

CASE NO.:
Writ Petition (civil) 41 of 2003

PETITIONER:
Association of Registration Plates

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 30/11/2004

BENCH:
Y. K. Sabharwal, D. M. Dharmadhikari & Tarun Chatterjee]

JUDGMENT:
J U D G M E N T

WITH
WP (c) No. 24/03, TC (c) 30-31/03, TC (c) 32/03, TC (c) 38/03
TC (c) 39-40/03, TC (c) 41/03 TC (c) 42/03, TC (c) 62/03, WP(c)
56/03, WP(c) 395/03, WP (c) 77/03.

Dharmadhikari J.

The present writ petition along with the cases transferred from various High Courts have been placed before this Bench on a difference of opinion between Hon'ble Judges constituting the Division Bench.

The dispute concerns the terms and conditions of Notices Inviting Tenders [NITs] for supply of High Security Registration Plates to motor vehicles. The tenders have been issued by various State Governments on the guidelines circulated by the Central Government for implementing the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') and the newly amended Central Motor Vehicles Rules, 1989 (hereinafter referred to as 'the Rules').

The main grievance of the petitioner is that all Notices Inviting Tenders (NITs) which have been issued by various State Governments contain conditions which seem to have been tailored to favour companies having foreign collaboration. The tender conditions are described to be discriminatory under Article 14 of the Constitution of India being aimed at excluding indigenous manufacturers from the tender process. In all the cases the grievance is that the work of supply of High Security Registration Plates for all existing vehicles and new vehicles is being entrusted to a single license plates manufacturer in a State or a region and for a long period of 15 years thus creating monopoly in favour of selected bidders to the complete exclusion of all others in the field. The contention advanced is that creation of monopoly in favour of few parties having connection with foreign concerns is violative of fundamental right of trade under Articles 19 (1) (g) and discriminatory under Article 14 of Constitution of India.

A survey of the relevant provisions of the Act and Rules continuing the Scheme of High Security Registration Plates is necessary for considering the merit of the petitioners' grievances.

The object of the new scheme is to curb the increasing menace of vehicle thefts and their usage in commission of crimes like murder, dacoity, kidnapping etc. It is felt urgent to check usage of motor vehicles in terrorists activities. The Central Government on the recommendation of its Technical Committee has devised a system of

High Security Registration Plates which will ensure public safety and security. With the above purpose, Rule 50 of the Motor Vehicles Rules has been amended. Rule 50 was first amended on 28.03.2001, then on 24.09.2001 and lastly on 21.01.2003 w.e.f. 01.01.2004. The relevant part of the rule in its amended form reads as under:

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

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

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

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

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

(v) the plate shall be fastened with non-removable/non-reusable snap lock fitting system on rear of the vehicle at the premises of the registering authority; The licence plates with all the above specifications and the specified registrations for a vehicle shall be issued by the registering authority or approved the licence plates manufacturers or their dealers. The Central Road Research Institute, New Delhi or any of the agency authorized by the Central Government shall approve the license plates manufacturers to the above specification;

(vi) the size of the plate for different categories of vehicles shall be as follows:-

For two and three wheelers	200 x 100 mm
For light motor vehicles and Passenger cars	340 x 200 mm/ 500 x 120 mm
For medium commercial vehicles Heavy commercial vehicles and Trailer/combination	340 x 200 mm

Provided that this sub-rule shall apply to already registered vehicles two years from the date of commencement:

Provided further that the size of the registration plates for agricultural tractors shall be as follows:-

Front	-	285 x 45 mm
Rear	-	200 x 100 mm

2 to 6.

[Underlining for pointed attention]

The rule in the above manner requires manufacture of such registration plates which would be non-reusable and non-replaceable. The technical specifications of the registration plates are such as to make identification of the vehicle and its tracking easier and certain. The other requirements contained in Rule 50 are that apart from regulating the aspect of issuing registration mark with use of specific kinds of letters and numerals, it seeks to ensure its safety and security by regulating issuance and fixation of number plate from the premises of the Regional Transport Office of the concerned area. The RTO will issue registration number and also issue the plate itself. Thus a high security number plate with specified technical features is to be issued under Governmental control and supervision. The Scheme contained in Rule 50 substitutes the existing system where the registration number was given by the RTO and ordinary plate obtained from the open market. The implementation of the rule requires cooperation and coordination between the authorities of the State and the manufacturer of registration plates.

The source of power for providing Scheme of High Registration Plates by Rule 50 is traceable to Rule Making Power of Central Government contained in Section 64, clauses (a) to (e) of the Act which read as under:-

"Section 64. Power of Central Govt. to make rules. - The Central Government may make rules to provide for all or any of the following matter namely :-

- (a) the period within which and the form in which an application shall be made and the documents, particulars and information it shall accompany under sub-section (1) of Section 41;
- (b) the form in which the certificate of registration shall be made and the particulars and information it shall contain and the manner in which it shall be issued under sub-section (3) of Section 41;
- (c) the form and manner in which the particulars of the certificate of registration shall be entered in the records of the registering authority under sub-section (5) of Section 41;
- (d) the manner in which and the form in which the registration mark, the letters and figures and other particulars referred to in sub-section (6) of Section 41 shall be displayed and shown;
- (e) the period within which and the form in which the application shall be made and the particulars and information it shall contain under sub-section (8) of Section 41
- (f) to (o)

