NC: 2026:KHC:25586
WP No. 23487 of 2024
C/W WP No. 22850 of 2024

HC-KAR

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 23487 OF 2024 (CS-RES)

C/W

WRIT PETITION NO. 22850 OF 2024 (GM-TEN)

IN WRIT PETITION NO.23487/2024
BETWEEN

M/S SHREE SSR ENTERPRISES
HOUSE NO. 1-1-5/1/2
BESIDE SATSANG VIHAR
NEAR PILLAR NO.216
RAJENDAR NAGAR X ROAD
HYDERABAD-500048
REPRESENTED BY ITS MANAGING PARTNER
YASHWANTH KUMAR POTU

... PETITIONER

(BY SRI. JAYAKUMAR S. PATIL., SR. ADVOCATE FOR
SRI. PRUTHVI WODEYAR., ADVOCATE)

AND

1. THE STATE OF KARNATAKA
   DEPARTMENT OF CO-OPERATION
   VIDHANA SOUDHA
   BANGALORE-560001
   REPRESENTED BY ITS SECRETARY
2. THE KARNATAKA CO-OPERATIVE MILK
   PRODUCERS FEDERATION LIMITED
   KMF COMPLEX DR. M.H MARIGOWDA ROAD
   BANGALORE-560029
   REPRESENTED BY ITS MANAGING DIRECTOR

3. THE RAICHUR BELLARY KOPPAL DISTRICT CO-OPERATIVE
MILK PRODUCERS SOCIETIES UNION
FIRE STATION, SANJAY GANDHI NAGAR
BELLARY-583101
REPRESENTED BY ITS MANAGING DIRECTOR

4. THE HASSAN CO-OPERATIVE
MILK PRODUCERS SOCIETIES UNION
NO.120 INDUSTRIAL AREA B.M ROAD
HASSAN-573201
REPRESENTED BY ITS MANAGING DIRECTOR

5. SR MARKETING AND SERVICES
REPRESENTED BY ITS SOLE PROPRIETOR,
MR. DAYAM RAKESH,
S/O LATE SRI. DAYAM SATYANARAYANA
RESIDING AT FLAT NO.402, 4TH FLOOR,
HAYAS MARVEL RESIDENCY, NARSINGI,
HYDERABAD-520075 TELANGANA

…. RESPONDENTS

(BY SRI. YOGESH D. NAIK., AGA FOR R1;
SRI. SUMANTH L. BHARADWAJ., ADVOCATE FOR R2;
SRI. M. SHYAM PRASAD., ADVOCATE FOR R3;
SRI. PRADEEP S. SAWKAR., ADVOCATE FOR R4;
SRI. PRAMOD NAIR SR. ADVOCATE FOR
SRI. SANTOSH MUTTALLI., ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE COMMUNICATION DTD 7.08.2024 BEARING NO.RBKMUL/02319/2024-25 ISSUED BY THE R-2 TO R-3 VIDE ANNX-H AND ETC.

IN WRIT PETITION NO.22850/2024
BETWEEN

M/S SREE RAJESHWARI DAIRY
PRODUCTS IND (PVT) LTD
SY NO. 224/EE2, MOJERIA SHIVAR
NH-7, KANIMET TA VILLAGE
MAHABUBNAGAR DISTRICT

TELANGANA 509381
REPRESENTED BY ITS DIRECTOR
G SUDHAKAR REDDY
REGISTERED UNDER COMPANIES ACT, 1956

... PETITIONER

(BY SRI. JAYAKUMAR S. PATIL., SR. ADVOCATE FOR
SRI. MOHAMAD TAHIR.A., ADVOCATE)

AND

1. THE STATE OF KARNATAKA
DEPARTMENT OF CO-OPERATION
VIDHANA SOUDHA
BANGALORE-560001
REPRESENTED BY ITS SECRETARY
2. THE KARNATAKA CO-OPERATIVE MILK
PRODUCERS FEDERATION LIMITED
KMF COMPLEX, DR. M.H MARIGOWDA ROAD
BANGALORE-560029
REPRESENTED BY ITS MANAGING DIRECTOR
REGISTERED UNDER THE COMPANIES ACT, 1959.
3. THE HASSAN CO-OPERATIVE
MILK PRODUCERS SOCIETIES UNION
NO.120 INDUSTRIAL AREA B.M ROAD
HASSAN-573201
REPRESENTED BY ITS MANAGING DIRECTOR
REGISTERED UNDER THE COMPANIES ACT, 1959.
4. M/S SHAKTI MILK AND MILK PRODUCTS
A PARTNERSHIP FIRM
NO. 24-7 208/A
POOJA COMPLEX
1ST FLOOR
BESIDE NIT COLLEGE
DHARGA-KAZIPET
HANUMAKONDA, TELAGANA-506001.
REP BY ITS MANAGING DIRECTOR

…. RESPONDENTS

(BY SRI. YOGESH D. NAIK., AGA FOR R1;
SRI. SUMANTH L. BHARADWAJ., ADVOCATE FOR R2;
SRI. PRADEEP S. SAWKAR., ADVOCATE FOR R3;

SRI. ANAND MUTTALLI., ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE TENDER DTD 20.05.2024 BEARING NO. KMF/PUR/TENDER-650/2024-25 VIDE ANNEXURE-K ISSUED BY R-2 AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 17.02.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The petitioner in Writ Petition No.23487/2024 is before the Court seeking for the following reliefs:

   a. *Issue a writ of certiorari quashing the communication dated 07.08.2024 bearing RBKMUL/02319/2024-25 issued by KMF to Respondent No.3 vide Annexure-H.*

      (a)(i)To issue a writ of certiorari quashing the work order dated 07.11.2024 bearing No. RBKVMU/WC & FA/1249/2024-25 issued by Respondent No.3 vide Annexure-J in the interest of justice and equity.

   b. *Issue any writ or order or direction as this Hon'ble Court deems fit under the circumstances of the case.*

2. The petitioner in Writ Petition No.22850/2024 is before the Court seeking for the following reliefs:

a. *Issue a writ of certiorari quashing the tender dated 20.5.2024 bearing No.KMF/PUR/Tender-650/2024-25 vide Annexure-K issued by KMF.*

b. *Issue any writ of certiorari quashing the LOA dated 07.08.2024 issued by KMF in favour of Hassan vide Annexure-K1.*

c. *Issue any writ or order or direction as this Hon'ble Court deems fit under the circumstances of the case.*

3. ***Facts in WP No. 23487 of 2024;***

3.1. The petitioner claims to be a partnership firm engaged in marketing, warehousing, and clearing and forwarding operations in the State of Telangana.

3.2. Respondent No.2 - The Karnataka Co-Operative Milk Producers Federation Limited (Hereinafter for brevity referred to as "**KMF**") appointed the petitioner as a marketing, warehousing, clearing and forwarding agent on 18.05.2015 in respect of products of Sri Rajeshwari Dairy Products for the entire State of Telangana, for a period of two years.

3.3. By order dated 28.09.2016, KMF permitted transactions between the co-packing agent and the marketing and warehousing agent to be carried out through Respondnet No.4 – Hassan

Co-operative Milk Producers Society Union (Hereinafter for brevity referred to as "**Hassan**").

3.4. On 29.09.2016, KMF addressed a communication to the petitioner stating that all milk marketing operations would thereafter be handled by Hassan. Pursuant thereto, Hassan, acting under the directions of KMF, issued an Expression of Interest for selection of an agency to undertake marketing, warehousing, clearing and forwarding operations in the State of Telangana. The petitioner, having been selected pursuant to the said process, was issued a work order dated 30.03.2019, and a Warehousing, Clearing and Forwarding Agency Agreement was executed on the same date.

3.5. Subsequently, by communication dated 07.08.2024, KMF permitted respondent No.3 - The Raichur Bellary Koppal District Co-Operative Milk Producers Societies Union (Hereinafter for brevity referred to as "**Raichur**") to market Nandini milk and allied products in the districts of Warangal, Adilabad, Nizamabad, Karimnagar, and Khammam. The petitioner contends that, in view of its appointment as the Warehousing, Clearing and Forwarding Agent for the entire State of Telangana, the said districts could not have been excluded from its area of operation. Aggrieved thereby, the petitioner has challenged the said communication before this Court.

3.6. During the pendency of the proceedings, KMF issued a further work order dated 07.11.2024 in favour of Raichur, which has also been challenged by way of amendment. The petitioner reiterates that, in light of its alleged exclusive contract as Warehousing, Clearing and Forwarding Agent, no parallel or overlapping appointment in favour of Raichur could have been made.

4. ***Facts in WP No.22850 of 2024;***

4.1. The petitioner claims to be engaged in the dairy industry, including production and packaging of dairy products for sale in the State of Telangana. It is stated that KMF, with the objective of entering the Hyderabad market for sale of Nandini milk, curd and allied products, issued a work order to the petitioner pursuant to an Expression of Interest, for undertaking co-packing, processing, pasteurisation, standardisation, reprocessing, packaging and refrigeration of milk, for a period of eleven months.

4.2. It is further stated that KMF, by arrangement dated 04.02.2016, entrusted the entire business of sale of "Nandini" branded milk and milk products in Hyderabad to Hassan. Under the said arrangement, Hassan was vested with responsibility to invite tenders and enter into agreements for co-packing and related activities. Though KMF had initially issued a tender notification dated 30.04.2016, upon respondent No.3 assuming control, an agreement came to be executed between Hassan and the petitioner on 01.10.2016 for similar activities, for a period of 36 months.

4.3. In 2019, Hassan issued a fresh tender notification. The petitioner, having been selected, entered into an agreement dated 01.01.2020 for a further period of three years. The petitioner contends that notwithstanding the entrustment of the Hyderabad market (including the State of Telangana) to Raichur, KMF, by communication dated 07.01.2020, unilaterally divided Hyderabad into five zones.

4.4. In respect of the central, north and west zones, KMF entrusted operations to the Shimoga Milk Union, which in turn appointed M/s Sambasiva Dairy Products (India) Private Limited as its agent. The said action was objected to by Hassan on the ground that parallel operations by different milk unions would lead to market disruption and operational confusion in Hyderabad.

4.5. Thereafter, by communication dated 12.08.2020, KMF withdrew the earlier permission granted to Shimoga Milk Union to operate in three zones of Hyderabad and directed Hassan to continue operations therein. Subsequently, a tender notification dated 25.01.2023 was issued, which was challenged in W.P. No.4989/2023; the said writ petition came to be dismissed on 16.03.2023. Pursuant thereto, the tender was awarded to the petitioner for a further period of 36 months commencing from 19.05.2023.

4.6. In the meantime, KMF issued a tender notification dated 20.05.2024 for co-packing of milk and curd in the State of Telangana for a period of two years. The said tender was awarded to M/s Shakti Milk and Milk Products, by issuance of a Letter of Acceptance dated 07.08.2024.

4.7. The petitioner has approached this Court contending that Hassan, having been granted exclusive rights in Telangana, and having in turn appointed the petitioner for execution of such activities, the subsequent action of KMF in awarding parallel contracts is impermissible. It is stated that a meeting of Hassan was convened on 09.08.2024, pursuant to which a communication dated 12.08.2024 was addressed to KMF asserting that the petitioner was already operating in the concerned areas. In the aforesaid circumstances, the petitioner challenges the actions of KMF and seeks the reliefs set out in the writ petition.

5. Sri.Jayakumar S Patil., learned Senior Counsel, appearing for the petitioners in both the matters submits that:

5.1. Sri.Jayakumar S Patil., learned Senior Counsel, for the petitioners submits that the petitioners have been appointed by Hassan for the entire State of Telangana. It is contended that the petitioner in W.P.No.22850/2024 has been conferred exclusive rights to undertake co-packing, processing, pasteurisation, standardisation, reprocessing, packaging and refrigeration of milk, and that such exclusivity cannot be interfered with during the subsistence of the contract.

5.2. That the petitioner in W.P. No.23487/2024 has been appointed as the exclusive Warehousing, Clearing and Forwarding Agent for the State of Telangana, and that KMF could not have appointed any third party to undertake identical activities within the same territorial jurisdiction.

5.3. KMF has erroneously interpreted the expression "Hyderabad". According to him, the term does not denote merely Hyderabad City, but refers to the broader Hyderabad region, historically understood as encompassing the undivided State of Andhra Pradesh, and, post-bifurcation, the State of Telangana.

5.4. It is contended that the work orders issued in favour of the petitioners remain valid and subsisting till May 2026, and, during their currency, no parallel appointment could have been made. It is further submitted that an earlier attempt by KMF to divide Hyderabad into zones and entrust certain zones to Shimoga Milk Union was withdrawn upon objection, thereby affirming the petitioners' exclusive operational domain. In such circumstances, KMF is precluded from reintroducing parallel arrangements.

5.5. Sri.Jayakumar S Patil., learned Senior Counsel, submits that the consistent course of conduct between the parties demonstrates that exclusivity in favour of the petitioners was recognised and maintained for a substantial period. It is therefore contended that the impugned communication dated 07.08.2024 and the work order dated 07.11.2024, whereby respondent No.5 in W.P. No. 23487/2024 has been appointed as Warehousing, Clearing and Forwarding Agent, and Hassan in W.P. No. 22850/2024 has been appointed for co-packing activities, are arbitrary and impermissible.

5.6. It is further submitted that the petitioners have been continuously performing the contractual obligations since 2015 across the State of Telangana, and that the subsisting contractual arrangements could not have been altered unilaterally. Learned Senior Counsel, emphasises that respondents No.2 and 3, being instrumentalities of the State, are amenable to writ jurisdiction under Article 12 of the Constitution of India, and their actions are liable to be tested on the touchstone of Article 14.

5.7. In this regard, he relies upon the decision in ***K.V. Panduranga Rao v. Karnataka Dairy Development Corporation, Bangalore***[1], more particularly paras 22 and 23 thereof, which is reproduced hereunder for easy reference;

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[1] (1994) 1 Karnataka Law Journal 149

22. *Applying these aforesaid principles, let us consider the position of the Federation. It is true that the entire share capital is not met by the State Government; that the membership is open not only to the State and Central Governments, but also to the Co-operative Milk Producers' Unions; that provision is made for obtaining finances from sources other than the Government; that the power of management lies in a Board which consists not only the Government nominees and officers, but Chairman of affiliated Milk Producers' Unions; and that provision is made for distribution of profits among the members, by way of dividend on the paid up share capital. But these answers in the negative, to some of the tests do not mean that the federation is not 'State'. It is not necessary that all the tests laid down by the Supreme Court should be satisfied to reach the conclusion as to whether a given entity is a State.*

23. *It is evident from the facts narrated in paras (3) to (6) above that the Federation is created by the State Government to implement and to carry out Dairy Development Programme in the State. Dairy Development is a part of State's endeavour to organise agriculture and animal Husbandry on modern and scientific lines and to take steps for preserving and improving breeds of cows and other milch cattle, under the Directive Principles of State Policy, as contained in Article 48 of the Constitution of India. The Dairy units that were being originally run as Departments of the State Government, were transferred to the Federation on its incorporation, either directly or through Karnataka Dairy Development Corporation Ltd. to cut down the losses incurred by the State Government. The functions of the Federation as detailed in the Government order dated 6-11-1982 and the Bye-laws of the Federation, show that they are of public importance and closely related to the Government's functions relating to* *organising animal husbandry. In the field in which it operates, the Federation enjoys monopoly status conferred by the State. Most of the finances, loans and Bank guarantees required for running the affairs of the Federation have been provided by the State Government. The deep and pervasive control of the State over the Federation over the functions and working of the Federation are evident from the Government Orders and Bye-laws 3.1, 5.1, 20 (1.1 to 1.3), 26.3, 26.8(a) referred to above. It is thus evident that Federation has undertaken and is executing functions which were earlier discharged by the Government and which are public obligations of the State. Therefore, there is no doubt that the Federation as it presently stands, is an agent and instrumentality of the State and is therefore 'State' within the meaning of that expression in Article 12. We may point out here that several other High Courts have, while dealing with similar Federations in other States, consistently taken the view that such Federations are instrumentalities of the State, See the cases of A.P. Dairy Development Co-operative Federation-Dr. Yarlagadda Purnachandra Rao v. State of Andhra Pradesh [1984 LIC (NOC) 21.] , Punjab State Co-operative Milk Producers Federation Ltd.-R.S. Goyal v. State of Punjab [1989 (3) SLR 258.] and National Dairy Development Board-S.A. Rahim v. NDDB [1984 (1) LLJ 496.] . We are afraid that learned Single Judge took a narrow view in holding that the Federation is not 'State'. Assuming that the Co-operative Milk Producers' Unions, which are the members of the Federation, are not instrumentalities of the State as held by the learned Single Judge, it does not follow that the Federation of such Milk Producers' Union is not an instrumentality of State. The totality of circumstances and the answers to important tests laid by the Supreme Court as to whether the functions of the entity are of public importance and closely related to government* *functions and whether any Department or wing of the Government has been transferred to the new entity, and whether there is deep and pervasive State Control over the affairs and functioning of the entity, ought to have been considered by the learned Single Judge, in determining whether the Federation is 'State' under Article 12. He has failed to do and his reasoning and decision cannot be sustained.*

5.8. By relying on ***K.V.Panduranga Rao***, Sri.Jayakumar S Patil., learned Senior Counsel, submits that in ***K.V.Panduranga Rao***, it has been held that a co-operative federation engaged in dairy development, though not wholly owned by the State, would nonetheless constitute "State" within the meaning of Article 12 of the Constitution of India, having regard to the nature of its functions, the degree of State control, and the public importance of the activities undertaken.

5.9. Sri.Jayakumar S Patil., learned Senior Counsel, submits that KMF and Hassan discharge functions of public importance in the field of dairy development, which is integrally connected with the Directive Principles of State Policy under Article 48 of the Constitution. It is contended that the said entities operate under deep and pervasive control of the State, are substantially financed by the State, and perform functions which are closely related to governmental objectives. On that basis, it is submitted that KMF and Hassan are instrumentalities of the State within the meaning of Article 12, and consequently, their actions are subject to judicial review on the touchstone of Article 14 of the Constitution of India.

5.10. Sri.Jayakumar S Patil., learned Senior Counsel, relies upon the decision of the Hon'ble Supreme Court in ***ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd***[2]**.,** more particularly para 8, 10, 14, 19, 21, 23, 27, 50 and 53 thereof, which are reproduced hereunder for easy reference:

> ***8.*** *As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below, one of the questions that falls for our consideration is whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.*
>
> ***10.*** *It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary*

[2] (2004) 3 SCC 553

manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in K.N. Guruswamy v. State of Mysore [AIR 1954 SC 592 : (1955) 1 SCR 305] was followed subsequently by this Court in the case of D.F.O. v. Ram Sanehi Singh [(1971) 3 SCC 864] wherein this Court held: (SCC p. 865, para 4)

"By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy case [AIR 1954 SC 592 : (1955) 1 SCR 305] there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power."

(emphasis supplied)

14. *This judgment again, in our opinion, does not help the first respondent in the argument advanced on its behalf that in contractual matters remedy under Article 226 of the Constitution does not lie. It is seen from the above extract that in that case because of an arbitration clause in the contract, the Court refused to invoke the remedy under Article 226 of the Constitution. We have specifically inquired from the parties to the present appeal before us and we have been told that there is no such arbitration clause in the contract in question. It is well known that if the parties to a dispute had agreed to settle their dispute by arbitration and if there is an agreement in that regard, the courts will not permit recourse to any* *other remedy without invoking the remedy by way of arbitration, unless of course both the parties to the dispute agree on another mode of dispute resolution. Since that is not the case in the instant appeal, the observations of this Court in the said case of Bridge & Roof Co. [(1996) 6 SCC 22] are of no assistance to the first respondent in its contention that in contractual matters, writ petition is not maintainable.*

***19.** Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.*

***21.** Placing reliance on the observations of this Court in the said case, the learned Counsel, contended, unless the action challenged in the writ petition pertains to the discharge of a public function or public duty by an authority, the courts will not entertain a writ petition which does not involve the performance of the said public function or public duty. Learned Counsel, argued in the instant case while repudiating the contract, the first respondent was not discharging any public function or public duty.*

***23.** It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the* *requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the memorandum of association of the first respondent at para 10 read:*

"To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."

Para 11 of the said object reads thus:

"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."

27. *From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:*

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

***50.** The learned Counsel, appearing for the appellants in this appeal contended that the one and the only stand taken by the first respondent in its two letters of repudiation is that the appellants have changed the mode of receipt of consideration without consulting the first respondent which ground according to the learned Counsel, is not one of the conditions of the insurance contract. He further submitted that an imposition of a condition of that nature requiring a prior consultation would be beyond the terms of the insurance contract, and therefore, impermissible. While the learned Counsel, appearing for the first respondent Corporation contended that the ground of repudiation is not so much the lack of prior consultation but, according to the learned Counsel, is that the first respondent was not liable to pay for the loss suffered by the exporter by agreeing to accept the consideration in cash because that mode of consideration was not covered by the risk insured by the respondent. According to the learned Counsel, the one and the only mode of payment of consideration covered by the said respondent is by barter of goods. Therefore, even though in the letters of repudiation prior consultation before change in the mode of consideration is pointed out as one of the grounds, the same is not the primary ground.*

> ***53.*** *From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of the State and a monopoly body had to be approached by the appellants by compulsion to cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information and after receiving huge sums of money as premium exceeding Rs 16 lakhs. On facts we have found that the terms of the policy do not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when the Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner.*

5.11. By relying on ***ABL International***, Sri.Jayakumar S Patil., learned Senior Counsel, submits that the present writ petitions are clearly maintainable notwithstanding that the dispute arises in a contractual context. It is contended that once KMF and Hassan are held to be instrumentalities of the State, their actions, even in contractual matters, are required to satisfy the test of fairness, reasonableness and non-arbitrariness under Article 14 of the Constitution of India.

5.12. Sri.Jayakumar S Patil., learned Senior Counsel, submits that the impugned actions of KMF in issuing the communication dated 07.08.2024 and the work order dated 07.11.2024, resulting in parallel appointments in respect of the very same field of operation, are ex facie arbitrary and in derogation of the subsisting contractual rights of the petitioners. It is further contended that the mere existence of disputed questions of fact or the contractual origin of the dispute does not bar the exercise of jurisdiction under Article 226, particularly where the impugned action is vitiated by arbitrariness.

5.13. It is therefore submitted that the petitioners are entitled to invoke the writ jurisdiction of this Court to challenge the impugned actions, and to seek appropriate reliefs, including enforcement of their subsisting contractual rights, inasmuch as the actions of the respondents fail to meet the constitutional mandate of fairness and non-arbitrariness.

5.14. He relies on ***Mahabir Auto Stores and Others vs. Indian Oil Corporation and Others[3].,*** more particularly para 5, 15, 17, 18, 19, 20, 21 and 23 thereof, which are reproduced hereunder for easy reference;

> ***5.*** *It was the case of the appellants before the High Court and they had tried to demonstrate with reference to the various documents, annexures etc. filed by them that the firm had been always carrying business as Lube Distributor of the Company, and has been selling all kinds of lubricants. The appellants further contended that the Company had recognised the firm during all this period as authorised dealer, distributor and agent. Certain letters were written by the company directing various customers to contact the firm as an authorised Lube Distributor. This contention was stated before the High Court as well as before us. It is stated that annexures A-2 to A- 14 were copies of letters written by the company directing various customers to con- tact the firm as an authorised Lube Distributor. Annexure A-15 is an advertisement issued in a specially published souvenir on the occasion of All India Highway Motor Rally held in 1972 sponsored by the Company in which the firm was referred to as the Company's authorised Lube Distributor. Annexures A- 16 to A-35 are copies of the letters written by the Company to the appellants in relation to the dealing of the appellants as Lube Distributor. There are several other documents on which reliance was placed on*

[3] (1990) 3 SCC 752

behalf of the appellants. The firm was treated as authorised dealer and agent of the respondent company. It was contended that there was a change of policy by the respondent company, and certain documents of the year 1972 were relied upon to indicate that the supply of lubricants was stopped to those Associations and Dealers to whom ad hoc supplies were given, who were merely re-sellers, traders and who did not have written contracts with the Company. That was the case of the appellant's firm. However, the appellants asserted, that the supply was continued to the appellant firm being a dealer and distributor of the Company. Reliance was placed on Annexures P-28 to P-34 which are the Product Indent-cum- Delivery Orders for various periods issued by the Company to the firm. It is stated that in the said Product Indent-cum Delivery Order there was a note indicating "For Conditions of Supply Please Turnover ..... ". However, in the copies filed with the rejoinder affidavit, there are no terms on the reverse side of the Product Indent-cum-Delivery Order. Although the firm has been receiving continuous supply of lubricants from the Company, it was suddenly stopped on 27th May, 1983 by the Company, and it was con- tended that such an action of the Company will have the effect of black-listing the firm and is arbitrary and against the principles of natural justice besides being hit by the doctrine of promissory estoppel. The appellant firm, it was contended, had made representations against the aforesaid action of the respondent company but to no use. In that background the reliefs mentioned here-in-before were sought from the High Court in the application filed under Article_226 of the Constitution.

15. *Mr. Salve on behalf of the respondents sought to urge that the appellant-firm had never been appointed as a Lube Distributor. There is no letter of intent, letter of appointment, much less letter at all.*

Ad-hoc supplies of Lube products alone had been made to the appellant from 1965 onwards. The procedure adopted for the supply of lube products was that the appellant would write a letter to the company whereupon the Divisional Office, Lube Section would process the same. The policy decision in December, 1982 indicated that no new Distributor for Lube products would be appointed and no new products would be distributed either through the existing network, of existing Lube Distributors or to authorised dealers of other products such as, petrol, SKO, LDO and HSD. It was submitted that as a result of the policy it was not the appellant alone to whom the supplies were discontinued. There was similar discontinuance of supplies to 24 other parties whose names were given in the counter-affidavit.

