

**Power Measurement Ltd. Vs. U.P. Power Corporation Ltd. and ors.**

**Power Measurement Ltd. Vs. U.P. Power Corporation Ltd. and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/460489](http://sooperkanoon.com/460489)

**Court :** Allahabad

**Decided On :** Feb-05-2003

**Reported in :** 2003(2)AWC1642b

**Judge :** Jagdish Bhalla and ;S.N. Srivastava, JJ.

**Acts :** [Constitution of India](#) - Articles 14, 19, 19(1), 21 and 226

**Appeal No. :** Writ Petition No. 6978 (M/B) of 2002

**Appellant :** Power Measurement Ltd.

**Respondent :** U.P. Power Corporation Ltd. and ors.

**Advocate for Def. :** N.K. Pandey, C.S.C., ;Sr. S.C. and ;Prashant Chandra, Adv.

**Advocate for Pet/Ap. :** Umesh Chandra, ;Aseem Chandra and ;Anoop Kumar, Adv.

**Disposition :** Writ petition dismissed

**Judgement :**

**Jagdish Bhalla, J.**

1. Petitioner, a foreign Power Measurement Limited company having no office in India, engaged in manufacturing of 0.2S and 0.5S Accuracy Class Energy Meters and other metering components has approached this Court under Article 226 of

the Constitution against the decision of respondent No. 1--U.P. Power Corporation Limited to award contract for the supply, installation testing and commissioning of 0.2S Accuracy Class Static Electronic Trivector Energy Meters in favour of respondent No. 5--M/s. Secure Meters Limited, Udalpur, on the ground that the bid of the respondent No. 5 is second lowest and expensive than the bid of the petitioner and as such the decision of respondent No. 1 is not only arbitrary and unreasonable but is also mala fide. Petitioner has, therefore, inter alia prayed to quash the decision of respondent No. 1 awarding contract to respondent No. 5 and further to direct the respondent Nos. 1 and 3 to award the contract to the petitioner company forthwith in terms of petitioner company's bid for the supply, installation, testing and commissioning of 0.2S Accuracy Class Static Electronic Trivector Energy Meters.

2. Counsel for the Power Corporation and respondent No. 5 have raised preliminary question regarding the maintainability of the writ petition under Article 226 of the Constitution by a foreign company not having any office in India and as such, the learned counsel for the parties have addressed the Court on the maintainability of the writ petition.

3. Sri Umesh Chandra, senior advocate appearing for the petitioner has contended that for the violation of Article 14 of the Constitution, it is not necessary that a person should be a citizen of the country but the protection is also available to a non-citizen. The rights guaranteed under Part III of the Constitution though are not absolute in terms but those rights would be available subject to such restrictions as may be imposed. In the instant case, since the equal treatment in the like circumstances has not been provided to the petitioner, as such the petitioner has a right to maintain this writ petition.

4. Relying upon the decisions in *Chairman, Railway Board and Ors. v. Chandrima Das (Mrs.) and Ors.*, (2000) 2 SCC 465; *Deena alias Deen Dayala and Ors. v. Union of India and Ors.*, AIR 1983 SC 1155 and *State Trading Corporation of India v. Commercial Tax Officer and Ors.*, AIR 1963 SC 1811, the learned counsel for the petitioner argued that the Article 14 is a fundamental right which is available to any person irrespective of whether he is a citizen of India or an alien or whether a

natural or an artificial person and for the enforcement of this right, a writ petition is maintainable. In the instant case, although the bid of the petitioner was lower than the bid of respondent No. 5 but the Power Corporation-Respondent No. 1 has taken decision to award contract to the respondent No. 5 which action is violative of Article 14 of the [Constitution of India](#) and is non-est.

5. In Chairman, Railway Board's case (supra), the Hon'ble Supreme Court, the paragraph 35 on which reliance has been placed by Sri Umesh Chandra, senior advocate reads, as under :

'The rights guaranteed under Part III of the Constitution are not absolute in terms. They are subject to reasonable restrictions and, therefore, in case of a non-citizen also, those rights will be available subject to such restrictions as may be imposed in the interest of the security of the State or other important considerations. Interest of the nation and security of the State is supreme. Since 1948 when the Universal Declaration was adopted till this day, there have been many changes political, social and economic, while terrorism has disturbed the global scenario. Primacy of the interest of the nation and the security of the State will have to be read into the Universal Declaration as also in every Article dealing with fundamental rights including Article 21 of the Indian Constitution.'

