litigation is well-known but it is also trite that the court should exercise its jurisdiction only when it is essential to do so. It is also trite that ordinarily the High Court would not interfere in an administrative action of the State unless it is *inter alia* found to be contrary to a legislative policy or arbitrary attracting the wrath of Article 14 of the Constitution of India. The jurisdiction of the High Court is limited in this regard. [366-D-F]

*State of U.P. v. Section Officer Brotherhood and Anr.*, [2004] 8 SCC 286, referred to.

1.2. The question who should be given the contract for the slaughter house and on what terms, is for the Municipal Corporation to decide, and not for the Courts. All that the Courts can do is to ensure that there is no arbitrariness on the part of the Municipal authorities. [368-B-C]

1.3. It is a well settled principle of law that having regard to the provisions of Article 14 of the Constitution of India, a State within the meaning of Article 12 thereof cannot distribute its largesse at its own sweet will. The Court can ensure that the statutory functions are not carried out at the whims and caprices of the officers of the government/local body in an arbitrary manner. But the Court cannot itself take over these functions. [368-B-D]

*R.S. Shetty v. Union of India*, AIR (1979) SC 1628, referred to.

1.4. It was not for the High Court to fix the terms and conditions of the Contract. It is for the state authorities to take a policy decision and fix

- A** the terms and conditions of the Contract. It is one thing to say that the High Court in exercise of power of judicial review may strike down the contract or a notice inviting the tender if it offends Article 14 of the Constitution of India, but it is another thing to say that the High Court in exercise of the power of judicial review would thrust a contract upon a non-willing party particularly when the said exercise would be violative of Article 14 of the Constitution.
- B** Yet again, save and except in some very rare and exceptional case, the question of fixing any terms of the Contract or laying down the terms and conditions is for the concerned authority to decide, and it is not a matter within the domain of the Courts. [370-F-H; 371-A-B]

- C** *Association of Registration Plates v. Union of India and Ors.*, [2005] 1 SCC 679, relied on.

- 1.5. In the present case, the respondent no.1 challenged the impugned advertisement issued by the Nagar Nigam. There is no illegality in the same. The Court should not ordinarily interfere with the terms mentioned in such an advertisement. Hence the High Court had no justification for interfering with the said advertisement. [371-G-H; 372-A-B, E]

- Global Energy Ltd. and Anr. v. Adani Exports Ltd. and Ors.*, [2005] 4 SCC 435 and *Master Marine Services (P) Ltd. v. Metcalfe and Hodgkinson (P) Ltd. and Anr.*, [2005] 6 SCC 138, relied on.

- E** 2.1. Contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public-auction or inviting tenders should be advertised in well known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services
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and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through 'private negotiations'. [368-H; 369-A-D] A

*Ram & Shyam Company v. State of Haryana and Ors.*, AIR (1985) SC 1147 and *Sachidanand Pandey v. State of West Bengal*, AIR (1987) SC 1109, relied on. B

2.2. Ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well known newspapers having wide circulation, so that all eligible persons will have opportunity to bid in the bid, and there is total transparency. This is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence. [370-D-F] C

3. The interest of justice would be subserved if the appellant Corporation is directed to issue an advertisement in well known newspapers having wide circulation again calling for bids on such terms and conditions which it may find to be reasonable within six weeks from the date of communication of this order. Till such time it will be for the appellant-Corporation to decide as to how the slaughter house should be allowed to function by making such interim arrangement as it may find fit and proper. [372-F-H] D E

4. Although the State of U.P. had rejected the proposal of the Municipal Corporation, the State is directed to have a fresh look at the matter and to consider the feasibility/desirability of grant of a licence to run the slaughter house for a longer period than one year on the condition that the plant should be modernized by the licensee. Such a policy decision may be required to be taken keeping in view the health and welfare of a large number of inhabitants of the vicinity where such abattoirs are functioning, as also *vis-à-vis* the health of the inhabitants of the locality, which is a fundamental right under Article 21 of the Constitution of India. If a policy decision is taken by the State, it goes without saying that the appellant-Corporation in future may act in terms thereof, unless otherwise provided for by the Statute. [372-H; 373-A-C] F G

**A** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5673 of 2006.

From the final Judgment and Order dated 29.3.2006 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 53782/2004.