The Central Government has also issued the Motor Vehicles (New High Security Registration Plates) Order, 2001 in purported exercise of

power under sub-section (3) of Section 109 of the Act. The relevant parts of the order of 2001 contained in sub-clauses (viii) to (xiv) read as under:-

"(i) to (vii) \005\005\005\005\005

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

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

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

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

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

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

(xiv) Periodic audit shall be carried out by concerned ;testing agencies to ensure compliance of the requirements of the High Security Registration Plates. "[Highlighted for emphasis]

According to the respondents, the source of power to issue the New High Security Registration Plates Order, 2001 is to be found in sub-section 3 of Section 109. The petitioners have challenged the validity of the Registration Plates Order, 2001 (hereinafter shortly referred to as Order of 2001) which according to them is beyond provisions of the Act and has no legal efficacy.

The main features of the High Security Registration Plates as provided in Rule 50 and the order of 2001 are as follows:-

1. It provides for a solid aluminium plate.
2. The plate should be suitable for hot stamping and would be a reflective sheet.
3. The plate should bear the letters "IND" in blue colour.
4. It should have a chromium based hologram which shall also be hot stamped.
5. There would be third registration mark which would be self-reflective being a chromium based hologram sticker and which would be affixed on the windshield of the vehicle.
6. The plate on the rear shall be fastened with non-removable/non-resuable snap lock fitting system

The above-mentioned features to the High Security Registration Plates have been insisted upon for the following reasons:-

1. Hot Chromium based hologram would prevent counterfeiting.
2. The ingress letter "IND" on the plate would secure national identity and standardization.
3. The laser etched 7 digits code to be given by the manufacturer to each plate is with a view that there should be a sequential identification of individual registration plate across the country. This would act as a watermark and not erasable by any mechanical or technical process.
4. Snap lock to be fitted on the rear portions of the vehicle would be temper proof. Any attempt to remove the plate would break it.
5. The reflective sheet of superior grade would be visible from a minimum of 200 meters.
6. The alpha-numeral would be easily readable and identifiable.
7. On alpha-numeral border, ingress letters "IND" would prevent painting and screen printing which would act as protection and counterfeiting.
8. The sticker to be affixed on the windshield would have 7 digit laser code containing the engine number and the chassis number. This was so designed to be self-destructive upon removal.

After Rule 50 was amended and New High Registration Plates (amendment) Order, 2001 was issued in purported exercise of power under Section 109(3) of the Act. The Ministry of Road Transport and Highways vide its letter dated 6.3.2002 circulated the minutes of meeting of 4.3.2001 held between the representatives of all States and Union Territories on introduction of the new system of the registration plates. A series of meetings were held by the Union with the States. Eventually, on 6.3.2002 the Union laid down guidelines for incorporating necessary conditions in the Notices Inviting Tenders to be issued by the various States. In substance, the guidelines suggest as follows:-

1. The tender document would specify whether the appointment of vendor was for the whole State or for certain parts.
2. The tender document would specify the terms of the bank guarantee.
3. The tender document would require report back on certain aspects on "a periodic and regular basis".
4. The bidder must furnish proof of past experience/expertise in this area or proof of the same with a collaborator.

NIT guidelines were later modified by letter dated 14.6.2002 sent by the Ministry. It was suggested that the bidders may be asked to provide details about the experience/capability of its collaborator to the satisfaction of the State Authorities.

On 16.9.2002, meeting was held between officials of Ministry, representatives of States/Union Territories and manufacturers of New Registration Plates wherein several issues pertaining to the introduction of the new system as well as the terms of NIT were discussed. The minutes of the said meeting resulted in issuance of a clarificatory letter on 13.11.2002 wherein it is reiterated that the guidelines are suggestive in nature. The main features of the guidelines issued after due deliberations between Union and States officials and the representatives of manufacturers are as follows:-

"The determination of the physical and financial capability of the bidder was to be done by the State. A suggestion was voiced that

instead of tender process the market process should be given and all manufacturers would obtain technical approval certificate for being allowed to sell their product. This led to clarification by the Secretary of Road Transport and Highways that the State Transport Authorities will have to exercise control over issuance of registration plates. Representatives of certain States opposed to free open market situation having large vehicular population of cities and likelihood of successful tenderer neglecting the rural area having low vehicular population."

The Ministry of Road Transport and Highways left the discretion to the States in the matter of issuing NIT but reiterated security and rural concerns. On the guidelines given by Central Government and pursuant to joint deliberations between the officials of the Union, States and the manufacturers, several States issued Notices Inviting Tenders which led to filing of petitions in the High Courts of several States. The petitioners have challenged the terms and conditions of the NITs. All those cases have been transferred to this Court for decision along with the writ petitions directly filed here. It is not necessary to reproduce all the conditions in various Notices Inviting tenders issued by different States. The gist of impugned conditions in various NITs may be summarised as under:-

Condition (a) Tenderer/bidder or the promoter or any of the members of joint venture should have sufficient experience in the field of registration plates and should be working at least in 5 countries for license plates and in a minimum of 3 countries with license plates having security features world-wide (necessary credentials from the Government of such country should be attached along with a performa as per annexure XIII duly filed in). Apart from the above credentials the tenderer/bidder should furnish "Type Approved Certificate" from Testing Agencies".

