

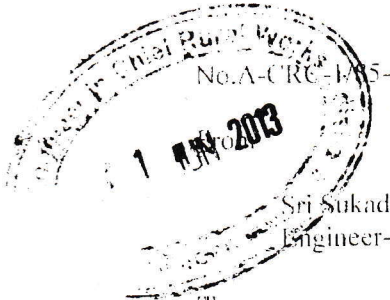
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OFFICE OF THE ENGINEER-IN-CHIEF (CIVIL): ODISHA.

(15)

21760

/Dt. Bhubaneswar, the 27th May, 2013.



Sri Sukadev Meher
Engineer-in-Chief (Civil), Odisha.

To

The E.I.C., Water Resources, Odisha, Bhubaneswar /
Chief Engineer (D.P.I & Roads), Odisha / Chief Engineer (Buildings), Odisha /
Chief Engineer, World Bank Projects, Odisha / Chief Engineer, Public Health
(Urban), Odisha / Chief Engineer, Minor Irrigation, Odisha / Chief Engineer,
Rural Works-I, Odisha / Chief Engineer, National Highways, Odisha / Chief
Engineer & Basin Manager, Lower Mahanadi Basin, Bhubaneswar / Chief
Engineer & Basin Manager, Brahmani Left Basin, Samal Barrage, Angul /
Chief Engineer & Basin Manager, Subarnarekha, Budhabalang & Baitarani
Basin, Laxmiposi, Baripada, Mayurbhanj / Chief Engineer & Basin Manager,
Upper Mahanadi Basin, Sambalpur / Chief Engineer & Basin Manager,
R.V.N. Basin, Berhampur, Ganjam / Chief Engineer, Drainage, Gandarpur,
Cuttack-3 / Chief Electrical Inspector, Odisha, Bhubaneswar.

Sub: Dismissal of writ petitions by Hon'ble High Court.

Sir,

With reference to the subject cited above, it is to state that judgement dt.25.2.2011
passed by the Hon'ble High Court of Odisha, Cuttack in full bench in W.P.(C) No.9251/2009
and 25 baches and others (copy enclosed) uphold the constitutional validity of the
amendment made to rule-3 of Appendix-VIII of O.P.W.D. Code, Vol-II (P.W.D. Contractors
Registration Rules, 1967) vide Works Department Office Memorandum No.3009
dt.13.2.2002 and dismissed the writ petitions filed by the 25 numbers of contractors (list
enclosed) challenging the said amendment.

You are, therefore, requested to bring this matter to the notice of all the Registering
Authority and Divisional Officers working under your administrative control in order to
enable them to take appropriate action at their end.

Yours faithfully,

Encl.: As above.

Memo No. 12493 dt. 12.07.13

Copy to all S.E.s of E.E.s of R.W. wings for
information & necessary action.

P.T.O.

SE (P.W.D.)
Pl. dt. 27/3/13

2246113

12.7.13

GOVERNMENT OF ODISHA
WORKS DEPARTMENT

No.07550200102013

3660

/W.Dt.

30.3.13

From

Smt. M. Dash,
AFA-cum-Under Secretary to Government

To

The E.L.C. (Civil), Odisha, Bhubaneswar/
The Chief Engineer, World Bank Projects, Odisha/
The Chief Engineer, Buildings, Odisha, Bhubaneswar/
The Chief Engineer, DPI & Roads, Odisha, Bhubaneswar/
The Chief Engineer, R.D. & Q.P., Odisha, Bhubaneswar.

Sub: WP(C) No 9251/2009 filed by Bijay Ku. Panigrahi Vrs- State of Odisha and others and 25 batches & others.

Sir,

I am directed to enclose herewith a copy of the judgement dt.25.2.2011 passed by the Hon'ble High Court of Odisha, Cuttack in Full Bench in WP(C) No.9251/2009 and 25 batches and others for necessary action at your level. Further, you are also requested to issue instruction in the matter to the sub-ordinate offices under your control for necessary compliance under intimation to this Department.