6. In Deena v. Union of India (supra), the validity of the mode of execution of the death sentence was questioned before the Court and the Apex Court while dealing with the question of burden of proof for violation of the equality clause in Article 14 of the Constitution and those others which deal with the violation of the guarantees contained in Article 19 observed as under :

'The question of discrimination arises under Article 14 and not under Article 19 of the Constitution. Any case, even a locus classicus, is an authority for what it decides. It is permissible to extend the ratio of a decision to cases involving identical situations, factual and legal but care must be taken to see that this is not done mechanically, that is, without a close examination of the rationale of the decision which is cited as a precedent. Human mind, trained even in the strict discipline of law, is not averse to taking the easy course of relying on decisions which have become famous and applying their ratio in supposedly identical situation. In Ram

KrishnaDalmia, the Court was dealing with a challenge to Section 3 of the Commissions of Inquiry Act, 1952 and notification issued by the Central Government under that section appointing a Commission of Inquiry to inquire into and report on the affairs of certain companies.

7. In paragraphs 16 and 17, the Hon'ble Supreme Court further observed as under :

'The principle, which underlines Article 14 is that equals must be treated equally, that is to say, that 'Law must operate equally on all persons under like circumstances' Seervai's Constitutional Law of India, Third Edition, p. 296. Article 14, though apparently absolute in its terms, permits the State to pass a law which makes a classification, so long as the classification is based on intelligible differentia having a real nexus with the object which is sought to be achieved by the law. In the generality of cases under Article 14, the challenging is based on the allegation that the impugned provision is discriminatory since it singles out the petitioner for hostile treatment, from amongst persons who, being situated similarly, belong to the same class as the petitioner. It is plain that in matters of this nature, the petitioner has to plead and prove that there are others who are situated similarly as him and that he is singled out and subjected to unfavourable treatment.

Para-17.--Thus, there is a fundamental distinction between cases arising under Article 14 and those which arise under Articles 19 and 21 of the Constitution. In a challenge based on the violation of Articles 19 and 21, the petitioner has undoubtedly to plead that, for example, his right or that he is deprived of his right to life and personal liberty. But once he shows that, which really is not a part of the 'burden of proof', it is for the State to justify the impugned law or action by proving that, for example, the deprivation of the petitioner's right to free speech and expression is saved by Clause (2) of Article 19 since it is in the nature of a reasonable restriction on that right in the interests of matters mentioned in Clause (2) or that, the petitioner has been deprived of his life or personal liberty according to a just, fair and reasonable procedure established by law. In cases arising under Article 19, the burden is never on the petitioner to prove that the restriction is not

reasonable or that the restriction is not in the interests of matters mentioned in Clause (2). Likewise, in case arising under Article 21, the burden, is never on the petitioner to prove that the procedure prescribed by law which deprives him of his life or personal liberty is unjust, unfair or unreasonable. That is why the ratio of cases which fall under the category of the decision in Ram Krishna Dalmia, AIR 1958 SC 538 must be restricted to those arising under Article 14 and cannot be extended to cases arising under Article 19 or Article 21 of the Constitution.'

8. Sri Umesh Chandra, learned counsel for the petitioner while arguing that the petitioner has been discriminated while awarding contract has also placed reliance on paragraph 10 of the decision of the Supreme Court in the case of State Trading Corporation of India v. Commercial Tax Officer and Ors., AIR 1963 SC 1811. Paragraph 10 reads as under :