Condition (b): The tenderers/bidders of the joint venture partners together must have a minimum annual turnover equivalent to INR 30 crores in the immediately preceding last year. At least 25% of this turnover must be from the license plate business. Certificate confirming and the certification of the minimum 25% turnover being from licensed plates business will have to be provided duly attested by a Chartered Accountant/any bank to be attached in support of fulfillment of this condition.

Condition (c): The contract will be for a period of fifteen years commencing from the date of commencement of the scheme. A detailed agreement shall be entered into between the successful bidder and the Government for a period of fifteen years and government ensures that no second bidder will be approved during the currency of the contract in the State except in the case of termination of the contract in view of the strictest of adherence to High Security Features and to impose answerability on to the successful bidder. [Portions highlighted being under specific challenge]

We shall now take up for consideration the various submissions made by the counsel appearing for the petitioners in assailing certain conditions of the Notices Inviting Tenders issued by various States, provisions of the Rule 50 and the statutory order of 2001 issued to implement the scheme of High Security Registration Plates.

1) Challenge to the impugned tender conditions.

The learned counsel appearing for the petitioners submit that the three conditions concerning experience and extent of business (the gist of which has been mentioned above) contained in the Notices Inviting Tenders, are per se discriminatory and unreasonable. They are apparently tailor-made to sub-serve the business interests of a class of manufacturers having foreign collaboration and for a cartel of

companies. He further submitted that the above mentioned three clauses which are substantially same in all the NITs issued by many of the States, make it mandatory for the bidders to enter into collaboration with the foreign collaborators. It becomes a pre-condition to participate in the bidding process. It envisages collaboration with few known foreign companies in the field of manufacture which alone can satisfy the tender conditions. It is known to tendering authorities that there are not more than 1 or 2 companies that could satisfy the stringent eligibility conditions laid down in the NITs.

It is submitted that Rule 50 as amended has inbuilt safeguards to ensure the technical competence of the prospective manufacturer and for controlled issuance of registration plates. The manufacturers can manufacture the said plates only after it has got type approved certificate from one of the autonomous certifying agencies. Supply of the plates to the vehicle users can be made only after the grant of certificate of conformity of the standard of the production. The States, therefore, can have no jurisdiction to decide or declare any of the manufacturers as competent or incompetent with respect to their technical competence.

To reinforce the challenge to the conditions and describing them as highly unreasonable and resulting in complete exclusion of indigenous manufacturers, it is submitted that at present, registration plates with specified security features are in use only in some of the countries which are much smaller than India. They are Armenia, Columbia, Congo, Curacao, Ethiopia, Georgia, Iraq, Mali, Malta Oman, Palestine, Sri Lanka, Tanzania, Uganda, Uruguay, and Zambia. The learned counsel argues that it is difficult to understand as to how the experience of working in the above mentioned small countries with a very small vehicular population would be of any help as an experience for supplying registration plates for large vehicular population of India whose needs and requirements are of far greater magnitude and in no way comparable to the above mentioned small countries. The total vehicular population of all above mentioned nations accumulated does not match the vehicular population of Delhi alone. Indigenous manufacturers of High Security Plates can manufacture and supply registration plates on their own strength by complying with all standards and in conformity with all norms laid down in Rule 50 without entering into collaboration with any foreign partner.

It is contended that in the name of implementing the amended Rule 50, the States are imposing conditions in the tender that would take away the existing rights of the manufacturers of plates in India. The implication of conditions is that indigenous manufacturers, although capable of fulfilling the requirements of Rule 50, are prohibited to do the business of manufacturing and supplying the High Security plates. This violates their fundamental right under Article 19 (1) (g) of the Constitution of India.

The further contention is that all security features for number plates have been specified for the first time in India and, therefore, insistence on possessing experience in five countries from the manufacturers is to eliminate manufacturers of India. It is pointed out that as per the requirements of Rule 50 the plates are required to conform to DIN 1745/DIN 1783 or ISO 7591 standards (DIN of the German Standards and ISO of the World standards). The other security features are the additional features. It is submitted that these standards have been used to suit only one or two manufacturers. It is submitted that the laid down standards and security features are so laid down as to wipe out indigenous manufacturers from the field although Indian manufacturers are fully competent to be involved in the implementation of the new scheme of High Security plates.

To the condition laid down of prescribed minimum turnover of

business, the challenge made on behalf of the petitioners is that fixing such high turnover for such a new business is only for the purpose of advancing the business interests of a group of companies having foreign links and support. It is impossible for any indigenous manufacturers of security plates to have a turnover of approximately 12.5 crores from the High Security Registration Plates which are sought to be introduced in India for the first time and the implementation of the project has not yet started in any of the States.

