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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1413 of 2025

Biswajit Rath

....

Petitioner

-Versus-

State of Odisha and Another

....

Opposite Parties

Advocates appeared in this case:

For Petitioner: Ms. Saswati Mohapatra, Advocate

For Opposite Parties: Mr. Pitambar Acharya, Advocate General
Mr. Debasish Tripathy, AGA
Ms. A. Dash, ASC

CORAM:

**HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE MURAHARI SRI RAMAN**

J U D G M E N T
9th January, 2026

HARISH TANDON, C.J.

1. The uniformity and the certainty in law is the virtue. The comity of the Courts ensures the uniformity in decision and eradicates any sense of uncertainty in adhering to the principles of law laid down



by the Courts at an earlier point of time. The judgment rendered by the Supreme Court not only binds the Courts of the country where the law is declared but also binds the coordinate Bench to ensure uniform pattern of adherence to the law so declared. The judgment rendered by a co-equal strength bench is not only binding upon a lesser strength Bench but also on the bench of equal strength. The amity and comity of adherence to a judgment rendered by the coordinate Bench is not only binding upon the Bench of equal strength but also to ensure the propriety of the judicial discipline. The only course open to a Bench of the equal strength is to refer the matter to a larger Bench in the event of disagreement to the proposition of law laid down by the coordinate Bench at an earlier point of time. Time and again the comity of the Courts and its adherence to the judgment of the coequal strength Bench rendered previously having a binding effect on a latter coordinate Bench has been a center of debate and its conscious consideration in the legal parlance are highlighted in a catena of decisions rendered by the apex Court, one of which can be gainfully applied in case of *S. Kasi Vs. State through the Inspector of Police Samaynallur*



Police Station Maduari District, reported in ***AIR 2020 SC 2921*** in

the following:

“31. The learned Single Judge in the impugned judgment has taken a contrary view to the earlier judgment of learned Single Judge in *Settu v. State* (supra). It is well settled that a coordinate Bench cannot take a contrary view and in event there was any doubt, a coordinate Bench only can refer the matter for consideration by a larger Bench. The judicial discipline ordains so. This Court in *State of Punjab v. Devans Modern Breweries Ltd. and another*, (2004) 11 SCC 26, in para 339 laid down following :-

“339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench. (See *Pradip Chandra Parija v. Pramod Chandra Patnaik*, (2002) 1 SCC 1] : (AIR 2002 SC 296) followed in *Union of India v. Hansoli Devi*, (2002) 7 SCC 273 : (AIR 2002 SC 3240). But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. *Kalyani Stores* (AIR 1966 SC 1686) (supra) and *K.K. Narula* (supra) both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority.”

32. The learned Single Judge did not follow the judicial discipline while taking a contrary and diagonally opposite view to one which has been taken by another learned Single Judge in *Settu v. State* (supra). The contrary view taken by the learned Single Judge in the impugned judgment is not only erroneous but also sends wrong signals to the State and the prosecution emboldening them to act in breach of liberty of a person.

33. We may further notice that learned Single Judge in the impugned judgment had not only breached the judicial discipline but has also referred to an observation made by the learned Single Judge in *Settu v. State* as uncharitable. All



courts including the High Courts and the Supreme Court have to follow a principle of Comity of Courts. A Bench whether coordinate or larger, has to refrain from making any uncharitable observation on a decision even though delivered by a Bench of a lesser coram. A Bench sitting in a larger coram may be right in overturning a judgment on a question of law, which jurisdiction a Judge sitting in a coordinate Bench does not have. In any case, a Judge sitting in a coordinate Bench or a larger Bench has no business to make any adverse comment or uncharitable remark on any other judgment. We strongly disapprove the course adopted by the learned Single Judge in the impugned judgment.”