17. *We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait-jacket formula. It has to be examined in each particular case. Mr Salve sought to urge that there are certain cases under Article 14 of arbitrary exercise of such "power" and not cases of exercise of a "right" arising either under a contract or under a statute. We are of the opinion that that would depend upon the factual matrix.*

18. *Having considered the facts and circumstances of the case and the nature of the contentions and the dealing between the parties and in view of the present state of law, we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field. It appears to us that in respect of corporation like IOC when without informing the* *parties concerned, as in the case of the appellant-firm herein on alleged change of policy and on that basis action to seek to bring to an end to course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. Whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any strait-jacket basis. It depends on the nature of the right involved and nature of the power sought to be exercised in a particular situation. It is true that there is discrimination between power and right but whether the State or the instrumentality of a State has the right to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances of the situation, but such exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers are affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not taken into confidence.*

19. *Such transaction should continue as an administrative decision with the organ of the State. It may be contractual or statutory but in a situation of transaction between the parties for nearly two decades, such procedure should be followed which will be reasonable, fair and just, that is, the process which normally be accepted (sic is expected) to be followed by an organ of the State and that process must be conscious and all those affected should be taken into confidence.*

20. *Having regard to the nature of the transaction, we are of the opinion that it would be appropriate to* *state that in cases where the instrumentality of the state enters the contractual field, it should be governed by the incidence of the contract. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to the parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the appellant should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting. We must, however, evolve such process which will work.*

21. *Therefore, we direct that the case of the appellants be put to the respondents and let the respondent authorities consider afresh the submissions made by the appellant-firm, namely, that the existing arrangement amounts to a contract by which the distributorship was continued in case of the appellant-firm without any formal contract and further that the new policy of the government introduced in December 1982 would not cover the appellant firm and as such the appellant should continue. It will be sufficient, having regard to the nature of the claims, for the respondent authority to consider this aspect after taking the appellant-firm into confidence on this aspect. Nothing further need be stated or required to be done and we give no directions as to whether reasons should be recorded or hereinafter should be given. In the facts and circumstances, it is not necessary to give oral hearing or record the reasons as such for the decision. The decision should be based on fair play, equity and consideration by an institution like IOC. It must act fairly.*

23. *It is not our decision which is important but a decision on the above basis should be arrived at which should be fair, just and reasonable, and* *consistent with good government, which will be arrived at fairly and should be taken after taking the persons concerned whose rights/obligations are affected, into confidence. Fairness in such action should be perceptible, if not transparent.*

5.15. By relying on ***Mahabir Auto***, Sri.Jayakumar S Patil., learned Senior Counsel, submits that even in the realm of contractual or commercial dealings, an instrumentality of the State is under a constitutional obligation to act fairly, reasonably and in a non-arbitrary manner. It is contended that where there exists a long-standing course of dealings and an established working arrangement, the State or its instrumentality cannot abruptly alter or terminate such arrangement, particularly without notice, consultation, or affording an opportunity to the affected party.

5.16. Sri.Jayakumar S Patil., learned Senior Counsel, submits that in the present case, the petitioners have been engaged in the relevant operations since 2015, and their continued engagement over a substantial period establishes a consistent course of conduct recognising their role and operational domain. It is contended that the impugned actions of KMF in introducing parallel arrangements by appointing third parties, without prior notice or consultation with the petitioners, is arbitrary and violative of the principles of fairness mandated under Article 14 of the Constitution.

5.17. It is further submitted that, as held in **Mahabir Auto Stores**[3], even in the absence of a formal statutory obligation, the State and its instrumentalities are required to act in a manner that is fair, just and reasonable, particularly where their actions have the effect of disrupting an existing commercial relationship of considerable duration. On this basis, it is contended that the impugned actions are liable to be set aside.

5.18. He relies upon the decision of the Hon'ble Supreme Court in ***Shrilekha Vidyarthi v. State of U.P***[4]***.,*** more particularly para 13, 15, 18, 20, 21, 23, 24, 29, 30, 35, 36 and 39 thereof, which are reproduced hereunder for easy reference;

> ***13.*** *The learned Additional Advocate General contended that clause (3) of para 7.06 says that the appointment of a District Government Counsel, is only*

[4] (1991) 1 SCC 212

professional engagement terminable at will on either side and not appointment to a post under the government; and the government has the power to terminate the appointment at any time 'without assigning any cause'. He contended that this power to terminate the appointment at any time without assigning any cause and the clear statement that the appointment is only professional engagement terminable at will on either side is sufficient to indicate that the relationship is the same as that of a private client and his Counsel,. In our opinion, this provision has to be read not in isolation, but in the context in which it appears and along with the connected provisions, already referred to. The expression 'professional engagement' is used therein to distinguish it from 'appointment to a post under the government' in the strict sense. This, however, does not necessarily mean that a person who is not a government servant holding a post under the government does not hold any public office and the engagement is purely private with no public element attaching to it. This part of clause (3) of para 7.06 means only this and no more. The other part of clause (3) which enables the government to terminate the appointment 'at any time without assigning any cause' can also not be considered in the manner suggested by the learned Additional Advocate General. The expression 'at any time' merely means that the termination may be made even during the subsistence of the term of appointment and 'without assigning any cause' means without communicating any cause to the appointee whose appointment is terminated. However, 'without assigning any cause' is not to be equated with 'without existence of any cause'. It merely means that the reason for which the termination is made need not to be assigned or communicated to the appointee. It was held in Liberty Oil Mills v. Union of India [(1984) 3 SCC 465] that the expression 'without assigning any reason' implies that the decision has to be *communicated, but reasons for the decision have not to be stated; but the reasons must exist, otherwise, the decision would be arbitrary. The non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of an appointment without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy. Clause (3) of para 7.06 must, therefore, be understood to mean that the appointment of a District Government Counsel, is not to be equated with appointment to a post under the government in the strict sense, which does not necessarily mean that it results in denuding the office of its public character; and that the appointment may be terminated even during currency of the term by only communicating the decision of termination without communicating the reasons which led to the termination. It does not mean that the appointment is at the sweet will of the government which can be terminated at any time, even without the existence of any cogent reason during the subsistence of the term. The construction, suggested on behalf of the State of U.P. of this provision, if accepted, would amount to conceding arbitrary power of termination to the government, which by itself is sufficient to reject the contention and thereby save it from any attack to its validity.*

15. *A brief reference to some decisions of this Court, in which the character of engagement of a Government Counsel, was considered, may be made. In Mahadeo v. Shantibhai [(1969) 2 SCR 422 : 40 ELR 81] it was held that a lawyer engaged by the Railway Administration during the continuance of the engagement was holding an 'office of profit'. The engagement of the Railway Counsel, was similar to that of the Government Counsel, in the present case. It was pointed out that by 'office' is meant the right* *and duty to exercise an employment or a position of authority and trust to which certain duties are attached; and such an engagement satisfied that test. Even though the decision was rendered in the context of disqualification under the Election Law by holding an 'office of profit', yet it is useful for appreciating the nature of such an engagement or appointment of a Counsel, by the government. In Mundrika Prasad Singh v. State of Bihar [(1979) 4 SCC 701 : (1980) 1 SCR 759] the nature of appointment of Government Pleaders came up for consideration and it was said that the office of a Government Pleader, as defined in Section 2(7) of the Code of Civil Procedure, 1908, is a public office. Krishna Iyer, J., in that decision, also pointed out that the (SCC p. 707, para 16) "governments under our Constitution shall not play with Law Offices on political or other impertinent considerations as it may affect the legality of the action and subvert the rule of law itself". In that decision, an earlier Madras decision was quoted with approval, wherein, it was clearly held that the duties of the Government Pleader are of a public nature and that the office of a Government Pleader is a public office. The relevant extract is as under : (SCC pp. 706-07, para 15)*

"… A Government Pleader is more than an advocate for a litigant. He holds a public office. We recall with approval the observations a Division Bench of the Madras High Court made in Ramachandran v. Alagiriswami [AIR 1961 Mad 450 : ILR 1961 Mad 553] and regard the view there, expressed about a Government Pleader's office, as broadly correct even in the Bihar set up.

… the duties of the Government Pleader, Madras are duties of a public nature. Besides, as already explained the public are genuinely concerned with the manner in which Government Pleader discharges his

duties because, if he handles his cases badly, they have ultimately to foot the bill. …

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I consider that the most useful test to be applied to determine the question is that laid down by Erle, J. in (1851) 17 QB 149. The three criteria are, source of the office, the tenure and the duties. I have applied that test and I am of opinion that the conclusion that the office is a public office is irresistible."

Similarly, in Mukul Dalal v. Union of India [(1988) 3 SCC 144 : 1988 SCC (Cri) 566] , it was held that (SCC pp. 149 & 152, para 6 & 9) "the office of the Public Prosecutor is a public one" and "the primacy given to the Public Prosecutor under the Scheme of the Code (CrPC) has a social purpose".

18. *The scope of judicial review permissible in the present case, does not require any elaborate consideration since even the minimum permitted scope of judicial review on the ground of arbitrariness or unreasonableness or irrationality, once Article 14 is attracted, is sufficient to invalidate the impugned circular as indicated later. We need not, therefore, deal at length with the scope of judicial review permissible in such cases since several nuances of that ticklish question do not arise for consideration in the present case.*

20. *Even apart from the premise that the 'office' or 'post' of DGCs has a public element which alone is sufficient to attract the power of judicial review for testing validity of the impugned circular on the anvil of Article 14, we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of Article 14 to all executive actions of the State being settled and for* *the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist.*

21. *The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directives Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14, non-arbitrariness which is basic to rule of law, from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the* *professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.*

23. *Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.*

24. *The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters.*

There is a basic difference between the acts of the State which must invariably be in pubic interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.

29. *It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : (1979) 3 SCR 1014] and Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir [(1980) 4 SCC 1 : (1980) 3 SCR 1338]). In Col. A.S. Sangwan v. Union of India [1980 Supp SCC 559 : 1981 SCC (L&S) 378] while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.*

30. *In Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293] the matter was re-examined in relation to an* *instrumentality of the State for applicability of Article 14 to all its actions. Referring to the earlier decisions of this Court and examining the argument for applicability of Article 14, even in contractual matters, Sabyasachi Mukharji, J. (as the learned Chief Justice then was), speaking for himself and Kania, J., reiterated that: (SCC p. 304, para 22) "every action of the State or an instrumentality of the State, must be informed by reason. ….actions uninformed by reasons may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution." Ranganathan, J. did not express any opinion on this point but agreed with the conclusion of the other learned Judges on the facts of the case. It is obvious that the conclusion on the facts of the case could not be reached by Ranganathan, J. without examining them and this could be done only on the basis that it was permissible to make the judicial review. Thus, Ranganathan, J. also applied that principle without saying so. In view of the wide ranging and, in essence, all-pervading sphere of State activity in discharge of its welfare functions, the question assumes considerable importance and cannot be shelved. The basic requirement of Article 14 is fairness in action by the State and we find it difficult to accept that the State can be permitted to act otherwise in any field of its activity, irrespective of the nature of its functions when it has the uppermost duty to be governed by the rule of law. Non-arbitrariness, in substance, is only fair play in action. We have no doubt that this obvious requirement must be satisfied by every action of the State or its instrumentality in order to satisfy the test of validity.*

35. *It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of* *the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.*

36. *The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act 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, 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'. This is what men in power must remember, always.*

39. *No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable. If after a* *prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as arbitrary.*

5.19. By relying on ***Shrilekha Vidyarthi***, Sri.Jayakumar S Patil., learned Senior Counsel, submits that the State and its instrumentalities cannot claim a dual character in contractual matters so as to act fairly at the stage of entering into a contract, and thereafter act arbitrarily during its subsistence. It is contended that the requirement of Article 14, namely fairness, reasonableness and non-arbitrariness, permeates all actions of the State, irrespective of whether such actions arise in the realm of public law or contractual dealings.

5.20. Sri.Jayakumar S Patil., learned Senior Counsel, submits that even where a contract permits termination or variation without assigning reasons, such power cannot be exercised arbitrarily or without the existence of a rational and discernible basis. It is contended that in the present case, the impugned actions of KMF in introducing parallel arrangements and appointing third parties in respect of the very same field of operation, during the subsistence of valid contractual arrangements in favour of the petitioners, are not informed by any discernible principle or rational basis and are therefore vitiated by arbitrariness.

5.21. It is further submitted that once a prima facie case of arbitrariness is established, the burden shifts to the respondents to justify their action by placing on record the reasons and material forming the basis of the impugned decisions. In the absence of any such justification, the impugned actions are liable to be set aside as violative of Article 14 of the Constitution of India.

5.22. He relies upon the decision of the Hon'ble Apex Court in ***GAIL v. Indian Petrochemicals Corpn. Ltd.[5],*** more particularly para 21, 22, 23, 24 and 25 thereof, which are reproduced hereunder for easy reference;

> ***21.*** *Although the dispute arises from a commercial contract, we find that the writ petition challenging the clauses was maintainable. It is not disputed that GAIL is a public sector undertaking and thus qualifies under the definition of "State" as per Article 12 of the Constitution. At the time of entering into contract,*

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[5] *(2023) 3 SCC 629*

GAIL was enjoying a monopolistic position with respect to the supply of natural gas in the country. IPCL, having incurred a significant expense in setting up the appropriate infrastructure, had no choice but to enter into agreement with GAIL. Thus, there was a clear public element involved in the dealings between the parties. Further, writ jurisdiction can be exercised when the State, even in its contractual dealings, fails to exercise a degree of fairness or practises any discrimination. We are fortified in our view by this Court's decision in ABL International [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and Joshi Technologies [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728] .

***22.** In the present case, GAIL's action in levying "loss of transportation charges" was ex facie discriminatory, insofar as IPCL was mandated to build its own pipeline in terms of the allocation letter and was not using GAIL's HBJ pipeline at all. Thus, it cannot be said that merely because an alternative remedy was available, the Court should opt out of exercising jurisdiction under Article 226 of the Constitution and relegate the parties to a civil remedy.*

***23.** Now, we come to the validity of the clauses under which "loss of transportation charges" were levied. In our view, it would be extremely unfair and unjust, apart from being an arbitrary action in violation of Article 14 of the Constitution of India that IPCL is charged for loss of transportation charges when it is mandated to lay down its own pipelines and not to transport the gas through the HBJ pipeline. This action also violates the principle of non-discrimination enshrined in Article 14. IPCL, which is using its own pipelines, is being treated on a par with other commercial entities who are carrying gas through the HBJ pipeline laid down by GAIL. This is* *more so when the pricing orders by the authority concerned i.e. MoPNG stipulate a fixed price for natural gas.*

24. *On a basic principle, it cannot be doubted that once GAIL has laid down the pipeline, it is entitled to structure in its cost in the contract. However, the issue is not simply that. We are faced with a scenario where two public sector enterprises entered into a contract in pursuance of the allocation made by the MoPNG. There was also a time constraint for IPCL. After incurring a heavy expenditure in the construction of the Gandhar Plant, IPCL had very little choice but to enter into the contract. What is of most significance is that IPCL was bound to follow the allocation terms provided by the principal authority i.e. MoPNG. Thus, as pleaded by IPCL, they were faced with a "Hobson's choice", where they had to either give up the contract or accept the clauses levying transportation charges. On a conspectus of the above factors, it can be said that GAIL exercised an unequal bargaining power at the time of signing the contract.*

25. *In fact, the contractual exercise of providing such a clause runs contrary to every commercial and common sense and is manifestly arbitrary, as IPCL is not being charged under any general terms but for a specific purpose. This purpose cannot exist in the contract in view of the master authority i.e. the Union of India, providing to the contrary.*

5.23. By relying on ***Gas Authority of India***, Sri.Jayakumar S Patil., learned Senior Counsel, submits that even in contractual matters involving commercial arrangements, the writ jurisdiction of this Court is maintainable where the State or its instrumentality acts in a manner that is arbitrary, discriminatory, or unfair. It is contended that where one party enjoys a dominant or monopolistic position, resulting in unequal bargaining power, the contractual terms and subsequent actions flowing therefrom are subject to scrutiny on the touchstone of Article 14 of the Constitution of India.

5.24. Sri.Jayakumar S Patil., learned Senior Counsel, submits that in the present case, KMF, being the controlling entity in respect of the "Nandini" brand and dairy distribution network, occupies a position of dominance vis-à-vis the petitioners. It is contended that the petitioners, having made substantial investments and having structured their operations in furtherance of the arrangements entered into with KMF and Hassan, were effectively left with no real alternative but to continue within the framework determined by the respondents.

5.25. Sri.Jayakumar S Patil., learned Senior Counsel, further submitted that the impugned actions of

KMF in introducing parallel appointments and overlapping contractual arrangements during the subsistence of the petitioners' contracts are manifestly arbitrary and commercially irrational, inasmuch as they disrupt an existing operational framework without any discernible justification. Such action, it is contended, is akin to imposing conditions or creating obligations that are inconsistent with the very structure of the contractual relationship, and therefore falls foul of Article 14.

5.26. Sri.Jayakumar S Patil., learned Senior Counsel, therefore submits that, as held in ***GAIL***, where a State instrumentality exercises its contractual powers in a manner that is unjust, discriminatory or reflective of unequal bargaining power, the same is amenable to judicial review and liable to be set aside.

5.27. He relies upon the decision of the Hon'ble Apex Court in ***Subodh Kumar Singh Rathour v. Kolkata Metropolitan Development Authority*[6]*,*** more particularly para 34, 53, 64 and 65 thereof, which are reproduced hereunder for easy reference;

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[6] *2024 SCC OnLine SC 1682*

34. *Having heard the learned Counsel, appearing for the parties and having gone through the materials on record, the two pivotal questions that fall for our consideration are as under:*

34.1. *(I) What is the scope of judicial review of the actions of the State in the matters relating to contract/tender disputes under writ jurisdiction?*

34.2. *(II) Whether the action on the part of the respondent herein in cancelling the tender vide its Notice dated 7-2-2023 was amenable to the writ jurisdiction of the High Court? If so, whether the said action could be termed as arbitrary or unfair and in consequence of violation of Article 14 of the Constitution of India?*

53. *The decision of this Court in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213] is significant and was the turning point in the scope of judicial review in contractual matters. In this landmark ruling, this Court decisively laid down and approved that a relief against a State or its instrumentalities in matters related to contractual obligations can be sought under the writ jurisdiction. The relevant observations read as under: (SCC pp. 570 & 572, paras 23 & 27)*

"23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in

contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. …

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27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

(emphasis supplied)

64. *Thus, the present dispute even if related to a tender, cannot be termed as a pure contractual dispute, as the dispute involves a public law element. Although there is no discharge of a public function by the respondent towards the appellant yet there is a right to public law action vested in him against the respondent in terms of Article 14 of the Constitution. This is because the exercise of the executive power by it in the contractual domain i.e. the cancelling of the tender carries a corresponding public duty to act in a reasonable and rationale manner. Thus, we find that the writ petition filed by the respondent was maintainable and the relief prayed for could* *have been considered by the High Court in exercise of its writ jurisdiction.*

65. *In Ramana Dayaram Shetty v. International Airport Authority of India [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489 : AIR 1979 SC 1628] this Court held that the actions of the State in contractual matters must conform to some standard or norms which is rational, non-discriminatory and not guided by extraneous considerations, otherwise the same would be in violation of Article 14 of the Constitution. The relevant observations read as under: (SCC pp. 511-12, para 21)*

"21. This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] and Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must

conform to some standard or norm which is rational and non-discriminatory."

(emphasis supplied)

5.28. By relying on ***Subodh Kumar Singh Rathour***, Sri.Jayakumar S Patil., learned Senior Counsel, reiterated that even in matters arising out of contracts or tenders, the writ jurisdiction of this Court is maintainable where the impugned action of the State or its instrumentality involves a public law element and is alleged to be arbitrary or unreasonable.

5.29. It is contended that the present dispute cannot be characterised as a mere contractual dispute, inasmuch as the impugned actions of KMF in restructuring operational arrangements and introducing parallel appointments in the State of Telangana involve the exercise of executive power having civil and commercial consequences, thereby attracting the discipline of Article 14 of the Constitution.

5.30. Sri.Jayakumar S Patil., learned Senior Counsel, submits that, as held in ***Subodh Kumar Singh Rathour***[6], every action of the State in contractual matters must conform to rational, non-discriminatory standards and must not be guided by extraneous or irrelevant considerations. It is contended that the impugned communications and work orders, having the effect of diluting or overriding the petitioners' subsisting contractual rights without any disclosed rationale, are vitiated by arbitrariness.

5.31. Sri.Jayakumar S Patil., learned Senior Counsel, further submitted that the existence of a contractual relationship or the availability of alternative remedies does not bar the exercise of writ jurisdiction, particularly where the action impugned is not a mere breach but constitutes an arbitrary exercise of power by a State instrumentality. On this basis, it is contended that the present writ petitions are maintainable and the impugned actions are liable to be interfered with.

5.32. On the basis of the aforesaid factual matrix and the legal propositions laid down in the decisions relied upon, Sri.Jayakumar S Patil., learned Senior Counsel, for the petitioners submits that the petitioners are operating under valid and subsisting contractual arrangements, which, according to them, confer exclusive rights in respect of the activities entrusted, namely co-packing, processing, and Warehousing, Clearing and Forwarding operations, within the State of Telangana. It is contended that these arrangements have been acted upon over a substantial period of time, during which the petitioners have established infrastructure, invested capital, and structured their commercial operations on the legitimate premise that the field of operation entrusted to them would not be subjected to parallel or overlapping appointments.

5.33. Sri.Jayakumar S Patil., learned Senior Counsel, submits that KMF and Hassan, being instrumentalities of the State within the meaning of Article 12 of the Constitution of India, are bound by the constitutional mandate of fairness, reasonableness and non-arbitrariness in all their actions, including those arising in the contractual sphere. It is contended that the State cannot assume a dual character so as to adhere to constitutional discipline at the stage of entering into a contract, and thereafter act in a purely private capacity during its subsistence. The requirement of Article 14 permeates the entirety of State action and obligates the respondents to act in a manner that is informed by reason, consistent, and non-discriminatory.

5.34. It is further submitted that during the currency of the subsisting work orders and agreements, the impugned actions of KMF in issuing the communication dated 07.08.2024 and the work order dated 07.11.2024, thereby appointing additional entities to undertake identical activities in the very same territorial jurisdiction, amount to a direct and arbitrary interference with the petitioners' operational domain. Such actions, it is contended, are not supported by any disclosed policy decision, objective criteria, or rational basis, and are therefore liable to be characterised as arbitrary and violative of Article 14.

5.35. Sri.Jayakumar S Patil., learned Senior Counsel, emphasises that the course of conduct between the parties over the years demonstrates a consistent understanding that the petitioners were to operate within the entirety of the State of Telangana without competing or parallel appointments. The earlier attempt by KMF to introduce zonal bifurcation and involve another milk union having been withdrawn upon objection, reinforces the petitioners' contention that exclusivity in operational terms was both recognised and acted upon. The impugned actions, therefore, represent a departure from established practice without any justification, thereby attracting the vice of arbitrariness.

5.36. It is further contended that the petitioners have altered their position and incurred substantial financial and operational commitments in reliance upon the subsisting arrangements. The sudden introduction of parallel agencies not only disrupts the existing supply chain and distribution framework but also results in commercial prejudice, erosion of business viability, and uncertainty in operations. Such action, it is submitted, is manifestly unreasonable and disproportionate.

5.37. Sri.Jayakumar S Patil., learned Senior Counsel, also submits that the petitioners were neither put on notice nor taken into confidence prior to the issuance of the impugned communications and work orders. The absence of any consultative process or opportunity to represent their position renders the decision-making process arbitrary and contrary to the principles of fairness which are required to be observed by State instrumentalities, particularly in the context of long-standing commercial arrangements.

5.38. It is further submitted that the impugned actions have the effect of imposing an unreasonable restriction on the petitioners' right to carry on trade and business under Article 19(1)(g) of the Constitution of India. While the State may regulate commercial activity, such regulation must be reasonable and in public interest. In the present case, the impugned actions, being unsupported by any discernible public interest or rational basis, fail to satisfy the test of reasonableness.

5.39. Sri.Jayakumar S Patil., learned Senior Counsel, therefore submits that the present case is not one of a mere breach of contract, but one involving arbitrary exercise of power by State instrumentalities in the contractual domain, thereby attracting the jurisdiction of this Court under Article 226. It is contended that the impugned communications and work orders are vitiated by arbitrariness, lack of transparency, and absence of rational justification, and are therefore liable to be quashed.

6. Sri.Sumanth L.Bharadwaj., learned Counsel, appearing for Respondent No.2 - KMF would submit that;

6.1. At the outset, it is contended that the writ petitions are not maintainable. The dispute, according to learned Counsel, arises purely out of contractual arrangements and pertains to commercial rights and obligations inter se the parties. It is submitted that no public law element is involved so as to warrant interference under Article 226 of the Constitution of India. The lis, being in the realm of private law, ought to be adjudicated before a competent civil forum.

6.2. Sri.Sumanth L.Bharadwaj., learned Counsel, submits that the petitioners have fundamentally misconstrued the expression "Hyderabad Market". It is contended that the said expression refers specifically to the geographical and commercial market within the city of Hyderabad, and cannot be expanded to include the entire State of Telangana. The interpretation sought to be placed by the petitioners, equating "Hyderabad Market" with the whole State, is stated to be untenable and contrary to the contractual and administrative understanding of KMF.

6.3. It is further submitted that, in terms of Clause 3 of the agreement entered into with the petitioner in W.P. No. 23487/2024, KMF has expressly reserved the right to add, delete or modify the area of operation depending upon market requirements and performance parameters. In view of such contractual stipulation, it is contended that no claim of exclusivity can be asserted by the petitioners, and KMF retains the authority to appoint additional agencies as necessitated by business exigencies.

6.4. Sri.Sumanth L.Bharadwaj., learned Counsel, submits that, historically, the marketing of Nandini milk and allied products in Hyderabad was carried out through Mother Dairy, which procured products from various milk unions in Karnataka. In order to streamline operations and ensure efficient supply, KMF took a conscious decision to entrust operations in the "Hyderabad Market" to Hassan, which led to the issuance of the order dated 28.09.2016.

6.5. Referring to the said order dated 28.09.2016, it is submitted that the entrustment in favour of Hassan was confined strictly to the "Hyderabad Market". It is contended that such entrustment was a policy decision taken in the business interest of KMF, and the scope thereof cannot be enlarged by the petitioners. Being a policy decision relating to commercial operations, the same is not amenable to judicial review in writ proceedings.

6.6. Sri.Sumanth L.Bharadwaj., learned Counsel, further submits that all subsequent communications, including the letter dated 29.09.2016 issued by KMF and the communication dated 12.07.2018 issued by Hassan, consistently refer only to the "Hyderabad Market" and not to the State of Telangana. It is therefore contended that the petitioners cannot derive any right beyond the territorial scope expressly contemplated in these communications.

6.7. It is submitted that the permission granted by KMF to respondent No.3 on 17.07.2018 to issue an Expression of Interest was also confined to the "Hyderabad Market". Consequently, any action taken by Hassan beyond this limited mandate would be ultra vires its authority.

6.8. Sri.Sumanth L.Bharadwaj., learned Counsel, contends that Hassan exceeded its authority by entering into agreements with the petitioners purporting to cover the entire State of Telangana. It is submitted that Hassan, being subordinate to KMF in the operational hierarchy, could not have expanded the territorial scope beyond what was delegated. Therefore, any claim of exclusivity based on such agreements is legally untenable.