Yours faithfully,

AFA-cum-Under Secretary to Government

Memo No.

3661

/W.Dt.

30.3.13

Copy with copy of the judgement dt.25.2.2011 passed by the Hon'ble High Court of Odisha, Cuttack in Full Bench forwarded to all Departments of Government for information and necessary action.

AFA-cum-Under Secretary to Government

*Recd
Pr 11/1/2008*

IN THE HIGH COURT OF ORISSA: CUUTTACK
(ORIGINAL JURISDICTION CASES)

W.P. (C) No. 9251 of 2008

CODE NO: 289900

IN THE MATTER OF : An application Under Article 226 and 227 of
the Constitution of India,

AND

IN THE MATTER OF : Relating to challenging the Amendment to
Rule -3 of Appendix -VII of the Orissa Public
Works Department Code (OPWD CODE) ,
Volume -1 (Public Works Department
Contractors Registration Rules, 1967 ,
Which has an effect of debarring the
petitioner (Special class contractor) to
participate in any Tender where 'A' Class, 'B'
class, 'C' class and 'D' class contractor can
participate.

Presented in Court
B.G.

30-6-08

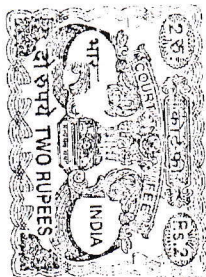


AND

IN THE MATTER OF: Bijay Ku Panigrahi, aged about 43 years, Son
of Suresh Ku. Panigrahi, Village- Ranghar
Para, P.O./ P.S.- Bargarh, District.-Bargarh.
..... Petitioner.

Versus

1. State of Orissa, represented through it's
Secretary, Works Department, Secretariat
Building, Bhubaneswar, District-Khurda
..... Opp. Party.



HIGH COURT OF ORISSA : CUTTACK

FULL BENCH

W.P.(C.) Nos. 9251 of 2009,

With W.P.(C.) Nos. 12525, 17490, 17491 & 18466 of 2008;

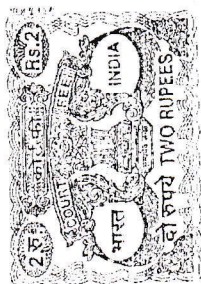
W.P.(C) Nos. 9252, 7133, 8282, 3488, 3487, 8525, 4511, 5645,

3514, 3515, 10759, 16935, 15587, 18751, and 19524 of 2009;

W.P.(C) Nos. 1843, 2325, 13545, 13546, 13547 and 13548 of 2010.

In the matter of applications under Articles 226 and 227 of the Constitution of India.

In W.P.(C) No. 9251 of 2009	Bijay Ku. Panigrahi
In W.P.(C) No. 12525 of 2008	Lal Mohan Panda
In W.P.(C) No. 17490 of 2008	Prasant Mohan Jena
In W.P.(C) No. 17491 of 2008	Basant Kumar Das
In W.P.(C) No. 18466 of 2008	Swadhin Kumar Sahu
In W.P.(C) No. 9252 of 2009	Aditya Narayan Mishra
In W.P.(C) No. 7133 of 2009	Ajit Kumar Mallick
In W.P.(C) No. 8282 of 2009	Rama Chandra Behera
In W.P.(C) No. 3488 of 2009	Karunakar Routary
In W.P.(C) No. 3487 of 2009	Krushna Ch. Paikray
In W.P.(C) No. 8525 of 2009	Birakishor Dash
In W.P.(C) No. 4511 of 2009	Sanjay Jain
In W.P.(C) No. 5645 of 2009	Satyanarayan Padhan
In W.P.(C) No. 3514 of 2009	M/s. D.K. Engineering & Construction.
In W.P.(C) No. 3515 of 2009	Dhirendra Kumar Jain
In W.P.(C) No. 10759 of 2009	Biranchi Narayan Das
In W.P.(C) No. 16935 of 2009	Bramhananda Nayak
In W.P.(C) No. 15587 of 2009	Paban Ku. Agrawal
In W.P.(C) No. 18751 of 2009	Md.Ismail @ Mohammed Ismail
In W.P.(C) No. 19524 of 2009	Anil Singhal
In W.P.(C) No. 1843 of 2010	Binaya Kumar Mishra
In W.P.(C) No. 2325 of 2010	Kabiraj Mohanty