2. The exposition of the principles of law enunciated in the above report gained importance in the instant case, as the petitioner challenges one of the clauses contained in the tender document taking the ruse that the earlier judgment rendered by the coordinate Bench failed to take into consideration the other aspects requiring deep introspection. What is sought to be projected before us is that the earlier coordinate Bench did not, in a specific term, declare the impugned clause non-arbitrary, non-discriminatory and unreasonable in relation to the object and purpose for which the same is floated.
3. In order to address the point so urged before us, the genesis of the dispute is adumbrated being inevitable in this regard. The tender call notice dated 09.12.2024 for supply of veterinary medicines and vaccines was floated by the Directorate of Animal Husbandry



and Veterinary Services, Odisha inviting the bid from the intending supplier. The said tender was floated with an avowed object of providing veterinary services to the various livestock farmers within the State so that such sector would be benefitted. Apart from several stipulations, one of the clauses is projected by the petitioner to be arbitrary, discriminatory and eroding the concept of level playing field, which is one of the core fabric of equality enshrined under Article 14 of the Constitution of India. Clause 5.2.8 of the tender call notice is assailed in the instant writ petition and, therefore, the reproduction thereof would be profitable in addressing the issues raised in the instant writ petition. Clause 5.2.8 is quoted as under:

“5.2.8 The Bidder must have 3 (three) years’ experience in supplying Veterinary medicines and vaccines of its own manufacturing or reputed manufacturers of National level to **Central & State Government**/semi Govt. organizations, PSUs, with **annual average** worth of **Rs.4.50 Cr** or more in any three (3) financial years during **2019-20, 2020-21, 2021-22, 2022-23 & 2023-24**. The Bidders are required to submit the proof of supply i.e. **purchase order and the copy of invoice**. The Odisha SMEs are fully exempted from past work experience criteria as per MSME Deptt. Notification No.566 dt. 24.01.2024.”



4. The bare reading of the said clause relates to the experience of the bidder in supplying the veterinary medicines and vaccines manufactured by the reputed companies of a national level to the Central & State Government/semi Government Organizations, PSUs with an annual average worth of Rs.4.50 crores or more in any three financial years and the documents in support thereof shall be submitted by such bidder. In order to avoid any ambiguity in perceiving the apparent and debatable issue, the relief claimed in the writ petition is quoted as under:

“Under this facts and circumstances humbly prayed that this Hon’ble Court may graciously be pleased to quash clause 5.2.8 of the tender call notice as unreasonable and arbitrary and fixing EMD to the tune of Rs.1,20,00,000/- (One Crore Twenty Lakhs) is also exorbitantly high and in accordance with the statutory provision OGFR Rule.

And may pass such other order/orders, as would be just deem fit and proper.”

5. The foundation of assailing the said clause is laid upon arbitrariness, discrimination and advancing the favouritism to one or two persons, who according to the petitioner, are blue eyed persons of the tendering committee. It is highlighted in the writ petition that fixation for supply of such veterinary medicines and



vaccines at such high values is designately made to weed out the other intending bidders with an object to provide an easy passage to the favoured persons, who are found to have complied such conditions and, therefore, shattered the very fabric of the level playing field, which is intricately embodied under Article 14 of the Constitution of India. It is also averred in the writ petition that the tender floated for supply of the 147 medicines and vaccines by one bidder and fixation of Earnest Money Deposit (EMD) at Rs.1,20,00,000/- has impliedly eliminated the genuine suppliers/manufacturers of some of medicines and vaccines and, therefore, it is not only unreasonable but arbitrary per se.

6. The main endeavour of the counsel appearing for the petitioner in pursuit of declaring the initiative and the action of the authority in fixing such criterion to be arbitrary, whimsical, discriminatory and shackling the equality principle is founded upon the various decisions rendered by the apex Court and the coordinate Bench of this Court. The reliance was placed upon a judgment of the coordinate Bench of this Court in ***M/s. Kamala Agencies Vs. State of Odisha and another*** (W.P.(c) No.17471 of 2022 decided on



11.08.2022) where the tender was floated for supply of the identical veterinary drugs, medicines and vaccines by restricting to the manufacturer or authorized distributor or authorized dealer having three years experience with a turnover of Rs.4.00 crore in the preceding three years was assailed. Since the said tender was restricted to a particular class of the persons, an argument was advanced that it would create a monopoly excluding the other class of persons who are otherwise competent to supply such medicines/vaccines and therefore, offends the equality principles. In the backdrop of the above facts, the Bench has held that exclusion of the distributors/ suppliers/agents/ C & F agents/C & A agents is arbitrary, irrational, unreasonable, discriminatory, mala fide, bias and affects the public interest.