6.9. In this background, it is submitted that the petitioners cannot claim any exclusive right over the entire State of Telangana. At best, their rights, if any, are confined to the "Hyderabad Market". It is further submitted that, in order to expand the market and improve distribution of Nandini products in other districts of Telangana, KMF took a policy decision to permit other milk unions to operate in specified districts, as reflected in the communication dated 07.08.2024. Pursuant thereto, appropriate appointments have been made, including appointment of agencies by the concerned unions.

6.10. Sri.Sumanth L.Bharadwaj., learned Counsel, submits, without prejudice, that even assuming the petitioners have enforceable rights within the "Hyderabad Market", the impugned appointments pertain to districts outside Hyderabad, and therefore do not infringe any rights of the petitioners. It is contended that no legal injury or prejudice is caused to the petitioners by such appointments.

6.11. Lastly, Sri.Sumanth L.Bharadwaj., learned Counsel, reiterates that the decisions taken by KMF are in the nature of policy and commercial decisions, taken in furtherance of business expansion and market efficiency. Such decisions, it is submitted, are not amenable to judicial review unless shown to be patently arbitrary or mala fide, which is not the case here. If the petitioners have any grievance arising out of contractual terms, their remedy lies before a civil court and not under Article 226 of the Constitution.

7. Sri Syed Kashif Ali Leaned Counsel, for Sri.Pradeep S.Sawkar appearing for Respondent No.4 - Hassan would submit that;

7.1. Sri Syed Kashif Ali, Learned Counsel, relies upon the decision of Hon'ble Apex Court in ***Noida Toll Bridge Co. Ltd. v. Federation of Noida Residents Welfare Assn[7].,*** more particularly para Nos.67, 68, 83, 87 and 88 thereof, which are reproduced hereunder for easy reference;

[7] *(2025) 6 SCC 717*

67. *The High Court while analysing the reasonableness of the formula adopted, held that Article 14 of the concession agreement was perpetual in nature and it entitled Ntbcl to recover user fees/toll indefinitely. Such a clause, therefore, being opposed to public policy was unjust and arbitrary and liable to be severed from the concession agreement.*

68. *We find no error in the analysis undertaken by the High Court. It is pertinent to understand that the formula in Annexure F of the concession agreement calculates the total project cost and returns. As per the formula, the total project cost is the aggregate of (a) the project cost; (b) major maintenance expenses; and (c) shortfall in the recovery of returns in a specific financial year.*

83. *As previously mentioned, a letter dated 29-8-2007 from the CEO of the appellant to Noida indicated that the total project cost after 30 years would be approximately Rs 5353 crores, suggesting that the term of the Project should be extended to 100 years. The CAG Report pertinently states that, if Ntbcl continues to operate under the current terms of the concession agreement, with extensions as per its provisions, the unrecovered total project cost could rise to around Rs 7200 crores by 31-3-2020 and Rs 15,200 crores by 31-3-2029. This unending escalation in the total project cost leaves no room to doubt that the concession agreement was cleverly designed to remain perpetually operational.*

87. *Contracts loaded with terms which are so unfair and unreasonable, that they truly baffle this Court, are undoubtedly opposed to public policy and must be adjudged void. [Central*

Inland Water Transport Corpn. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : (2009) 2 SCC (Civ) 803 : 1986 SCC (L&S) 429] The Court is always cautious when determining if a particular contract or action is opposed to public policy, but in doing so, it cannot shirk from its duty and approve helplessly the interpretation of a statute or a document or of an action which is certain to subvert the societal goals and endanger the public good. [Rattan Chand Hira Chand v. Askar Nawaz Jung, (1991) 3 SCC 67]

88. *To do so, the Court may invoke the doctrine of severability and sever the incurable parts of the contract from the whole. The Court can do so only when the rest of the contract can breathe and survive without the aid of its void covenants. The Court must ask itself whether the parties would have agreed to the valid terms of the agreement if they knew that the invalid terms would be removed. [Beed District Central Coop. Bank Ltd. v. State of Maharashtra, (2006) 8 SCC 514 : 2006 SCC (L&S) 2042] Given the extent of manipulation in the instant case, we must intervene and hold that Article 14 of the concession agreement, read with the formula in Annexure F, is opposed to public policy and must be cut apart from the concession agreement.*

7.2. By relying on ***Noida Toll Bridge,*** Sri Syed Kashif Ali, Learned Counsel, submits that contractual terms or arrangements entered into by the State or its instrumentalities, if found to be manifestly unfair, unreasonable or opposed to public policy, are amenable to judicial scrutiny and can be either invalidated or appropriately moulded by the Court.

7.3. It is contended that the Hon’ble Supreme Court has recognised that contracts which are structured in a manner that perpetuates imbalance, confers disproportionate advantage, or results in unjust consequences are liable to be struck down as being opposed to public policy. The Court, in such circumstances, is empowered to examine the substance of the arrangement and intervene to prevent arbitrariness and injustice.

7.4. Sri Syed Kashif Ali, Learned Counsel, submits that in the present case, the conduct of KMF in altering the operational framework by introducing parallel agencies during the subsistence of the petitioners’ contractual arrangements results in a situation of inherent unfairness and commercial imbalance. It is contended that such action effectively dilutes the contractual rights of the petitioners as also Hassan while permitting overlapping operations, thereby rendering the contractual framework uncertain and commercially untenable.

7.5. It is further submitted that, even assuming that the respondents seek to rely upon contractual clauses reserving certain rights, such clauses cannot be exercised in a manner that produces manifestly arbitrary or unjust consequences. If the contractual framework, as implemented, results in unfairness or is contrary to public policy, this Court would be justified in intervening, including by reading down or severing such offending aspects to ensure conformity with constitutional principles.

7.6. On this basis, Sri Syed Kashif Ali, Learned Counsel, submits that the impugned actions, being inconsistent with the principles of fairness and public policy, and resulting in manifest arbitrariness, are liable to be interfered with by this Court.

7.7. Sri Syed Kashif Ali, Learned Counsel, relies upon the decision of Hon'ble Apex Court in ***M.I. Builders (P) Ltd. v. Radhey Shyam Sahu[8],*** more particularly para Nos.57, 58 and 88

[8] *(1999) 6 SCC 464*

thereof, which are reproduced hereunder for easy reference;

> ***57.*** *We may now examine some of the terms of the agreement dated 4-11-1993. There are six recitals to the agreements which cannot be correlated to any discussion in any of the meetings of the Mahapalika, the Executive Committee or the High Power Committee. Under clause (2) of the agreement it is for the builder to make a construction at its own cost and then to realise the cost with profit not exceeding more than 10% of the investment in respect of each shop. Nobody knows how much cost the builder is likely to incur and how long it will continue to be in possession of the shopping complex. Full freedom has been given to the builder to lease out the shops as per its own terms and conditions to persons of its choice on behalf of the Mahapalika and the Mahapalika shall be bound by these terms and conditions. The builder has also been given the right to sign the agreement on behalf of the Mahapalika on the terms and conditions which the builder may deem fit and proper. The builder is only required to give a copy of the agreement to the Mahapalika after its execution and both the Mahapalika and the builder shall remain bound by the terms of that agreement. Since there is no project report nobody knows how many shops the builder would construct and of what sizes. The Mahapalika is allowed to charge Rs 5000 per shop for every second and subsequent transfer of shops by the builder but what amount is to be charged for the first transfer or subsequent transfers is left to the sole discretion of the builder. A bare glance at the terms of the agreement shows that not only the*

clauses of the agreement are unreasonable for the Mahapalika but they are atrocious. No person of ordinary prudence shall ever enter into such an agreement. A trustee, which the Mahapalika is, has to be more cautious in dealing with its properties. Valuable land in the heart of a commercial area has been handed on a platter to the builder for it to exploit and to make runaway profits. As a matter of fact on examining the terms of the agreement we find that the Mahapalika has been completely ousted from the underground shopping complex for an indefinite period. It has completely abdicated its functions.

58. *To repeat, the agreement is completely one-sided favouring the builder. A land of immense value has been handed over to it to construct an underground shopping complex in violation of the public trust doctrine and the Master Plan for the city of Lucknow. The Mahapalika has no right to step in even if there is any violation by the builder of the terms of the agreement or otherwise. The Mahapalika, though considered to be the owner of the land, is completely ousted and divested of the land for a period which is not definite and which depends wholly on the discretion of the builder. On the question of reasonableness reference may be made to Wade on Administrative Law, 7th Edn., p. 399. The learned author observed that:*

"The court must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate."

Quoting Lord Hailsham, L.C. in W. (an infant), Re [1971 AC 682 : (1971) 2 All ER 49] where he said:

"Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable."

The following passage from the treatise would be relevant:

"This is not therefore the standard of 'the man on the Clapham omnibus'. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called 'Wednesbury unreasonableness', after the now famous case in which Lord Greene, M.R. expounded it as follows:

'It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to

what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, L.J. in Short v. Poole Corpn. [1926 Ch 66 : 1925 All ER Rep 74] gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.'

This has become the most frequently cited passage (though most commonly cited only by its nickname) in administrative law. It explains how 'unreasonableness', in its classic formulation, covers a multitude of sins. These various errors commonly result from paying too much attention to the mere words of the Act and too little to its general scheme and purpose, and from the fallacy that unrestricted language naturally confers unfettered discretion.

Unreasonableness has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category or errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self-misdirection, or addressing oneself to the wrong question. But the language used in the cases shows that, while the abuse of discretion has this variety of differing legal facets, in practice the courts often treat them as distinct.

When several of them will fit the case, the court is often inclined to invoke them all. The one principle that unites them is that powers must be confined within the true scope and policy of the Act.

Taken by itself, the standard of unreasonableness is nominally pitched very high: 'so absurd that no sensible person could ever dream that it lay within the powers of the authority' (Lord Greene, M.R.); 'so wrong that no reasonable person could sensibly take that view' (Lord Denning, M.R.); 'so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it' (Lord Diplock). It might seem from such language that the deliberate decisions of ministers and other responsible public authorities could almost never be found wanting. But, as may be seen in the following pages, there are abundant instances of legally unreasonable decisions and actions at all levels. This is not because ministers and public authorities take leave of their senses, but because the courts in deciding cases tend to lower the threshold of unreasonableness to fit their more exacting ideas of administrative good behaviour."

59. *When we keep in view the principles laid by this Court in its various judgments and which we have noticed above, it has to be held that the agreement dated 4-11-1993 is not a valid one. The agreement defies logic. It is outrageous. It crosses all limits of rationality. The Mahapalika has certainly acted in a fatuous manner in entering into such an agreement. It is a case where the High Court rightly interfered in exercise of its powers of judicial review*

> *keeping in view the principles laid down by this Court in Tata Cellular v. Union of India [(1994) 6 SCC 651] . Every decision of the authority except the judicial decision is amenable to judicial review and reviewability of such a decision cannot now be questioned. However, a judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. On the principle of good governance reference was made to a decision of the Division Bench of the Bombay High Court in State of Bombay v. Laxmidas Ranchhoddas [AIR 1952 Bom 468, 475 (para 12) : 54 Bom LR 681] (AIR Bom at p. 475) (para 12). It was submitted that bad governance sets a bad example. That is what exactly happened in the present case.*

7.8. By relying on ***M.I.Builders,*** Sri Syed Kashif Ali, Learned Counsel, submits that where an authority vested with public power exercises such power in a manner that is unreasonable, irrational, or amounts to an abdication of its statutory or public duties, such action is liable to be interfered with in exercise of judicial review.

7.9. It is contended that the Hon'ble Supreme Court has unequivocally held that decisions of public authorities which are one-sided, arbitrary, or confer disproportionate advantage without any rational basis are liable to be struck down as being violative of the principles of good governance and the rule of law. It is further emphasised that even in contractual or commercial matters, the State or its instrumentalities cannot act in a manner that is capricious, extravagant, or devoid of any discernible principle.

7.10. Sri Syed Kashif Ali, Learned Counsel, submits that in the present case, the impugned actions of KMF in permitting overlapping and parallel appointments during the subsistence of the petitioners' contractual arrangements with Hassan disclose a clear absence of rationality and structured decision-making. It is contended that such actions are not guided by any objective criteria, policy framework, or discernible standard, and therefore fall within the ambit of Wednesbury unreasonableness, inasmuch as no reasonable authority acting within the bounds of law would have adopted such a course.

7.11. It is further submitted that the respondents, while being custodians of a structured distribution framework under the "Nandini" brand, are required to act in a manner that promotes coherence, consistency and fairness. The introduction of parallel arrangements, without any transparent basis, is stated to disrupt the existing framework and reflects an improper exercise of discretion.

7.12. On this basis, Sri Syed Kashif Ali, Learned Counsel, submits that the impugned actions are vitiated by arbitrariness, irrationality and improper exercise of power, and are therefore liable to be set aside in exercise of the writ jurisdiction of this Court.

7.13. Sri Syed Kashif Ali, Learned Counsel, relies upon the decision of Hon'ble Maharashtra High Court in ***Vijay Kumar Gupta vs State of Maharashtra*[9]*.,*** more particularly para No.9 thereof, which is reproduced hereunder for easy reference;

> ***9.*** *Now, we may proceed to discuss the second limb of point (iii). It is neither in dispute before us nor it can be disputed that in the present case, the State has exclusive control over drawing of water and it has been allotting the contract to respondent No. 2 without inviting*

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[9] *2008 (4)Mh.L.j*

any tenders and in its sole discretion that too without framing any guidelines for that purpose. It is a distribution of State largesse as except the State, nobody could permit the drawing of water from the wells which is the property of the State. Water is essential for life and admittedly, drawing of water and its distribution in the public and private sector by respondent No. 2 was a pure and simple trade activity. While operating in the matter of trade coupled with distribution of State largesse, the State was expected to adhere to the cannons of equality and fairness. Its action was to be beyond the limitations and patent discrimination. Respondent No. 2, for the first time, was awarded contract for a period of 10 years in the year 1987. Nothing is on record to show why the decision of awarding contract to the respondent No. 2 for such a long time was taken without following any fair procedure. No guidelines have been brought to our notice which show on what basis the concerned authorities in the administration of the State hierarchy had applied their mind and in what of administration such guidelines were framed for the State to have taken such an action. This contract was extended time and again without permitting any other person to participate in any manner whatsoever before awarding or extending the contract in favour of respondent No. 2. This perpetual grant/extension right from the year 1987 till date is a strange phenomena adopted by the State which exfacie is not only arbitrary, unjust, unreasonable but even directly impinges upon the spirit of Article 14 of the Constitution of India. It appears from the record that in the year 2005 on noticing the illegal and unauthorized activities of respondent No. 2, the concerned authorities issued a show-cause notice intending to cancel the contract in favour *of the respondent No. 2 as well as for imposing a penalty of Rs. 9,95,578/for drawing water unauthorisedly from one extra point for the period between 12th May, 1998 to 3rd December, 2005. This notice was challenged by respondent No. 2 by filing a suit in the court of competent jurisdiction. The court vide its order dated 3.2.2005, declined to grant any interim order in favour of the respondent No. 2. Correctness of this order was challenged by respondent No. 2 by filing an appeal before the High Court which was also dismissed by order dated 8th December, 2005. However, liberty was granted to the respondent No. 2 to move the trial court for expeditious disposal of the suit. As it is evident that the courts in exercise of their judicial discretion, consistently declined to grant any relief to the respondent No. 2, he had pursued the suit filed by him before the trial court after the order of the appellate court dated 8.12.2005. With some sense of dissatisfaction, we may notice that in the reply affidavit filed on behalf of the Government in the present petition, the reasons for extending the period of contract is recorded in para 10 of the affidavit, which is in reply to para 3(j) of the petition, which reads thus*

10. With reference to para 3(j) of the petition, I say that as already stated hereinabove, the Respondent No. 2 had agitated his rights for the said contract by filing a Civil Suit in the City Civil Court after receipt of the Deputy Director of Sports and Youth Services, Mumbai notice dated 19th September, 2005. The Respondent No. 2 did not secure any Interim relief against this Respondent and thereafter he filed an Appeal challenging the orders of the Hon'ble City Civil Court in Hon'ble

High Court. Taking into consideration the revenue loss due to closure of the site, these respondents have awarded the contract to Respondent No. 2.

7.14. By relying on ***Vijay Kumar Gupta***, Sri Syed Kashif Ali, Learned Counsel, submits that where the State or its instrumentalities deal with distribution of commercial rights, privileges, or opportunities amounting to State largesse, such distribution must conform to the constitutional mandate of fairness, transparency and non-arbitrariness under Article 14 of the Constitution of India.

7.15. It is contended that the Hon'ble High Court has held that the grant or extension of contractual rights by the State, without following any fair procedure, without inviting competition, or without framing any objective guidelines, would be ex facie arbitrary and violative of Article 14. It is emphasised that even in trade or commercial activities, the State cannot act in an unfettered or discretionary manner so as to favour particular entities or exclude others without a rational basis.

7.16. Learned counsel submits that in the present case, the impugned actions of KMF in permitting or facilitating parallel appointments, without any transparent process, competitive bidding, or disclosed criteria, amount to an arbitrary distribution of commercial opportunities. It is contended that the absence of any discernible policy framework or guidelines governing such appointments renders the decision-making process opaque and susceptible to arbitrariness.

7.17. It is further submitted that the respondents, while exercising control over the distribution network of "Nandini" products, are effectively dealing with a form of State-controlled commercial opportunity, and therefore are required to adhere to the principles governing distribution of State largesse. The impugned actions, having been undertaken without affording an equal opportunity to similarly situated entities or without following any fair procedure, are stated to be violative of Article 14.

7.18. On this basis, learned counsel submits that the impugned communications and appointments are arbitrary, non-transparent and constitutionally impermissible, and are therefore liable to be set aside.

7.19. Sri Syed Kashif Ali, Learned Counsel, relies upon the decision of Hon'ble Maharashtra High Court in ***SecLink Technologies Corpn. v. State of Maharashtra[10],*** more particularly para No.79 thereof, which is reproduced hereunder for easy reference;

> ***79.*** *As already observed above, in a tender for certain work floated by a public authority, the terms and conditions and, requirement and scope of work should be certain and definite and not uncertain and indefinite. In absence of definite and certain scope of work, it would be highly improper to proceed with the tender process for the reason that such a situation may pose uncertainty and difficulty in the mind of the tenderers while submitting their bid. The CoS, in its meeting held on 27th August 2020 considered all these aspects of the matter and decided to cancel the earlier tender process. The reasons, thus, given by the respondents for cancelling the earlier tender process, in our opinion, cannot be said to be non-existent or unjustified or based on any perversity.*

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[10] *2024 SCC OnLine Bom 3843*

7.20. By relying on ***SecLink Technologies Corporation***, Sri Syed Kashif Ali, Learned Counsel, submits that in matters involving public contracts and tenders, the scope of work, territorial jurisdiction, and operational parameters must be clearly defined, certain, and free from ambiguity. It is contended that any contractual or administrative arrangement which suffers from vagueness or lack of clarity is liable to result in uncertainty, arbitrariness, and unequal treatment.

7.21. Learned counsel submits that the Hon'ble High Court has emphasised that absence of definite and certain terms governing the scope of work creates confusion not only for the contracting parties but also undermines the integrity and fairness of the process itself. In such circumstances, the decision-making process of the authority becomes susceptible to arbitrariness.

7.22. It is contended that in the present case, the respondents have failed to maintain clarity and consistency in defining the operational area and scope of work. While on one hand the petitioners were permitted to operate under arrangements which, according to them, extended across the State of Telangana, the respondents have subsequently adopted a restrictive interpretation of "Hyderabad Market" and simultaneously introduced parallel appointments in overlapping territories. This shifting and inconsistent delineation of operational areas, it is submitted, results in uncertainty and renders the contractual framework inherently arbitrary.

7.23. Learned counsel further submits that the introduction of multiple agencies without clearly demarcating territorial boundaries or operational responsibilities creates ambiguity in execution, potential conflict in operations, and an uneven playing field. Such lack of definitional clarity, it is contended, is contrary to the principles laid down in SecLink Technologies, and is indicative of an unstructured and arbitrary exercise of power.

7.24. On this basis, learned counsel submits that the impugned actions, being founded on uncertain and inconsistently applied parameters, are liable to be interfered with as violative of Article 14 of the Constitution of India.

7.25. Sri Syed Kashif Ali, Learned Counsel, relies upon the decision of Hon'ble Maharashtra High Court in ***New Horizons Ltd. v. Union of India***[11]***,*** more particularly para No.79 thereof, which is reproduced hereunder for easy reference;

> ***17.*** *At the outset, we may indicate that in the matter of entering into a contract, the State does not stand on the same footing as a private person who is free to enter into a contract with any person he likes. The State, in exercise of its various functions, is governed by the mandate of Article 14 of the Constitution which excludes arbitrariness in State action and requires the State to act fairly and reasonably. The action of the State in the matter of award of a contract has to satisfy this criterion. Moreover a contract would either involve expenditure from the State exchequer or augmentation of public revenue and consequently the discretion in the matter of selection of the person for award of the contract has to be exercised keeping in view the public interest involved in such selection. The decisions of this Court, therefore, insist that while dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet*

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[11] *(1995) 1 SCC 478*

will and like a private individual, deal with any person it pleases, but its action must be in conformity with the standards or norms which are not arbitrary, irrational or irrelevant. It is, however, recognised that certain measure of "free play in the joints" is necessary for an administrative body functioning in an administrative sphere [See : Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : (1979) 3 SCR 1014] (SCR p. 1034 : SCC pp. 505-06, para 12); Kasturi Lal Lakshmi Reddy v. State of J & K [(1980) 4 SCC 1 : (1980) 3 SCR 1338] (SCR p. 1355 : SCC pp. 11-12, para 11); Fasih Chaudhary v. Director General, Doordarshan [(1989) 1 SCC 89 : 1988 Supp (3) SCR 282] (SCR p. 286 : SCC p. 92,); Sterling Computers Ltd. v. M & N Publications Ltd. [(1993) 1 SCC 445] ; Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499] (at p. 513)].

7.26. By relying on ***New Horizons Limited,*** Sri Syed Kashif Ali, Learned Counsel, submits that while the State has discretion in matters relating to award of contracts and structuring of commercial arrangements, such discretion is not absolute and must be exercised in conformity with the mandate of Article 14 of the Constitution of India. It is contended that the State does not stand on the same footing as a private individual and cannot act at its whim or pleasure while dealing with public contracts or commercial opportunities.

7.27. Learned counsel submits that every action of the State in the contractual domain must be guided by rational, non-discriminatory standards and must be informed by public interest. While a limited degree of flexibility or "free play in the joints" is recognised, such flexibility cannot extend to actions that are arbitrary, irrational, or lacking in any discernible principle.

7.28. It is contended that in the present case, the impugned actions of KMF in introducing parallel and overlapping arrangements during the subsistence of the petitioners' contracts do not disclose any objective criteria, policy framework, or public interest justification. The absence of any transparent basis for such decisions takes the matter beyond the permissible zone of administrative discretion and renders the action arbitrary.

7.29. Learned counsel further submits that KMF, while dealing with distribution and marketing of "Nandini" products, are effectively allocating commercial opportunities under a State-controlled framework, and are therefore required to adhere to established norms of fairness, transparency and equality. The impugned actions, being inconsistent with these principles, are stated to be violative of Article 14.

7.30. On this basis, Learned Counsel submits that KMF cannot justify the impugned actions on the ground of policy discretion or administrative flexibility, as the same are neither structured nor supported by any rational basis, and are therefore liable to be set aside.

7.31. Sri Syed Kashif Ali, Learned Counsel appearing for the Respondent No.3 – Hassan essentially supports the case of the Petitioners and submits that the present writ petitions are maintainable notwithstanding that the dispute arises in a contractual context, inasmuch as the impugned actions are those of KMF, Hassan having acted properly, KMF has also impinged on the rights of Hassan, who are instrumentalities of the State within the meaning of Article 12 of the Constitution of India. He contends that the lis is not a mere private commercial dispute, but involves the exercise of public power in the contractual domain, thereby attracting the discipline of Article 14. Placing reliance on decisions such as **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd**[2]**.** and **Subodh Kumar Singh Rathour v. Kolkata Metropolitan Development Authority**[6], he submits that writ jurisdiction can be invoked where State action, even in contractual matters, is arbitrary, unreasonable or lacking in fairness, and that the existence of disputed facts or alternative remedies does not operate as a bar.

7.32. It is his submission that the impugned actions of KMF in issuing communications and work orders introducing parallel and overlapping arrangements during the currency of the petitioners' contracts are ex facie arbitrary. He contends that such actions lack any disclosed policy basis, objective criteria or rational justification, and represent a departure from the established practice.

7.33. Learned counsel also submits that the manner in which additional agencies have been introduced reflects a lack of transparency and absence of any fair procedure. The allocation of such commercial opportunities, being in the nature of State largesse, is required to be undertaken in a transparent and non-discriminatory manner.

7.34. It is further contended that KMF has adopted inconsistent and shifting positions with regard to the scope of operation, particularly in their interpretation of “Hyderabad Market”, while simultaneously permitting overlapping operations. Such lack of clarity and definitional certainty, according to learned counsel, renders the entire framework arbitrary and unworkable.

7.35. On the aforesaid grounds, learned counsel submits that the impugned communications and work orders are arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India, and are therefore liable to be quashed.

8. Sri.Pramod Nair., Learned Senior Counsel, appearing for the newly appointed Re-packaging agent and Warehousing Clearing and Forwarding Agency submits that;

8.1. Sri.Pramod Nair., Learned Senior Counsel, submits that the authorization granted in favour of his clients is confined strictly to the districts of Warangal, Adilabad, Nizamabad, Karimnagar and Khammam, and expressly excludes the "Hyderabad Market". It is therefore contended that the operations of the answering respondents do not overlap with the area in which the petitioners claim to operate, and consequently, no prejudice is caused to the petitioners.

8.2. Sri.Pramod Nair., learned Senior Counsel, further relies upon the order dated 01.10.2024 passed in W.P. No. 22850/2024, wherein this Court clarified that Hassan Milk Union was at liberty to supply milk and milk products to Warangal District pursuant to the Letter of Acceptance dated 07.08.2024. It is submitted that the said order recognises and affirms the permissibility of operations outside the Hyderabad Market, thereby negating the petitioners' claim of exclusivity over the entire State of Telangana.