**B** Jayant Bhushan, Nagendra Singh and Vishwa Pal Singh for the Appellant.

Dinesh Dwivedi, Ashish Mohan, Geetanjali Mohan, Ankur Chawla, Jayant Mohan, Ruby Singh Ahuja, S.W.A. Qadri, Mohd. Fuzail Khan and Kamendra Mishra for the Respondents.

**C** The Judgment of the Court was delivered by

**S.B. SINHA, J.** Leave granted.

**D** Nagar Nigam Meerut is before us questioning the legality of a judgment and order dated 29th March, 2006 passed by a Division Bench of the Allahabad High Court in Civil Misc. Writ Petition No. 53782 of 2004. Appellant-Corporation is a local authority constituted under Uttar Pradesh Municipal Corporations Adhiniyam, 1959 (the Act). As a local authority, indisputably it has a large number of public duties and functions to perform; maintenance of slaughter house being one of them. Chapter XVI of the Act *inter alia* provides for regulation of slaughter houses. Sections 422 and 423 of the said Act, which are relevant for the purpose of this case are set out herein below:

**E** “422. *Municipal Commissioner’s powers in respect of Corporation markets and slaughterhouse etc.* - Subject to the provision of this Act and the rule and bye-laws framed thereunder the Municipal Commissioner shall have the power—(a) upon being authorized by the Corporation in that behalf, to construct, purchase, take on lease or otherwise acquire any building or land for the purpose of establishing a Corporation market or a Corporation slaughter-house or stockyard within, and with the prior sanction of the State Government, without the limits of the Corporation and of extending or improving any existing Corporation market or slaughter-house;

**F** (b) from time to time, to build and maintain such Corporation markets, slaughter-house and stockyards and such stalls, shops, sheds, pens and other buildings or conveniences as may be deemed necessary for the use of the persons carrying on trade or business in, or frequenting,

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such Corporation markets, slaughter-houses or stockyards; A

(c) to provide for maintaining on any such Corporation markets such building, places, machines, weights, scales and measures for weighing and measuring goods, sold therein as he shall think fit;

(d) upon being authorized by the Corporation on that behalf, to close any Corporation market or slaughter-house or stockyard or any portion thereof and to dispose of as the property of the Corporation the premises occupied for any market or slaughter-house or stockyard or any portion thereof so closes; B

(e) with the previous sanction of the Corporation, to prohibit by public notice from time to time within a distance of fifty yards of any Corporation market the sale or exposure for sale of the commodities or of any of the commodities specified in the notice ordinarily sold in the said Corporation market and with like sanction to *cancel* or modify any such notice at any time; C

(f) to charge for the occupation or use of any stall, shop, standing shed, or pen or other building in a Corporation market, slaughter-house or stockyard, and for the right to expose goods for sale in a Corporation market, and for weighing and measuring goods sold in any such market and for the right to slaughter animals in any Corporation slaughter-house, such stallages, rents and fees as shall, from time to time be fixed by him, with the approval of the Executive Committee, in that behalf; D

(g) with the approval of the Committee, from the stallages, rents and fees leviable as aforesaid or any portion thereof, for any period not exceeding one year at a time; or E

(h) to put up to public auction, or with the approval of the Executive Committee, dispose of, by private sale, for privilege of occupying or using any stall, shop, standing shed or pen or other building in a Corporation market, slaughter-house or stockyard for such term and on such conditions as he shall think fit. F

423. *Opening of private markets and of private slaughter-houses:-* G

(1) The Corporation shall from time to time determine whether the establishment of new private markets or the establishment or H

A maintenance of private slaughter-house shall be permitted in the City or in any specified portion of the City.

B (2) No person shall establish a private market for sale of, or for the purpose of exposing for sale, animals intended for human food, or any article of human food or livestock or articles of good for livestock or shall establish or maintain a private slaughter-house except with the sanction of and after obtaining a licence from the Municipal Commissioner who shall be guided in giving such sanction and licence by the decisions of the Corporation at the time in force under Sub-section (1):

C Provided that the Municipal Commissioner shall not refuse to give sanction lawfully established on the appointed day if application for such sanction and licence is made within two months of the appointed day, except on the ground that the place where the market or slaughter-house is established falls to comply with any requirements of this Act or of any rule of bye-law thereunder.