In W.P.(C) No. 13545 of 2010	Gopal Ch. Sahu
In W.P.(C) No. 13546 of 2010	Md. L.Liyas
In W.P.(C) No. 13547 of 2010	Ram Kumar Sahu
In W.P.(C) No. 13548 of 2010	M/s. M.M. Construction

..... **Petitioners.**

-Versus-

State of Orissa (in all the writ petitions) Opposite party.
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For petitioner (s):

M/s. Prasanta Ku. Nayak, & S. Panda.
(In W.P.(C) Nos. 9251, 9252, 5645, 15587
of 2009; and 12525 of 2008).

M/s. S.K. Sangneria, P.C. Patnaik & P.C.
Nayak.
(In W.P.(C) Nos. 17490, 17491, of 2008,
3514, 3515 of 2009)

M/s. B.P. Nayak, S. Mohanty, & A.R.
Mohanty
(In W.P.(C) No. 18466 of 2008).

M/s. Niranjan Panda, & D.P. Mahapatra.
(In W.P.(C) No. 7133 of 2009)

Mr. Sandipani Mishra (In W.P.(C) No. 8282
of 2009)

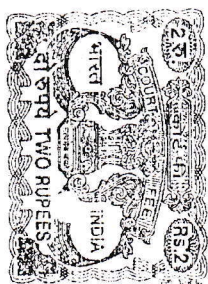
Mr. Jatindra Ku. Mohapatra (In W.P.(C) Nos.
3487 & 3488 of 2009)

M/s. Prasanta Kumar Nayak, P.K. Panigrahi,
P.K. Panda, S. Pattanayak. (In W.P.(C) No.
8525 of 2009)

M/s. Janmejaya Katikia, & A. Mohanty
(In W.P.(C) No. 4511 of 2009)

Mr. Somadarsan Mohanty (In W.P.(C) No.
10759 of 2009)

Mr. A.P. Bose
(In W.P.(C) No. 16935 of 2009)



M/s. D. Mund, & R.K. Acharya.
(In W.P.(C) No. 18751 of 2009)

M/s. D.R. Swain & M.M. Swain
(In W.P.(C) No. 19524 of 2009)

M/s. Sidheswar Mallick & C. Mallick & A.
Mallick.
(In W.P.(C) No. 1843 of 2010)

M/s. Subash Ch. Acharya, J.K. Raya, P.
Sethy, P.R. Mishra & K.P. Behera.
(In W.P.(C) No. 2325 of 2010)

M/s. Barada Pr. Pattnaik, B.B. Panda.
(In W.P.(C) No. 13546 of 2010)

M/s. Bibhuti B. Panda & B.P. Pattnaik
(In W.P.(C) Nos. 13545, 13547 & 13548 of
2010).

For Opp. Party :

Mr. D. Panda, Addl. Govt. Advocate
(in all the writ petitions)

M/s. M. Kanungo, S. Das & M.R. Dhal.
(In W.P.(C) Nos. 17490 & 17491 of 2008
and 4511 of 2009).