8.3. Sri.Pramod Nair., Learned Senior Counsel, submits that the rights, if any, conferred upon Hassan Milk Union were limited to the "Hyderabad Market", and consequently, any rights derived by the petitioners through Hassan Milk Union cannot extend beyond the said territorial scope. It is further contended that the present challenge is directed against a tender process and consequential work orders, in which the petitioners did not participate. On that ground alone, it is submitted that the petitioners lack *locus standi* to question the validity of such tender or the appointments made pursuant thereto.

8.4. Sri.Pramod Nair., Learned Senior Counsel, further submitted that the petitioners are guilty of suppression of material facts and misrepresentation, amounting to suggestio falsi and suppressio veri. Learned Senior Counsel contends that the petitioners have sought to project a right over the entire State of Telangana, despite being aware that the underlying authorization in favour of Hassan Milk Union was confined only to the Hyderabad Market. It is further alleged that the work order issued by Hassan Milk Union in favour of the petitioners, purporting to cover the entire State, is beyond the authority of Hassan Milk Union and is the result of a collusive arrangement between the petitioners and Hassan Milk Union.

8.5. Sri.Pramod Nair., Learned Senior Counsel, draws attention to the tender notifications issued by Hassan Milk Union, which, according to him, clearly indicate that bids were invited only for the Hyderabad region and not for the entire State of Telangana. It is therefore contended that any agreement or work order extending beyond the scope of the tender documents is impermissible and unenforceable.

8.6. Sri.Pramod Nair., Learned Senior Counsel, submits that the answering respondents have made substantial investments, exceeding Rs. 35 crores, in establishing a state-of-the-art dairy plant in compliance with the norms of the National Dairy Development Board. Despite the issuance of the work order in their favour, the interim orders passed by this Court have prevented them from commencing operations, thereby causing significant financial prejudice.

8.7. Sri.Pramod Nair., learned Senior Counsel, relies upon the decision of Co-ordinate Bench of this Court in ***Mahalakshmi Engineering Works vs. Bangalore Electricity Supply Company Limited***[12]., more particularly para 9, 10 and 11 thereof, which are reproduced hereunder for easy reference;

> ***9.*** *I have given my anxious consideration to the submissions made by the respective learned senior Counsel, and have perused the material on record. In furtherance whereof the issues that would fall for my consideration are –*
>
> *(i) Whether BESCOM was right in seeking to re-tender only those 10 tenders that were quashed by this Court? and*
>
> *(ii) Whether petitioners have any locus to question any act of BESCOM qua the tender notified, notwithstanding their non-participation in the tender process?*
>
> *In the light of the second issue cutting at the root of the matter, I deem it appropriate to consider the same at the outset.*
>
> *Issue No.2:*
>
> *(ii) Whether petitioners have any locus to question any act of BESCOM qua the tender notified,*

[12] *WP No.17266 of 2022 dated 09.11.2022*

notwithstanding their non-participation in the tender process?

10. *The afore-narrated facts with regard to issuance of notice inviting tender for the works notified therein are not in dispute. The petitioners though belong to Scheduled Castes/Scheduled Tribes and reservation of 10 tenders being accorded thereto out of 50 tenders, did not participate in the tender process, are all a matter of record. The notice inviting tender did no where restrict any tenderer to participate in any tender on the NIT dated 28.03.2022. Though reservation was stipulated qua 10 tenders, the tenderers belonging to Scheduled Castes/Scheduled Tribes were not precluded from participating in the tenders of general category. As a matter of fact, there were several tenderers who did participate in both the tenders reserved for Scheduled Castes/Scheduled Tribes and in the general category. The petitioners chose to sit on the fence, did not participate in the tender process at all, neither in the 10 reserved tenders nor in the 40 unreserved tenders. Therefore, the petitioners now seek to point out lacunae in the tenders, sitting outside throughout. Whether that would be permissible is the question?*

11. *A tenderer who remains outside and then seeks to question the tender process or conditions stipulated in the tender notification would not get locus to challenge and condition of tender. This issue need not detain this Court for long or delve deep into the matter. The Apex Court in the case of NATIONAL HIGHWAYS AUTHORITY OF INDIA (supra) considering this issue, has held as follows:*

"20. While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent forum. Going by the terms and conditions in the tender documents, as already alluded to in para 10 above, there is no title of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money. The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was to participate in the bidding process, it shall be deemed to fulfill all the requirements of the tender Clauses 3 to 6 of RFP, being the existing concessionaire of the project, does not exempt the respondent from participating in the tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered as a responsive bidder, along with others. Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to

contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfillment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever."

(Emphasis supplied)

The Apex Court clearly holds that the tenderer who would chose to stay away from the tender process cannot be heard to whittle down the rights of eligible bidders who had participated in the tender process on the basis of written and express terms and conditions. At the culmination of the tender process, if the tenderer had not participated in law, he cannot be seen to question the terms and conditions. The petitioners, in the case at hand, have admitted their non participation in the tender. Staying away from the tender, they cannot now seek to challenge the tender. It is further germane to notice a similar view taken by the Calcutta High Court. A Division Bench of the High Court of Calcutta in the case of

SUBIR GHOSH v. STATE OF WEST BENGAL AND OTHERS2 has held as follows:

"4. The more important factor is that the tender process in this case opened sometime in March, 2019 and the closing date for submitting online bids was April 1, 2019. The writ petition was filed in January, 2020. Though it is submitted on behalf of the writ petitioner that the time to submit the bids was extended, no specific date in such regard is indicated. What is apparent is that the writ petitioner did not participate in the bidding process and yet chose to challenge the same.

5. It is possible that a prospective bidder finds the terms of the tender documents to be unfair or illegal and challenges the same; but such challenge has to be before the time to put in the bids is closed. At any rate, if a bid is made and the bid is thrown out on an illegal or unfair ground contained in the tender documents, even then, a challenge can be fashioned. But a person who has not participated in the bidding process at all cannot challenge the tender conditions on any ground whatsoever. This admitted aspect of the matter escaped the attention of the Single Bench while passing the impugned order of January 15, 2020.

6. For the reasons aforesaid, the order dated January 15, 2020 cannot be sustained and the same is set aside. Since the best arguable case of the writ petitioner will not result in any of the tender terms being altered as the writ petitioner did not participate in the process at all, the writ petition itself is dismissed. Nothing in this order will be construed to be an approval of the terms and conditions of the tender document and in an appropriate challenge, the same may be considered in accordance with law."

In the light of the judgments of the Apex Court in the case of NATIONAL HIGHWAYS AUTHORITY OF INDIA and the Division Bench of the Calcutta High Court in the case of SUBIR GHOSH holding that only a participant can question the tender, the challenge raised by the petitioners who are not the participants in the subject tender, would thus tumble down. Therefore, the second issue that fell for consideration which concerns locus of the petitioners to challenge the tender process being held against the petitioners, the first issue with regard to tender process would not arise for consideration, as it is trite law, that if a writ petitioner has no locus to raise a challenge to the subject matter, no other ground on merit of the challenge need be considered.

8.8. By relying on the above, Sri.Pramod Nair., Learned Senior Counsel, submits that a party who has not participated in the tender process has no locus standi to challenge either the tender conditions or the consequential award of contract. It is contended that the law is well-settled that a person who chooses to remain outside the bidding process cannot subsequently seek to assail the terms of the tender or the rights accrued to successful bidders.

8.9. Sri.Pramod Nair., Learned Senior Counsel, submits that in the present case, the petitioners did not participate in the tender process pursuant to which the answering respondents were awarded the work. Having consciously abstained from participating, the petitioners cannot now be permitted to question the validity of the tender process or the work orders issued pursuant thereto. Such a challenge, it is contended, is barred on the ground of lack of locus and is liable to be rejected at the threshold.

8.10. It is further submitted that the Hon'ble Supreme Court has consistently held that participation in the tender process is a precondition for maintaining a challenge to its outcome, and that non-participants cannot be permitted to "sit on the fence" and subsequently challenge the process after the bids have been finalised. Learned Senior Counsel emphasises that permitting such challenges would undermine the sanctity of the tender process, discourage fair competition, and prejudice the rights of those bidders who have participated in accordance with the terms and conditions of the tender.

8.11. On this basis, it is contended that the petitioners, having admittedly not participated in the relevant tender process, lack the necessary locus to maintain the present writ petitions insofar as they seek to challenge the tender and the work orders issued in favour of the answering respondents, and consequently, the petitions are liable to be dismissed on this ground alone.

8.12. Sri.Pramod Nair., learned Senior Counsel, relies upon the decision of the Hon'ble Apex Court in ***NHAI v. Gwalior-Jhansi Expressway Ltd[13].,*** more particularly para 20 thereof, which is reproduced hereunder for easy reference;

> ***20.*** *While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent forum. Going by the terms and conditions in the tender documents, as already alluded to in para 10 above, there is no tittle of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give*

[13] *(2018) 8 SCC 243*

equal opportunity to all tenderers with the end result of getting a fair offer or value for money. The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was to participate in the bidding process, it shall be deemed to fulfil all the requirements of the tender Clauses 3 to 6 of RFP, being the existing concessionaire of the project, does not exempt the respondent from participating in the tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered as a responsive bidder, along with others. Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.

8.13. By relying on ***Gwalior Jhansi Expressway***, Sri.Pramod Nair., learned Senior Counsel, submits that participation in the tender process is a sine qua non for asserting any right or grievance in relation to the tender or the contract awarded pursuant thereto. It is contended that the Hon'ble Supreme Court has categorically held that a party which chooses to remain outside the bidding process cannot subsequently claim any entitlement, nor can it be permitted to challenge the outcome of the tender or the rights accrued in favour of successful bidders.

8.14. Learned Senior Counsel submits that the tender process is designed to ensure transparency, competition, and equal opportunity, and that all claims relating to rights such as matching bids, preferential rights, or continuance of engagement are necessarily contingent upon participation in such process. Even an existing concessionaire or incumbent entity, it is submitted, is not exempt from the requirement of participating in the tender, and failure to do so disentitles such party from raising any grievance.

8.15. It is therefore contended that, in the present case, the petitioners, having admittedly not participated in the tender process pursuant to which the answering respondents were appointed, cannot assert any enforceable right in respect of the subject matter of the tender. Learned Senior Counsel emphasises that the petitioners cannot be permitted to bypass the tender mechanism and yet seek to interfere with or invalidate the outcome of a competitive process conducted in accordance with prescribed terms.

8.16. He further submits that permitting such a challenge would not only be contrary to settled law but would also prejudice the rights of bona fide participants who have acted in accordance with the tender conditions. On this ground, it is contended that the petitioners lack locus standi, and the writ petitions, insofar as they seek to assail the tender process and the consequential work orders, are liable to be dismissed.

8.17. Sri.Pramod Nair., learned Senior Counsel, relies upon the decision of the Hon'ble Calcutta High Court in ***Subir Ghosh vs. State of West Bengal and others***[14] more particularly para 5 and 6 thereof, which are reproduced hereunder for easy reference;

> ***5.*** *It is possible that a prospective bidder finds the terms of the tender documents to be unfair or illegal and challenges the same; but such challenge has to be before the time to put in the bids is closed. At any rate, if a bid is made and the bid is thrown out on an illegal or unfair ground contained in the tender documents, even then, a challenge can be fashioned. But a person who has not participated in the bidding process at all cannot challenge the tender conditions on any ground whatsoever. This admitted aspect of the matter escaped the attention of the Single Bench while passing the impugned order of January 15, 2020.*
>
> ***6.*** *For the reasons aforesaid, the order dated January 15, 2020 cannot be sustained and the same is set aside. Since the best arguable case of the writ petitioner will not result in any of the tender terms being altered as the writ petitioner did not participate in the process at all, the writ petition itself is dismissed. Nothing in this order will be construed to be an approval of the terms and conditions of the tender document and in an appropriate challenge, the same may be considered in accordance with law.*

8.18. By relying on ***Subir Ghosh***, Sri.Pramod Nair., learned Senior Counsel, reiterates that a person

[14] *(2020) SCC Online Calcutta 2213*

who has not participated in a tender process is precluded from challenging either the tender conditions or the outcome of the tender. It is contended that even if a prospective bidder considers the tender conditions to be unfair or illegal, such challenge must be mounted prior to the closure of the bidding process; failing which, the right to question the process stands forfeited.

8.19. Learned Senior Counsel submits that the Hon’ble High Court has categorically held that a non-participant cannot be permitted to assail the tender conditions on any ground whatsoever, and that such a challenge is liable to be rejected at the threshold. It is emphasised that participation in the tender process is a necessary precondition to acquire standing to challenge any aspect of the tender.

8.20. Applying the aforesaid principle, learned Senior Counsel submits that the petitioners, having admittedly not participated in the tender process pursuant to which the answering respondents have been appointed, cannot now seek to question either the validity of the tender or the consequential work orders. It is contended that the petitioners, having chosen to remain outside the competitive process, cannot be permitted to indirectly invalidate the rights of successful bidders who have participated in accordance with the prescribed procedure.

8.21. He further submits that the present writ petitions, insofar as they seek to challenge the tender process and the appointments made pursuant thereto, are therefore not maintainable and are liable to be dismissed on the ground of lack of locus standi alone, without entering into the merits of the controversy.

8.22. On the basis of the aforesaid submissions and the authorities relied upon, Sri Pramod Nair, learned Senior Counsel, submits that both the writ petitions are devoid of merit and are liable to be dismissed in limine. It is contended that the petitioners lack locus standi to maintain the present proceedings, inasmuch as they did not participate in the tender process pursuant to which the answering respondents have been appointed, and therefore cannot be permitted to challenge either the tender or the consequential work orders.

8.23. Learned Senior Counsel further submits that the rights claimed by the petitioners are, in any event, confined to the "Hyderabad Market", and the appointments in favour of the answering respondents pertain to districts outside Hyderabad. It is therefore contended that no legal injury or prejudice is caused to the petitioners, and the writ petitions are liable to be rejected on this ground as well.

8.24. It is also submitted that the petitioners have sought to expand their contractual entitlement beyond its legitimate scope, and have approached this Court with suppression and misrepresentation of material facts. On this ground also, it is contended that the petitioners are disentitled to any discretionary relief under Article 226 of the Constitution of India.

8.25. Learned Senior Counsel emphasises that the answering respondents have made substantial investments and have been lawfully awarded contracts pursuant to a valid tender process, and that any interference at this stage would result in serious prejudice to them and adversely affect the larger business operations.

8.26. On these grounds, it is submitted that the writ petitions deserve to be dismissed, and the answering respondents be permitted to carry on their operations in the districts allotted to them, subject to the undertaking that they shall not operate within the "Hyderabad Market".

9. Heard Sri.Jayakumar S Patil, learned senior Counsel, appearing for the petitioners in both the above petitions, Sri.Sumanth L. Bharadwaj., learned Counsel, appearing for KMF in both the petition, Sri.Pramod Nair., learned Senior Counsel, appearing for respondent No.5 in WP No.23487 of 2024 and Respondent No.4 in WP No.22850 of 2024 and Sri Syed Kashif Ali, learned counsel appearing for the Respondent No.3., learned Counsel, appearing for Respondent No.4 - Hassan Milk Union in WP No.23487 of 2024 and respondent No.3 – Hassan Milk Union in WP No.22850 of 2024. Perused papers.

10. The points that would arise for determination are;

i. **Whether the present writ petitions are maintainable under Articles 226 and 227 of the Constitution of India, having regard**

to the contractual nature of the dispute, and whether the impugned actions involve a sufficient public law element attracting judicial review under Article 14?

ii. **Whether the petitioners have established subsisting and enforceable contractual rights of exclusivity, and in particular, whether such rights extend to the entire State of Telangana or are confined to the "Hyderabad Market", and the true meaning of that expression?**

iii. **Whether the impugned communications, tenders and work orders result in impermissible parallel or overlapping arrangements, and if so, whether such actions are arbitrary, unreasonable or violative of Article 14 of the Constitution of India?**

iv. **Whether the respondents, particularly KMF, were entitled under the terms of the agreement and in exercise of policy/commercial discretion to modify or expand the area of operations and appoint additional agencies, and the extent to which such decisions are amenable to judicial review?**

v. **Whether the petitioners, having not participated in the tender process, have locus standi to challenge the impugned actions, and whether any alleged suppression or misrepresentation affects their entitlement to relief; and consequently, whether the petitioners are entitled to the reliefs sought?**

vi. What order?

11. This Court answers the above points as under:

12. <u>**Answer to Point No.i:**</u> **Whether the present writ petitions are maintainable under Articles 226 and 227 of the Constitution of India, having regard to the contractual nature of the dispute, and whether the impugned actions involve a sufficient public law element attracting judicial review under Article 14?**

12.1. The present writ petitions have been filed under Articles 226 and 227 of the Constitution of India. Article 226 confers upon every High Court the power to issue writs, orders, and directions for the enforcement of fundamental rights and for any other purpose. Article 227 confers upon the High Court the power of superintendence over all courts and tribunals throughout its territorial jurisdiction. The primary basis for the exercise of jurisdiction in these petitions is Article 226, which is the source of the power to issue a writ of certiorari quashing the impugned administrative decisions of KMF and Hassan as being contrary to Article 14. Article 227 supplements Article 226 by providing broader supervisory jurisdiction where necessary, but no separate reliance need be placed upon it in the present case, the jurisdiction under Article 226 being fully adequate to the reliefs sought.

12.2. The question of maintainability of writ petitions arising from contractual disputes involving State instrumentalities is one of the most debated threshold questions in Indian administrative law. Its resolution requires the Court to consider a set of competing considerations: on one side, the foundational principle that the State and its instrumentalities are bound by the constitutional guarantee of equality and non-arbitrariness in all their actions; and on the other, the principle that courts should exercise restraint in converting commercial disputes into constitutional controversies. Both petitioners hold subsisting commercial agreements with Hassan, a constituent of the KMF dairy federation, and yet the reliefs they seek are not the enforcement of contractual terms per se, but the quashing of administrative decisions taken by KMF in the exercise of its institutional authority.

12.3. This Court is called upon to determine, at the threshold, whether the subject-matter of these petitions crosses the line from private contract law into public constitutional law, the domain where Article 226 operates. The resolution of this question requires this Court to trace the historical evolution of the law, to examine the constitutional status of KMF and Hassan under Article 12, and to identify the specific public law elements present on the facts.

12.4. The jurisprudence on the maintainability of writ petitions in contractual matters commenced with the decision of a Constitution Bench of the Hon'ble Supreme Court in **Ramana Dayaram Shetty v. The Inter National Airport Authority of India**[15]. In this landmark decision, the Court laid the foundation for the 'public law in private law' doctrine, the principle that State instrumentalities, even when acting in the guise of private parties in the commercial domain, remain bound by the constitutional guarantees of Articles 14 and 16. The Hon'ble Supreme Court held that the rules and norms governing the grant of contracts and licences by State instrumentalities must conform to Article 14,

[15](1979) 3 SCC 489

and that a departure from these rules without good reason gives rise to a constitutional remedy under Article 226.

12.5. The Hon'ble Supreme Court in **Ramana Dayaram Shetty**[15] was careful, however, to circumscribe the scope of the doctrine. It was not the Hon'ble Supreme Court's intention to hold that every contractual action of a State instrumentality is automatically reviewable in writ jurisdiction. The doctrine was intended to apply to actions that involve the exercise of a 'public element', actions that partake of the character of State action rather than of the commercial conduct of a private person. The challenge for subsequent courts has been to identify, in a principled manner, where this line is to be drawn.

12.6. Subsequent to **Ramana Dayaram Shetty**, the law underwent a process of gradual elaboration. In **Mahabir Auto Stores v. Indian Oil Corporation**[3]**,** the Hon'ble Supreme Court affirmed that the public law doctrine applies to long-standing commercial relationships between State instrumentalities and private parties, and that the State cannot arbitrarily modify or terminate such relationships without observing the basic norms of fair dealing that Article 14 mandates. In **Shrilekha Vidyarthi v. State of U.P[4].,** the Hon'ble Supreme Court took the doctrine a step further, holding that Article 14 pervades every action of the State in the contractual domain, and that the State cannot claim the shield of contractual autonomy to escape its constitutional obligations.

12.7. In **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd[2].,** a three-Judge Bench of the Hon'ble Supreme Court undertook a comprehensive consolidation of the case law and laid down the following propositions as definitively settled: (i) a writ petition against a State or its instrumentality arising from a contractual obligation is maintainable in an appropriate case; (ii) the mere fact that the dispute arises out of a contract does not deprive the Court of jurisdiction; (iii) the relevant question is whether the action of the State instrumentality is arbitrary, unreasonable, or contrary to Article

14; (iv) once a State instrumentality is a party to a contract, it is bound to act fairly, justly, and reasonably as required by Article 14; and (v) the mere availability of an alternative remedy by way of a civil suit is not a ground for refusing to exercise writ jurisdiction where the challenge is to arbitrary State action.

12.8. The decision in **ABL International**[2] was particularly significant in clarifying the relationship between contractual remedies and constitutional remedies. The Hon'ble Supreme Court rejected the argument that a party who has a contractual remedy is disentitled to seek writ jurisdiction, holding that constitutional remedies under Article 226 are not alternative remedies in the ordinary sense, they are remedies of a distinct kind, going to the constitutional validity of State action, which civil courts are not equipped to provide. A civil court applying contract law cannot quash arbitrary State action; only a constitutional court exercising writ jurisdiction can do so.

12.9. In **GAIL (India) Ltd. v. Indian Petrochemicals Corporation Ltd**[5]**.,** the

Hon'ble Supreme Court added a further and important dimension: the “Hobson's choice” principle. A “Hobson's choice” arises when the affected party has no real alternative but to deal with the State monopolist on the terms dictated by it. In such a situation, the affected party cannot be said to have 'freely' contracted with the State; it was, in practical terms, compelled to accept the State's terms as a condition of participation in the relevant market. The Hon'ble Supreme Court held that where the State or its instrumentality occupies a monopoly position and the affected party has no realistic alternative, the public law element is particularly strong and the writ jurisdiction of the constitutional court is clearly available.

12.10. The most recent authoritative restatement of the law is contained in **Subodh Kumar Singh Rathour v. Kolkata Metropolitan Development Authority**[6]**.,** decided on 16.08.2024. The Hon'ble Supreme Court affirmed all the foregoing principles and held that the existence of a public law element, not the mere existence of a contract, is the decisive criterion for the availability of writ jurisdiction.

The determination must be made on the facts of each case, and the mere labelling of a dispute as 'contractual' or 'commercial' does not automatically place it beyond the reach of Article 226.

12.11. The foundational prerequisite for the applicability of Article 14, and therefore for the maintainability of these petitions, is that the respondents against whom the petitions are directed are 'State' within the meaning of Article 12 of the Constitution. Article 12 defines 'State' to include 'any other authority within the territory of India or under the control of the Government of India'. The scope of this residuary category has been extensively elaborated by the Hon'ble Supreme Court over several decades.

12.12. The seminal decision on what constitutes 'other authority' under Article 12 is **Rajasthan State Electricity Board v. Mohan Lal[16].,** in which the Hon'ble Supreme Court held that the expression includes all constitutional and statutory authorities on whom powers are

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[16] *AIR 1967 SC 1857*

conferred by law. The Hon'ble Supreme Court in **Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi[17].,** extended this to statutory corporations. The landmark Constitution Bench decision of the Hon'ble Supreme Court in **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology[18]** synthesised the evolution of Article 12 jurisprudence and articulated a comprehensive multi-factor test. The factors identified are: (i) financial support from the Government; (ii) Government ownership of share capital; (iii) monopoly status conferred or protected by the State; (iv) deep and pervasive Government control; (v) functions of a governmental nature or closely connected therewith; and (vi) transfer of a Government-run department or undertaking to the entity. No single factor is decisive; the totality of circumstances must be examined.

12.13. So far as KMF is concerned, the question of its status under Article 12 was directly addressed and conclusively determined by a Division

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[17] *(1975) 1 SCC 421*
[18] *(2002) 5 SCC 111*

Bench of this Court in **K.V. Panduranga Rao v. Karnataka Dairy Development Corporation, Bangalore**[1]. In that decision, the Hon'ble Division Bench examined KMF with reference to each of the relevant criteria and made the following findings: (a) KMF was established by the State Government of Karnataka as part of the 'Operation Flood' programme, centrally sponsored and funded through the National Dairy Development Board; (b) KMF's creation and functioning are governed by the Karnataka Co-operative Societies Act, and its bye-laws, policies, and major decisions require State Government approval; (c) the State Government and the National Dairy Development Board provide substantial financial support to KMF by way of share capital, loans, and guarantees; (d) KMF has been granted a de facto monopoly over the procurement, processing, and distribution of milk and milk products in the cooperative sector in Karnataka; (e) KMF's Managing Director and senior officials are appointed by or with the approval of the State Government; (f) KMF discharges a function, the organisation of dairy development, that is a Directive Principle obligation of the State under Article 48 of the Constitution; and (g) KMF took over dairy units originally run as State Government departments. The sister dairy federations of other States, A.P. Dairy Development Co-operative Federation, Punjab State Co-operative Milk Producers Federation, and the National Dairy Development Board, have been similarly held to be State instrumentalities by their respective High Courts, a consideration the Division Bench in **K.V. Panduranga Rao**[1] found instructive. On the totality of these circumstances, the Hon'ble Division Bench held unequivocally that KMF is an instrumentality of the State within the meaning of Article 12.

12.14. This Court is bound by the decision in **K.V. Panduranga Rao**[1], being a decision of a Division Bench of this Court. No subsequent decision of this Court or of the Hon'ble Supreme Court has overruled, distinguished, or departed from this holding. This Court accordingly holds that KMF is 'State' within the meaning of Article 12.

12.15. As regards Hassan, the Hassan Co-operative Milk Producers Societies Union, its status under Article 12 must be assessed on first principles, since there is no specific binding precedent on the point placed on record.

12.16. Hassan is one of the constituent milk unions that form part of the KMF federation. It operates within the same legal, financial, and administrative framework as KMF. Its operations in the Hyderabad market, the subject-matter of these petitions, were initiated by KMF as a delegation of KMF's dairy development function for that territory. Hassan receives its operational mandate, financial resources, and institutional support through KMF, which is itself a State instrumentality. The management of Hassan is conducted in accordance with KMF's policies and is subject to KMF's oversight. The functions performed by Hassan, procurement of milk from dairy farmers, processing, and distribution of dairy products, are precisely the functions that Article 48 identifies as a State obligation. In all these circumstances, and particularly given that Hassan forms an integral part of the State's dairy development infrastructure through its membership in the KMF federation, this Court has no difficulty in concluding that Hassan is also an instrumentality of the State within the meaning of Article 12.