7. We do not find any ambiguity in the exposition of law in the said judgment as any attempt to restrict a particular class of persons without any intelligible differentia is violative of equality principle enshrined under Article 14 of the Constitution of India. The arbitrariness and reasonableness in fixing a condition in the tender document is to be tested on the anvil of nexus with the object and purpose and in the event the Court finds such conditions having no



connection therewith and perceived to avoid the fair and transparent competition, the interference becomes inevitable. Though in ***Kamala Agencies*** (supra), the coordinate Bench quashed the condition which restricts a particular class of persons to participate in the tender process but subsequent thereto the apex Court in ***Subodh Kumar Singh Rathour vs. Chief Executive Officer*** reported in ***AIR 2024 SC 3784*** restricted the interference of the Court in exercising the power of judicial review by adumbrating the concept of arbitrariness to be tested in conjunction with the object and purpose of securing the supply in the following:

“65. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned action is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, the performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows



that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you.”

8. We do not find any element in the present case which comes within the ambit of facts involved in ***Kamala Agencies (supra)***.

We do not intend to delve deep on the above aspects after our attention is drawn to a coordinate Bench decision of this Court rendered in ***M/s. Winners Pharma, Cuttack Vs. State of Odisha and another*** (W.P.(c) No.1110 of 2025 decided on 16th January, 2025) wherein the said clause i.e. clause 5.2.8 was assailed. The Division Bench dismissed the writ petition obviously having found the said clause to be reasonable, rational and non-discriminatory.

9. Learned counsel appearing for the petitioner vociferously submits that the judgment rendered by the coordinate Bench did not address the issue of arbitrariness and discrimination and in absence of any such expressions having used, the said judgment has no binding effect on a subsequent coordinate Bench. We are unable to persuade ourselves to the submissions advanced in this regard. It is manifest from the reading of the judgment that the



petitioner therein assailed the said clause 5.2.8 being not only contrary to Rule 212(i) of the OGFR, 2023 but also arbitrary, irrational, unreasonable, discriminatory, mala fide, bias and violative of Articles 14, 19(1)(g), 21 and 300A of the Constitution of India. The coordinate Bench proceeded to consider in the above backdrop of the facts on the scope and jurisdiction exercised by the writ court under Article 226 of the Constitution of India more particularly in the field of a contract and does not find such clause to be malicious, arbitrary and outcome of colourable exercise of statutory powers warranting interference by the Court.

10. It would be incongruous to suggest that the binding efficacy of a judgment rendered by a coordinate Bench is to be tested on the anvil of a particular and/or specific words or expressions used therein. What is required to be considered is the exposition of law in the context of a case and ultimate destination having achieved therefrom. As it can be reasonably discerned on the holistic reading of the words and/or expressions used in the judgment that the said clause is not arbitrary, discriminatory and/or incorporated to favour a particular class of persons, we do not find any



impediment in applying the principles of comity of Courts and the judicial discipline in perceiving the binding efficacy of the said judgment. When the same clause was assailed in an earlier judgment and the Court declined to interfere therewith, it leads to an inevitable conclusion that the Court did not find such clause offending the core fabric of Article 14 of the Constitution of India.

11.As indicated hereinabove, the amity and comity of the Courts and advancement of the judicial discipline ordained the binding nature of the judgment of the coordinate Bench with an exception that in the event the latter coordinate Bench dissents from the decision so rendered by the earlier coordinate Bench, the only course available to the latter coequal strength Bench is to refer the matter to the Chief Justice to constitute a larger Bench. The aforesaid concept not only ensures uniformity and certainty in the decision but also to avoid any anomalous situation operating in the field. The art of writing a judgment differs from person to person. The judgments are articulated in different manners but have to be understood in the perspective of the context and the destination to have been reached. The moment the earlier coordinate Bench held



that the said impugned clause is non-discriminatory, non-arbitrary and not tainted with the vice of malice, favouritism and nepotism or offending the core value of the level playing field, such judgment assumes a binding effect on the latter coordinate Bench.

12. We, thus, do not find any ground warranting interference with the said clause and, therefore, the instant writ petition is devoid of merit, the same is hereby dismissed. However, in the facts and circumstances of instant case, there shall be no order as to costs. Interim order passed, if any, shall stand vacated and Interlocutory Applications(s) pending, if any, is dismissed.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

SK Jena/Secy.