D (3) When the establishment of a private market or a slaughter-house has been so sanctioned the Municipal Commissioner shall cause a notice of such sanction to be affixed in Hindi and such other language or languages as the Corporation may from time to time specify on some conspicuous spot on or near the building or place where such market is to be held.

E *Explanation:* For the purpose of Sub-section (2) the owner or occupier of a place in which a private market or slaughter-house is established shall be deemed to have established such market.

F (4) The Municipal Commissioner shall not cancel or suspend or refused to renew any licence for keeping open a private market for any cause other than the failure of the owner thereof to comply with some provision of this Act, or with some regulation or with some bye-law.

G (5) The Municipal Commissioner may cancel or suspend any licence for failure of the owner of a private market to give in accordance with the conditions of his licence a written receipt for any stallage, rent, fee or other payment received by him or his agent from any person for the occupation or use of any stall, shop, standing, shed, pen or other place therein.

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(6) When the Municipal Commissioner has refused, cancelled or suspended any licence to keep open a private market, he shall cause a notice of his having so done to be affixed in such language or languages as the Corporation may from time to time specify on some conspicuous spot on or near the building or place where such market has been held.”

The first respondent herein was granted a licence for a period of one year to run a slaughter house which is owned by the appellant-Corporation. It gives this slaughter house on annual licence basis. Such a licence was granted to the first respondent herein on 9.1.2004. The said licence expired on 8.1.2005. The impugned advertisement dated 6.12.2004 was issued by the appellant inviting applications for granting a fresh contract for running the slaughter house. It is this advertisement whose validity was challenged before the High Court.

It may be mentioned here that in the year 2003, the Mayor of the Nagar Nigam issued an advertisement on 9.11.2003 for modernizing the existing slaughter house, which was published in some local newspapers. The first respondent is said to have submitted a project report in response to the same. However, as stated in paragraph 8 of the counter affidavit of the Nagar Nigam before the High Court, the power to accept such a project report is with the general body of the Nagar Nigam, which has not granted any approval thereto.

It is alleged by the first respondent that he sent a representation to the State Government seeking its permission to modernize the slaughter house. Thereafter he filed a writ petition being Writ No. 37187/2004 before the High Court, which disposed off the same on 15.9.2004 by directing the State Government to consider the said representation. It is alleged that instead of deciding the representation, the Nagar Nigam issued the impugned advertisement inviting applications for tenders for running of the slaughter house in question.

We may at this juncture also notice that the State intended to acquire some land for a site for construction of an alternative slaughter house, in respect of which proceeding under the Land Acquisition Act was initiated. However, at the instance of one of the owners of the said land, the High Court in Civil Misc. Writ Petition No. 11069 of 2006 (*Asaf Ali v. State of U.P. & Ors.*) stayed dispossession of the petitioner therein. That writ petition

A is said to be still pending.

The High Court by means of the impugned judgment dated 29.3.2006 has allowed the writ petition directing that the writ petitioner (respondent No. 1 herein) should be allowed to run the slaughter house for 10 years on terms and conditions stipulated therein. We would reproduce the relevant part of the impugned judgment of the High Court which is as under:

“Petitioner No. 1 and his counsel (Sh. S.D. Kautilya, advocate) have categorically stated before us that the petitioner No. 1 shall construct new building and install latest modern plants, machines fixtures with latest advanced technology on international standards so that one shall not be able to identify it as “Slaughter House” from outside and offered to invest Rs. 6 crores to complete the project in one year besides undertaking to deposit Rs. 60 lacs per annum at par with the offer of petitioner No. 2 (As per affidavit of Sri Prithvi Singh Chauhan) provided he is allowed to carry on the Slaughter House for ten years.