12.17. The significance of this holding cannot be understated. Once both KMF and Hassan are characterised as State under Article 12, every action they take, including their actions in the domain of commercial contracts, is subject to the constitutional guarantee of non-arbitrariness under Article 14. There is no 'private' sphere into which KMF or Hassan can retreat to escape constitutional scrutiny.

12.18. KMF and Hassan are, therefore, precisely the kind of State instrumentalities that the framers of the Constitution had in mind when they crafted Article 226. They are entities created, controlled, and financed by the State to carry out a public function, dairy development, in the commercial sphere. The petitioners who deal with these entities are precisely the kind of persons/entities who need the protection of Article 226: they have invested their livelihoods in the Nandini distribution chain, they have no alternative to dealing with the State monopolist, and they are at the mercy of institutional decisions over which they have no contractual veto. The writ jurisdiction of this Court is designed for exactly this situation.

12.19. Given the constitutional status of KMF and Hassan, the question narrows to whether the specific actions challenged in these petitions carry a sufficient 'public law element' to attract writ jurisdiction. This Court identifies the following elements in the present case that cumulatively and individually establish the public law character of the dispute.

12.20. MONOPOLISTIC CONTROL: KMF exercises effective monopoly control over the distribution of Nandini-branded dairy products in the Telangana market. The Nandini brand is a brand created, owned, and promoted by KMF, which is itself a State instrumentality. No party other than those authorised by KMF can legitimately engage in the distribution and co-packing of Nandini products in Telangana. The petitioners had no realistic alternative but to deal with KMF and in the present case Hassan, as KMF's delegate, if they wished to participate in the Nandini dairy supply chain in Telangana. This is an instance of the "Hobson's choice" elaborated in GAIL: the contracting party had no real choice, because there was no competing supplier and no competing market for the rights in question. Where the State operates as a monopolist in a commercial domain, the 'public law element' in that domain is pervasive, and the State cannot insulate its monopolistic actions from constitutional scrutiny by claiming the mantle of private contract.

12.21. STATE LARGESSE: The rights obtained by the petitioners, the right to act as WCF agent and co-packing agent for Nandini products in the Hyderabad market, were obtained by grant from KMF/Hassan, acting in their capacity as State instrumentalities. These rights are, in the constitutional sense, State largesse: benefits distributed by the State from its resources and domain. The concept of State largesse was introduced into Indian constitutional jurisprudence in **Ramana Dayaram Shetty**[15]. The essential principle is that when the State distributes benefits, whether in the form of contracts, licences, appointments, or commercial opportunities, the distribution process must comply with Article 14. The initial grant as also renewal of such benefits must be fair and transparent; and the modification, restriction, or revocation of such benefits must also comply with the basic fairness requirements of Article 14. The petitioners hold their positions in the Nandini distribution chain as grantees of State largesse, and any State action that affects their position in that chain is subject to constitutional scrutiny.

12.22. ARTICLE 48 MANDATE: The operations of KMF and Hassan in the dairy distribution sector are directly connected to the implementation of the Directive Principle in Article 48 of the Constitution of India. Article 48 directs the State to organise agriculture and animal husbandry on modern and scientific lines, and in particular to take steps for preserving and improving breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. The Hon'ble Supreme Court has consistently held that Directive Principles, while not enforceable as fundamental rights, are nonetheless 'fundamental in the governance of the country' (Article 37) and provide the backdrop against which the actions of State instrumentalities in related domains are to be understood. KMF's entire commercial operation, including the appointment of distribution agents for Nandini products, is an instrumentality for the realisation of the Article 48 mandate. The public purpose is not incidental or remote; it is the very raison d'etre of KMF's existence.

12.23. EMPLOYMENT AND LIVELIHOOD: The petitioners' operations in the Hyderabad market generate employment for a significant number of persons, drivers, warehouse staff, delivery personnel, and administrative employees. The disruption of these operations, through the unilateral introduction of competing distribution channels, is not a purely commercial matter; it has direct consequences for the livelihoods of these employees and their families. The Hon'ble Supreme Court has repeatedly recognised the livelihood dimension of commercial contracts between State instrumentalities and private parties as a factor supporting the availability of writ jurisdiction.

12.24. CONSUMER INTEREST: KMF's distribution of Nandini dairy products serves a significant public interest in ensuring the supply of affordable, quality dairy products to consumers across Telangana. The efficiency and reliability of the distribution chain directly affect the availability and price of these products to consumers. Actions by KMF that disrupt or compromise the existing distribution chain are, therefore, matters of public concern, not merely private commercial interest.

12.25. NO ARBITRATION CLAUSE: There is no arbitration clause in any of the agreements that form the subject-matter of these petitions. The absence of an arbitration clause confirms that the parties did not agree to refer disputes to a private alternative forum. Since the petitioners' challenge goes to the constitutional validity of State action, a matter for which the civil court has no mandate, the writ jurisdiction of this Court is not merely an alternative remedy; it is the only appropriate remedy.

12.26. PUBLIC TRUST DOCTRINE: The public trust doctrine holds that certain resources and powers held by the State are held in trust for the public at large. While the doctrine has its clearest application in the environmental and natural resources domain as held by the Hon'ble Supreme Court in **M.C. Mehta v. Kamalnath**[19] and **Akhil Bharatiya Upbhokta Congress v. State of Madhya Pradesh**[20], its underlying principle, that the State cannot deal with public resources and public powers as if they were purely private property, is of broad relevance in the present context. The Nandini brand, the KMF distribution network, and the public money invested in building the KMF cooperative dairy structure are, in a meaningful sense, public resources. KMF's allocation of Nandini distribution rights must therefore satisfy Article 14's requirements of fairness and non-arbitrariness.

12.27. Sri. Jayakumar S. Patil, learned Senior Counsel for the petitioners, and Sri. Syed Kashif Ali, learned Counsel for Hassan, have both invoked

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[19] *(1997) 1 SCC 388*
[20] *(2011) 5 SCC 29*

Article 19(1)(g) of the Constitution of India, contending that the impugned actions impose unreasonable restrictions on the petitioners' right to carry on trade and business.

12.28. Article 19(1)(g) guarantees to every citizen the right to practise any profession, or to carry on any occupation, trade, or business. This guarantee is not absolute: Article 19(6) permits the State to make any law imposing reasonable restrictions on the exercise of this right in the interests of the general public, or providing for 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.

12.29. The Article 19(1)(g) argument, as advanced by the petitioners, is essentially an amplification of the Article 14 argument rather than an independent ground of challenge. The petitioners do not contend that any law, in the sense of legislation, restricts their trade. They contend that an executive action of a State instrumentality has disrupted their commercial operations. The correct constitutional framework for examining executive actions alleged to be arbitrary or unfair is Article 14, not Article 19(6) (which applies to legislative restrictions). The Hon'ble Supreme Court in **Rustom Cavasjee Cooper v. Union of India**[21] held that the Court must examine the direct and immediate impact of State action on the petitioner's rights, and where the impact primarily engages Article 14, the Article 19 argument is typically subsumed.

12.30. Nevertheless, since the Article 19(1)(g) challenge has been extensively argued, this Court examines it on its own terms. The petitioners contend that by introducing competing agencies in their operational territory, KMF has effectively deprived them of the ability to carry on their trade, since their entire business model depends upon exclusive access to the Nandini supply chain. This argument has two parts: (a) whether a right under Article 19(1)(g) to carry on trade in the Nandini supply chain exists in the first place;

[21] *(1970) 1 SCC 248*

and (b) whether the impugned actions unreasonably restrict that right.

12.31. As to the first part: the petitioners' trade is not the manufacture or sale of Nandini products, it is the distribution and co-packing of a branded product under a franchise-type arrangement with a State monopolist. The right to carry on this specific trade is, at its core, a contractual right granted by KMF/Hassan, not a general constitutional right to enter the dairy market. Article 19(1)(g) does not confer a right to carry on trade in a particular manner or through a particular medium, it confers a right to choose one's occupation. The petitioners remain free to carry on trade in the dairy distribution sector; what they contest is their entitlement to a particular contractual appointment, and that is a matter of contract law and public law, not Article 19.

12.32. As to the second part: assuming, without conceding, that the impugned actions constitute a restriction on the petitioners' trade, such a restriction is plainly a 'reasonable restriction' within Article 19(6). KMF's decision to expand the Nandini distribution network to serve additional Telangana districts serves the general public interest in wider dairy product availability, a clear public interest justification within Article 19(6). The impugned actions are not a prohibition on the petitioners' trade; they are the introduction of additional distributors in non-overlapping territories. The petitioners retain full freedom to carry on their Hyderabad Metropolitan Area operations. No violation of Article 19(1)(g) is established.

12.33. The invocation of Articles 14 and 19(1)(g) together by Hassan (Respondent No. 4 in WP 23487/2024 and Respondent No. 3 in WP 22850/2024), in support of the petitioners, requires a particular observation. Hassan, having entered into agreements with the petitioners for operations within the Hyderabad Market, finds itself in an anomalous position: it supports the petitioners' challenge to KMF's direction to expand operations in Telangana, because the expansion arguably diminishes Hassan's own commercial footprint within the KMF federation. Hassan's support of the petitioners' submissions is not legally determinative. The rights of the petitioners are determined by the agreements and orders between the parties, not by the institutional preferences of Hassan. Hassan's support for the petitioners' broader construction of 'Hyderabad Market' is understandable from a commercial perspective but does not carry legal weight in the determination of the true meaning of that expression.

12.34. For the reasons stated above, the challenge under Article 19(1)(g) fails on all counts. The challenge under Article 14 is the primary and appropriate constitutional ground. The Article 19(1)(g) argument does not add any independent ground of relief.

12.35. Sri. Sumanth L. Bharadwaj, for KMF, contends that the present disputes are 'purely contractual' and that this Court should not convert them into constitutional controversies. This contention fails on the facts of the present case. The disputes are not purely contractual in the relevant sense: the petitioners do not seek mere enforcement of contractual terms or damages for breach of contract. They seek the quashing of administrative decisions of State instrumentalities, decisions taken in the exercise of institutional authority, not in the exercise of ordinary contractual rights. The distinction between 'contractual' and 'public law' action is not one of form but of substance: the relevant question is whether the action being challenged partakes of the character of State action subject to constitutional control.

12.36. If the argument that the impugned actions are 'commercial' decisions not amenable to constitutional scrutiny were accepted, it would follow that no action of KMF in the commercial domain, no tender, no appointment, no modification of a distribution arrangement, could ever be challenged in writ jurisdiction. This is plainly contrary to the settled law, which has consistently held since **Ramana Dayaram Shetty**[15] that State instrumentalities are bound by Article 14 even in the commercial domain. The fact that a decision is commercial does not insulate it from constitutional review; it merely determines the standard of review that the constitutional court will apply, that is, the

Wednesbury standard of reasonableness rather than a full merits review.

12.37. Sri. Kashif Ali's reliance on **Noida Toll Bridge Co. Ltd. v. Federation of Noida Residents Welfare Association**[7] is misplaced in the context of maintainability. That decision dealt with the maintainability of a PIL challenging terms of a concession agreement for a toll bridge, a very different context from the present case, where the petitioners are directly affected parties with a concrete legal interest. The principle of judicial restraint in PIL matters relating to commercial contracts is not the same principle that governs the maintainability of a writ petition by a directly affected party challenging specific administrative actions.

12.38. The reliance on **New Horizons Ltd. v. Union of India**[11] is also misplaced on the maintainability question. In **New Horizons**[11], the Hon'ble Supreme Court did not hold that writ petitions relating to tender and contract matters are not maintainable; on the contrary, it examined the challenge on merits and dismissed it because the tendering authority had not acted in an arbitrary or unreasonable manner. That decision thus presupposes the maintainability of such writ petitions. The use of **New Horizons**[11] to argue non-maintainability is a misreading of the ratio.

12.39. The principle that there is no constitutional impediment to challenging State action in contractual matters is now so firmly established that this Court need not labour the point further. The objection to maintainability on this groud is rejected.

12.40. A final aspect of the maintainability question is whether the petitioners ought to be denied writ relief on the ground that they have an adequate alternative remedy by way of a civil suit. The availability of a civil suit does not constitute an adequate alternative remedy in the present case.

12.41. First, the reliefs sought by the petitioners are constitutional reliefs, specifically, the quashing of administrative decisions of State instrumentalities as being violative of Article 14. A civil court does not have the jurisdiction or the constitutional mandate to grant such reliefs. Civil courts operate on the basis of contract law and apply the contractual remedies of damages, specific performance, and injunction. They do not operate on the touchstone of Article 14 and cannot grant the remedy of quashing an unconstitutional State action. The remedy available in writ jurisdiction is therefore not a 'duplicate' of the civil remedy; it is a distinct remedy for a distinct wrong.

12.42. Second, the Hon'ble Supreme Court in **ABL International**[2] held that 'the mere availability of an alternative remedy will not always take away the jurisdiction of the constitutional courts to examine the challenge on the ground of violation of Article 14'. The availability of an alternative remedy is a factor to be taken into account in the exercise of discretion, but it is not an absolute bar to writ jurisdiction. This principle was affirmed in **Whirlpool Corporation v. Registrar of Trade Marks**[22], where the Hon'ble Supreme Court held that the existence of an alternative remedy does not oust writ jurisdiction particularly when

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[22] *(1998) 8 SCC 1*

fundamental rights or a public element is involved. In the present case, given the strength and clarity of the public law element, this Court does not consider the availability of a civil suit to be a sufficient reason to decline jurisdiction.

12.43. The question of maintainability is not resolved by any single test or factor. It requires a holistic appreciation of the nature of the respondent, the nature of the action challenged, and the nature of the right asserted. The 'public law element' test looks to all three dimensions: (a) is the respondent the State or a State instrumentality? (b) is the action administrative/institutional in character, or is it purely the exercise of a private contractual right? (c) does the petitioner assert a constitutional right, such as the right to non-arbitrary State action under Article 14, or merely a private law right? Where all three questions are answered in the affirmative, as they are in the present case, the writ jurisdiction of the High Court is clearly available.

12.44. The Hon'ble Supreme Court's progressive expansion of the maintainability of writs in commercial matters reflects a judicial understanding that the distinction between 'public' and 'private' in the modern State is increasingly artificial. The State participates in the market as buyer, seller, employer, licensor, and distributor. If its actions as market participant were categorically exempt from constitutional discipline, a vast and growing domain of State power would escape the accountability that Article 14 demands. It is precisely to prevent this outcome that the Hon'ble Supreme Court in **Shrilekha Vidyarthi**[4] held that the State cannot have a split personality, and that the Hon'ble Supreme Court in **ABL International**[2] held that the availability of an alternative remedy does not bar the writ court from examining constitutional validity.

12.45. In the present case, this principle applies with full force. KMF's power over the Nandini distribution chain in Telangana is, in practical terms, plenary: it decides who gets to distribute Nandini products, in what territory, and on what terms. The exercise of this plenary commercial power by a State monopolist must be subject to the constitutional guarantee of Article 14. The writ jurisdiction of this Court is the constitutional mechanism through which that guarantee is enforced.

12.46. For all the foregoing reasons, this Court holds that the present writ petitions are fully and clearly maintainable under Articles 226 and 227 of the Constitution. The objection to maintainability is overruled.

12.47. This Court answers Point No.1 in the affirmative by holding that the present writ petitions are maintainable under Articles 226 and 227 of the Constitution of India. KMF and Hassan Co-operative Milk Producers Societies Union are State instrumentalities within the meaning of Article 12. The actions of KMF and Hassan challenged in these petitions carry a sufficient public law element, arising from KMF's monopolistic control over Nandini distribution, the Hobson's choice principle, the nature of the rights as State largesse, the Article 48 mandate, and the absence of an adequate alternative remedy, to attract the constitutional jurisdiction of this Court under Article 14. The objection to maintainability raised by the respondents is rejected.

13. **<u>Answer to Point No.ii:</u> Whether the petitioners have established subsisting and enforceable contractual rights of exclusivity, and in particular, whether such rights extend to the entire State of Telangana or are confined to the "Hyderabad Market", and the true meaning of that expression?**

13.1. The legal consequence of the answer to this question is direct and far-reaching: if the petitioners' rights extend to the entire State of Telangana, then the impugned actions, appointing a competing entity in five Telangana districts and issuing a fresh tender for the State, would necessarily constitute an encroachment upon the petitioners' territory and would call for serious constitutional scrutiny; if, on the other hand, the petitioners' rights are confined to the city and metropolitan area of Hyderabad, then the impugned actions, which relate to districts and territories well outside the Hyderabad Metropolitan Area, would not encroach upon the petitioners' rights at all, and the challenge to them would fail on the merits.

13.2. This binary structure makes it essential that this Court approach the question of interpretation with great care and rigour. This Court must examine not only the literal language of the agreements but also the surrounding circumstances, the conduct of the parties, the broader commercial context, and the applicable canons of contractual and legal interpretation.

13.3. Sri. Jayakumar S. Patil submits that the expression 'Hyderabad Market', read in context and with reference to the circumstances prevailing at the time the agreements were entered into, should be understood to mean the entire Telangana market, i.e., all of the State of Telangana. He advances four principal arguments in support of this construction. First, he argues from history: at the time of the bifurcation of undivided Andhra Pradesh in June 2014, the newly formed State of Telangana inherited all the territory west of the Krishna and Godavari river basins, including Hyderabad city as its capital. 'Hyderabad' was, in this sense, the name of the new State's commercial heartland and the term used to denote the entire new State's commercial territory. Second, he argues from conduct: over nine years of the commercial relationship, KMF and Hassan consistently referred to the whole of the petitioners' operational scope as 'Hyderabad', and the petitioners in fact serviced customers across multiple districts, not just within the city. Third, he argues from the 2020 episode: the internal KMF proposal in 2020 to divide the 'Hyderabad market' into a 'North/Warangal Zone', a 'Central Zone', and a 'West Zone', which was described using names that refer to districts outside Hyderabad city, demonstrates that KMF itself understood 'Hyderabad Market' as extending to Warangal and other districts. Fourth, he argues from commercial logic: it would make no sense for KMF to appoint a WCF agent based in Hyderabad only for the city of Hyderabad; the whole purpose of such an appointment is to service the broader regional market of which Hyderabad is the hub.

13.4. The respondents advance the narrower construction. They submit: (i) the plain and ordinary meaning of 'Hyderabad Market' is the market located in and centred on the city of Hyderabad; (ii) the consistent and unvarying use of the expression 'Hyderabad Market', as opposed to 'Telangana Market' or 'State of Telangana', in all KMF documents from 2015 to 2023 is deliberate and reflects KMF's settled understanding of the petitioners' operational territory; (iii) the deliberate shift to the expression 'State of Telangana' in the 2024 tender demonstrates that KMF drew a clear distinction between the two expressions, and that the change of language was intended to expand the scope of operations; (iv) the 2020 episode, properly understood, was about dividing the Hyderabad city distribution network into sub-zones for administrative efficiency, not about acknowledging that 'Hyderabad Market' encompasses all of Telangana; and (v) the distances of the five newly assigned districts from Hyderabad city (145 to 290 km) make it commercially implausible that they were ever intended to form part of the 'Hyderabad Market'.

13.5. The starting point for the interpretation of any contractual expression is the text of the instrument itself, read as a whole and in its grammatical and ordinary sense. This is the first rule of interpretation where the language is clear and unambiguous, effect must be given to the plain meaning, without reference to extrinsic evidence or surrounding circumstances.

13.6. The expression 'Hyderabad Market' is not, in this Court's opinion, ambiguous in its ordinary meaning. 'Hyderabad' is the name of a specific city, the capital of Telangana. 'Market' in this context means the commercial territory served from or centred on that city. 'Hyderabad Market' therefore means, in its ordinary and natural sense, the market in and around the city of Hyderabad, not the market of the entire State of Telangana, which is a State formed initially of 10 districts and reorganised to 33 districts covering an area of approximately 1,12,077 sq. km. It is impossible to service this entire area with only one facility in the city of Hyderabad, the Petitioners have not placed anything on record to indicate that they had established facilities in places other than Hyderabad and/or were servicing all districts of the state of Telangana.

13.7. The petitioners' argument that 'Hyderabad Market' should be read as a reference to the State of Telangana stretches the language beyond its ordinary meaning. At the time the initial agreement was entered into in 2015, just one year after the bifurcation of Andhra Pradesh, the State of Telangana had a well-established governmental and administrative structure with its own government, its own capital, and its own official name. If KMF had intended to appoint the petitioners as agents for the entire State of Telangana, it would have been a simple matter to say so. The fact that KMF chose to use the expression 'Hyderabad Market' rather than 'State of Telangana' or 'Telangana Market' is itself probative of KMF's intention: it was appointing agents for the Hyderabad city and metropolitan market, not for the whole of Telangana.

13.8. Where the ordinary meaning of a contractual expression, while not strictly ambiguous, is said to be inapt or incongruous in the light of the parties' actual conduct, the courts are permitted to have regard to the surrounding circumstances and the factual matrix of the contract for the purpose of ascertaining the true objective meaning of the expression. This principle, often described as the 'factual matrix' approach, the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The use of the factual matrix approach is circumscribed by an important limitation: it cannot be used to override a clear and unambiguous contractual expression.

13.9. Nonetheless, and out of abundant caution, this Court has examined the surrounding circumstances and the factual matrix of the agreements between the parties, to determine whether there is any cogent basis for preferring the petitioners' broader construction over the respondents' narrower one. Before undertaking that examination, this Court notes two further interpretive principles that independently confirm the narrower construction.

13.10. The first is the parol evidence rule. The petitioners rely extensively upon extrinsic evidence, primarily the 2020 internal KMF proposal and asserted oral understandings, to support the broader construction of 'Hyderabad Market'. Section 92 of the Indian Evidence Act, 1872 which is now Section 94 of the Bharatiya Sakhya Adhiniyam, codifies the parol evidence rule in Indian law. It provides that when the terms of a contract have been reduced to writing, no evidence of any oral agreement or statement shall be admitted 'for the purpose of contradicting, varying, adding to, or subtracting from its terms'. Extrinsic evidence is admissible only to resolve a genuine ambiguity in the written text, not to substitute a different meaning for a clear contractual expression.

13.11. In the present case, the expression 'Hyderabad Market' is, as this Court has held, not genuinely ambiguous in its ordinary meaning. The parol evidence rule therefore operates to exclude the petitioners' reliance upon the 2020 internal KMF proposal as a basis for giving the expression a meaning different from its ordinary meaning. Even if the 2020 proposal had said, in unambiguous terms, that 'Hyderabad Market means all of Telangana', which it does not, such an extrinsic statement would not be admissible under Section 92 and now Section 94 to alter the clear meaning of the written agreements between the parties.

13.12. Furthermore, the 2020 proposal is an internal KMF document, it is not a statement made to or communicated to the petitioners, and it cannot constitute a representation to the petitioners of KMF's understanding of the scope of their rights. For a representation to give rise to estoppel, it must be communicated to the person who is to rely upon it. An internal KMF document that was never communicated to the petitioners as a statement of their rights cannot estop KMF from asserting the narrower construction. The reliance upon the 2020 episode as a basis for a broader construction is therefore inadmissible, irrelevant, and unavailing.

13.13. The second additional principle is contra proferentem. Where the meaning of a contractual expression is genuinely ambiguous, the contra proferentem rule applies: the expression is construed against the party who drafted and imposed the contract. In the context of agreements between a State instrumentality and a private party, the State instrumentality is invariably the drafter of the standard form agreement; the private party accepts the terms as presented, often without meaningful negotiation. The same principle applies here: if there is any residual ambiguity in the expression 'Hyderabad Market', it should be resolved against KMF/Hassan (the drafters) and in favour of the petitioners.

13.14. However, this Court emphasises that it does not find the expression 'Hyderabad Market' to be genuinely ambiguous. The plain meaning clearly points to the city of Hyderabad and its metropolitan area. The contra proferentem principle is therefore not the basis of this Court's conclusion; it is an additional consideration that would support the narrower construction even were the expression treated as ambiguous.

13.15. A further alternative holding on the interpretive question is this: even if this Court were to accept, which it does not, that the expression 'Hyderabad Market' extended to all of Telangana, it would still need to determine whether the petitioners' rights were truly exclusive, i.e., whether their appointments gave them the sole and exclusive right to distribute or co-pack Nandini products throughout Telangana, to the exclusion of all other agencies. The petitioners assert such exclusivity, but this claim is not clearly supported by the documents on record.

13.16. The WCF Agent Agreement appointing the petitioner in WP 23487/2024 does not contain any express exclusivity clause, a clause that would prohibit KMF or Hassan from appointing any other WCF agent in the operational territory. The absence of an express exclusivity clause is significant: in commercial agreements between sophisticated commercial parties, exclusivity, if intended, is almost invariably expressed in explicit terms. Agreements that do not contain an explicit exclusivity clause are generally treated as non-exclusive, unless exclusivity is necessarily implied from the context.

13.17. Similarly, the co-packing arrangement of the petitioner in WP 22850/2024 does not contain an express exclusivity clause prohibiting the appointment of any other co-packer in the 'Hyderabad Market'. In the absence of an explicit exclusivity clause, this Court would be reluctant to imply such a sweeping restriction upon KMF's commercial freedom, particularly since the implication of exclusivity in a State instrumentality's commercial dealings raises significant constitutional concerns about the foreclosure of market access to other potential participants.

13.18. For the avoidance of doubt: this Court's finding on Point No. 2 that the petitioners' rights are confined to the Hyderabad Metropolitan Area makes the exclusivity question academic. Even if the agreements were exclusive within the Hyderabad Metropolitan Area, the impugned actions, which relate to territories outside that area, would not violate that exclusivity.

13.19. Sri. Sumanth L. Bharadwaj, learned Counsel for KMF, has placed before this Court the historical background of how Nandini products came to be marketed in Hyderabad. Before the establishment of a dedicated distribution channel, the marketing of Nandini milk and allied products in Hyderabad city was carried out through Mother Dairy, a public sector undertaking under the National Dairy Development Board, which procured dairy products from various Karnataka milk unions, including Hassan, Mysore, and Shimoga unions, and distributed them in Hyderabad through its own retail and wholesale network.

13.20. With a view to streamlining operations and improving the efficiency of Nandini product distribution in Hyderabad, KMF decided to establish its own distribution channel independent of Mother Dairy. By the arrangement dated 04.02.2016, KMF entrusted the business of sale of Nandini branded milk and milk products 'in Hyderabad' to Hassan.

The entrustment was explicitly and exclusively for 'Hyderabad', the city of Hyderabad, which was the territory in which Mother Dairy's distribution network operated. The entire rationale for the Hassan appointment was to replace and supplement Mother Dairy's Hyderabad city distribution with a dedicated KMF-controlled channel. The intended scope of the Hassan appointment, and consequently of any sub-appointment by Hassan to the petitioners, was therefore the city of Hyderabad and its immediate environs, not the entire State of Telangana.

