

# Moot Speech – Speaker 1 (Respondent's Side, State of Wellesley.)

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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 Respondent, that is State of wellesley.

## 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.*

- ➔ Your Lordships, although the High Court had rejected the Appellant's petition,
- ➔ The High Court has already applied its judicial mind and dismissed the writ, recognising this as a matter of **policy discretion & holding that contractual disputes ordinarily fall outside writ jurisdiction**, where judicial interference is minimal. Unless the Appellant shows clear mala fides or perversity, saying this Hon'ble High Court need not intervene further.
- ➔ 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, it is respectfully submitted that the very admission of the SLP does not, in itself, establish that any injustice has occurred. Admission only signifies that this Hon'ble Court has deemed it appropriate to hear the matter further.
- ➔ It is well settled that admission of an SLP is not a finding on merits. It merely grants the Appellant a hearing before this Hon'ble Court.

## 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 referred 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 referred 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 :

1. Articles 14 and 19(1)(g)

- My learned friend has argued arbitrariness. But, Your Lordships, **equality before law does not mean identical treatment in every situation.**
- This Court in *Ajay Hasia v. Khalid Mujib* (1981) held that reasonable classification is permissible so long as there is *intelligible differentia* and a *rational nexus* with the object sought to be achieved.
- Here, the differentia is **higher local employment offered by L2**. The nexus is **economic revival and healthcare manpower strengthening** in the post-COVID context. Both satisfy the constitutional test.
- As for **Article 19(1)(g)**, Your Lordships in *ITC Ltd. v. State of U.P.* (2005) upheld restrictions on trade in the larger public interest. The right to carry on business is not absolute; it is subject to **reasonable restrictions under Article 19(6)**.
- Losing a single tender does not amount to curtailment of the right to trade. This Court has repeatedly held that participation in tender does not create a fundamental right to award.
- In *Raunaq International v. IVR Construction* (1999), this Court made it clear that L1 does not have an indefeasible right to be awarded a contract.

Thus, Articles 14 and 19(1)(g) stand unviolated.

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## 2. Clause 12.4 and Section 23

- The Appellant attacks **Clause 12.4** as unconscionable and void under Section 23 of the Contract Act.
- But Your Lordships, Clause 12.4 merely reserves discretion for the Cabinet to weigh *broader public policy considerations*. Such clauses are standard in PPP projects.
- This Court in ***LIC of India v. Consumer Education & Research Centre (1995)*** upheld contractual terms when they are guided by **public interest**.
- Contrast this with ***Central Inland Water Transport v. Brojo Nath (1986)*** where the clause was struck down as unconscionable because it gave arbitrary termination power against employees with no public purpose.
- Here, by contrast, the discretion was exercised transparently, citing **employment generation** and **health preparedness**. This is the opposite of arbitrariness—it is **policy rationality**.

Hence, Clause 12.4 furthers, not defeats, public policy.

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## 3. Judicial Review in Tender Matters

- Your Lordships have time and again cautioned against excessive judicial interference in tender and contract matters.
- In ***Tata Cellular v. Union of India (1994)***, this Court held that the scope of judicial review is limited to examining arbitrariness, mala fides, or perversity—not to sit as an appellate authority over executive policy.
- In ***Jagdish Mandal v. State of Orissa (2007)***, it was held that unless the decision is mala fide or intended to favour someone unfairly, courts must defer to executive wisdom.
- Here, there is no allegation of mala fides, no hidden favouritism, and no procedural violation. Only a policy preference was exercised under a valid clause.

Therefore, the High Court rightly exercised restraint, and so must this Hon'ble Court.

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#### 4. Employment and Public Welfare

- The Appellant claims “employment was an afterthought”. Respectfully, this ignores ground realities.
- After COVID, States across India have emphasised **local employment generation** to revive economies and to ensure manpower in critical health sectors.
- In *Reliance Airport Developers v. AAI (2006)*, this Court recognised that government can legitimately incorporate socio-economic considerations while awarding contracts.
- Similarly, *BALCO Employees Union v. UOI (2002)* acknowledged that public policy considerations—employment, growth, and welfare—lie at the core of State discretion.
- Even if employment was not an explicit parameter in the original evaluation, **Clause 12.4 empowered the Cabinet to consider such vital public interest factors before final award.**

Thus, employment as a consideration is constitutionally valid and in harmony with Articles 14 and 19(6).

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#### 5. Legitimate Expectation

- My learned friend invokes “legitimate expectation”. But this doctrine cannot override express tender terms.
  - In *UOI v. Hindustan Development Corporation (1993)*, this Court held that legitimate expectation yields to overriding **public interest**.
  - Clause 12.4 put every bidder on notice that the Cabinet retained discretion. No expectation contrary to that clause can arise.
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#### Closing

##### **Your Lordships,**

This is not a case of arbitrariness but of **balancing competing interests**—price versus employment, cost versus welfare.

Judicial review cannot supplant executive wisdom where policy choice is exercised lawfully.

We therefore respectfully submit that the Petition be dismissed, the award to Care Well be upheld, and Clause 12.4 sustained as a valid expression of public interest.