

# Moot Speech – Speaker 1 (Appellant’s Side, Medi Health Pvt. Ltd.)

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## [Opening Formalities]

- The Counsel seeks permission to approach the dais.
- The Counsel seeks permission to address this Hon’ble Bench collectively as *Your Lordships*.
- The Counsel appears before this Hon’ble Court in the matter of *Medi Health Pvt. Ltd. vs. State of Wellesley* on behalf of the Appellant, Medi Health Pvt. Ltd.

## Jurisdiction

*May it please Your Lordships, I, appearing on behalf of the Appellant, humbly seek Your Lordships’ permission to present the case. If permitted, I will first establish the jurisdiction of this Hon’ble Court.*

- ➔ The Appellant has approached this Hon’ble Supreme Court under Article 136. This Court, exercising its discretionary power under Special Leave Petition, has been pleased to admit the appeal.
- ➔ Your Lordships, although the High Court rejected the Appellant’s petition, this Hon’ble Court granted leave because Your Lordships, this very admission indicates there exists a substantial question of law and a potential miscarriage of justice.
- ➔ If Had there been no such issue, the petition would have been dismissed outright. The very admission of the SLP is recognition that grave injustice needs to be corrected.

## Facts of the Case

*May it please the Court, with due permission of the court the council would like to brief the bench with the facts of the case :*

1. In **January 2023**, the State of Wellesley issued an **E-tender** for a ₹850 crore Multi-Specialty Hospital under the **PPP (BOT)** model. The State offered **₹300 crores support** (40-year concessional land lease + upfront subsidy) with a **30-year concession period**.
2. The tender expected completion in **5 years** and employment of **2,500 persons**, aiming to strengthen healthcare infrastructure in the post-COVID scenario.

### 3. Bidders:

- **Medi Health from here after to be reffered as L1** – had proposed ₹790 crores, 4.5 years project completion time & 45% local employment. Having expertise in hospital projects including AIIMS extension.

All India Institute Of Medical Sciences Delhi, a renowned & prestigious institution in itself.

- **Care Well from here after to be reffered as L2** – ₹815 crores, 6 years project completion time, 80% local employment. Having expertise in Infra projects.
- **Life Line (L3)** – had proposed ₹875 crores, 5 years project completion time, 60% local employment. With expertise in hospital projects indeed.

4. On **10 May 2023**, the **Tender Evaluation Committee (TEC)** ranked Medi Health as L1 & Care well as L2. Based on the tender criteria.
5. On **20 June 2023**, the **State Cabinet**, invoking **Clause 12.4 (absolute discretion)**, overruled the TEC and awarded the contract to Care Well, citing its **higher local employment (80 %)**.
6. **Employment generation was not a pre-declared decisive criterion**, but introduced at Cabinet stage under a claimed “policy preference.”
7. On **15 July 2023**, Medi Health filed a **writ petition under Article 226**, alleging arbitrariness, violation of **Articles 14 & 19(1)(g)**, and illegality of Clause 12.4 under **Section 23, Contract Act**.
8. On **12 September 2023**, the **High Court dismissed the petition**, holding that tender decisions fall within State policy discretion.
9. On **20 October 2023**, Medi Health approached this Hon’ble Court under **Article 136 (SLP)**, re-asserting violation of fundamental rights, arbitrariness, and miscarriage of natural justice & additionally raising the argument of “Legitimate expectation.”

**With due permission council would like to proceed with the issues**

1. The central issues before this Hon'ble Court are:

(I). Whether the rejection of L1 and award to L2 on **undisclosed grounds** is consistent with Articles 14 and 19(1)(g);

(II). Whether **Clause 12.4**, granting absolute discretion, is void under **Section 23 of the Wellesley Contract Act**.

(III). Whether writ jurisdiction under art. 32 & art 226 extends to government contracts involving claims of arbitrariness.

(IV). Whether promoting local employment justifies deviation from the "lowest bidder" principle in public contracts.

➔ Your Lordships, the Counsel will be addressing Issues 1 and 2, while my Learned Co-Counsel shall address the on Issues 3 & 4.

With due permission, council would like to proceed with the arguments.

With Your Lordships' permission, the Counsel shall now proceed with the arguments on Issue 1.

- ➔ Whether the rejection of L1 and award to L2 on **undisclosed grounds despite fulfilling** all conditions is consistent with Articles 14 and 19(1)(g);

Argument 1 on article 14 :

Your Lordships, Article 14 is the very heart of constitutional equality. It ensures that the State cannot act arbitrarily – that is, it cannot act on randomness, favouritism, or by its mere choice.

The Appellant respectfully submits that the Respondent's action is **arbitrary, unreasonable, and unconstitutional** because you lordships :

1. **Equality before law** means that every person is equally subject to the law of the land. That says means **no individual, whatever their rank or status they possess none above the law.**

1.1 Every person, from the highest authority to the common citizen, is subject to the same law administered by ordinary courts.

- ➔ Your Lordships, equality before law mandates that no one is above the law and must be treated equally under it. And therefore, by arbitrarily favoring L2, the State has violated this very foundation of Article 14.