P R E S E N T :

THE HONOURABLE CHIEF JUSTICE MR. V.GOPALA GOWDA,

**THE HONOURABLE MR. JUSTICE PRADIP MOHANTY
AND**

THE HONOURABLE MR. JUSTICE I. MAHANTY

Date of Judgment : 25-02-2011

V. GOPALA GOWDA, C.J. This batch of writ petitions were listed before this Court on reference being made by the Division Bench of this Court vide order dated 06.05.2010 to answer the question framed therein, which reads thus :



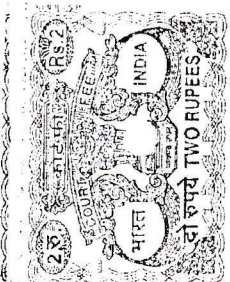


"as to whether the amendment amounts to encroaching upon the rights of livelihood, guaranteed as the fundamental rights enshrined in the Constitution of India, of the contractors belonging to lower class and as to whether the amendment permitting the higher class contractors to bid for the works earmarked for lower category is rational and as to whether the amendment permitting the higher class contractors to bid for a lower class works fulfills the object sought to be achieved by the Constitution and safeguards the rights of contractors belonging to lower classes?"

2. The said order of reference was made in view of the decisions rendered by a Division Bench of this Court vide common judgment dated 23.3.2010 and also by another Division Bench of this Court vide order dated 25.3.2008 in earlier writ petitions filed on the similar grounds. Both Division Benches of this Court considered the validity of the amendment to Rule 3 of Appendix-VIII of the Orissa Public Works Department Code, Volume-II (Public Works Department Contractors Registration Rules, 1967) and held that the classification having been made on the basis of the value of the contract and the authorities having acted in a reasonable manner, there is no scope for interference.

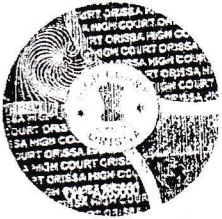
3. Brief facts in a nutshell and rival legal contentions urged by the parties are necessary in this judgment with a view to answer the said points of reference. The same are stated as under:

All the petitioners are registered contractors under the Orissa Public Works Department Contractors Registration Rules, 1967 (hereinafter in short called 'the Rules'). The Government of Orissa brought an amendment in the Rules which was concurred by the Finance Department with effect from 14.09.1995 classifying the

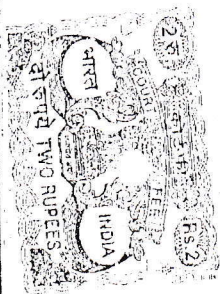


contractors and the amount regarding participation in the tender. The said classification is as under :

(i)	Super Class	.....	Unlimited.
(ii)	Special Class	.....	Not exceeding Rs. 3 crores
(iii)	'A' Class	.....	Not exceeding Rs. 60 lakhs
(iv)	'B' Class	.....	Not exceeding Rs. 15 lakhs
(v)	'C' Class	.....	Not exceeding Rs. 6 lakhs
(vi)	'D' Class	.....	Not exceeding Rs. 3 lakhs"



On 13.02.2002 the State Government brought another amendment in respect of Rule-3 of the Rules. By the said amendment, all the contractors for the purpose of registration have been classified to different categories and by way of that the amount regarding participation in tender has been enhanced. The said amendment stipulates that while awarding work to any individual contractor, the cost of the work, which exceeds the amount noted against the class to which the contractor belongs, should be strictly adhered to, except with the prior approval of the Engineer-in-Chief or Chief Engineer. By the said amendment, it was further introduced that a contractor having license for a particular class can offer tender for his next below class in addition to his own class. For example, a Super Class contractor can offer bidding meant for Special Class contractor in addition to Super Class and a Special Class contractor can offer bidding meant for 'A' class contractor in addition to Special Class and so on and so forth.

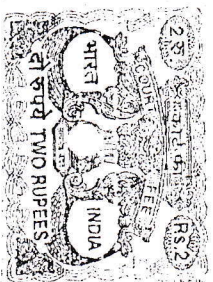


The case of the petitioners is that the impugned amendment is contrary to the principles laid down under Article 14 of

the Constitution and it would frustrate the object to be achieved. It is further stated that by the aforesaid amendment, the contractors belonging to lower class, i.e., Class-A, B, C, & D will be greatly prejudiced inasmuch as the contractors of higher class would encroach upon the works, which are meant for them. Therefore, the prayer is made by the petitioners to declare the aforesaid amendment of the Rules as ultra vires.