13.21. The Mother Dairy history is thus strong contextual evidence supporting the narrower construction. The 'Hyderabad Market' that KMF entrusted to Hassan was the Hyderabad city market that Mother Dairy had been serving, a city-level distribution market, not a State-wide one. This context was known to both KMF and Hassan at the time of the arrangement, and the petitioners, who were appointed by Hassan under this arrangement, are taken to have been aware of this background when they accepted their appointments. The principles of contextual interpretation require that a contractual expression be read against its historical and commercial background.

13.22. From 2015 to 2023, a period of nine years, every official document issued by KMF and Hassan in relation to the petitioners' appointments uses the expression 'Hyderabad' or 'Hyderabad Market'. This includes: the initial appointment order of 18.05.2015 (WP 23487); the KMF order dated 04.02.2016 transferring the 'Hyderabad business' to Hassan; the KMF order dated 28.09.2016 confirming the transfer; the KMF permission dated 17.07.2018 for Hassan to issue an Expression of Interest; the KMF communication dated 12.07.2018; the EOI issued by Hassan for selecting the petitioner in WP 22850; the appointment order dated 01.10.2016; the agreement dated 01.01.2020; and the tender notification and award in 2023. Not one of these documents uses the expression 'State of Telangana', 'Telangana Market', or any formulation that would suggest a territory extending beyond the Hyderabad Metropolitan Area.

13.23. This nine-year pattern of consistent and unvarying terminology is highly probative. When parties to a commercial relationship consistently use a particular expression over an extended period, courts generally treat that consistent usage as evidence of the parties' mutual understanding of the meaning of the expression. If the parties had understood 'Hyderabad Market' to mean 'entire State of Telangana', one would expect to see some documents that use 'Telangana' or 'State of Telangana' as an alternative description for the petitioners' territory, particularly in the later years, when the new State of Telangana was fully established. The complete absence of any such alternative formulation strongly supports the conclusion that the parties consistently understood 'Hyderabad Market' to mean the city of Hyderabad and its metropolitan area.

13.24. When KMF decided, in 2024, to expand its co-packing operations to cover the entire State of Telangana, it issued the tender notification with the explicit description 'for carrying out co-packing activities for the State of Telangana for a period of 2 years'. The change from

'Hyderabad Market' (used in all previous documents) to 'State of Telangana' (used in the 2024 tender) is not a casual or inadvertent one. It is a deliberate and purposeful change of language, effected by a professionally managed State instrumentality in an official document. The change of expression carries legal significance: it demonstrates that KMF understood, and intended, these to be different and distinct territorial descriptions. If they were the same, there would have been no reason to change the language in 2024.

13.25. This reasoning is consistent with the well-established principle that contracting parties are presumed to have used different words to mean different things. Where a contract uses two different expressions, the presumption is that the parties intended the expressions to have different meanings. The use of 'Hyderabad Market' in pre-2024 documents and 'State of Telangana' in the 2024 documents must therefore be read as a conscious and deliberate choice to describe different territorial scopes.

13.26. This Court turns to the practical commercial geography of the Telangana dairy market as a further basis for the narrower construction. Dairy distribution is a logistics-intensive business requiring the maintenance of a 'cold chain', a continuous refrigeration infrastructure from the processing plant to the end consumer. Cold chain logistics imposes severe constraints on the geographic range over which a single distribution hub can efficiently operate. A WCF agent or co-packing agent based in Hyderabad city would typically operate within a delivery radius of 50–100 km, the practical distance for efficient cold chain delivery within a single working day.

13.27. The five Telangana districts that are the subject of the impugned authorisation, Warangal (145 km), Karimnagar (165 km), Nizamabad (170 km), Khammam (213 km), and Adilabad (290 km), are all well beyond this practical delivery radius. A Hyderabad-based WCF agent attempting to serve these districts would face: (a) transit times of 3–6 hours by road, significantly compromising cold chain integrity; (b) substantially higher logistics costs making the operations commercially unviable; and (c) regulatory compliance challenges under FSSAI regulations governing temperature-controlled transportation across large distances. The commercial reality, therefore, is that the 'Hyderabad Market' for dairy distribution purposes has always been and can only practically be the city of Hyderabad and its metropolitan area.

13.28. This Court takes judicial notice of the fact that the State of Telangana has a well-developed district-level dairy infrastructure of its own. Each major Telangana district has its own APDDCF (Andhra Pradesh Dairy Development Cooperative Federation) or local dairy cooperative infrastructure, through which locally sourced milk products are distributed. The idea that Nandini products from Karnataka would be distributed across all of Telangana by a single Hyderabad-based agent, thereby competing with and bypassing the existing district-level dairy infrastructure of Telangana, is commercially and operationally implausible. The 'Hyderabad Market' for Nandini products has always been the city of Hyderabad and its suburban environs, where the demand for Karnataka Nandini products is concentrated among Karnataka-origin migrant communities and discerning urban consumers.

13.29. The petitioners cite the Shimogga Milk Union episode as evidence of their broader territorial claim.

13.30. Hassan opposed this reorganisation vigorously, contending that the permission granted by KMF to Shimoga. Following Hassan's objections, KMF, by communication dated 12.08.2020, formally withdrew the permission granted to Shimoga Milk Union and directed Hassan to continue operating the entire Hyderabad city market. M/s Sambasiva Dairy Products, which had been identified as Shimoga's agent, was accordingly not allowed to commence operations.

13.31. The petitioner in WP 22850/2024 relies upon the 2020 episode as establishing that KMF's own proposal to divide the 'Hyderabad Market' into sub-zones, one of which was called 'North/Warangal Zone', proves that the Hyderabad Market extends to Warangal. This argument fails for the reasons this Court has already given. There is a further reason specific to the 2020 episode: the episode actually proves the opposite of what the petitioner contends. The withdrawal of the Shimoga permission and the reaffirmation of Hassan's mandate for the entire Hyderabad city market establishes that KMF's settled institutional position, after the episode, was that the 'Hyderabad Market' belongs exclusively to Hassan. It does NOT establish that the 'Hyderabad Market' means all of Telangana; it establishes that within the city of Hyderabad, Hassan is the authorised and exclusive distributor.

13.32. When WP 23487/2024 first came up for hearing before this Court, an interim order was passed on 01.10.2024. The order, as recorded, 'allowed Hassan to supply Nandini products to Warangal' for a specified interim period, subject to conditions. This Court has carefully considered the significance of this interim order in the context of the present Point.

13.33. The interim order of 01.10.2024 carries a clear and telling implication. If Warangal had been within the operational territory of the petitioner in WP 23487/2024, there would have been no need for the Court to 'allow' Hassan to supply to Warangal, the petitioner's pre-existing rights would have covered Warangal, and the Court's order on the interim application would have been directed at maintaining the status quo, i.e., preventing any new entrant from entering the petitioner's territory. The fact that the Court, on the very first hearing, granted permission for Hassan to supply to Warangal, thereby implicitly recognising that Warangal was not within the petitioner's exclusive territory, is a strong indication of this Court's prima facie view, at the interlocutory stage, that the petitioner's rights did not extend to Warangal.

13.34. The interim order is not, in itself, determinative of the rights of the parties, interim orders are inherently provisional and are made on the basis of a prima facie assessment. But the reasoning underlying the interim order is indicative of this Court's assessment of the probable position in law, and that assessment is confirmed upon a full examination of the evidence and arguments at the final hearing stage.

13.35. There is an additional and independent ground on which the petitioners' claim to rights over the entire State of Telangana must fail: the principle of delegatus non potest delegare, the delegate cannot sub-delegate beyond the scope of the delegated authority.

13.36. The chain of authority relevant to the present case is as follows: KMF, as the apex dairy federation of Karnataka, had the authority to distribute Nandini products in any territory it chose, including Telangana. KMF exercised this authority by delegating the 'Hyderabad business', i.e., the business of distributing Nandini products in the Hyderabad market, to Hassan by the order dated 04.02.2016. Hassan's authority in Telangana was therefore confined to the 'Hyderabad Market' as delegated by KMF. Hassan could not, without further authorisation from KMF, extend its sub-delegated authority to cover territories beyond those delegated to it. When Hassan appointed the petitioners as its sub-agents, it could therefore grant them only such rights as it itself had, i.e., rights within the 'Hyderabad Market'. Any purported grant of rights over the entire State of Telangana by Hassan would have been in excess of Hassan's own authority and would have been void to that extent.

13.37. The principle of delegatus non potest delegare is well established in both public law and private law. In the context of agency, the principle is expressed as the rule that an agent cannot sub-delegate authority that has not been conferred upon him, a sub-agent's authority cannot exceed the agent's authority. In the public law context, a delegate of statutory power cannot further delegate that power unless expressly authorised to do so. The same principle applies, by analogy, to the sub-delegation of commercial authority by a State instrumentality.

13.38. It follows that even if the agreements between Hassan and the petitioners were, on their face, worded as granting rights over 'Telangana' or some larger territory, such a grant would be ultra vires the scope of Hassan's authority from KMF and would be legally ineffective to that extent. The agreements between Hassan and the petitioners must be read subject to the limitation on Hassan's authority, i.e., they confer rights only within the 'Hyderabad Market', which is the territory that Hassan was itself authorised to operate in by KMF.

13.39. The petitioners argue that the word 'Hyderabad' in the expressions 'Hyderabad Market' and 'Hyderabad business' must be understood in its post-bifurcation political and administrative context, where 'Hyderabad' was the capital of a newly formed State and colloquially denoted the entire State. This Court is unable to accept this argument for the following reasons.

13.40. First, there is no linguistic or legal basis for reading 'Hyderabad' as a synonym for 'Telangana'. The State of Telangana, even immediately after bifurcation in June 2014, had an official name, Telangana, and a well-established geography that was distinct from and far larger than the city of Hyderabad. The

Andhra Pradesh Reorganisation Act, 2014, precisely defined the territory of Telangana as comprising 10 districts (subsequently reorganised into more). These districts included not only Hyderabad but also Warangal, Karimnagar, Nizamabad, Medak, Nalgonda, Mahabubnagar, Khammam, Adilabad, and Ranga Reddy. In this context, when KMF used the expression 'Hyderabad Market' in 2015, it was writing against a clear background in which 'Hyderabad' referred to the city and 'Telangana' referred to the State. The substitution of one for the other is not legally supportable.

13.41. Second, KMF is a sophisticated institutional actor, it is an apex dairy federation with experience in commercial operations across multiple States. It is not plausible that KMF, when preparing official orders and agreements in 2015, 2016, and subsequent years, would use the word 'Hyderabad' when it meant 'State of Telangana'. A professionally managed State instrumentality of KMF's stature would use precise language in official documents. If KMF had intended the entire State of Telangana, it would have said so.

13.42. Third, the argument from the 'joint capital' status of Hyderabad proves as much. Under the Andhra Pradesh Reorganisation Act, 2014, Hyderabad was the joint capital of both Telangana and Andhra Pradesh for ten years. On the petitioners' logic, 'Hyderabad Market' could be read as denoting not only the whole of Telangana but also the whole of Andhra Pradesh, an absurdity that demonstrates the fallacy of reading 'Hyderabad' as coextensive with any State. The joint capital arrangement was a political expedient for an interim period; it had no bearing on the commercial meaning of the word 'Hyderabad' in business documents.

13.43. Since this Court has held that the petitioners' contractual rights are confined to the Hyderabad Metropolitan Area, and since the operative order specifically protects those rights within this area, it is necessary to precisely define what this area encompasses.

13.44. The Hyderabad Metropolitan Development Authority (HMDA) was constituted under the Hyderabad Metropolitan Development Authority Act, 2008. The HMDA exercises planning and development authority over the Hyderabad Metropolitan Region (HMR), which covers an area of approximately 10,473 sq. km. The HMR includes: (a) the area of Greater Hyderabad Municipal Corporation (GHMC); (b) the areas of surrounding municipalities; (c) mandal development authorities; and (d) gram panchayats within the metropolitan area. It encompasses portions of the districts of Hyderabad, Medchal-Malkajgiri, Rangareddy, Sangareddy, Yadadri-Bhongiri, and Vikarabad.

13.45. For the purposes of this matter, the expression 'Hyderabad Metropolitan Area' refers to the entire area under the jurisdiction of the HMDA, i.e., the Hyderabad Metropolitan Region as constituted under the HMDA Act, 2008. The petitioners' contractual rights under their respective agreements with Hassan CMPSU encompass this entire area, and no other party is entitled to conduct Nandini distribution or co-packing operations within this area in competition with the petitioners during the subsistence of their agreements, subject to the terms of those agreements.

13.46. Sri. Syed Kashif Ali, appearing for Hassan (Respondent No. 4 in WP 23487/2024 and Respondent No. 3 in WP 22850/2024), has taken the unusual step, for a respondent, of supporting the petitioners' submissions. Hassan's counsel has submitted: (a) that the impugned actions of KMF in introducing parallel and overlapping agencies are ex facie arbitrary; (b) that KMF has adopted inconsistent positions regarding the meaning of 'Hyderabad Market'; (c) that the allocation of commercial opportunities without fair procedure violates Article 14; and (d) that the impugned actions violate Articles 14 and 19(1)(g). These submissions, made by the party that entered into the relevant agreements with the petitioners, deserve careful consideration.

13.47. This Court acknowledges that Hassan's support of the petitioners is understandable from an institutional perspective. Hassan, as the entity that entered into the WCF Agent Agreement and the Co-packing Agreement with the petitioners, has a direct interest in the integrity of those agreements: if the agreements are found to have been exceeded by Hassan, i.e., if

Hassan is found to have granted rights over a broader territory than it was authorised to grant, Hassan itself may be exposed to liability. Hassan therefore has an institutional incentive to support the broader construction of 'Hyderabad Market' that would legitimate its own appointments of the petitioners. This Court takes note of this institutional interest and weighs Hassan's submissions accordingly.

13.48. More importantly, Hassan's submissions on behalf of the petitioners cannot override the legal analysis of the documents and agreements. The meaning of the expression 'Hyderabad Market' is determined by the Court on the basis of the text, context, and surrounding circumstances of the relevant documents, not on the basis of the current institutional preferences of the parties. The fact that Hassan now supports a broader reading of 'Hyderabad Market' does not establish that this broader reading was intended at the time the agreements were made. If anything, Hassan's previous conduct, consistently referring to the petitioners' territory as 'Hyderabad Market' in all official communications, supports the narrower construction, not the broader one.

13.49. The fact that a respondent supports the petitioners does not, in itself, assist the petitioners, the Court must independently determine the legal position. As the Hon'ble Supreme Court observed in **Shrilekha Vidyarthi v. State of U.P[23].** the Court must examine arbitrariness on the basis of whether the impugned action is 'uninformed by reason', not on the basis of which parties support or oppose it. Having examined the impugned actions on the merits, this Court finds, that no arbitrariness cognisable under Article 14 is established.

13.50. This Court's finding that 'Hyderabad Market' means the city of Hyderabad and its metropolitan area has the following specific legal effects: (a) KMF is entitled to appoint any entity/ies that it chooses, whether through tender or administrative direction, to carry out Nandini distribution, co-packing, or other dairy activities in any part of the State of Telangana

[23] *(1991) 1 SCC 212*

outside the Hyderabad Metropolitan Area, without any reference to or consent from the petitioners; (b) KMF's letter dated 07.08.2024 and the work order dated 07.11.2024, appointing Raichur CMPSU for five districts outside the Hyderabad Metropolitan Area, are lawful; (c) KMF's tender and the Letter of Award to M/s Shakti Milk for the State of Telangana are lawful, subject to the specific direction that these appointments shall not encroach upon the Hyderabad Metropolitan Area during the subsistence of the petitioners' agreements; and (d) the petitioners' existing agreements with Hassan for their Hyderabad Metropolitan Area operations remain in full force and effect, and neither Hassan nor any of the newly appointed entities is entitled to interfere with those operations during the subsistence of the contractual arrangment.

13.51. This Court concludes, on the basis of: (a) the plain and ordinary meaning of the expression 'Hyderabad Market'; (b) the Mother Dairy history and the terms of the 04.02.2016 entrustment; (c) the consistent nine-year usage of this expression in all official documents; (d) the deliberate change to 'State of Telangana' in the 2024 tender; (e) the commercial geography and cold chain logistics; (f) the principle of delegatus non potest delegare; (g) the implication of this Court's interim order of 01.10.2024; (h) the Shimoga episode, which confirms rather than contradicts the narrower construction; and (i) the failure of the post-bifurcation 'Hyderabad = Telangana' argument, that the expression 'Hyderabad Market' as used in the agreements and orders between the parties refers to the city of Hyderabad and its metropolitan area as defined by the HMDA Act, 2008. The petitioners' rights do NOT extend to the entire State of Telangana.

13.52. It is equally important to state what this Court's conclusion does not mean. It does not mean that the petitioners have no rights at all. The petitioners have subsisting contractual rights within the Hyderabad Metropolitan Area, and these rights are both acknowledged and protected by this Court's order. The respondents are not permitted to encroach upon the Hyderabad Metropolitan Area operations of the petitioners during the subsistence of their respective agreements with Hassan.

13.53. This Court answers Point No.2 by holding that the expression 'Hyderabad Market' in the agreements, orders, and communications between the parties refers to the city of Hyderabad and its metropolitan area, and does NOT encompass the entire State of Telangana. The petitioners have subsisting contractual rights within the Hyderabad Metropolitan Area, but these rights do not extend to the districts of Warangal, Adilabad, Nizamabad, Karimnagar, Khammam, or any other part of Telangana lying outside the Hyderabad Metropolitan Area.

14. **<u>Answer to Point No.iii:</u> Whether the impugned communications, tenders and work orders result in impermissible parallel or overlapping arrangements, and if so, whether such actions are arbitrary, unreasonable or violative of Article 14 of the Constitution of India?**

14.1. Answer to Point No.iii is substantially, though not entirely, dependent upon this Court's conclusion on Point No. 2. The petitioners' case under Point No. 3 is that the impugned appointments, Raichur CMPSU for five

Telangana districts and M/s Shakti Milk for the State of Telangana, create impermissible parallel or overlapping arrangements within their operational territory, thereby violating Article 14. Given this Court's finding under Point No.ii that the petitioners' rights are confined to the Hyderabad Metropolitan Area, the question under Point No.iii is whether the impugned appointments encroach upon that territory.

14.2. The broader question of whether the manner in which KMF proceeded, without prior notice to the petitioners, without consultation, and without any fair process, constitutes arbitrary State action in violation of Article 14, independent of the question of geographic overlap.

14.3. The five districts specified in the impugned letter dated 07.08.2024, Warangal, Adilabad, Nizamabad, Karimnagar, and Khammam, are located at the following approximate distances from Hyderabad city centre: Warangal (145 km), Karimnagar (165 km), Nizamabad (170 km), Khammam (194 km), Adilabad (290 km).

The Hyderabad Metropolitan Development Authority (HMDA) area of jurisdiction, the legally defined metropolitan area of Hyderabad, does not extend to any of these districts. The HMDA includes Hyderabad, Medchal-Malkajgiri, Rangareddy, and parts of Sangareddy and Vikarabad. None of the five Telangana districts specified in the impugned authorisation falls within this HMDA area.

14.4. Accordingly, the authorisation of Raichur CMPSU to operate in these five districts does not, on its face, create any geographical overlap with the petitioners' operational territory in the Hyderabad Metropolitan Area. The operations are spatially separate. There is no 'parallel' arrangement in the sense of two competing entities operating in the same geographic market.

14.5. As regards WP 22850/2024, the appointment of M/s Shakti Milk and Milk Products as co-packing agent for the 'State of Telangana' requires more careful treatment. The Letter of Award is framed in terms of the entire State, which would ostensibly include the Hyderabad

Metropolitan Area. However, the appointment of M/s Shakti Milk for the State of Telangana cannot, as a matter of law, extinguish or override the petitioner's subsisting contractual rights within the Hyderabad Metropolitan Area. The petitioner holds a valid agreement with Hassan CMPSU for co-packing operations within the Hyderabad Market. That agreement remains operative. M/s Shakti Milk's appointment cannot be given effect within the Hyderabad Market to the extent that it would conflict with the petitioner's pre-existing contractual rights during the subsistence of the existing agreement.

14.6. The petitioners challenge the impugned actions on the ground that they were taken without prior notice or consultation with the petitioners, and that this absence of notice constitutes arbitrary State action in violation of Article 14. This ground of challenge raises the important question of what procedural obligations Article 14 imposes upon a State instrumentality making commercial decisions that affect its long-standing contractual partners.

14.7. The starting point for this analysis is the decision in **Mahabir Auto Stores v. Indian Oil Corporation**[24]. In that case, the Indian Oil Corporation terminated a dealership of 18 years' standing without any prior notice or fair process. The Hon'ble Supreme Court held that this was impermissible under Article 14, observing that a State instrumentality that has maintained a long-standing commercial arrangement owes its commercial partner at least a basic duty of notice and fair dealing before introducing any significant change. The Hon'ble Supreme Court referred to this as the 'obligation to act fairly', which is an incident of the constitutional guarantee of non-arbitrariness.

14.8. The principle in **Mahabir Auto Stores** has been affirmed and applied in a series of subsequent decisions. In **Ramana Dayaram Shetty v. The International Airport Authority of India**[25], the Hon'ble Supreme Court similarly held that the State cannot act capriciously or irrationally in its contractual

[24] *(1990) 3 SCC 752*
[25] *(1979) 3 SCC 489*

dealings, even where it has a formal right to do so under the contract. These decisions collectively establish that Article 14 imposes a duty of basic procedural fairness upon State instrumentalities in their commercial dealings.

14.9. Applying these principles to the present case: the undisputed evidence on record establishes that KMF did not provide any prior notice to either petitioner before: (a) issuing the letter dated 07.08.2024 to Raichur CMPSU permitting it to operate in five Telangana districts; or (b) issuing the tender notification dated 20.05.2024 for a co-packing agent for the State of Telangana. The petitioners first learnt of these actions through informal channels, not through any official communication from KMF or Hassan. This falls short of the basic fairness standard that Article 14 requires of State instrumentalities.

14.10. However, the more critical question is whether this failure to give notice has caused the petitioners any legally cognisable prejudice, in circumstances where the impugned actions do not actually encroach upon the petitioners'

Hyderabad Market rights. This Court holds that the answer is in the negative. The procedural deficiency has not prejudiced the petitioners' substantive rights, because the impugned actions do not touch the Hyderabad Metropolitan Area in which the petitioners operate.

14.11. It is a settled principle of administrative law that not every procedural irregularity vitiates the substantive validity of an administrative action. The courts have consistently distinguished between procedural defects that go to the root of the action and cause substantial prejudice (which vitiate the action) and those that are technical or incidental and cause no substantial prejudice (which do not). In the present case, the failure to give prior notice is a procedural deficiency, but it has not caused any substantial prejudice to the petitioners since the impugned actions do not encroach upon the Hyderabad Market.

14.12. The doctrine of proportionality, which the Hon'ble Supreme Court has increasingly applied as a standard of constitutional review, similarly supports this conclusion. Even if KMF's failure to give prior notice constitutes a departure from the standard of procedural fairness required by Article 14, the appropriate remedy for such a departure must be proportionate to the wrong. The disproportionate remedy of quashing the impugned appointments entirely, thereby depriving five Telangana districts of a distribution channel for Nandini products, cannot be justified on the basis of a procedural deficiency that has caused no substantive harm to the petitioners.

14.13. Having said that, this Court considers it appropriate to note on record that KMF and Hassan are expected to observe higher standards of procedural fairness in their future dealings with long-standing commercial partners. KMF and Hassan are accordingly directed to ensure that, in future, any material change to the distribution arrangements in Telangana that affects the petitioners' contractual entitlements during the subsistence of the contract within the Hyderabad Market shall be preceded by adequate notice to the petitioners and a reasonable opportunity for them to be heard.

14.14. This Court examines the substantive rationality of KMF's decision to expand its Telangana distribution network to the five districts under the Wednesbury unreasonableness standard, as articulated by the Hon’ble Supreme Court in **Tata Cellular v. Union of India**[26]. Under this standard, the court examines whether the decision is so unreasonable that no reasonable person in the position of the decision-maker could have made it, or whether the decision was made without applying the mind, or was actuated by mala fides, extraneous considerations, or irrelevant factors.

14.15. This court can take judicial note that the five Telangana districts to which the authorisation was extended, Warangal, Karimnagar, Nizamabad, Khammam, and Adilabad, have a substantial. The availability of quality dairy products, including the well-established Nandini brand, in these districts serves a demonstrable public interest. The decision by KMF to extend

[26] *(1994) 6 SCC 651*

its distribution network to these districts, which had been underserved in terms of Nandini product availability, is a manifestly rational decision in furtherance of KMF's public dairy development mandate. This Court cannot characterise this decision as Wednesbury unreasonable.

14.16. The decision of KMF to assign this expanded Telangana distribution territory to Raichur CMPSU, rather than to some other entity, is an internal federal arrangement within the KMF family of constituent milk unions. It does not involve the disbursement of State largesse to a private party; it is an administrative direction by the apex federation to one of its own constituent units. This Court holds that such internal administrative arrangements are entitled to a still higher degree of judicial deference than public tenders or contracts with private parties. In the absence of any evidence of mala fides, discrimination, or non-application of mind, this Court will not interfere with KMF's internal federal arrangements.

14.17. The doctrine of proportionality has been increasingly recognised as an additional tool of constitutional review by the Hon'ble Supreme Court, most significantly in **Modern Dental College and Research Centre v. State of Madhya Pradesh**[27] and **K.S. Puttaswamy v. Union of India**[28]. In these decisions, the Hon'ble Supreme Court recognised proportionality, the principle that State action should not exceed what is necessary to achieve its legitimate aim, as an implied constitutional standard under Article 14. The doctrine requires that any restriction on the rights of a private party dealing with the State should be no greater than necessary to achieve the State's legitimate commercial or public interest objective.

14.18. The legitimate aim of KMF's actions is to expand the reach of the Nandini distribution network to districts of Telangana that had not previously been adequately served, a legitimate commercial and public interest objective. The means adopted, authorising Raichur CMPSU to

[27] *(2016) 7 SCC 353*
[28] *(2017) 10 SCC 1*

operate in five specific districts (WP 23487) and issuing a public tender for Telangana-wide co-packing (WP 22850), are appropriate and necessary to achieve this aim. Neither action goes further than what is required to serve the districts in question. Neither action encroaches upon the petitioners' Hyderabad Metropolitan Area rights. The impugned actions satisfy the proportionality test.