2. **Equal protection of the laws** requires that persons similarly situated must be treated alike. That is: "Persons who are similarly situated must be treated alike, without arbitrary discrimination." It does not mean that every law must apply universally to all persons in all situations. They shall possess a equal eligibility to pass.

- ➔ Your Lordships, equal protection of the laws requires that persons similarly situated must be treated alike. In this case, all bidders stood on the same footing under the tender. Yet, the State departed from its declared norms to favour L2 over L1, without

a rational nexus to the tender's object. Such arbitrary deviation directly violates Article 14.

### **Intelligible Differentia**

- Your Lordships, The classification must be based on a clear, reasonable distinction between those included and those excluded.
- The distinction between bidders on the basis of employment percentage is **not intelligible**, because:
  - Employment generation was never declared as the sole & only criterion in the tender.
  - All bidders were evaluated under the same financial + technical criteria, and the Appellant (L1) fulfilled all requirements and therefore it was ranked as the Lowest bidder.
  - Introducing a new ground of only employment generation in the name of policy preference midway destroys the clarity of differentia.

### **On Rational Nexus:**

Even assuming that employment could be a factor out of project completion time, cost & so on, but the nexus to the tender's object that affordability, quality of healthcare through PPP, expertise in the segment is absent.

The main object of the project was healthcare infrastructure, not only merely infrastructure building & employment generation.

By prioritizing employment numbers over cost efficiency and healthcare experience expertise, the Respondent broke the rational link.

Here, the rejection of the Appellant's bid solely on the ground of "local employment" is **disproportionate and unreasonable**, especially when the Appellant had already committed to employing **45% local workforce**.

If local employment was the sole or decisive criterion, it should have been expressly stated in the tender conditions. By introducing it post-facto, the State has acted unreasonably and unfairly.

Moreover, if employment generation was indeed the overriding concern, the Appellant could have increased its commitment—possibly even up to 95% & more upto its capacity.

➔ Your Lordships, the doctrine of reasonable classification requires both intelligible differentia and rational nexus. In the present case, the State has created an artificial distinction between L1 and L2 on the basis of local employment—when this was never declared as the tender's objective. Further, this distinction has no rational nexus with the true purpose of the project, namely healthcare delivery. Hence, the classification fails both prongs of the Article 14 test.

Case Law: Your Lordships, as laid down in *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3, para 85, this Hon'ble Court held that arbitrariness is the very antithesis of equality. Any State action that is arbitrary, must, by definition, violate Article 14. In the present case, the Respondent's action in discarding L1 and favouring L2 without any solid declared basis is the very manifestation of arbitrariness condemned.

Case law: Your Lordships, in *ONGC v. Saw Pipes* (2003), this Court emphasized that State or public authority decisions must withstand the test of fairness and reasonableness under Article 14. Any action that is arbitrary, unfair, or irrational is liable to be struck down. The Respondent's rejection of the Appellant's bid suffers from the same arbitrariness.

## **Legitimate Expectation**

- The Appellant, being L1 and meeting all eligibility conditions, had a **legitimate expectation** that the bid would be considered fairly as in most of the cases.
- Your lordships, Council would like to seek permission to submit another latest govt. tender having a clause which would state that Lowest bidder with past relevant project & segment expertise is must & the work shall be awarded to L1

Your lordships council requests you to please refer page number Titled : Evaluation Criteria. Para 2, 3, 4.

- ➔ “2. The bidder who quotes lowest rates for the work in financial bid will be declared L1.
- ➔ 3. In case of tie in the rates, the work will be awarded to the agency who have more value of work experience in similar nature of work executed in the past three years for which separate sheet (Work order with completion certificate) may be enclosed with documents.
- ➔ 4. The work shall be awarded to L1 bidder. “
- By suddenly preferring L2, the State has defeated this expectation, contrary to principles of administrative fairness laid down by this Hon’ble Court.
- Having demonstrated that the action fails the test of equality, I now submit that it also violates the Appellant’s freedom of trade under Article 19(1)(g).

## **Article 19(1)(g)**

### **Your Lordships,**

1. Article 19(1)(g) guarantees to every citizen the right to practice any profession or to carry on any trade, business, or occupation. This includes the right to participate in government contracts on an equal and fair footing.

2. **Fair Competition Principle:**

As we all know your lordships, Every business has the right to compete fairly. The State cannot arbitrarily shut the doors of opportunity unless it has a clear, logical, rational, and constitutionally valid justification.

3. The Appellant was the L1 bidder, offering the most competitive and efficient bid.
4. Despite fulfilling all eligibility criteria, it was arbitrarily sidelined in favour of L2.
5. This action directly curtailed the Appellant's freedom to carry on trade, and such arbitrary restraint violates Article 19(1)(g).

The Respondent seeks to justify the decision on the ground of higher local employment.

6. But, Your Lordships, if employment generation was to be the decisive factor, the Appellant could have been given the opportunity to commit to even higher—perhaps more than 95%—local employment or as much of the capabilities.
7. Denial of this opportunity makes the restriction neither fair, nor reasonable, nor proportionate.