Keeping in mind that the interest of the common man at large is paramount which should not be ignored and to ensure the welfare of the local residents by saving them from facing untold hardships and sufferings (as already recapitulated earlier), we direct the Nigam and other concerned authorities of Meerut, Administration to assist and cooperate with petitioner No. 1 to modernize the Slaughter House at its existing site on following “terms and conditions”:-

(1) Petitioner No. 1 represented by its Director Mohd. Imran Khan (which includes legal representative, successor, assignee, agent, nominee, servant etc.) shall, on or before 30.4.2006, file an affidavit giving undertaking to the Nigam to comply with the directions given hereunder.

(2) (a) Petitioner No. 1 as per its offer and undertaking given to the court shall on or before 15th May 2006 deposit Rs. three crores with Nagar Nigam, Meerut.

(b) Petitioner No. 1 shall also deposit Rs. two crores on or before 30th September 2006 with Nagar Nigam, Meerut.

(c) The Nigam give written notice to the Petitioner No. 1 to deposit within three weeks of receipt of said Notice or such extended time as

the Nigam may grant in writing such additional amount (not exceeding Rs. 50 lacks at one instance) in case additional amount, exceeding Rs. five crores referred in above clause (a) and (b), is required to complete the project, (as contemplated under this judgment) subject, however, to the condition:

(i) demand of additional amount shall not in total exceed Rs. one crore and the petitioner No. 1, therefore, shall not be required to deposit in total more than rupees six crores; and

(ii) Further, in case of any amount being found in excess and unutilized at the end of completion of Project the said amount with interest if any shall be repaid to Petitioner No. 1 forthwith.

(d) The above amount and time schedule shall be subject to such further mutual agreement/Settlement as the Nigam and Petitioner No. 1 may settle under prior information to each other as well as to the State Government but notwithstanding the quality and the conditions of Project of Slaughter House duly approved/sanctioned by Centre for Integrated Animal Husbandry & Dairy Development, Noida (CIAHDD).

(e) All the aforesaid amounts deposited by petitioner No.1 shall be kept by the Nigam in a separate Nationalized Bank Account which shall be exclusively appropriated/utilized for executing modern slaughter house Project as duly approved (as contemplated herein under) at the site of existing Slaughter House.

(3) Petitioner No. 1 shall get the project-report of the modern Slaughter House (with all details) duly approved and cleared on or before 15th May 2006 by Centre for Integrated Animal Husbandry and Dairy Development, Noida CIAHDD and Agency/Organizartion approved by the Nigam. The project reports shall include plan for Civil electrical and mechanical designs/plans, adequate provisions to check pollution of any kind including "Treatment of Effluents and Pollutants" as per norms prescribed by U.P. Pollution Control Board. Health and Safety Devices, prevention of Five and other relevant details as may be required by the Nigam, or the State Government under relevant concerned Act, Rules, Regulation, Government Orders etc. as well as bind itself to discharge all obligation otherwise created for operating modern slaughter house on international standards.