'Before dealing with the argument at the Bar, it is convenient to set out the relevant provisions of the Constitution. Part III of the Constitution deals with Fundamental Rights. Some fundamental rights are available to any person, whereas other fundamental rights can be available only to 'all citizens'. Equality before the law or equal protection of the laws within the territory of India is available to any person (Article 14). The protection against the enforcement of ex-post Jacto laws or against double jeopardy or against compulsion of self-incrimination is available to all persons (Article 20). So is the protection of life and personal liberty under Article 21 and protection against arrest and detention in certain cases under Article 22. Similarly freedom of conscience and free profession, practice and propagation of religion is guaranteed to all persons. Under Article 27, no person shall be compelled to pay any taxes for the promotion and maintenance of any particular religious denomination. All persons have been guaranteed the freedom to attend or not to attend religious instructions or religious worship in certain educational institutions (Article 28). And, finally, no person shall be deprived of his property save by authority of law and no property shall be compulsorily acquired or requisitioned except in accordance with law, as contemplated by Article 31. These in general terms without going into the details of the limitations and restrictions provided for by the Constitution, are the fundamental rights which are available to any person Irrespective of whether he is a citizen of India or an alien or whether a

natural or an artificial person. On the other hand, certain other fundamental rights have been guaranteed by the Constitution only to citizens and certain disabilities imposed upon the State with respect to citizens only.'

9. On the strength of the above decisions, Sri Umesh Chandra argued that for the infringement of Article 14 of the Constitution, any person can maintain the writ petition and as such, the petitioner has every right to invoke the jurisdiction of this Court under Article 226 of the Constitution. According to him, the petitioner is the best manufacturer of Accuracy Class Energy Meters and the metering components and the bid of the petitioner is cheaper than the bid of respondent No. 5 and further the respondent No. 1 after opening the bids grossly failed 'to observe the general principles of law and the norms contained in I.F.B. for processing the bids.

10. Sri N.K. Pandey, learned counsel appearing for the Corporation, on the other hand, argued that there is no violation of Article 14 of the Constitution as in view of the terms and conditions of the contract, the purchaser has a right to grant preference to goods manufactured in the Purchaser's country. Placing reliance on *Indo China Steam Navigation Co. Ltd. v. Jasjit Singh*, AIR 1964 SC 1140, the learned counsel for the respondent-corporation vehemently argued that the Article 19 is available only to the citizens of the country and not to a foreigner and as such the foreign company is not entitled to claim the protection of Article 19 in the garb of Article 14 of the Constitution. Respondent-corporation has taken the decision after scrutinizing the materials and the terms and conditions of contract and as such the decision taken by the respondent-corporation is perfectly justified and valid.

11. In *Indo-China Steam Navigation Co. Ltd. v. Jasjeet Singh*, the Hon'ble Supreme Court observed as under :

'There is one more point which must be mentioned before we part with this appeal. Mr. Choudhary attempted to argue that if mens rea was not regarded as an essential element of Section 52A, the said section would be ultra vires Articles 14, 19 and 31(1) and as such, unconstitutional and invalid. We do not propose to consider the merits of this argument, because the appellant is not only a company,

but also a foreign company, and as such, is not entitled to claim the benefits of Article 19. It is only citizens of India who have been guaranteed the right to freedom enshrined in the said Article. If that is so, the plea under Article 31(1) as well as under Article 14 cannot be sustained for the simple reason that in supporting the said two pleas, inevitably the appellant has to fall back upon the fundamental right guaranteed by Article 19(1)(f). The whole argument is that the appellant is deprived of its property by operation of the relevant provisions of the Act and these provisions are invalid. All that Article 31(1) provides is that no person shall be deprived of his property save by authority of law. As soon as this plea is raised, it is met by the obvious answer that the appellant has been deprived of its property by authority of the provisions of the Act and that would be the end of the plea under Article 31(1) unless the appellant is able to take the further step of challenging the validity of the Act, and that necessarily imports Article 19(1)(f). Similarly, when a plea is raised under Article 14, we face the same provision. It may be that if Section 52A contravenes Articles 19(1)(f), a citizen of India may contend that his vessel cannot be confiscated even if it has contravened Section 52(A) and in that sense, there would be inequality between the citizen and the foreigner, but that inequality is the necessary consequence of the basic fact that Article 19 is confined to citizens of India, and so, the plea that Article 14 is contravened also must take in Article 19 if it has to succeed. The plain truth is that certain rights guaranteed to the citizens of India under Article 19 are not available to foreigners and pleas which may successfully be raised by the citizens on the strength of the said rights guaranteed under Article 19 would, therefore, not be available to the foreigners.'