4. The main grounds urged in these writ petitions are that the said amendment of the Rule is arbitrary and unreasonable and is violative of Article 14 of the Constitution of India. Further, by the impugned amendment, the opposite party imposes unreasonable restrictions on the fundamental right of the petitioners to do work/to participate in tender meant for below classes guaranteed by Article 19(1)(g) of the Constitution. It is stated that the opposite party may authorize an exception to the policy/Rules, only if there is a most compelling reason to do so, such as when the Government's needs cannot reasonably be otherwise met. Therefore the same is void by reason of Articles 13(1) & (2), 14, 15(1), 16(2) and 19(1)(g) of the Constitution.

It is further submitted that there is also discrimination between the higher class and lower class contractors inasmuch as no equivalence of class is guaranteed to the other, namely, Super Class Contractors, Special Class Contractors, 'A' Class & 'B' Class contractors, who ought to be restricted to participate in the tender meant for lower class. The Amended Rule is contrary to the object in



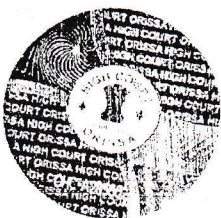
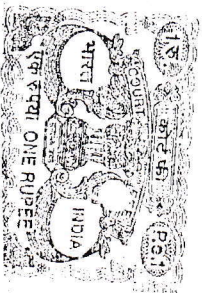
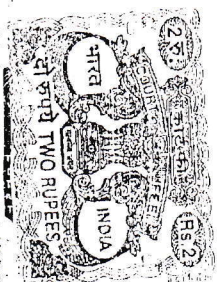
prohibiting one class of contractors to participate and bid with another class of contractors as classified in the impugned Rule and it affects the standard of work, performance, capacity, financial & technical aspect on the subject for issuing licence for higher class contractors. The amendment defeats the object for giving promotion from lower class to higher class as per Rule-5. The amendment is also bad on account of the fact that, the contractors of the lower class have no scope for promotion, as they will be stagnated only as lower class contractors.

With the amendment of the Rules, the Super Class, Special Class, 'A' class & 'B' will be permitted to participate in the tender meant for lower classes. Therefore, there is violation of the fundamental rights of the petitioners referred to supra and hence, it is prayed that the said amended Rule is liable to be quashed.

5. In support of the case of the petitioners reliance has been placed upon the judgments of the Supreme Court as follows:

6. In the case of **Corporation Bank Vs. Saraswati Abharansala & Anr.**, (2009) 1 SCC 540, it has been held that the State furthermore is bound "to act reasonably" having regard to the equality clause contained in Article 14 of the Constitution of India.

7. Placing reliance upon the case of **V. Subramaniam Vs. Rajesh Raghuvañdra Rao**, AIR 2009 SC 1858, it has been submitted that the restrictions imposed in a statute by the State Government must be reasonable one and it must be in public interest, then only the same is constitutionally valid.

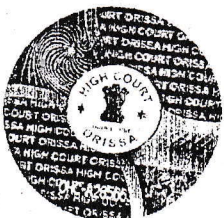
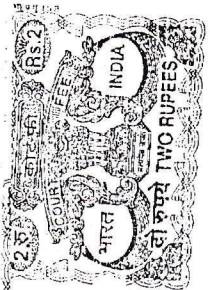


8. Learned counsel on behalf of the petitioners placed reliance in the case of **Mumtaz Post Graduate Degree College Vs. University of Lucknow**, (2009) 2 SCC 630, in support of the legal proposition that the constitutionality of a statute, keeping in view the fact that the power of judicial review has been conferred by the Constitution of India only in the Superior Courts (namely Supreme Court of India & High Courts) of the country, cannot be determined by any other authority howsoever high it may be.