On the question of condition of a period of 15 years for supply of High Security Registration Plates the contention advanced is that it is an attempt to create monopoly in favour of one private company or a cartel of companies. This is against public interest as it would leave the consumers/vehicle owners at the mercy of a sole successful bidder. Award of a contract for a long term of 15 years would eliminate indigenous Type Approved manufacturers for a long period of time and would deprive the vehicle users of the number plates from the benefits of the competitive market. In the event of further development of the technology of security plates, the State Government would be obliged to involve the same manufacturers who had been awarded the contract first of all. The process of grant of Type Approved Certificate is a continuing process and award of contract for a long period of 15 years in favour of a single manufacturer would render grant of Type Approved Certificate to other manufacturers, inconsequential. Referring to the relevant data of the business of the respondent group companies working in collaboration with foreign companies as joint venture concerns, the petitioners highlights that if indigenous manufacturers are involved in implementation of scheme the plates can be made available only for Rs. 200-250 for two plates whereas creating monopoly right in favour of joint venture companies in foreign collaboration would hike the cost of plates to not less than Rs. 2,000/- per pair in contrast to the market price of Rs. 800 to Rs. 900 per pair by the Indian manufacturers. In conclusion, learned counsel for the petitioner submits that the tender conditions are arbitrary, irrelevant and tailor-made to involve only certain joint venture companies in foreign collaboration. They aim at eliminating the indigenous manufacturers of plates. The petitioners seek quashing of the impugned tender conditions. Reliance is placed on *Sterling Computers Vs. M. and N. Publications* [1993 (1) SCC 445 and *Union of India Vs. Dinesh Engineering* [2001 (8) SCC 491]

The other counsel appearing in connected cases for the petitioners have submitted that selection of sole manufacturer for supply of registration plates has no justification either in law or on facts. On behalf of the petitioners, it is contended that grant of contract to more than one manufacturer would, in fact, ensure better and prompt services to the vehicle owners and minimize their inconvenience and possibility of black-marketing which might be there in case of monopoly. The submission is that regulated and disciplined multi-vendors system with registration of operating manufacturers and making them answerable and accountable is the only permissible method of implementation of the policy akin to that followed in other developed countries where no monopoly is created in favour of a sole manufacturer in the name of control and security.

On the economics of the project, the contention is that keeping in view large vehicular population of the country, benefits of a lucrative business are being unjustly conferred on a sole manufacturer for a long period of 15 years which is likely to give a profit of Rs.2500 crores to the sole manufacturer in the first two years itself.

The learned counsel appearing for the Union of India, State Authorities and counsel appearing for the contesting manufacturers, in

their replies, have tried to justify the manner and implementation of the policy contained in Rule 50. On behalf of the Union of India, learned Addl. Solicitor-General submitted that under Rule 50 read with the statutory order of 2001 issued under section 109(3) of the Act, the State Governments are legally competent to formulate an appropriate policy for choosing a sole or more manufacturers in order to fulfill the object of affixation of security plates. The registration plates have to be issued and affixed on the premises of the registering authority and with its permission. It is submitted that the scheme contained in rule 50 read with a statutory order of 2001 leaves it to the discretion of the State concerned to even choose a single manufacturer for the entire State or more than one manufacturer regionwise. Such a selection cannot be said to confer any monopoly right by the State to any private individual or concern. It is just like selection of an appropriate person for grant of a contract or largesse by the State on laid down criteria of experience and technical qualifications. A fair process of selection may eliminate persons or parties who may not be found technically, financially and on the basis of past experience sound to be awarded the contract. Reliance is placed on *Krishnan Kakkanth vs. Govt. of Kerala* [1997 (5) SCC 495]; *Ugar Sugar Works Ltd., vs. Delhi Administration & Ors.* [2001 (3) SCC 635]; and *M.R.F. Ltd., vs. Inspector Kerala Govt. & Ors.* [1998 (8) SCC 227].

On behalf of State of West Bengal, the learned senior counsel appearing supported the manner of implementation of scheme contained in rule 50 and the conditions contained in the Notice Inviting Tenders [NITs]. It is submitted that the main objective of the competitive bidder process was to ensure that such manufacturers as selected by the State would be able to comply with the requirements of rule 50. In selecting a suitable manufacturer, his capability and capacity to invest and build necessary infrastructure, has to be assessed so that through him, the scheme becomes operationable from the targeted date 28.2.2003 and without any difficulty it remains so operational for a longer period so that all existing vehicles switch over to high security registration plates as also the newly purchased vehicles are fitted with such plates. The tender conditions are deliberately so framed as to eliminate newly floated companies commonly described as 'fly by night companies' which merely compete to obtain the contract but have neither technical nor financial capacity to fulfil the contract of such vast dimensions.

It is submitted that the tender conditions are formulated keeping into account the public interest consideration and aspects of high security. The States do not possess the requisite resources of its own to implement the scheme. It has, therefore, to search and select a dependable manufacturer. It is submitted that the tender conditions specifically require the manufacturer to conform to the technical specification of high security registration plates. It should be able to prove existence of requisite financial resources to integrate large number of RTOs in the State on an on-line platform. The manufacturer should have a permanent technical partner to the venture so that the technology support is assured for the entire period of contract. The manufacturer to be selected should have access to the requisite technology and should be in a position to upgrade, expand and upscale operation on a continuous and sustainable basis. It is necessary to have a long term contractual relationship so that State can fix liability on the manufacturer and make him answerable for damages or any defects in the registration plates or for improper implementation of the project. The requirement of the rule that registration number and plates will be issued on the premises of the RTO, is to maintain secrecy and security. For the above purpose, selection of one single manufacturer would ensure security aspects instead of more than one manufacturers operating from different points.