- A (4) Petitioner No. 1 shall submit on or before 30th May 2006 a copy of the Project Report/Plan duly approved by CIAHDD and other information, if any, to the Nigam, M.D.A. or Pollution Control Board, etc. dealing with the subject in question for information who shall pass appropriate order within ten days of receipt plan and intimate Petitioner No. 1 accordingly.
- B (5) Petitioner No.1 shall be duty bound to remove defect, if any, communicated to it by the Nigam, M.D.A. or U.P. Pollution Control Board, within two weeks of receipt of objection and obtain No Objection forthwith but in any case before 15th June, 2006. The Board shall consider the report and pass appropriate order/grant or refuse "No Objection" within ten days of receipt of submission of papers after removal of such defect.
- C (6) Petitioner No. 1 shall also obtain sanction No Objection from the Nigam, Meerut Development Authority (MDA), and U.P. Control Pollution Board by submitting amendments in the plans, if any, at appropriate time and then authorities shall within ten days of the receipt of the same pass appropriate order.
- D (7) Petitioner No. 1 shall inform Nigam in writing before starting construction/execution of Project work which must be undertaken on or before 15th July, 2006.
- E (8) Petitioner No. 1 shall cooperate and assist the Nigam (its authorities/officers) to make inspection of the site during course of implementation of the project to satisfy that the work is as per Project Report approved by CIAHDD as well as other directions issued by other authorities viz. the Nigam, Meerrut Development Authority, U.P. Pollution Control Board etc.
- F (9) Petitioner No. 1 shall be entitled to supervise execution of the Project work and shall be entitled to ensure that said work is performed/executed as per Project Report, and all payments in that respect shall be made promptly by the Nigam in accordance with law from the amount so deposited by Petitioner No. 1 under the above sub clauses of Clause 2.
- G (10) Petitioner No. 1 shall be permitted to operate and slaughter animals at the existing slaughter-house subject to the condition that he shall deposit with the Nigam on or before 15.05.2006 rupees sixty
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lacs in lump sum for the period of 01-04-2006 to 31-03-2007. Such amount can be deposited, if so advised, in four equal instalments; the first installment of Rs. 15 lacs to be paid to the Nigam on or before 15th May, 2006. The second installment to be paid to the Nigam on or before 15-08-2006, third installment to be paid to the Nigam on or before 15-11-2006 and fourth installment to be paid to the Nigam on or before 15-02-2007. In case of default in making the said deposits within the time stipulated above, this order shall stand automatically vacated in its entirety. Petitioner No. 1 shall likewise continue to deposit amount of Rs. 60 lacs per annum for ten years i.e. for the period ending on 31-03-2016. And thereafter slaughter house shall be allowed to be used and operated on such basis and terms and conditions as may be allowed and settled by the Nigam under the law.

(11) Petitioner No. 1 shall be free to abandon his claim to run modern slaughter house for a period of "ten years" or for less period as he may be desired but he shall not be, in lieu of it or in connection with, entitled to damages/compensation of any kind.

(12) Slaughter House shall be modernized within a maximum period of one year from today out of the funds referred to in Clause 1(a), (b), (c), (d) and (e) above.

(13) Nagar Nigam Meerut, District Authorities and other concerned authorities shall be duty bound to ensure that all steps are taken to promote expeditious execution of the Project Report referred to above and further hereby directed to extend desired support and full cooperation to the petitioner in establishing "modern Slaughter House". Laxity or negligence in any manner on the part of either party shall be deemed and treated deliberate act of interfering with the compliance of this order of the Court.

(14) Petitioner No. 1 shall have no claim or interest or subsisting right or charge on the assets, whether movable or immovable in the assets of the slaughter house in question created out of funds referred to in sub-clause 2(a), (b), (c) (d), (e) and (f) of Clause 2 after expiry of ten years or in case of the petitioner No. 1 abandoning or relinquishing his right to operate the Slaughter House at any time before expiry of said ten years.

A (15) The Nagar Nigam, Meerut and all the concerned authorities shall have right to make periodical inspections to ensure that the slaughterhouse is properly maintained and run in accordance with the relevant statutory provisions, viz., the Act, Rules/Regulations and Government Orders, etc, if any for ten years period contemplated above.

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(17) This order shall not, in any manner be read or interpreted to encroach upon or undermine the power conferred in lieu upon any Officer/Authority of the Corporation etc.

C (18) In case of difficulty or doubt the parties are at liberty to approach this Court for appropriate/requisite order by way of clarification.

U.P. Government., Nagar Vikas Anubhag Order dated 07-01-2005 (No. 03 Writ/9-8-2005-11P/03), Annexure CA-3 to short counter affidavit of respondent No. 1/State of U.P., is hereby set aside.

D The Writ petition is allowed by moulding the reliefs subject to the conditions and to the extent indicated above”

E The directions issued by the High Court, in our considered opinion, were totally unwarranted. The High Court undoubtedly exercises a wide jurisdiction under Article 226 of the Constitution of India. The jurisdiction of the High Court to entertain an application in the nature of a public interest litigation is well-known but it is also trite that the court should exercise its jurisdiction only when it is essential to do so. It is also trite that ordinarily the High Court would not interfere in an administrative action of the State unless it is *inter alia* found to be contrary to a legislative policy or arbitrary attracting the wrath of Article 14 of the Constitution of India. The jurisdiction of the High Court is limited in this regard. [See *State of U.P. v. Section Officer Brotherhood and Anr.*, [2004] 8 SCC 286]