9. Placing reliance upon the case of **A. Satyanarayana & Ors. Vs. S. Puroshotham & Ors.**, (2008) 5 SCC 416, it is submitted that in service jurisprudence, promotions are granted to a higher post to avoid stagnations and also frustration amongst employees. Nexus, ultravirues-grounds, non-compliance with constitutional requirements- statutory rule must be made in consonance with constitutional scheme, it must be reasonable and not arbitrary.

10. Learned counsel on behalf of the petitioners further placed reliance on the decision of a thirteen Judge Bench of the Supreme Court in the case of **Kesavananda Bharati Vs. State of Kerala**, AIR 1973 SC 1461 and submitted that whether the law strikes a proper balance between Social Control on the one hand and the rights of individual on the other hand, on this aspect, the Court must take into account the following aspects:

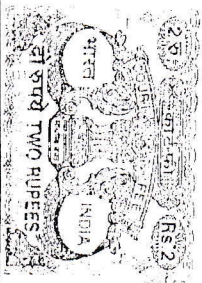
- (a) nature of the right infringed;
- (b) underlying purpose of the restriction imposed.
- (c) Evils sought to be remedied by the law, its extent and urgency;



- (d) How far as the restriction is or is not proportionate to the evil and;
- (e) Prevailing conditions at the time.

11. Learned Addl. Government Advocate, On the other hand, sought to justify the amended Rule, contending that the grounds urged in support of the case of the petitioners referred to supra are wholly untenable in law, for the reason that the amended Rule does not affect the fundamental rights of the petitioners, for the reason that there is neither any arbitrariness nor unreasonableness. It is submitted that the State Government after taking into consideration all the pros and cons of the problem faced by different class of contractors and giving due weightage to the interest of every class of contractors and maintaining equality between them has framed the Rules in conformity with the power vested on it. To facilitate the contractors the said amendment has been made increasing the financial limits fixed in the earlier notification dated 14.09.1995 classifying different contractors regarding participation in the tender. The stipulation as per the notification dated 14.09.1995, referred to supra has been increased in respect of all class of contractors as under:

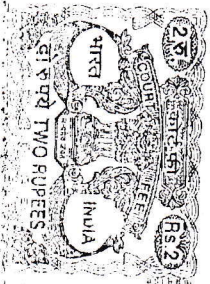
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|-------|---------------|-------|----------------------------|
| "(i) | Super Class | | Unlimited. |
| (ii) | Special Class | | Not exceeding Rs. 5 crores |
| (iii) | 'A' Class | | Not exceeding Rs. 1 crore |
| (iv) | 'B' Class | ..... | Not exceeding Rs. 25 lakhs |
| (v) | 'C' Class | ..... | Not exceeding Rs. 10 lakhs |
| (vi) | 'D' Class | ..... | Not exceeding Rs. 5 lakhs" |



12. The amended Rule is in conformity with the Constitution and certain restrictions have been imposed by the Government in exercise of statutory power for better execution of public works, to be executed by various contractors, taking into account the rights and liberty of all classes of contractor, therefore, the same cannot be termed as unreasonable and cannot be said that it would frustrate the object to be achieved. The writ petitions filed by the petitioners challenging the amended Rule are only to protect their personal interest. If a contractor belonging to a higher class is permitted to participate in a tender meant for all his lower class(s), the contractor for whom the work is meant would not be deprived from participating in any tender of any work, thereby causing despair in their right to livelihood guaranteed under the fundamental rights. Therefore, the writ petitions are liable to be dismissed.

13. It is further contended by the learned Government Advocate that the said Rule has been rightly affirmed by the two Division Benches of this Court vide judgments dated 25.3.2008 and 23.3.2010 referred to supra after considering all aspects of the matter. In this view of the matter, the points referred to supra are required to be answered in view of the decisions rendered by this Court in the aforesaid two earlier writ petitions and these present writ petitions are liable to be dismissed.