With regard to 15 years long term contract, it is submitted that it

is also in public interest. The manufacturer who has to stake the money would have to make huge investment by installing high technology based networking at each RTO's office. A short-term contract would not, therefore, attract an experienced and reliable manufacturer. Long-term contract with fixed price for entire 15 years period is beneficial to the customers as there would be no price increase for the stipulated period irrespective of inflation. Fifteen years period has been chosen in proportion to the average road-worthy life of a vehicle in India.

Looking to the huge vehicular population of the country, the capacity of the manufacturer has to be as great because plates are to be fitted to a very large number of existing vehicles within first two years. Thereafter, every year about one lakh vehicles in each State would be required to be fitted with the plates. If the bulk of contract is exhausted in the first two years, fresh manufacturers would not come forward to undertake the remaining work as it would not be cost-effective. A long-term contract was necessitated for various reasons such as necessity of huge investment for building infrastructure, uninterrupted supply of plates in the first two years and thereafter every year and the investment of such infrastructure requiring recovery over a long duration by way of supply. If the contract period is lowered, the cost of plate might go up as the huge investment will have to be recovered in a shorter period.

Justifying the selection of a single manufacturer for a region or an entire State, to ensure security considerations, the following factors have been highlighted as sub-serving the public interest :-

1. That it would not be possible to implement the scheme since the scheme provides that the approved manufacturer would use the premises of the State RTO and lay down V-Sat links so that the entire state is networked on a common platform.
2. It would be impossible for the State to provide all the TAC holders space and infrastructure in the RTO premises.
3. It would be difficult for the state to identify the source of any counterfeiting in case there are multiple manufacturers. This would severely compromise the security considerations involved in the scheme.
4. Different manufacturers would lead to variations in price between different manufacturers.
5. The State is at disadvantage since all the manufacturers would prefer to concentrate on supplying only in Kolkata and would not go to the other far flung RTOs where he would recover the returns on his investment.
6. In case more than one manufacturer operate within the state, it will lead to discrepancy and non-uniformity in price structure prevailing in different regions.
7. Difficulty in assimilation of data from more than one manufacturer thus leading to disaggregated and confusing database signals. Such sensitive and security related business must be governed by uniform database management processes and unified standardized coding practices.
8. Different manufacturers would mean that there would be variation in quality of the material and in terms of workmanship.
9. Possible duplication of Registration Plates due to competition between manufacturer of different regions and lack of

aggregated security controlled database management systems.

10. Non-conformity of data of different manufacturers would lead to confusion and integration of data from the State RTOs.

11. Difficulty in fixing up the answerability on any one manufacturer for not following the prescribed procedure.

12. Confidentiality of the public database would be severely compromised.

13. Provision of Training of RTO personnel by each manufacturer would be a logistic nightmare and would lead to confusion and further lead to the system being compromised severely.

14. It is also important to note that each registration plate has a unique number, and consequently, all the RTOs are required to be electronically connected to each other, if the vendors are allowed to proliferate, this connection would not be possible, and would lead to complete chaos.

By highlighting the above factors, it is submitted that if multiple manufacturers are involved in implementation of the policy, it is not likely to work satisfactorily. It is submitted that a single selected manufacturer would not just be marketing, servicing and providing a new product but would engage in assisting the State in fulfillment of statutory obligations to grant the high security registrations to the owners of motor-vehicles in accordance with the provisions of the Act and the Rules. It is submitted that tender conditions are suitably formulated for performance guarantee, experience and understanding of business, financial strength, and capacity of creating and installing the entire infrastructure and networking. Finally, it is submitted that the eligibility criteria prescribed by the State is commensurate not only with the scale of operation and size of network to be created by the operator but also with statutory requirement of States' continued delivery of its obligations to vehicle owners without any interruption. It is contended that through open tender, identifying and selecting an approved manufacturer to discharge statutory duty of RTO is not an act of the State creating any monopoly in favour of any private party. The grievance of infringement of fundamental rights under Article 19(1)(g) of the Constitution of India is misconceived. Reliance is placed on *Air India vs. Cochin International Airport Ltd.*, [2000(2) SCC 617] and *Asia Foundation & Construction Ltd. Vs. Trafalgar House Construction Ltd.* [1997 (1) SCC 738].

The learned senior counsel appearing for the respondent no. 5, has supported the submissions made on behalf of the Union of India and the State of West Bengal by advancing separate arguments with additional reasons.

We shall separately deal with the submissions made on behalf of the petitioners on the interpretation of the provisions of rule 50 and the statutory order of 2001 issued under the provisions of the Act.