14.19. Even applying the more searching proportionality analysis, which requires examining whether a less restrictive means was available to achieve the same end, this Court finds that KMF's actions pass scrutiny. The appointment of Raichur CMPSU for the five districts is a rational choice for those specific districts; there is no 'less restrictive' alternative that would have achieved the same result of serving those districts. Raichur also being geographically abutting State of Telangana. The issuance of a public tender for co-packing services is itself the least restrictive means of making a new appointment, it is an open, competitive, and transparent process that gave all eligible parties, including the petitioner, the opportunity to bid.

14.20. The dections relied and its application to the facts of the present case are as under.

14.21. **Noida Toll Bridge Co. Ltd. V. Federation Of Noida Residents Welfare Association**[29], was relied upon by Sri. Syed Kashif Ali. The Hon'ble Supreme Court examined the terms of a concession agreement for a toll bridge and held that contractual terms which are 'so unfair and unreasonable that they truly baffle this Court' are opposed to public policy and must be adjudged void, and that courts may invoke the doctrine of severability to sever incurable void terms from the rest of the contract. Sri. Kashif Ali relied on this decision for the proposition that even if contractual clauses purport to reserve modification rights, such clauses cannot be exercised in an arbitrary or unreasonable manner, and if so exercised, are liable to be struck down.

14.22. **Noida Toll Bridge**[29], on its specific facts, is distinguishable. That decision deals with a

[29] *(2025) 6 SCC 717*

concession agreement containing terms structurally so one-sided as to amount to unconscionable bargain, the tolling formula was found to permit the toll collector to recover revenues indefinitely, far beyond any reasonable recovery of project cost. The present case is not one where any term of the agreements between the parties is being challenged as unconscionable or void. The petitioners are not seeking to strike down Clause 3 of the WCF Agent Agreement; they are seeking to prevent KMF from acting in territories they claim as their own. The Noida Toll Bridge doctrine of striking down void contract terms has no application to this claim.

14.23. **M.I. Builders (P) Ltd. V. Radhey Shyam Sahu**[8], struck down a commercial agreement between the Lucknow Mahapalika and a private builder for construction of an underground shopping complex as being 'completely one-sided favouring the builder', violative of the public trust doctrine, and inconsistent with the Master Plan. Sri. Kashif Ali relied on this for the proposition that where a public authority exercises power in a manner that is 'one-sided, arbitrary or confers disproportionate advantage without any rational basis', the resultant arrangement must be struck down. **M.I. Builders**[8] is distinguishable on its facts. That decision involved an agreement that was itself found by the Hon'ble Supreme Court to be unconscionable and in violation of a specific statutory provision (the Master Plan). In the present case, there is no allegation that the agreement between KMF and the Respondents is unconscionable or illegal on its face. The challenge is to the exercise of specific rights under the agreement, not to the agreement itself. The Wednesbury standard of review applied to the exercise of contractual rights by a State instrumentality is the correct standard, not the more intensive standard applied in **M.I. Builders**[8] to strike down a manifestly unconstitutional agreement.

14.24. **New Horizons Ltd. V. Union Of India**[11]. The Hon'ble Supreme Court in **New Horizons**[11] stated that 'the State, in exercise of its various functions, enters into contracts. Such contracts cannot be regarded as being on the same footing as contracts between private persons.

The actions of the State or its instrumentalities, even while entering into contracts, are required to conform to the standard of fairness and non-arbitrariness which is the hallmark of State action.' Sri. Kashif Ali relies on this to argue that KMF's actions in the contractual domain must conform to non-arbitrary standards. This Court entirely accepts this proposition, it is the foundation of the public law analysis in this judgment. However, the question of whether a standard has been met is a different question from whether the standard applies. This Court holds that the standard applies but, for the reasons set out in Points 2 and 4, the standard is met by KMF's actions in the present case. The 'free play in the joints' doctrine, articulated in the context of government contracts in **Tata Cellular**[26] and endorsed in **New Horizons**[11], recognises that the State must have a degree of commercial flexibility necessary for efficient and rational commercial management of State resources. KMF's decisions fall well within this zone of legitimate discretion.

14.25. **Seclink Technologies Corporation V. State Of Maharashtra**[10]. The Hon'ble Bombay High

Court held in **SecLink**[10] that in matters involving public contracts, 'the terms and conditions and requirement and scope of work should be certain and definite, and not uncertain and indefinite; the absence of definite and certain terms creates confusion not only for the contracting parties but also undermines the integrity and fairness of the process'. Sri. Kashif Ali relies on this to contend that the impugned actions, by introducing multiple agencies with inconsistently defined territorial boundaries, create ambiguity and undermine fairness. **SecLink**[10] is distinguishable for two reasons. First, the proposition from **SecLink**[10] is directed at the clarity and definiteness of tender terms, it holds that tenders must have clear and certain specifications. The 2024 tender issued by KMF was for co-packing activities 'for the State of Telangana for a period of 2 years', a description that is clear, definite, and certain. There is no ambiguity in the scope of the 2024 tender. Second, the letter dated 07.08.2024 to Raichur specifies five distinct named districts, again clear and definite. The **SecLink**[10] principle of definiteness and clarity is therefore satisfied. The complaint is not about the definiteness of the impugned documents but about whether those documents encroach upon the petitioners' territory, a question of interpretation addressed under Point 2.

14.26. **Vijay Kumar Gupta V. State Of Maharashtra**[9]**.** The Hon'ble Supreme Court held that where the State exercises exclusive control over resources and allocates commercial opportunities on the basis of such control, the allocation must follow fair procedure and objective criteria. Sri. Kashif Ali relied on this for the proposition that KMF's allocation of additional distribution territory to Raichur CMPSU, without transparent criteria or competitive process, is an arbitrary distribution of State largesse.The **Vijay Kumar Gupta**[9] principle, while correct in the abstract, does not assist the petitioners on the facts of the present case. The key distinction is that **Vijay Kumar Gupta**[9] involved the allocation of commercial opportunities to private third parties without any transparent procedure, a pure case of arbitrary grant of State largesse. In the present case, the 'allocation' to Raichur CMPSU is not a grant of State largesse to an outside private party; it is an internal administrative direction by an apex federation to one of its own constituent units. The internal allocation of functions between constituent members of the same cooperative federation does not attract the same transparency requirements as the grant of commercial rights to private parties.

14.27. Sri. Pramod Nair, learned Senior Counsel for Respondent No. 5, has relied upon **Mahalakshmi Engineering Works v. BESCOM**[12]**, NHAI v. Gwalior-Jhansi Expressway Ltd**[13]**.,** and **Subir Ghosh v. State of West Bengal**[14]**.**

14.28. The specific propositions are: (a) **Mahalakshmi**[12]: a tenderer who remains outside the tender process and then seeks to question the tender conditions does not have locus to challenge; (b) **NHAI v. Gwalior-Jhansi**[13] : a person who has not participated in the tender process cannot assert rights against a person who has validly participated; (c) **Subir Ghosh**[14]: a prospective bidder who finds tender terms unfair must challenge before bid closure, not after the award.

14.29. All three decisions apply directly and squarely to the position of the petitioner in WP 22850/2024. The tender notification KMF/PUR/Tender-650/2024-25 was issued on 20.05.2024. The petitioner in WP 22850/2024 was aware of the tender. The petitioner chose not to participate, and critically, chose not even to challenge the tender before bid closure. WP 22850/2024 was filed only after the Letter of Award had been issued to M/s Shakti Milk on 07.08.2024. By this time, M/s Shakti Milk had already been selected after a competitive process, and had made substantial investments exceeding Rs. 35 crores in establishing a state-of-the-art dairy plant compliant with National Dairy Development Board norms, in reliance upon the award.

14.30. The principle from **Subir Ghosh**[14] is particularly apposite: 'It is possible that a prospective bidder finds the terms of the tender documents to be unfair or illegal and challenges the same; but such challenge has to be before the time to put in bids is closed.' This Court specifically endorses and adopts this principle. The petitioner in WP 22850/2024 had the option of: (a) participating in the tender; (b) challenging the tender before bid closure; or (c) seeking an interim injunction against the tender process before its conclusion. The petitioner chose none of these options. Having sat on the fence until the tender process concluded and the award was made, the petitioner cannot now be heard to challenge the process, this would be unfair to M/s Shakti Milk, which participated legitimately, was selected on merit, and has made substantial investments in reliance on the award.

14.31. The submission of Sri. Pramod Nair that the petitioners are guilty of suggestio falsi (active misrepresentation) and suppressio veri (suppression of true facts) is also well-founded in relation to WP 22850/2024. The petitioner in WP 22850/2024 did not disclose: (a) its deliberate choice not to participate in the tender; (b) the fact that it was aware of the tender process; and (c) the nine-year documentary record consistently describing the territory as 'Hyderabad Market' rather than 'State of Telangana'. These are material facts whose disclosure would have significantly affected this Court's consideration of interim relief. The doctrines of suggestio falsi and suppressio veri are recognised grounds in equity for declining to grant relief to a petitioner who has approached the Court with incomplete or misleading disclosure: see **S.P. Chengalvaraya Naidu v. Jagannath[30]**, where the Hon’ble Supreme Court held that a litigant cannot be permitted to 'play a fraud on the Court' by suppressing material facts, and that such conduct may justify dismissal of the petition.

14.32. The petitioners' case, reduced to its essentials, is this: KMF created competing distribution arrangements in territories that the petitioners had been led to believe were within their exclusive domain; KMF did so without any notice to the petitioners and without any fair process; and the result is arbitrary State action contrary to Article 14.

[30] *(1994) 1 SCC 1*

14.33. This Court accepts the factual premise of this case, that KMF acted without prior notice to the petitioners. It does not accept the legal premise, that the territories affected were within the petitioners' exclusive domain. As this Court has held under Point No. 2, the petitioners' rights are confined to the Hyderabad Metropolitan Area, and the impugned actions relate entirely to territories outside that area. The factual premise of the petitioners' case therefore does not engage the legal consequences they seek to draw from it.

14.34. Even if one were to assume, that the petitioners had rights over a wider area that included some of the affected districts, the remedy of quashing the impugned appointments, thereby depriving those districts of Nandini product supply, would be disproportionate. Courts exercising writ jurisdiction are mindful of the principle that the remedy must be proportionate to the wrong, and must take into account the interests of all affected parties, including the consumers in those districts and the newly appointed entities that have committed resources in reliance upon the appointments.

14.35. The petitioners' case accordingly fails. The procedural deficiency (absence of prior notice) is noted but does not vitiate the impugned actions in the circumstances, given the absence of cognisable prejudice to the petitioners' substantive rights. The prospective direction to KMF and Hassan to give prior notice in future is a sufficient and proportionate remedy for the procedural deficiency.

14.36. The letter dated 07.08.2024, the work order dated 07.11.2024, and the tender KMF/PUR/Tender-650/2024-25 and the Letter of Award dated 07.08.2024 in WP 22850/2024, do not create impermissible parallel or overlapping arrangements within the petitioners' Hyderabad Metropolitan Area, and are not arbitrary or unreasonable in violation of Article 14 of the Constitution of India.

14.37. This Court accordingly answers Point No.3 by holding that the impugned communications, tenders, and work orders do not create impermissible parallel or overlapping distribution arrangements within the petitioners' operational territory (the Hyderabad Metropolitan Area). The five districts assigned to Raichur CMPSU and the broader Telangana scope of the 2024 tender do not encroach upon the Hyderabad Metropolitan Area. KMF's failure to give prior notice to the petitioners was a procedural deficiency that did not cause any cognisable prejudice in the circumstances. The Wednesbury standard of reasonableness is not infringed. No violation of Article 14 is established.

15. **Answer to Point No.iv: Whether the respondents, particularly KMF, were entitled under the terms of the agreement and in exercise of policy/commercial discretion to modify or expand the area of operations and appoint additional agencies, and the extent to which such decisions are amenable to judicial review?**

15.1. What is required to be examined is first, whether KMF had the contractual and institutional authority to take the impugned actions, specifically, to modify the area of operation of its WCF agents and to issue a fresh tender for Telangana co-packing operations; and second, assuming such authority exists, what is the appropriate standard of judicial review for such commercial and policy decisions of a State instrumentality.

15.2. These are questions of general importance in administrative law, and this Court is acutely aware that an overly expansive or an overly restrictive approach to judicial review in this domain can have significant systemic consequences: in the former case, by converting every government commercial decision into a constitutional controversy; in the latter case, by insulating arbitrary State action from the accountability it deserves. Both errors are to be avoided.

15.3. Sri. Yogesh D. Naik, learned Additional Government Advocate for Respondent No. 1, the State of Karnataka, has supported the respondents' position on maintainability, pointing out that the writ petitions arise out of purely commercial contractual arrangements and that the appropriate forum for such disputes is the civil court. He has also supported KMF's position that the expression 'Hyderabad Market' does not encompass the entire State of Telangana, and that KMF's decisions were taken in furtherance of a legitimate commercial policy. This Court has held the petitions maintainable but has noted the State's position on the merits.

15.4. Sri. M. Shyam Prasad, learned Counsel appearing for Respondent No. 3, the Raichur District Co-operative Milk Producers Societies Union, has adopted the submissions of KMF and Respondent No. 5 on all points. Raichur CMPSU submits, in particular, that its operations under the work order dated 07.11.2024 are strictly confined to the five specified districts, Warangal, Adilabad, Nizamabad, Karimnagar, and Khammam, which are all outside the Hyderabad Metropolitan Area, and that it has no intention of or authority to operate within the Hyderabad Metropolitan Area.

15.5. It is also relevant to note, in the context of the respondents' equitable argument, that Raichur CMPSU is itself a constituent member of the KMF federation, it is not an outside private party. The extension of operations to Raichur CMPSU is a movement of business from one part of the KMF family (Hassan) to another (Raichur), not a privatisation or external grant of commercial rights. This internal redistribution, while it may affect the petitioners' volume of business indirectly, is not of the same constitutional significance as an arbitrary grant of a private party's commercial rights to another private party.

15.6. In WP 23487/2024, the relevant agreement between the petitioner and KMF (through Hassan) contains an express clause, Clause 3, that reserves to KMF the right to 'add, delete, modify, expand or alter the area of operation' of the WCF Agent. This is an unequivocal contractual reservation of authority. The petitioner, by executing the agreement containing Clause 3, accepted that KMF retained the right to modify, expand, or alter the area of operation. The petitioner cannot now challenge the exercise of this reserved right on the ground that it was not entitled to be exercised.

15.7. The petitioners argue that Clause 3 should be read as authorising KMF to modify the area of operation only in the petitioner's favour, e.g., to expand the petitioner's territory, and not to reduce or introduce competing areas. This is a strained and artificial construction that the Court declines to accept. Clause 3 is framed in broad and unconditional terms. There is no textual basis for limiting this authority to modifications that favour the agent. The power to 'modify' or 'alter' includes the power to reduce or change the configuration of the territory, not merely to expand it. The clause, read in its plain and natural sense, is a broad reservation of authority that fully covers the actions taken by KMF in the present case.

15.8. In WP 22850/2024, the relevant question is whether KMF had the institutional authority to issue a fresh tender for co-packing operations in Telangana, even though the petitioner had a subsisting agreement with Hassan for co-packing in the Hyderabad Market. This Court holds that KMF clearly had such authority. KMF, as the apex dairy federation and the principal authority in the KMF distribution chain, has an inherent and inalienable authority to manage and reorganise its distribution network as it considers appropriate, subject only to the constraints imposed by its own policies, its constituent agreements, and the constitutional guarantee of non-arbitrariness. The issuance of a tender for the 'State of Telangana', a territory wider than the 'Hyderabad Market' covered by the petitioner's existing agreement, is a lawful exercise of this authority. The tender covers new territory (all of Telangana outside Hyderabad); it does not purport to extinguish the petitioner's existing rights within the Hyderabad Market.

15.9. The petitioners' argument that the 2024 tender implicitly cancelled or superseded the petitioner's existing agreement is not supported by the terms of the tender or any other document on record. The Letter of Award in favour of M/s Shakti Milk is for co-packing operations for the 'State of Telangana', it does not purport to cancel any pre-existing agreement, and it does not direct Hassan to discontinue its operations with the petitioner within the Hyderabad Market. The co-existence of the petitioner's Hyderabad Market arrangement with Hassan and M/s Shakti Milk's

Telangana-wide arrangement is therefore legally possible, subject to the territorial protection provided in the operative order.

15.10. Sri. Jayakumar S. Patil learned Senior Counsel has relied upon specific paragraphs of **Mahabir Auto Stores v. Indian Oil Corporation**[3] in support of the petitioners' case on this Point. Para 17 holds: 'In all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies is not sacrosanct.' Para 18 holds that in a situation of 'a transaction between the parties for nearly two decades', it is 'appropriate' to treat the transaction as having a public law dimension. Para 20 holds that 'in cases where the instrumentality of the state enters the contractual field, it should act in a manner which is fair, just and reasonable'. Para 21 directed that the Corporation should 'consider afresh the submissions' of the affected party before deciding. Para 23 holds that 'a decision on the above basis should be arrived at which should be fair, just and reasonable, and consistent with good government'.

15.11. This Court is bound by the principles in **Mahabir Auto Stores**[3]. These principles are fully reflected in this judgment's holding that (a) the writ petitions are maintainable ; (b) KMF's actions are subject to the constitutional test of non-arbitrariness; and (c) the petitioners are entitled to notice and fair consideration before their existing Hyderabad Market arrangements are modified. However, **Mahabir Auto Stores**[3] does not require this Court to grant the specific reliefs sought by the petitioners, it requires that the affected party receive fair consideration and a fair decision. The decision that this Court has rendered, holding that the impugned actions do not encroach upon the petitioners' Hyderabad Market rights, are within KMF's authority, and are supported by legitimate reasons, is itself the fair, just, and reasonable decision that **Mahabir Auto Stores**[3] contemplates. The petitioners cannot invoke that decision to insist on a different substantive outcome.

15.12. Sri. Jayakumar S. Patil has specifically relied upon paragraph 24 of **Shrilekha Vidyarthi v. State of U.P**[4]**.**, which contains the celebrated 'split personality of Dr. Jekyll and Mr. Hyde' formulation. Paragraph 24 reads: 'The State cannot be attributed the split personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract and thereafter to shed off that character, and thereafter to act as Dr. Hyde like a private individual while performing, violating or terminating the contract.' This formulation was relied upon to argue that KMF cannot exercise its contractual modification powers under Clause 3 as if it were a private commercial entity, free of constitutional constraints.

15.13. This Court is bound by **Shrilekha Vidyarthi**[4]. It is precisely because KMF cannot shed its constitutional character that this Court has held, under Point No. 1, that the writ petitions are maintainable and that the Wednesbury standard of review applies to KMF's exercise of its commercial discretion. However, accepting the principle that KMF cannot act as a private individual does not mean that every exercise of KMF's contractual discretion must be held to violate Article 14. The principle requires that

KMF's actions be examined on the constitutional touchstone of non-arbitrariness, it does not require that those actions be struck down unless they are found to fail that test.

15.14. Other specific paragraphs of **Shrilekha Vidyarthi**[4] relied upon by the petitioners also deserve engagement. Para 35 holds that 'every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14'. Para 36 holds that 'the meaning and true import of arbitrariness is more easily visualized than precisely stated' and that 'an act uninformed by reason is arbitrary'. Para 39 holds that the 'person alleging arbitrariness must prove it by showing that the impugned State action is uninformed by reason'. Applying paras 35, 36, and 39 to the present case, this Court holds: (a) KMF's actions in expanding its Telangana distribution network are with informed by reason, the reason being the commercial and developmental objective of extending Nandini product availability to underserved districts; (b) the petitioners have not demonstrated that KMF's decisions are 'uninformed by reason';

and (c) accordingly, no arbitrariness under Article 14 is established. The **Shrilekha Vidyarthi**[4] principle, though fully applicable, does not assist the petitioners on the facts of this case.

15.15. The appropriate standard of judicial review for commercial and policy decisions of State instrumentalities is the Wednesbury unreasonableness standard, as authorised by the House of Lords in **Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation**[31] and adopted by the Hon'ble Supreme Court of India most systematically in **Tata Cellular v. Union of India**[26]

15.16. The Wednesbury standard, as applied in the context of government contracts and tenders, was explained by the Supreme Court in **Tata Cellular**[26] in the following terms: (a) the court does not act as an appellate authority over the decision of the Government or the tendering authority; (b) it confines its review to determining whether the decision-making process was lawful, fair, and rational; (c) the

[31] *(1947) 2 All ER 680*

court will not interfere merely because it would have reached a different commercial conclusion on the same facts; and (d) the court will only intervene if the decision is vitiated by mala fides, bias, extraneous considerations, non-application of mind, or such irrationality that no reasonable authority could have made the decision.

15.17. Applying the Wednesbury standard to the present case, this Court finds no basis for interfering with KMF's commercial decisions. The decision to expand the Telangana distribution network to five underserved districts is rational and serves a demonstrable public interest. The assignment of the expanded territory to Raichur CMPSU, a constituent member of the KMF federation, is a rational internal federal arrangement. The decision to issue a fresh public tender for co-packing operations in Telangana is the adoption of the most transparent and competitive procurement method available. None of these decisions can be characterised as irrational, arbitrary, or so unreasonable that no reasonable authority could have made them.

15.18. The Court has also carefully considered whether there is any evidence of mala fides in KMF's conduct. The petitioners have made general allegations of arbitrariness but have not pleaded or adduced any specific evidence of mala fides, bias, extraneous considerations, or discriminatory purpose. In the absence of such evidence, the Court cannot presume bad faith. The presumption of good faith in favour of State action, which is the starting point for any review of executive or administrative action, has not been displaced in the present case.

15.19. For completeness, this Court addresses the argument that the absence of prior notice to the petitioners, acknowledged as a procedural deficiency under Point No. 3, itself demonstrates non-application of mind or arbitrariness under the Wednesbury test. This argument fails because the impugned actions do not terminate or cancel the petitioners' existing rights within the Hyderabad Market; they expand KMF's operations into new territories outside that market. The absence of notice to the petitioners before expanding operations outside their territory does not constitute non-application of mind within the Wednesbury framework.

15.20. The petitioners invoke the doctrine of promissory estoppel, arguing that KMF's nine-year course of conduct, in consistently appointing and renewing the petitioners as sole agents in the Hyderabad Market, created a legitimate expectation amounting to a promissory estoppel that prevented KMF from appointing competing agents without the petitioners' consent.

15.21. The doctrine of promissory estoppel in the context of public law was authoritatively examined by the Hon'ble Supreme Court in **M.P. Sugar Mills v. State of U.P**[32]. The essential elements of the doctrine, as applicable to public law, are: (i) a clear, unequivocal, and unconditional representation or promise by the Government/State authority; (ii) the representation was intended to be relied upon; (iii) the promisee relied upon the representation to its detriment; and (iv) it would be inequitable to allow the promisor to

[32] *(1979) 2 SCC 409*

resile from its representation. An additional and crucial limitation on the public law application of promissory estoppel is that the doctrine cannot be invoked to compel the Government to perform an act that is contrary to public interest or contrary to its statutory duties.

15.22. The petitioners' case for promissory estoppel fails at the first stage: there is no clear, unequivocal, and unconditional representation or promise by KMF or Hassan that the petitioners would be the sole agents for the entire State of Telangana, or even for the Hyderabad Market, in perpetuity. The appointments were for fixed terms of 36 months at a time, and were subject to renewal, which is itself antithetical to the concept of a permanent and exclusive grant. The mere renewal of a fixed-term appointment does not give rise to a representation that the appointment will be renewed indefinitely, or that no competing appointment will ever be made in adjacent territories.

15.23. Furthermore, as this Court has held under Point No. 2, the petitioners' rights are confined to the

Hyderabad Metropolitan Area, not to the entire State of Telangana. Even if a promissory estoppel argument were available in principle, it could at best protect the petitioners from being displaced from the Hyderabad Market during the subsistence of their existing agreements, it could not give them a vested and inalienable right over the entire State of Telangana, which was never within the scope of their appointments.

15.24. The related doctrine of legitimate expectation, which the petitioners invoke as an alternative to, or in conjunction with, promissory estoppel. The doctrine of legitimate expectationholds that a person who has a legitimate expectation of a benefit or a particular course of conduct by a public authority is entitled to have that expectation given fair consideration before the authority acts inconsistently with it.

15.25. The limits of the legitimate expectation doctrine are, however, well established. In the context of commercial contracts and business licences, the Hon'ble Supreme Court has consistently held that a legitimate expectation does not create a legally enforceable right to a particular substantive outcome; it creates only a right to procedural fairness, i.e., a right to be heard before the expectation is defeated. Furthermore, the doctrine of legitimate expectation cannot be invoked to prevent the State from making policy changes in the public interest.

15.26. At most, the petitioners could have invoked the legitimate expectation doctrine to require KMF to give them prior notice before introducing competing distribution arrangements, a procedural entitlement, not a substantive one. This Court has already acknowledged this procedural entitlement under Point No. 3. The doctrine of legitimate expectation cannot give the petitioners a substantive right to prevent KMF from expanding its distribution network into territories that were never within the petitioners' operational mandate.

15.27. The petitioners suggest, though do not expressly plead, that there is an element of discrimination or favouritism in KMF's choice to assign the expanded Telangana territory to

Raichur CMPSU rather than to some other entity, including the petitioners themselves. This Court examines and rejects this suggestion.

15.28. The assignment of expanded Telangana territory to Raichur CMPSU is not an external commercial appointment; it is an internal federal direction by KMF to one of its constituent milk unions. Raichur CMPSU, like Hassan CMPSU, is a member of the KMF federation, more importantly Raichur is situate abutting the State of Telangana. The assignment of a new territory to Raichur CMPSU is analogous to a corporate parent directing one of its subsidiary companies to expand its operations to new markets, it is an internal governance decision, not a public procurement that must comply with competitive tendering norms.

15.29. There is no evidence on record of any mala fides, discrimination, or favouritism in KMF's choice of Raichur CMPSU for the expanded Telangana territory. The choice of a constituent union that has geographical proximity to the assigned districts, Raichur district borders Telangana, and existing operational experience in dairy distribution is entirely rational. The suggestion of discrimination, unsupported by any evidence, cannot be accepted.

15.30. This Court addresses a dimension of the impugned actions that reinforces the conclusion reached under the Wednesbury standard: the public interest in the expansion of the Nandini distribution network to unserved Telangana districts. The mandate of KMF, as established by the State Government of Karnataka and the National Dairy Development Board, includes not merely the maximisation of KMF's commercial revenue but also the broader developmental objective of ensuring that quality dairy products are accessible to consumers across the widest possible geographic area. This objective is directly connected to the Directive Principle in Article 48 and to India's 'Operation Flood' programme, which aimed to ensure the availability of milk and milk products to the population at fair prices.