14. With reference to the aforesaid rival legal contentions, it would be appropriate to extract the relevant provisions of the earlier



Rules which were in force prior to the impugned amendment as well as the amended Rules.

15. Rule 3 of the Rules, as notified w.e.f. 14.09.1995, reads thus :

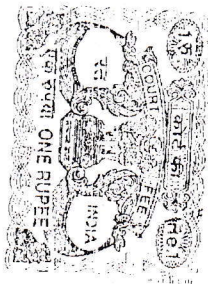
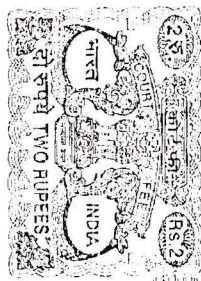
"3. For the purpose of registration, the contractors shall be classified as follows and award of any work to any individual contractor the cost of which exceeds the amount noted against the class to which he belongs is prohibited except with the prior approval of Engineer-in-Chief or Chief Engineer.

<u>Class of Contractor</u>	<u>Amount</u>
(i) Super Class	..... Unlimited.
(ii) Special Class	..... Not exceeding Rs. 3 crores
(iii) 'A' Class	..... Not exceeding Rs. 60 lakhs
(iv) 'B' Class	..... Not exceeding Rs. 15 lakhs
(v) 'C' Class	..... Not exceeding Rs. 6 lakhs
(vi) 'D' Class	..... Not exceeding Rs. 3 lakhs"

16. Amendment to Rule-3 of the said Rules as amended on 13.2.2002 reads thus :

"3. For the purpose of registration, the Contractors shall be classified as follows and award of any work to any individual contractor the cost of which exceeds the amount noted against the class to which he belongs is prohibited except with the prior approval of Engineer-in-Chief or Chief Engineer.

<u>Class of Contractor</u>	<u>Amount</u>
(i) Super Class	..... Unlimited.
(ii) Special Class	..... Not exceeding Rs. 5 crores
(iii) 'A' Class	..... Not exceeding Rs. 1 crore
(iv) 'B' Class	..... Not exceeding Rs. 25 lakhs
(v) 'C' Class	..... Not exceeding Rs. 10 lakhs
(vi) 'D' Class	..... Not exceeding Rs. 5 lakhs

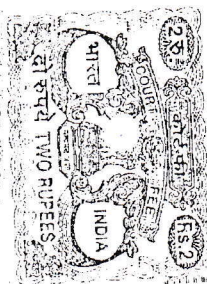


A contractor having licence for a particular Class can offer tender meant for his next below class of the contractor in addition to his own class, e.g.a Super Class Contractor can offer bidding meant for 'Special Class' in addition to 'Super Class' and 'Special Class' contractor can offer bidding meant for 'A' Class in addition to 'Special Class' and so on."

17. We have also examined the amended Rule. The classification of contractors has been made with reference to their status, nature of work to be executed, experience, financial capacity of different classes of contractor etc. as enumerated in the said Rules. The classification is made depending upon the volume of work required to be executed by different class of contractors registered under the Rules. Therefore, against each one of classes of contractors from 'Super Class' to Class 'D', limits are prescribed. By the amendment in the year 2002, classification of contractors has been retained by enhancing the financial limits for every class of contractor, taking into account the market condition, economic status of the contractors etc.

Apart from the above, the Engineer-in-Chief or Chief Engineer's power/authority to permit a contractor to bid for work exceeding the limits prescribed under Rule-3, is retained, even after the amendment on 13.2.2002. It is clear from the first part of Rule-3 which has been retained even after the amendment in the year 2002 that a contractor shall be classified in the manner prescribed.