Taking up first the challenge to the impugned conditions in the Notices Inviting Tenders issued by various State authorities, we find sufficient force in submissions advanced on behalf of the Union and the State authorities and the contesting manufacturers. The State as the implementing authority has to ensure that scheme of high security plates is effectively implemented. Keeping in view the enormous work involved in switching over to new plates within two years for existing vehicles of such large numbers in each State, resort to 'trial and error' method would prove hazardous. Its concern to get the right and most competent person cannot be questioned. It has to eliminate manufacturers who have developed recently just to enter into the new

field. The insistence of the State to search for an experienced manufacturer with sound financial and technical capacity cannot be misunderstood. The relevant terms and conditions quoted above are so formulated to enable the State to adjudge the capability of a particular tenderer who can provide a fail-safe and sustainable delivery capacity. Only such tenderer has to be selected who can take responsibility for marketing, servicing and providing continuously the specified plates for vehicles in large number firstly in initial two years and annually in the next 13 years. The manufacturer chosen would, in fact, be a sort of an agent or medium of the RTOs concerned for fulfillment of the statutory obligations on them of providing high security plates to vehicles in accordance with rule 50. Capacity and capability are two most relevant criteria for framing suitable conditions of any Notices Inviting Tenders. The impugned clauses by which it is stipulated that the tenderer individually or as a member of joint-venture must have an experience in the field of registration plates in at least three countries, a common minimum net worth of Rs. 40 crores and either joint-venture partner having a minimum annual turnover of at least Rs. 50 crores and a minimum of 15% turnover of registration plates business have been, as stated, incorporated as essential conditions to ensure that the manufacturer selected would be technically and financially competent to fulfil the contractual obligations which looking to the magnitude of the job requires huge investment qualitatively and quantitatively.

In the course of hearing, it could not be seriously disputed by the parties that technical know-how for the high security registration plates is outside the country. It is true that many indigenous manufacturers are in a position to supply the plates on the basis of technical assistance available in and outside the country. There are many tenderer who possess Type Approval Certificates [TACs] but to ensure major quantity of supply in initial two years and periodical supply for new vehicles for a long period, only a manufacturer who is sound both technically and financially, is required. Learned Brother G. P. Mathur J., in his elaborate opinion expressed by him [See 2004(5) SCC 364] found a serious vice in the tender conditions that they necessarily intend to promote such companies which have foreign collaborations and exclude indigenous manufacturers.

It is not controverted that the technical 'know-how' for the manufacture of high security registration plates presently is available outside India. Technically and financially, competent indigenous manufacturers are mostly those who are in collaborations with foreign companies engaged in such manufacturing activities. The scheme contemplated under rule 50 of registration plates is a new experiment for India. In the initial stages of its implementation, tender conditions encouraging such manufacturers who are in foreign collaborations cannot be held to be discriminatory to indigenous manufacturers. Keeping in view the nature of the contract and job involved particularly its magnitude and the huge investment for infrastructure required, attempt to select such manufacturer - may be having collaboration with foreign companies and experience in foreign countries cannot be held to be a deliberate attempt on the part of the State authorities to eliminate indigenous manufacturers.

In the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring supply of high security registration plates, greater latitude is required to be conceded to the State authorities. Unless the action of tendering Authority is found to be malicious and misuse of its statutory powers, tender conditions are unassailable. On intensive examination of tender conditions, we do not find that they violate the equality clause under Article 14 or encroach on fundamental rights of a class of intending tenderer under Article 19 of the Constitution. On the basis of the submissions made on behalf of the Union and State authorities and the

justification shown for the terms of the impugned tender conditions, we do not find that the clauses requiring experience in the field of supplying registration plates in foreign countries and the quantum of business turnover are intended only to keep out of field indigenous manufacturers. It is explained that on the date of formulation of scheme in rule 50 and issuance of guidelines thereunder by Central Government, there were not many indigenous manufacturers in India with technical and financial capability to undertake the job of supply of such high dimension, on a long term basis and in a manner to ensure safety and security which is the prime object to be achieved by the introduction of new sophisticated registration plates.

The notice inviting tender is open to response by all and even if one single manufacture is ultimately selected for a region or State, it cannot be said that the State has created monopoly of business in favour of a private party. Rule 50 permits, the RTOs concerned themselves to implement the policy or to get it implemented through a selected approved manufacturer.

Selecting one manufacturer through a process of open competition is not creation of any monopoly, as contended, in violation of Article 19(1)(g) of the Constitution read with clause (6) of the said Article. As is sought to be pointed out, the implementation involves large network of operations of highly sophisticated materials. The manufacturer has to have embossing stations within the premises of the RTO. He has to maintain a data of each plate which he would be getting from his main unit. It has to be cross-checked by the RTO data. There has to be a server in the RTO's office which is linked with all RTOs' in each State and thereon linked to the whole nation. Maintenance of record by one and supervision over its activity would be simpler for the State if there is one manufacturer instead of multi-manufacturers as suppliers. The actual operation of the scheme through the RTOs in their premises would get complicated and confused if multi-manufacturers are involved. That would also seriously impair the high security concept in affixation of new plates on the vehicles. If there is a single manufacturer he can be forced to go and serve rural areas with thin vehicular population and less volume of business. Multi-manufacturers might concentrate only on urban areas with higher vehicular population.

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

be arbitrary or discriminatory deserving its striking down as prayed for on behalf of the petitioners.