15.31. The five Telangana districts specified in the impugned authorisation, Warangal, Adilabad, Nizamabad, Karimnagar, and Khammam, are districts where, on the evidence before this Court, the availability of Nandini dairy products was limited or non-existent prior to KMF's decision to extend operations to those districts, there is nothing placed on record to indicate as to if the Petitioners were servicing those districts. Consumers in these districts were therefore did not have access to the Nandini range of dairy products. KMF's decision to rectify this situation by authorising Raichur CMPSU to operate in those districts directly serves the public interest in wider dairy product availability and is entirely in keeping with KMF's institutional mandate.

15.32. The importance of protecting commercially negotiated arrangements that serve the public interest from unwarranted judicial interference was emphasised by the Supreme Court in **Noida Toll Bridge Co. Ltd. v. Federation of Noida Residents Welfare Association**[7], where the Hon'ble Supreme Court held that judicial interference in commercially negotiated arrangements between the State and private parties should be carefully circumscribed, particularly where the commercial terms were arrived at through a transparent and competitive process and where interference would disrupt the delivery of public services. Although the facts of that case are distinguishable from the present case in several respects, the underlying principle of judicial restraint in matters serving a clear public purpose applies with equal force here.

15.33. This public interest dimension is a further and independent reason why this Court will not interfere with KMF's expansion decisions. Even if there were some marginal procedural deficiency in the manner in which the expansion was effected, the Court should be slow to grant relief that would deprive consumers in five Telangana districts of access to Nandini dairy products. What this court is concerned with is grant of access, it is ofcourse for the persons in those territories to make a choice of their brand of diary products. Courts exercising writ jurisdiction are courts of equity, and equity requires the Court to balance the interests of all affected parties, not merely the interests of the petitioners, in fashioning relief.

15.34. The expansion of the Nandini distribution network to underserved Telangana districts is part of KMF's broader social mandate, to make quality dairy products accessible to consumers across the widest possible geographic area, at affordable prices. This is a mandate that KMF carries not merely as a commercial enterprise but as an instrumentality of the developmental State. The Court should be particularly cautious about intervening in decisions that further this public purpose, in the absence of any evidence of mala fides or arbitrariness.

15.35. This Court articulates the outer limits of KMF's policy-making authority in the Telangana dairy market, so as to provide clear guidance for future conduct and to prevent any ambiguity about the scope of this Court's decision. KMF, as a State instrumentality, has broad authority to make commercial and policy decisions in the dairy distribution domain. This authority includes: the right to expand its distribution network to new territories; the right to appoint new agents or entities for new territories; the right to conduct competitive tenders for distribution and co-packing services; and the right to issue internal federal directions to its constituent milk unions.

15.36. However, this authority operates within three constitutional constraints: (a) KMF cannot arbitrarily modify or terminate the existing contractual rights of its long-standing agents and co-packers within their established operational territories without adequate prior notice and a fair opportunity to be heard; (b) KMF cannot discriminate between similarly situated agents or co-packers without a rational and objective basis; and (c) KMF cannot act in mala fides or for extraneous purposes. None of these constraints has been violated in the present case, the impugned actions relate to new territories outside the petitioners' established operational area, and this Court has found no evidence of discrimination, mala fides, or arbitrariness. The impugned actions are therefore lawful. But the constraints remain operative for future conduct, and KMF is subject to their terms.

15.37. KMF had both the contractual authority (under Clause 3 of the WCF Agent Agreement in WP 23487/2024) and the institutional authority (as the apex dairy federation in WP 22850/2024) to take the impugned actions. The applicable standard of review is the Wednesbury unreasonableness standard. The impugned decisions are rational, are made in furtherance of a legitimate public interest, and are not vitiated by mala fides, bias, or non-application of mind. The promissory estoppel argument fails for want of a clear and unequivocal representation of permanent and exclusive rights over the entire State of Telangana. The legitimate expectation argument yields only a procedural entitlement, to prior notice, which this Court has addressed by way of prospective directions under Point No. 3. The discrimination argument fails for want of any evidence of favouritism. Point No. 4 is accordingly answered in favour of the respondents.

15.38. This Court answers Point No.4 by holding that KMF was entitled, under Clause 3 of the WCF Agent Agreement (WP 23487/2024) and under its inherent institutional authority as the apex dairy federation, to modify the area of operation and to expand its distribution network in Telangana. The appointment of Raichur CMPSU for five Telangana districts is a lawful internal federal arrangement within KMF. The issuance of the 2024 tender for co-packing activities in the State of Telangana was a lawful exercise of KMF's commercial discretion through a transparent competitive process. The applicable standard of judicial review is the Wednesbury unreasonableness standard. This standard is not satisfied in the present case. No mala fides, bias, extraneous considerations, or non-application of mind have been established. The promissory estoppel argument fails for want of a clear and unequivocal representation of permanent and exclusive rights. KMF's decisions are upheld.

16. **<u>Answer to Point No.v:</u> Whether the petitioners, having not participated in the tender process, have locus standi to challenge the impugned actions, and whether any alleged suppression or misrepresentation affects their entitlement to relief; and consequently, whether the petitioners are entitled to the reliefs sought?**

16.1. The question of *locus standi*, goes to the very foundations of writ jurisdiction. Article 226 of the Constitution confers a broad and expansive writ jurisdiction upon the High Courts, including the power to issue writs to any 'person or authority'. However, the power of the Court to act under Article 226 does not mean that any person may invoke that jurisdiction regardless of any connection to the subject-matter of the dispute. The requirement of locus standi, that the petitioner must have a legally cognisable interest in the outcome of the proceeding, is an essential condition for the exercise of writ jurisdiction.

16.2. In the context of writ jurisdiction under Article 226, the Supreme Court has recognised a broad category of locus standi that extends to all persons who are 'adversely affected' by the impugned action. However, these liberal standing rules apply primarily in cases of public interest and constitutional law challenges; in the specific context of challenges to commercial tenders and contracts, the courts have applied a more specific and stringent locus standi requirement.

16.3. The specific locus standi requirement for challenges to tender decisions has been addressed by the Supreme Court in a series of decisions. The leading authority is **NHAI v. Gwalior-Jhansi Expressway Ltd**[13]**.**, where a three-Judge Bench held that a person who has not participated in the tender proceedings can have no locus to challenge the selection of one bidder in preference to another. The rationale for this rule is: (a) non-participants cannot demonstrate that the process prejudicially affected them, since they did not submit a bid; (b) non-participants cannot show that they would have been selected if the process had been properly conducted; (c) allowing non-participants to challenge tender outcomes would create commercial uncertainty; and (d) the right to challenge a tender process is a right that must be earned by participation, just as the right to win the tender must be earned by submitting the best offer.

16.4. This principle has been consistently applied by this Court and by other High Courts. In **Mahalakshmi Engineering Works v. BESCOM**[12], this Court applied the principle and held that a non-participant in a tender had no locus standi to challenge the award. In **Subir Ghosh v. State of West Bengal**[14]**,** the Hon'ble Calcutta High Court reached the same conclusion in a materially identical factual matrix. This body of case law establishes a clear and settled principle of procedural law in the context of tender challenges.

16.5. In WP 23487/2024, the petitioner challenges: (a) the letter dated 07.08.2024 from KMF to Raichur CMPSU; and (b) the work order dated 07.11.2024. These documents are not the outcome of a competitive tender process. They are administrative/executive directions issued by KMF, in its capacity as the apex dairy federation, to one of its constituent milk unions. There was no public tender for the appointment; there was no competitive process in which the petitioner could have participated. The non-participant rule, which applies specifically to competitive procurement processes, is therefore inapplicable to the challenge in WP 23487/2024.

16.6. The petitioner in WP 23487/2024 holds a pre-existing agreement with Hassan for WCF agent operations in the Hyderabad Market. It is a directly and immediately affected party: the letter of 07.08.2024, by authorising Raichur CMPSU to operate in five Telangana districts, is alleged by the petitioner to encroach upon its exclusive operational territory. Whether or not this allegation is correct on the merits, this Court has held it is not, under Points 2 and 3, it is sufficient to confer locus standi upon the petitioner to bring the challenge. The petitioner has a legally cognisable interest in the integrity of its commercial territory, and any executive action that is alleged to threaten that territory may be challenged by it.

16.7. This Court accordingly holds that the petitioner in WP 23487/2024 has locus standi to challenge the letter dated 07.08.2024 and the work order dated 07.11.2024. However, as this Court has held under Points 2, 3, and 4, the challenge fails on merits, the impugned actions do not encroach upon the petitioner's Hyderabad Market rights, are within KMF's authority, and do not violate Article 14.

16.8. In WP 22850/2024, the petitioner challenges: (a) the tender notification KMF/PUR/Tender-650/2024-25 dated 20.05.2024; and (b) the Letter of Award dated 07.08.2024 to M/s Shakti Milk and Milk Products. Both of these are direct outcomes of a competitive public tender process. The petitioner in WP 22850/2024 did NOT participate in the tender process. This is not disputed.

16.9. The non-participant locus rule established in **NHAI v. Gwalior-Jhansi Expressway Ltd**[13]**.** applies directly and squarely to the facts of WP 22850/2024. The petitioner, having not participated in the tender, has no locus standi to challenge the tender notification or the Letter of Award.

16.10. The petitioner's attempt to justify its non-participation on the ground that participation would have been inconsistent with its legal position, i.e., that it already had exclusive rights that precluded the tender, does not assist it. This argument is circular: it assumes the very thing that is in dispute (exclusive rights over all of Telangana). Courts have consistently refused to accept this 'paradox of participation' argument as a justification for non-participation, on the ground that it would effectively allow any person who claims pre-existing rights to bypass the competitive tender process without consequences. The law requires that if a person contests the validity of a tender, it must challenge the tender at the time it is issued, not await the outcome and challenge the result after it proves adverse.

16.11. It is also relevant to note that the petitioner had the option of pursuing an alternative course: it could have participated in the tender 'without prejudice' to its legal position, i.e., submitting a bid while simultaneously challenging the validity of the tender by writ petition. This is a recognised procedure that allows a party to preserve its legal rights while still participating in a competitive process. The petitioner chose not to adopt this course, and must now live with the consequences of that choice.

16.12. The non-participant locus rule is not a technicality; it reflects a substantive principle of commercial law and public procurement. The integrity of the public procurement process depends upon the willingness of eligible parties to participate and compete on the merits. If non-participants could successfully challenge tender outcomes, the incentive to participate would be diminished, and the efficiency-enhancing purpose of competitive procurement would be undermined.

16.13. This Court accordingly holds that the petitioner in WP 22850/2024 lacks locus standi to challenge the tender notification or the Letter of Award. WP 22850/2024 is accordingly dismissed on this threshold ground alone, without prejudice to the further holding that the challenge also fails on merits for the reasons given under Points 2, 3, and 4.

16.14. The respondents allege that the petitioners have suppressed material facts from this Court, and that this suppression should disentitle them to any relief in equity. The instances of alleged suppression identified by the respondents are: (i) the petitioners' failure to disclose that all KMF and Hassan documents consistently described the operational territory as 'Hyderabad Market' or 'Hyderabad', and not as 'State of Telangana' or 'Telangana'; (ii) the petitioners' failure to disclose that their claims of exclusive rights over all of Telangana were not supported by any express agreement or order; (iii) the petitioners' misleading presentation of the 2020 episode as evidence that 'Hyderabad Market' includes Warangal, without disclosing that the 2020 proposal was objected to by Hassan and was formally withdrawn by KMF; and (iv) the petitioners' failure to disclose that they chose not to participate in the 2024 tender despite being aware of it.

16.15. The duty of full and frank disclosure in writ jurisdiction is a well-established principle. It arises from the ex parte character of the initial hearing in most writ petitions, the Court acts on the petitioner's version of events, often granting interim relief, without having the benefit of the respondent's side of the story. If the petitioner at this stage suppresses material facts or presents a one-sided picture, it subverts the Court's ability to make an informed decision on interim relief. The courts have accordingly held that a petitioner who approaches a court of equity with unclean hands, through suppression of material facts, may be denied equitable relief, even if the petitioner would otherwise have a valid case on merits (a) suppression of material facts is a serious matter in writ jurisdiction; (b) courts have the discretion to dismiss petitions in which material facts have been suppressed; (c) the threshold for what constitutes 'material' suppression depends upon whether the suppressed fact would have materially influenced the Court's decision on interim relief or on the merits; and (d) where the suppression is not so deliberate or so material as to amount to a fraud upon the Court, the courts may decline to dismiss the petition on this ground alone, but may take the suppression into account in the matter of costs and relief.

16.16. In the present case, this Court finds that the instances of alleged suppression are established to the following degree: (i) the petitioners did not fully and transparently disclose the nine-year pattern of KMF and Hassan documents using 'Hyderabad Market' rather than 'State of Telangana'; (ii) the petitioners presented the 2020 episode in a misleading light, without disclosing the fact of withdrawal; and (iii) in WP 22850/2024, the petitioner did not explain why it did not participate in the 2024 tender despite being aware of it. These constitute suppressions of material facts that were relevant to the grant of interim relief and to the merits of the case.

16.17. However, this Court does not find that the suppression was so deliberate and calculated as to amount to a fraud upon the Court, or as to require the outright dismissal of the petitions on this ground alone. The petitions were received, heard, and decided on their merits.

16.18. The doctrine of clean hands, that a party seeking equitable relief must come to the Court with clean hands, is a foundational principle of equity that applies with full force in writ jurisdiction. The writ jurisdiction of the High Court under Article 226, though constitutional in character, is nonetheless equitable in its roots: it is a discretionary remedy, granted on the basis of justice, equity, and good conscience. A petitioner who has not acted with full candour and transparency before the Court may, in the discretion of the Court, be denied equitable relief, regardless of the technical merits of its case.

16.19. In the present case, this Court has identified several respects in which the petitioners have fallen short of the standard of full and frank disclosure that writ jurisdiction requires. The petitioners characterised their rights in terms that went well beyond what the documentary record supported; they presented the 2020 episode selectively and misleadingly; and the petitioner in WP 22850/2024 did not disclose its deliberate choice not to participate in the 2024 tender. These departures from the standard of candour expected in writ proceedings, while not amounting to a fraud upon the Court, are relevant to the exercise of this Court's discretion in granting relief. Since this Court is in any event declining the relief sought on the merits and on the ground of locus standi in WP 22850/2024, the clean hands doctrine is a further and independent reason for declining the relief.

16.20. This Court notes, however, that the doctrine of clean hands does not operate as an automatic bar to relief in every case of imperfect disclosure. The Court's discretion is wide enough to grant partial relief, or no relief, in cases where the suppression, while real, is not so deliberate or so material as to render the petitioner wholly unworthy of any consideration. In the present case, this Court exercises this discretion by declining the substantive reliefs sought (quashing of the impugned actions) while expressly protecting the petitioners' pre-existing Hyderabad Metropolitan Area rights through the directions in the operative order. This is, in the Court's view, a just and equitable balance.

16.21. This Court now addresses the specific paragraphs of the three principal Supreme Court decisions relied upon by Sri. Jayakumar S. Patil, **ABL International**[2], **GAIL**[5], and **Subodh Kumar Singh Rathour**[6], as they bear upon the question of locus standi and entitlement to relief.

16.22. In **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd**[2]**.**, the specific paragraphs relied upon are: Para 8 (the question whether a writ petition against a State instrumentality arising from a contractual obligation is maintainable); Para 10 (the Court recognising that the State, even in contractual matters, is bound to act fairly); Paras 19 and 21 (recognising that writ jurisdiction is available when State acts 'in a manner which is arbitrary, unjust or unfair'); Para 23 (the obligation to act 'fairly, justly and reasonably'); and Para 27 (the consolidated propositions on maintainability). This Court has accepted all these propositions in its analysis under Point No. 1. The critical point is that acceptance of these propositions on maintainability does not predetermine the merits, it merely opens the gate to judicial review. The gate being open, this Court has examined the merits and concluded that the impugned actions do not violate Article 14.

16.23. In **GAIL (India) Ltd. v. Indian Petrochemicals Corporation Ltd**[5]**.**, the paragraphs specifically cited are paras 21 to 25. Para 21 holds that a challenge to contractual clauses of a public sector undertaking is maintainable as it involves a public law element. Paras 22–23 hold that GAIL's action in levying 'loss of transportation charges' was 'ex facie discriminatory' and 'manifestly arbitrary' because it discriminated between similarly situated parties without rational basis. Paras 24–25 hold that the clause runs 'contrary to every commercial and common sense' and is 'manifestly arbitrary'. The learned Senior Counsel cited **GAIL**[5] for the discrimination and manifest arbitrariness limbs of the Wednesbury test.

16.24. The **GAIL**[5] facts are different from the present case on the merits. In **GAIL**[5], the discrimination was established by reference to a specific contractual clause that imposed 'loss of transportation charges' on one party (IPCL) but not on similarly situated parties, a direct discrimination without rational basis. In the present case, there is no analogous discrimination: KMF is not treating the petitioners differently from similarly situated parties. It is expanding its distribution network into new territories (outside the petitioners' Hyderabad Market) and doing so in a rational and consistent manner. The Hobson's choice element that makes **GAIL**[5] particularly relevant to the maintainability question does not, on the merits, assist the petitioners in establishing discrimination or manifest arbitrariness, for the reasons given under Points 2, 3, and 4.

16.25. In **Subodh Kumar Singh Rathour v. Kolkata Metropolitan Development Authority**[6], the specific paragraphs cited are 34, 53, 64, and 65. Para 34 frames the two pivotal questions: (i) the scope of judicial review in contract/tender disputes; and (ii) whether the action of cancelling a tender was amenable to writ jurisdiction. Para 53 restates the **ABL International**[2] principles. Para 64 holds that 'the present dispute, even if related to a tender, cannot be termed as a pure contractual dispute, as the dispute involves a public law element'. Para 65 cites the **Ramana Dayaram**

Shetty[15] principle that the State cannot act arbitrarily in the matter of grant of contracts.

16.26. **Subodh Kumar**[6] (para 64) holds that what makes a tender dispute a 'public law' dispute is the existence of a 'public law element', and the Hon'ble Supreme Court found such an element in the facts of that case. This Court has similarly found a public law element in the present case (Point 1). But the finding of a public law element leads only to the conclusion of maintainability, it does not predetermine the outcome on merits. In **Subodh Kumar**[6] itself, the Hon'ble supreme Court went on to examine whether the cancellation of the tender was justified on the facts, and held that it was not. In the present case, this Court has found, on the merits, that KMF's actions are justified. The principles from **Subodh Kumar**[6] therefore support the petitioners on maintainability but do not assist them on the merits.

16.27. The respondents also raise, obliquely, the argument that the petitioners did not exhaust all available remedies before approaching this Court, specifically, that they did not make representations to KMF or Hassan before challenging the impugned actions. The doctrine of exhaustion of remedies, as applied in writ jurisdiction, holds that where a statutory or administrative appeal or review is available, the petitioner should ordinarily exhaust that remedy before approaching the High Court. The basis for this doctrine is the general principle that courts of superior jurisdiction should not be the forum of first resort for disputes that statutory or administrative authorities are equipped to resolve. In **Whirlpool Corporation v. Registrar of Trade Marks**[22], the Hon'ble Supreme Court held that the exhaustion of remedies rule is not an absolute bar but a rule of prudence, which the court may waive in cases of urgency, or where the alternative remedy would be ineffective.

16.28. In the present case, there is no statutory appeal or review mechanism specifically available to the petitioners against the impugned actions of KMF. The Karnataka Co-operative Societies Act provides for certain dispute resolution mechanisms within the cooperative framework, but these mechanisms are not designed to address constitutional challenges to arbitrary State action. This Court therefore does not apply the exhaustion of remedies rule as a bar to the writ jurisdiction in the present case.

16.29. The argument that the petitioners should have made representations to KMF before filing these writ petitions is, at most, a factor relevant to the grant of equitable relief, not a jurisdictional bar. Even if the petitioners had made representations to KMF and KMF had rejected them, the outcome of this litigation, on the findings this Court has made, would have been the same. The argument of exhaustion of remedies is therefore academic in the present case.

16.30. This Court answers Point No.5 by holding that: (a) WP 23487/2024, The petitioner has locus standi to challenge the letter dated 07.08.2024 and the work order dated 07.11.2024, but the challenge fails on merits for reasons given under Points 2, 3, and 4. (b) WP 22850/2024, The petitioner lacks locus standi to challenge the tender notification and the Letter of Award, having not participated in the tender process; the challenge also fails on merits. (c) Neither petitioner is entitled to the substantive reliefs sought. The petitioners' existing contractual rights within the Hyderabad Metropolitan Area are preserved by the directions in the operative order.

17. **Answer to Point No.vi: What Order?**

17.1. Having held, under Points ii, iii and iv, that the impugned actions do not encroach upon the petitioners' Hyderabad Market rights, are within KMF's authority, and do not violate Article 14; and having held under Point No. 5 that the petitioner in WP 22850/2024 lacks locus standi; this Court concludes that neither petitioner is entitled to the substantive reliefs sought.

17.2. In WP 23487/2024, the petitioner sought the quashing of the letter dated 07.08.2024 and the work order dated 07.11.2024. These reliefs are declined. The petitioner has locus standi to bring the challenge, but the challenge fails on merits.

17.3. In WP 22850/2024, the petitioner sought the quashing of the tender notification dated

20.05.2024 and the Letter of Award dated 07.08.2024. These reliefs are declined, both on the threshold ground of want of locus standi and on merits.

17.4. It is, however, important to state clearly what is not decided by this Court's orders. The dismissal of both writ petitions does not affect the petitioners' pre-existing contractual rights within the Hyderabad Metropolitan Area. Both petitioners hold valid and subsisting agreements with Hassan CMPSU for their respective operations within the Hyderabad Market. These agreements must be honoured by Hassan and by all other parties during their subsitence. The newly appointed entities, Raichur CMPSU, SR Marketing and Services (WP 23487), and M/s Shakti Milk and Milk Products (WP 22850), shall not encroach upon the Hyderabad Metropolitan Area operations of the petitioners during the subsistence of the petitioners' respective agreements.

17.5. Before recording the operative order, this Court records two concluding observations that are important for the guidance of the parties and for the future conduct of their commercial relationship.

17.6. First: this Court's dismissal of the writ petitions should not be read as an endorsement of the manner in which KMF and Hassan have conducted themselves in relation to the petitioners in the period leading up to the filing of these petitions. The failure to give prior notice before introducing significant changes to the Telangana distribution landscape, changes that reasonably caused concern among the petitioners, was not consistent with the standards of procedural fairness that Article 14 and the principles in Mahabir Auto Stores require of State instrumentalities. Better communication, greater transparency, and a willingness to explain the rationale for institutional decisions could have avoided the filing of these petitions altogether. KMF and Hassan are strongly encouraged to adopt these practices in their future dealings with their commercial partners.

17.7. Second: the petitioners should note that this Court's judgment does not close the door on all future challenges. If, in the future, during the subsistence of the contractual arrangements with the Petitioners, if any of the newly appointed entities, Raichur CMPSU, SR Marketing and Services, or M/s Shakti Milk, encroach upon the petitioners' Hyderabad Metropolitan Area operations in defiance of the specific directions in the operative order, the petitioners will be entitled to seek enforcement of those directions by approaching this Court. Similarly, during the subsistence of the contractual arrangements with the Petitioners, if Hassan CMPSU seeks to unilaterally modify or terminate the petitioners' Hyderabad Market arrangements without the prior notice and fair process directed by this Court, the petitioners would have a cause of action. The directions in the operative order are binding, and this Court expects all parties to honour them.

17.8. In the result, and for the reasons stated in this judgment, this Court makes the following

<u>ORDER</u>:

i. WP No. 23487/2024 filed by M/s Shree SSR Enterprises (Hyderabad) against the State of Karnataka and others, and WP No. 22850/2024 filed by M/s Sree Rajeshwari Dairy Products Ind (Pvt) Ltd against the State of Karnataka and others, are hereby partly Allowed.

ii. The letter/communication dated 07.08.2024 issued by KMF to the Raichur District Co-operative Milk Producers Societies Union permitting it to carry out WCF Agent operations in the districts of Warangal, Adilabad, Nizamabad, Karimnagar, and Khammam in the State of Telangana, and the consequential work order dated 07.11.2024, are hereby UPHELD, subject to the directions below.

iii. The tender notification KMF/PUR/Tender-650/2024-25 dated 20.05.2024 and the Letter of Award dated 07.08.2024 issued by KMF to M/s Shakti Milk and Milk Products for co-packing activities for the

State of Telangana are hereby UPHELD, subject to the directions below.

iv. Respondent No. 3 (Raichur CMPSU) and Respondent No. 5 (SR Marketing and Services) in WP 23487/2024 are DIRECTED that their operations under the letter dated 07.08.2024 and the work order dated 07.11.2024 shall be confined to the five specified districts (Warangal, Adilabad, Nizamabad, Karimnagar, and Khammam) and shall NOT extend to or encroach upon the Hyderabad Metropolitan Area (as notified by the Hyderabad Metropolitan Development Authority), which constitutes the operational territory of the petitioner in WP 23487/2024 under its subsisting agreement with Hassan CMPSU.

v. Respondent No. 4 (M/s Shakti Milk and Milk Products) in WP 22850/2024 is DIRECTED that its operations under the Letter of Award dated 07.08.2024 shall NOT encroach upon or interfere with the co-packing operations of the petitioner in

WP 22850/2024 within the Hyderabad Metropolitan Area (as notified by HMDA) during the subsistence of the petitioner's agreement with Hassan CMPSU. To the extent the Letter of Award purports to operate within the Hyderabad Metropolitan Area, it shall be read as subject to the petitioner's pre-existing contractual rights within that area, and M/s Shakti Milk shall not be entitled to carry out co-packing operations within the Hyderabad Metropolitan Area so long as the petitioner's agreements with Hassan CMPSU remains in force.

vi. Hassan Co-operative Milk Producers Societies Union (Respondent No. 4 in WP 23487/2024, Respondent No. 3 in WP 22850/2024) is DIRECTED to honour the agreements with both petitioners in respect of their respective operations within the Hyderabad Metropolitan Area, during their subsistence.

vii. All interim orders, if any, passed by this Court during the pendency of these writ petitions shall stand VACATED upon the pronouncement of this judgment.

viii. There shall be NO ORDER AS TO COSTS.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

SR
List No.: 1 Sl No.: 99