12. Sri Prashant Chandra, appearing for the respondent No. 5-M/s. Secure Meters Limited argued that the answering respondent was entitled to price preference on account of more than 30% ingredients being indigenous and as such, the U. P. Power Corporation made its recommendations for finalization of the contract in favour of the answering respondents. Supporting the arguments made by the learned counsel for the corporation regarding the maintainability of the writ petition. Sri Prashant Chandra argued that the petitioner is a foreign company and as such has no entitlement to claim the benefits of Article 19 of the Constitution. According to him, the rights guaranteed to the citizens of India under Article 19 are

not available to a foreigner and pleas which may be raised by the citizens of this country would not be available to foreigners. In support of his contention, he also placed reliance on the decision of the Supreme Court in *Indo China Steam Navigation Co. Ltd. v. Jasjit Singh* (supra) in addition to the decisions rendered by the Apex Court in *Louis De Raedt u. Union of India*, (1991) 3 SCC 554 and *State of Arunachal Pradesh v. Khudiram Chakma*, 1994 Supp (1) SCC 615.

13. In *Louis De Raedt v. Union of India*, the Hon'ble Supreme Court while examining the claim of Indian Citizenship by a foreigner and whether Article 19(1)(e) is available to a foreigner also held as under :

'The next point taken on behalf of the petitioner, that the foreigners also enjoy some fundamental rights under the Constitution of this Country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for the life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in *Hans Muller of Nuremburg u. Superintendent, Presidency Jail, Calcutta*, that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion.'

14. In *State of Arunachal Pradesh v. Khudiram Chakma*, the Supreme Court while examining the provisions of the Citizenship Act, 1955, in respect to the appellant and other 56 families, popularly known as Chakmas of the erstwhile East Pakistan, the Hon'ble Supreme Court observed as under :

'It is true that fundamental right is available to a foreigner as held in *Louis De Raedt v. Union of India*, SCC p 562, para 13. The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country.'

As such Articles 19(1)(d) and (e) are unavailable to foreigners because those rights are conferred only on the citizens. Certainly, the machinery of Article 14 cannot be invoked to obtain that fundamental right. Rights, under Articles 19(1)(d) and (e) are expressly, withheld to foreigners.

15. After giving anxious consideration to the facts of the case and the submissions made by the learned counsel for the parties, we are of the opinion that the foreigners also enjoy some fundamental right under the Constitution of this country but the same is confined to Article 21 of the Constitution, i.e., life and liberty and does not include the rights guaranteed under Article 19 of the Constitution, which are available only to the citizens of this country. Fundamental rights, which are available to the citizens of this country, cannot be extended to non-citizens through Article 14 of the Constitution.

16. In the present case, learned counsel for the petitioner claims violation of Article 14 in the matter of awarding bid by the respondent-corporation. In our view, violation of Article 14 is to be examined under the back-drop of the facts that the petitioner has applied for tender in respect of supply. Installation, testing and commissioning of 0.2S Accuracy Class Static Electronic Trivector Energy Meters but the Power Corporation, after making enquiry and the preference of the domestic company over the foreign company, took a decision to grant tender to respondent No. 5, In these circumstances, the petitioner cannot claim violation of Article 14 independently but the same is to be read with Article 19(1)(g) of the Constitution, which is confined to the citizens of the country alone. Article 14 of the Constitution cannot be pleaded independently and in seclusion to other fundamental rights. The equitable protection of laws as envisaged in Article 14 necessarily has to take into consideration that law in respect of which equitable protection is being claimed in the matter of award of tender.

17. In view of the above, we are of the considered opinion that the writ petition for the enforcement of protection available under Article 19(1)(g) in the garb of Article 14 is not maintainable.

18. Accordingly, this writ petition is dismissed. It is made clear that we have not delved into the merits of case.