G Apart from the above, Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the appellant submitted before us that the High Court could not have issued the impugned directions which are not only violative of Sections 422 and 423 of the Act, for the reasons that the statutory functions of the Corporation have been taken away by the High Court’s order, but in addition the constitutional scheme adumbrated under Article 14 of the

H Constitution also stands violated. The learned senior counsel contended that

if with a view to achieve transparency the Corporation intended to advertise a tender, it was not for the High Court to direct grant of contract in favour of the first respondent herein on the terms and conditions laid down in the impugned judgment. A

Mr. Dinesh Dwivedi, learned senior counsel appearing for respondent No.1, on the other hand, submitted that the High Court was faced with an exceptional situation namely, the pressing need for modernization and proper maintenance of the slaughter house keeping in view the health hazards of the public at large. It was pointed out that the new proposed slaughter house cannot be constructed at an early date, as the High Court in another writ petition has stayed acquisition of the alternative site, as a result whereof a stalemate had occurred and continued for 2-1/2 years. The appelland-Corporation, it was urged, in view of the stand taken by the State of U.P. could not grant lease for more than one year and it had no funds to construct a new modernized slaughter house. It was submitted that having regard to the aforementioned difficulties, the High Court passed the impugned judgment and, thus, no fault can be found therewith. The learned senior counsel would contend that Article 14 does not prohibit negotiation with a private person for the purpose of distribution of largesse by the State in some exceptional circumstances. Reliance in this connection has been placed on the judgments of this Court reported in *Sachidanand Pandey & Ors. v. State of West Bengal & Ors.*, [1987] 2 SCC 295, *Brij Bhushan & Ors. v. State of J & K & Ors.*, [1986] 2 SCC 354 and *M.P. Oil Extraction v. State of M.P.*, [1997] 7 SCC 592. B C D E

Indisputably Appelland-Corporation is a State within the meaning of Article 12 of the Constitution of India. It was constituted under the said Act which was enacted with a view to ensure better municipal government of the cities in the State of Uttar Pradesh. The statutory obligation on the part of the Municipal Corporation to build and/or maintain a hygienic slaughter house is not open to question. We have noticed hereinbefore that in terms of Sections 422 and 423 of the Act, the Corporation has various options. Such options, however, must be exercised by the Nagar Nigam itself having regard to the statutory scheme with a view to maintain public hygiene, but the same must be done in the light of the doctrine of life and liberty of a citizen as adumbrated under Article 21 of the Constitution. Such options cannot be exercised by the High Court, as that is no part of its functions. Maintenance and setting up of a slaughter house (abattoir) is a statutory responsibility of the Corporation. We may notice that the three Judge bench of this Court in F G H

A *Buffalo Traders Welfare Association v. Union of India & Ors.*, [2004] 11 SCC 333 had issued certain directions to the Municipal Corporation of Delhi to construct both temporary and permanent slaughter house (abattoir) keeping in mind the future need of the city. This Court in the said case has been monitoring construction of a modern slaughter house in Delhi. However, the question who should be given the contract for the slaughter house and on what terms, is for the Municipal Corporation to decide, and not for the Courts. All that the Courts can do is to ensure that there is no arbitrariness on the part of the Municipal authorities.

C In this case, however, we are concerned with a different question. It is now a well settled principle of law that having regard to the provisions of Article 14 of the Constitution of India, a State within the meaning of Article 12 thereof cannot distribute its largesse at its own sweet will, vide *R.S. Shetty v. Union of India*, AIR (1979) SC 1628. The Court can ensure that the statutory functions are not carried out at the whims and caprices of the officers of the government/local body in an arbitrary manner. But the Court cannot itself take over these functions.

E This Court time and again has emphasized the need to maintain transparency in grant of public contracts. Ordinarily, maintenance of transparency as also compliance of Article 14 of the Constitution would *inter alia* be ensured by holding public auction upon issuance of advertisement in the well known newspapers. That has not been done in this case. Although the Nagar Nigam had advertised the contract, the High Court has directed that it should be given for 10 years to a particular party (respondent No. 1). This was clearly illegal.