There is no material on record to infer any mala fide design on the part of the tendering authority to favour parties having foreign collaborations and keep out of fray indigenous manufacturers. The high security plates is a sophisticated article - new for manufacturer in India. It is being introduced for the first time under the scheme contained in rule 50 of the Rules and the Act. At the time of issuance of Notices of Tender, technical know-how for manufacture of plates and its further development was undoubtedly outside the country. Only a few concerns in India having collaboration with foreign parties possessed the expertise and were available in the market. The terms of the notice inviting tender were formulated after joint deliberations of Central and State Authorities and the available manufacturers in the field. The terms of the tender prescribing quantum of turnover of its business and business in plates with fixation of long term period of the contract are said to have been incorporated to ensure uninterrupted supply of plates to a large number of existing vehicles within a period of two years and new vehicles for a long period in the coming years. It is easy to allege but difficult to accept that terms of the Notices Inviting Tenders which were fixed after joint deliberations between State authorities and intending tenderers were so tailored as to benefit only a certain identified manufacturers having foreign collaboration. Merely because few manufacturers like the petitioners do not qualify to submit tender, being not in a position to satisfy the terms and conditions laid down, the tender conditions cannot be held to be discriminatory.

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

The grievance that the terms of notice inviting tender in the present cases virtually creates a monopoly in favour of parties having foreign collaborations, is without substance. Selection of a competent contractor for assigning job of supply of a sophisticated article through an open tender procedure, is not an act of creating monopoly, as is sought to be suggested on behalf of the petitioners. What has been argued is that the terms of the Notices Inviting Tenders deliberately exclude domestic manufacturers and new entrepreneurs in the field. In the absence of any indication from the record that the terms and conditions were tailor-made to promote parties with foreign collaborations and to exclude indigenous manufacturers, judicial interference is uncalled for.

Challenge to the tender conditions on Paragraph 2 of Rule 50(1)(v).

On behalf of the petitioners, paragraph 2 of rule 50(1)(v), which is reproduced below, has been interpreted. The contention is that it does not contemplate selection of sole manufacturer for a State or a Region. The relevant paragraph 2 of rule 50(1)(v) reads thus :-

"Rule 50(1)(v). Form and manner of display of registration marks on the motor vehicles. \026 (1).....

(i) to (iv)

(v)

The licence plates with all the above specifications and the specified registrations for a vehicle shall be issued by the registering authority or approved licence plates manufacturers or their dealers.

The Central Road Research Institute, New Delhi or any of the agency authorized by the Central Government shall approve the license plates manufacturers to above specification.

[Emphasis supplied]

Learned counsel for the petitioners argues that the use of the word "approved" in para 2 of clause (v) of rule 50(1) has to be given its natural meaning and cannot be read to mean "selected" through notice inviting tender. In this respect, it is further submitted that the rule making authority has used the word 'approved' and 'approve' twice in the same paragraph. The rule read harmoniously rules out selection of sole manufacturer through a tender process. The argument in substance is that every approved licence plate manufacturer can be entrusted with the job of supplying the registration plates and selection of one manufacturer for the job is against the intendment of the rule.

The above argument seems attractive but on closer scrutiny is unacceptable. The rule is interpreted to mean that the registration plates can either be issued by RTO to the exclusion of all others or all type approval certificate holders must be allowed to do business of supply in open market. In other words, according to the petitioners, the rule contemplates that if the registering authority does not supply the plates itself, it allows all TAC holders to do the business without any restriction.

In interpreting the rule, the object of the scheme providing for affixation of high security plates has to be kept in view. Where the RTO himself is not making the supply of plates, an approved registration plate manufacturer can be selected for supply. The legal obligation on the registering authority under rule 50(1)(v) to issue specified kinds of registration plates implies issuance of such registration plates through a selected approved plate manufacturer. Paragraph 2 of clause (v) of rule 50(1), if reasonably construed, does not indicate any prohibition of selection of an approved plate manufacturer for assisting the registering authority to implement the scheme of affixation high security registration plates to existing vehicles and new vehicles. Such an interpretation fulfils the object of the scheme. The interpretation sought to be placed by the petitioners on the said para of the rule would result in frustrating the high security aspect and object of the scheme of affixation of high security registration plates on vehicles.

Challenge to Para 4(x) of the Motor-Vehicles [New High Security Registration Plates] Order, 2001 issued in purported exercise of powers under section 109(3) of the Act.

Para 4(x) of the statutory Order, 2001 mentioned above, reads as under :-

"The manufacturer or the vendors selected by the State Transport Department for supply of such registration plates may

be for the State as a whole or for any region of the State."

On behalf of the petitioners, it is submitted that para 4(x) of the statutory Order, 2001 is ultra vires section 109 (3) of the Act under which it is purported to have been issued. Section 109 with its heading and the relevant sub-section (3) reads as under :-

"Section 109. General provision regarding construction and maintenance of vehicles. (1) Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

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

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

[Highlighted for interpretation].