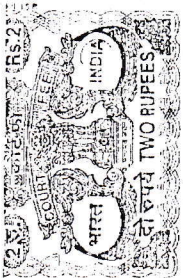
18. While retaining the aforesaid part of Rule-3 in the amendment in the year 2002, a further Sub-Clause has been added to the following effect:



"A contractor having licence for a particular Class can offer tender meant for his next below class of the contractor in addition to his own class, e.g. a Super class Contractor can offer bidding meant for 'Special Class' in addition to 'Super Class' and 'Special Class' contractor can offer bidding meant for 'A' Class in addition to 'Special Class' and so on."

The aforementioned quoted portion of the Rule-3, is the subject matter of challenge. By bringing into force the aforequoted part of Rule-3, by amendment on 13.2.2002, it restricted a contractor registered for a particular class, for example 'Super Class' to be entitled to also bid for the next below class of contractor i.e. 'Special Class'. By virtue of the aforesaid clause brought in by the amendment in the year 2002, a higher class contractor could also offer tenders meant for his next lower class category.

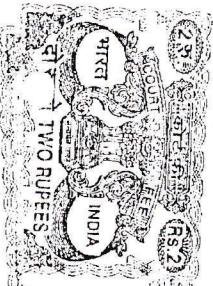
The intent behind the aforesaid provision is clearly to limit contractors from bidding for tenders meant for lower category contractors. From the above it is clear that while the unamended Rule-3 allowed/permitted contractors to make offers meant for all categories below his registered category but post amendment of 2002, a higher category contractor was restricted to only bidding for the next lower class alone. It is clear that this amendment was brought about to restrict a higher class contractor from grabbing work of a lower class contractors since there was every possibility that 'a big fish will eat small fishes', which is the reason assigned by the Division Bench of this Court while making the order of reference in its order dated 6.5.2010.



19. We are unable to accept the contention advanced by the learned counsel for the petitioners that no rational object is sought to be achieved by the State by promulgating such an amendment and incorporating the clause quoted above. The State has considered the consequences while amending the aforesaid rule. The State is bound "to act reasonably" and such act on the part of the State has to be tested on the touchstone of public interest.

We are of the considered view that the public interest would be protected and limiting a higher class contractor to offering bids for his own category and the next lower class achieves the intent of protecting the interests of lower category contractors. The claim of the petitioner-contractors of a higher category to permit them to bid for all work, meant for a lower category contractors is a clear attempt to try and make an inequals to compete as an equal and, therefore, violative of the constitutional guarantee of equality under Article 14. A contractor of a lower category would have a very poor chance or no chance of getting any work at all. Accordingly, we are of the view that the amendment made protects the interests of contractors of lower categories and has been enacted to protect the big fishes from eating "small fish".

20. In our considered view, public purpose is served by brining in the aforesaid amendment. We are, therefore, of the considered view that the amendment of 2002 bringing into force, the later part of Rule-3, as quoted hereinabove in para-18 is intra vires of Constitution of India and not violative of Articles 13(1), 13(2), 14, 16(2), 19(1)(g)



and 21 of the Constitution. Therefore, the amendment of Rule-3 in the year 2002 incorporating the later part of Rule-3 as noted herein above is upheld.

21. With the aforesaid observation and direction, these writ petitions are dismissed of. The reference made by the Division Bench is answered accordingly.

No order as to costs.

Sd/- V. Gopala Gowda. C.J.

Pradip Mohanty, J.

I agree.

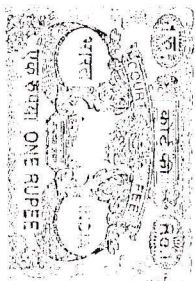
Sd/- P. Mohanty. J.



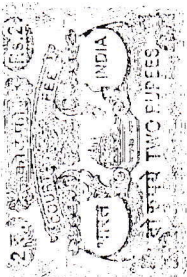
I. Mahanty, J.

I agree.

Sd/- I. Mahanty. J.



Orissa High Court, Cuttack
The 25th day of February, 2011/A.Dash



Comp by P. 17.1.10.

C.O.(M.)