➔ Case law: Your Lordships, in *LIC v. Consumer Education & Research Centre* (1995), this Court struck down arbitrary eligibility restrictions as violative of Articles 14, 19(1)(g), and 21, holding that freedom of trade cannot be curtailed by unreasonable and unfair conditions. Likewise, the Respondent's decision here unfairly restrains the Appellant's right to compete.

➔ The Respondent's rejection of the Appellant's bid was not founded on the tender conditions. The plea of 'local employment' is nothing but a post-hoc justification, introduced later to defend an arbitrary action. This Hon'ble Court has consistently held that the State cannot supplement its decision with reasons not present at the time of the decision. Otherwise, fairness is defeated and the right to trade is curtailed arbitrarily."

➔ If employment generation was to be the decisive factor, it should have been expressly notified in the tender. Adding such criteria later on amounts to shifting the goalpost, which cannot be permitted under Article 19(1)(g)

**Article 19(6) – Reasonable Restriction:**

It is true that Article 19(6) permits the State to impose reasonable restrictions in the interest of the general public.

8. However, the restriction here fails the **test of proportionality**.
9. Preferring L2 at a higher cost, with no prior hospital track record, no much expertise in the same segment & only on the basis of marginally higher local employment, is a disproportionate and irrational restriction.
10. Public interest demanded efficiency, affordability, and quality healthcare and not just merely a numerical employment preference.

**Doctrine of Proportionality:**

- State action restricting fundamental rights must balance individual freedom with public interest.



- Here, the balance is completely lost—the Appellant’s right to trade has been curtailed without achieving any real or proportionate public benefit.

Therefore, Your Lordships, the rejection of the Appellant’s bid, despite being L1 and fully eligible, imposes an arbitrary and disproportionate restraint on its freedom to carry on business. This violates not only the letter but the very spirit of Article 19(1)(g) even”

## **The council seeks permission to proceed with the arguments on issue 2.**

- ➔ Whether clause 12.4 of the tender, granting “absolute discretion” to the state, is void under section 23 of the Wellesley Contract act, 1872.
- ➔ **Your Lordships, Section 23 of the Wellesley Contract Act declares an agreement void if its consideration or object is unlawful.**  
The unlawful object may arise if:

1. It is forbidden by law,
2. It defeats the provisions of any law,
3. It is fraudulent,
4. It involves injury to person or property, or
5. It is regarded by the Court as immoral or opposed to public policy.

In our case, Clause 12.4 reserves *absolute power* to the State to accept or reject any bid in the name of “public policy and administrative discretion.”

### **1. It Defeats the Provisions of Law**

- Public contracts are subject to **Article 14** that is fairness & non-arbitrariness.
- By giving the State **unfettered, unguided discretion**, Clause 12.4 allows rejection of bids without transparency or rationality.
- This directly *defeats* the mandate of equality under Article 14, since the State could bypass declared tender norms.

### **2. It also Opposes to Public Policy**

- Public policy requires **transparent, fair competition** in government tenders.
- Allowing the State to rely on Clause 12.4 to arbitrarily reject L1 encourages **favouritism, corruption, and arbitrariness & so on & so forth.**
- Instead of advancing public interest (affordable healthcare), it burdened the State with higher cost that is 25Cr more and chose a bidder having almost negligible expertise & experience.
- Such an outcome is contrary to public policy

### **3. Unlawful Object in Practice**

- While on paper Clause 12.4 mentions “public policy,” in practice it was used to bypass financial prudence and expertise requirements. And you never know corruption is involved behind it.
- The object of invoking it → to sideline L1 is completely unfair.
- Therefore, the *object of the State’s reliance on Clause 12.4 becomes unlawful under Section 23.*

#### 4. Present Case

- The clause essentially **ousts judicial review** and gives the Respondent “absolute discretion.”
- In effect, it becomes a tool of arbitrariness, not administration.
- Thus, Clause 12.4 is void under Section 23 as it defeats equality principles and is opposed to public policy.

#### 5. Anticipating Respondent’s Argument

The State may say:

- “Public policy” includes local employment promotion, hence Clause 12.4 is valid.

**Reply:**

- Employment promotion could have been a transparent tender condition.
- Hidden discretion  $\neq$  public policy.
- The law is clear: **Discretion cannot be unfettered; it must be guided by reason and transparency.**

Your Lordships, Clause 12.4 confers absolute power on the State to accept or reject bids under the guise of public policy. This violates the twin requirements of fairness and transparency. By defeating the constitutional guarantee of equality, and by being opposed to public policy, Clause 12.4 is void under Section 23 of the Contract Act.

Case law : Your Lordships, in *Central Inland Water Transport v. Brojo Nath Ganguly*, this Court held that any agreement or clause which is unfair, unreasonable, or against public interest is void under Section 23. Similarly, here, the Respondent’s act of awarding the tender to L2, contrary to the declared criteria initially, amounts to introducing a condition opposed to public policy — favouritism, randomness under the garb of employment. Such post-facto justifications cannot validate a contract which offends & doesn’t allow fairness and transparency.

With that, the Counsel respectfully concludes arguments on Issue 1 & 2, and with your Lordships permission, I would like to invite my learned Co-council to proceed with the issues 3 & 4.