F It is well settled that ordinarily the State or its instrumentalities should not give contracts by private negotiation but by open public auction/tender after wide publicity. In this case the contract has not only been given by way of private negotiation, but the negotiation has been carried out by the High Court itself, which is impermissible.

G We have no doubt that in rare and exceptional cases, having regard to the nature of the trade or largesse or for some other good reason, a contract may have to be granted by private negotiation, but normally that should not be done as it shakes the public confidence.

H The law is well-settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public

auction/public tender by inviting tenders from eligible persons and the notification of the public-auction or inviting tenders should be advertised in well known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money Deposit, etc. The award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through 'private negotiations'. (See *Ram and Shyam Company v. State of Haryana and Ors.*, AIR (1985) SC 1147).

In *Sachidanand Pandey v. State of West Bengal*, AIR (1987) SC 1109 at 1133, O.Chinnappa Reddy, J. after considering almost all the decisions of the Court on the subject summarized the legal propositions in the following terms:

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

A           *“The public property owned by the State or by an instrumentality*  
              *of the State should be generally sold by public auction or by inviting*  
              *tenders. This Court has been insisting upon that rule, not only to get*  
              *the highest price for the property but also to ensure fairness in the*  
              *activities of the State and public authorities. They should undoubtedly*  
B           *act fairly. Their actions should be legitimate. Their dealings should*  
              *be above board. Their transactions should be without aversion or*  
              *affection. Nothing should be suggestive of discrimination. Nothing*  
              *should be done by them which gives an impression of bias, favoritism*  
              *or nepotism. Ordinarily, these factors would be absent if the matter*  
C           *is brought to public auction or sale by tenders. That is why the Court*  
              *repeatedly stated and reiterated that the State owned properties are*  
              *required to be disposed of publicly. But that is not the only rule. As*  
              *O.Chinnappa Reddy, J. observed, “that though that is the ordinary*  
              *rule, it is not an invariable rule”. There may be situations necessitating*  
              *departure from the rule, but then such instances must be justified by*  
D           *compulsions and not by compromise. It must be justified by compelling*  
              *reasons and not by just convenience”.*

              The law is, thus, clear that ordinarily all contracts by the Government  
              or by an instrumentality of the State should be granted only by public auction  
              or by inviting tenders, after advertising the same in well known newspapers  
E           having wide circulation, so that all eligible persons will have opportunity to  
              bid in the bid, and there is total transparency. In our opinion this is an  
              essential requirement in a democracy, where the people are supreme, and all  
              official acts must be actuated by the public interest, and should inspire public  
              confidence.

F           In the present case, unfortunately, the High Court’s attention was not  
              drawn to the aforementioned legal principles.

              Furthermore, we see force in the submission of Mr. Jayant Bhushan,  
              learned senior counsel for the appellant, that it was not for the High Court  
              to fix the terms and conditions of the Contract. It is for the state authorities  
G           to take a policy decision and fix the terms and conditions of the Contract. It  
              is one thing to say that the High Court in exercise of power of judicial review  
              may strike down the contract or a notice inviting the tender if it offends  
              Article 14 of the Constitution of India, but it is another thing to say that the  
              High Court in exercise of the power of judicial review would thrust a contract  
              upon a non-willing party particularly when the said exercise would be violative  
H

of Article 14 of the Constitution. Yet again, save and except in some very rare and exceptional case, the question of fixing any terms of the Contract or laying down the terms and conditions is for the concerned authority to decide, and it is not a matter within the domain of the Courts. In this behalf, we may refer to a decision of this Court in *Association of Registration Plates v. Union of India & Ors.*, reported in [2005] 1 SCC 679, wherein this Court opined:

“The fifteen years’ contract period has also been supported by the Union of India and State authorities. We find great substance in the submissions made on the data supplied as a justification for awarding the contract for a long period of 15 years. There would be a huge investment required towards the infrastructure by the selected manufacturer and the major return would be expected in initial period of two years although he would be bound down to render his services for future vehicles periodically for along period. Looking to the huge investment required and the nature of the job which is most sophisticated, requiring network and infrastructure, a long-term contract, if though viable and feasible, cannot be faulted by the court. *If there are two alternatives available of giving a short-term or a long-term contract, it is not for the court to suggest that the short-term contract should be given. On the subject of business management, expertise is available with the State authorities.* The policy has been chalked out and the tender conditions have been formulated after joint deliberations between authorities of the State and the intending manufacturers. A contract providing for technical expertise, financial capability and experience qualifications with a long term of 15 years would serve the dual purpose of attracting sound parties to stake their money in understanding the job of supply and safeguard the public interest by ensuring that for a long period the work of affixation of security plates would continue uninterrupted in fulfillment of the object of the scheme contained in Rule 50. Our considered opinion, therefore, is that none of the impugned clauses in the tender conditions can be held to be arbitrary or discriminatory deserving their striking down as prayed for on behalf of the petitioners.”

(emphasis supplied)

In the present case, the respondent no.1 challenged the impugned advertisement dated 6.12.2004 issued by the Nagar Nigam. We have carefully

A perused the said advertisement and find no illegality in the same. It has been held by this Court in several decisions that the Court should not ordinarily interfere with the terms mentioned in such an advertisement. Thus in *Global Energy Ltd. and Anr. v. Adani Exports Ltd. and Ors.*, [2005] 4 SCC 435 this Court observed (vide para 10):

B “The principle is, therefore, well settled that the terms of the invitation to tender are not open to judicial scrutiny and the courts cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice....”

C Similarly in *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. and Anr.*, [2005] 6 SCC 138, this Court held that the modern trend points to judicial restraint in reviewing the administrative action. The court does not sit as a court of appeal over such a decision but merely reviews the manner in which the decision was made. The court ordinarily would not interfere with an administrative decision. The Government must have freedom of contract. Some fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere.

E We have carefully perused the impugned advertisement and we do not find any arbitrariness, discrimination or malafides in the same. Hence the High Court had no justification for interfering with the said advertisement.

F For the reasons aforementioned, we have no other option but to hold that the impugned judgment is unsustainable. It is set aside accordingly. The question, however, arises what direction should be passed by us now, considering the fact that the impugned advertisement was issued on 6.12.2004. We think that the interest of justice would be subserved if the appellants Corporation is directed to issue an advertisement in well known newspapers having wide circulation again calling for bids on such terms and conditions which it may find to be reasonable within six weeks from the date of communication of this order. The bids offered pursuant thereto must be opened and a final decision must be taken within eight weeks thereafter.

G Till such time it will be for the appellants-Corporation to decide as to how the slaughter house should be allowed to function by making such interim arrangement as it may find fit and proper.

H Although the State of U.P. had rejected the proposal of the Municipal

Corporation, we direct the State to have a fresh look at the matter and to consider the feasibility/desirability of grant of a licence to run the slaughter house for a longer period than one year on the condition that the plant should be modernized by the licensee. In our opinion, such a policy decision may be required to be taken keeping in view the health and welfare of a large number of inhabitants of the vicinity where such abattoirs are functioning, as also *vis-a-vis* the health of the inhabitants of the locality, which is a fundamental right under Article 21 of the Constitution of India. If a policy decision is taken by the State, it goes without saying that the appellant-Corporation in future may act in terms thereof, unless otherwise provided for by the Statute.

Although the matter is not before us, however, keeping in view the fact that now it is widely felt that a modern abattoir should be constructed, as was noticed by this Court in *Buffalo Traders Welfare Association* (supra), which ensures hygiene and sanitation, we would request the High Court to consider the desirability of disposing of Civil Misc. Writ Petition No. 11069/2006 (*Asaf Ali v. State of U.P. & Ors.*) as expeditiously as possible. Save and except the aforementioned directions, we are of the opinion that the Corporation may work out the other modalities as it deems fit and in accordance with law. If respondent No.1 has deposited any amount for the modernization of the plant, which has not been carried out, the Corporation may refund the amount subject to any outstanding dues.

The appeal is allowed accordingly. No costs.

K.K.T.

Appeal allowed.