It is contended that section 109(3) falls under Chapter VII which deals with construction, equipment and maintenance of motor vehicles. Registration of motor-vehicles falls under Chapter IV of the Act. Under section 109(3), a direction or order can be issued only to a 'manufacturer' defined in section 2(21A) to mean manufacturer of motor vehicles. It is submitted that a motor-vehicle manufactured by a manufacturer is sold to a dealer without a registration plate. Thereafter, the dealer sells the motor vehicle to a customer without registration plate. Chapter IV containing section 39 to 65 deal with registration of motor vehicles of different types. The proviso to section 39 of the Act says : 'nothing in this section shall apply to motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government'. Section 41 also points to the same position. It casts an obligation on the owner of a motor vehicle to obtain registration. The question of issuing a certificate of registration and assigning to a motor vehicle a registration mark arises only after sale of motor vehicle. Therefore, until the motor vehicle has been sold to a person by a dealer, the registering authority would not come into the picture and there is no occasion for assigning it a registration mark. A manufacturer of motor vehicle is not at all concerned with registration thereof by the registering authority. On the basis of above interpretation of provisions of the Act, the submission made is that under section 109(3), the Central Government can only prescribe standards for any article or process used by the manufacturer in the manufacturing of the vehicle and not for selecting any manufacturer of registration plates to the exclusion of others. It is submitted that reading sub-section (3) with sub-section (1) & (2) of section 109 of the Act, the position is that the provisions have nothing to do with registration plates of the vehicles.

It is further submitted that power to issue directions as contained in para 4(x) of the statutory order of 2001, cannot be traced to any provision in chapter IV of the Act dealing with registration of motor vehicles or to the rule making power under section 64(d). It is submitted that any provision regarding registration plates can only be made by rule framed by Central Government in accordance with provisions of the Act. Sub-section (4) of section 212 of the Act, prescribes a mandatory requirement of first publishing draft rule before making a final rule on any subject. Since in promulgating para 4(x) of the statutory order of 2001, mandatory requirement of section 212(4) has not been complied with, the impugned para of the said statutory order of 2001 cannot be supported even as a statutory

rule. The other submission made on the subject is that provisions for selecting only one manufacturer for registration plates in a region or a State is not a subject of 'prescribing manner and form in which the registration mark' would be displayed on the motor vehicles. On the above ground, it is submitted that para 4(x) of the statutory order of 2001 deserves to be struck down as ultra vires the Act. It is violative of the Article 19(1)(g) of the Constitution.

The above argument based on section 109(3) and the other provisions in Chapter IV of the Act have been suitably replied by the counsel appearing for the respondents. The reasoning advanced on behalf of the respondents is worthy of acceptance. The statutory order of 2001 is expressly issued under section 109 (3) of the Act which no doubt is concerned with construction, equipment and maintenance of motor vehicles. Sub-section (3) of section 109 permits Central Government to "notify that any article or process used by a manufacturer shall conform to such standard as prescribed". The word "manufacturer" is defined in section 2(21A) of the Act to mean a person engaged in the manufacture of the motor vehicles but the definition clause is prefixed by the words "unless the context otherwise requires". In the context of sub-section (3) of section 109, an article to be affixed to the motor vehicle like a high security registration plates is covered by the use of expression "any article or process used by a manufacturer". 'In the context' if the provision contained in sub-section 3 is read reasonably, an article which is adjunct or necessarily attachable to a motor vehicle, would also be covered in the said expression. The statutory order of 2001 is published in the official gazette. It does not fall outside the scope of sub-section (3) of section 109 of the Act. The expression 'any article or process used by a manufacturer' has to be construed 'in the context' as not to restrict the expression 'manufacturer' to only manufacturer of motor vehicles as defined under section 2 (21A) of the Act. The definition in the Act has to be construed according to the 'context' and if the 'context' otherwise indicates a meaningful interpretation is to be given to the words 'any article or process used by any manufacturer' as used in sub-section 3 of section 109 of the Act. Registration plates are not manufactured by the manufacturer of motor vehicles but for maintenance and operations of motor vehicles, registration plates are necessary. Therefore, manufacturer of registration plates can be subjected to certain standards by a statutory order to be notified and published in accordance with sub-section (3) of section 109 of the Act. Any restrictive interpretation of the said sub-section is neither called for from the language of the sub-section nor the object of the provision. Reference is made to the opinion of learned Brother G.P. Mathur J., in these cases. For the reasons mentioned by us above, in our opinion, the statutory order of 2001 and clause 4(x) thereof cannot be held to be beyond the purview of sub-section 3 of section 109 of the Act. Clause 4(x) of the statutory order of 2001, could be issued under section 109(3), as an aid to the fulfillment of provisions of high security registration plates contained in rule 50. Such power of the State to issue order containing clause 4(x) is not only supported by sub-section 3 of section 109 but by rule 50 itself. Clause 4(x) of the statutory order of 2001 is merely enabling one and re-states what rule 50 contemplates. We also find force in the alternative submission made on behalf of the respondents that the statutory order including clause 4(x) can be supported as having been issued in exercise of executive power of the Central Government which is co-extensive with its legislative power.

For the above reasons, all the challenges made to the provisions of the rule, statutory order or the tender conditions fail. All the petitions directly filed in this Court and transferred to this Court from High Courts are, hereby, dismissed.

In the circumstances, we direct that the parties shall bear their

own costs in all these cases.

JUDIS