

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No.40
Neutral Citation No. - 2025:AHC:57344-DB

**CORAM : HON'BLE SHEKHAR B. SARAF, J.
HON'BLE VIPIN CHANDRA DIXIT, J.**

WRIT-C NO. 34248 OF 2024

M/S RAJAN CONSTRUCTION COMPANY

V.

STATE OF U.P. AND ANOTHER

For the Petitioners : Mr. Satyendra Chandra Tripathi, Advocate
Mr. Shiv Poojan Yadav, Advocate
For the Respondents : Mr. Mukul Tripathi, Standing Counsel
Mr. Shad Khan, Advocate
Mr. Shishir Prakash, Advocate

Last heard on April 7, 2025
Pronounced on April 18, 2025

SHEKHAR B. SARAF, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India, wherein the petitioner prays for the issuance of a writ of certiorari quashing the impugned E-Tender No. ET-60/ MMC/PD/ETPS/

HTPS/2024 dated July 10, 2024 as amended on August 13, 2024 issued by Superintending Engineer, Material Management Circle (MMC), Harduaganj Thermal Power Station (HTPS), Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited, Kasimpur, Aligarh (hereinafter referred to as 'respondent no.3') whereby the petitioner was restricted from participating in E-Tender. The petitioner further prays for a direction to respondent no.3 to invite a fresh tender for the supply of agro-based non-torrefied biomass pellets for coal handling plant at the aforementioned location and to permit the petitioner to participate in the tender process without imposing any pre-qualifying condition as mentioned in Clause 3(i) of the impugned E-Tender.

FACTS

2. The factual matrix of the present writ petition is delineated below:
 - a. The petitioner is a firm registered at District Ambedkar Nagar, Uttar Pradesh, engaged in small-scale business of supplying non-torrefied biomass pellets for coal handling plants.
 - b. On November 17, 2017 the Ministry of Power published a Standard Operating Procedure (SOP) regarding biomass utilization for power generation through co-firing in coal-based power plants. This was followed by an advisory dated November 24, 2017 wherein all State Power Secretaries, Thermal Power Generating Plants/ Utilities (Public or Private) along with the Managing Director of Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited, Lucknow (hereinafter referred to as 'respondent no.2') were directed to utilize biomass pellets to the extent of 5-10%.
 - c. Subsequently, the said advisory was revised on October 8, 2021 further emphasizing biomass utilization for power generation through co-firing in coal based power plants.
 - d. On March 2, 2022 the Ministry of Power issued a Model Contract for the use of biomass in Thermal Power Plants

(TPPs) which was later revised on January 6, 2023.

- e. Clause 2(b) of the aforementioned Model Contract provides that the power stations situated within 300 km of National Capital Region (NCR) must use a minimum 50% raw materials consisting of stubble/straw/crop residue from rice paddy sourced exclusively from Punjab, Haryana or NCR region.
- f. On July 11, 2023, Ministry of Environment, Forest and Climate Change notified the Environment (Utilisation of Crop residue by Thermal Power Plants) Rules, 2023 which are applicable to the NCR region. These rules mandate that all coal-based thermal power plants must utilize a minimum five percent blend of pellets or briquettes made from crop residue along with coal.
- g. On July 10, 2024, respondent no.3 under the control of the Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. floated an E-Tender (No. ET-60/MMC/PD/ETPS/HTPS/2024), inviting bids for the supply of non-torrefied biomass pellets, a renewable fuel source promoted by the Central Government to reduce pollution and encourage cleaner energy in thermal power plants and the said E-Tender was amended on August 13, 2024.
- h. However, the tender documents contained a restrictive Clause 3(i) as a pre-qualifying condition, which mandated that only existing manufacturers in the NCR region or those whose manufacturing plants are located within 100 km from the Truck Gate (Material Entry Gate), Harduaganj Thermal Power Station, Kasimpur, Aligarh are eligible to participate in the tender. Bidders were required to confirm compliance with this condition in Part-I, that is, technical bid of the tender.
- i. The technical bids wherein the confirmation of the impugned restrictive clause was mandatory were opened on September 12, 2024.

- j. Subsequently, on October 8, 2024, Ministry of Power, Government of India, has issued a notification concerning significant shortfall in biomass co-firing monthly targets, wherein immediate action was required from the Head of all the thermal power plants to mitigate air pollution caused due to stubble burning in the NCR region by achieving the stipulated mandate for co-firing of biomass pellets in each thermal power plants.
- k. Thereafter, the financial bids were opened on November 13, 2024 and twelve firms were selected for the supply of agro-based non-torrefied biomass pellets.
- l. The petitioner's firm situated at District Ambedkar Nagar in Uttar Pradesh was excluded from participating due to the restrictive clause mentioned in the tender documents.
- m. Aggrieved by the exclusionary condition under Clause 3(i) of the tender, the petitioner has approached this Court by means of the present writ petition.

CONTENTIONS OF PETITIONER

3. Learned counsel appearing on behalf of the petitioner has made the following submissions:
 - a. There exists no nexus between the objective of procuring raw materials from specific regions and location of manufacturing unit as required within a particular geographical area. The petitioner further emphasized that the restriction lacks any reasonable connection with the objective of the tender and merely serves to unfairly limit the competition.
 - b. The tender condition is in violation of Article 19 and Article 21 of the Constitution of India, as they restrict applicants to a specific location, particularly within the NCR region and are therefore, discriminatory, arbitrary and contrary to the

principles of natural justice.

- c. Clause 3(i) as a pre-qualifying condition in the tender document is wholly illegal, arbitrary and in gross violation of the right to equality under Article 14, the right to practice any profession or trade under Article 19(1)(g), and the freedom of trade and commerce across India under Article 301 of the Constitution of India.
- d. Article 14 of the Constitution of India mandates that the State shall not deny equality before law or equal protection of laws. By imposing such a restrictive condition, the respondent authority being an instrumentality of the State has discriminated against the petitioner in the E-Tendering process.
- e. Article 19(1)(g) of the Constitution of India guarantees all its citizens the right to practice any profession or to carry on any occupation, trade or business. However, this right is subject to reasonable restrictions under Article 19(6) of the Constitution of India and must be justified in the interest of the general public.
- f. Clause 3(i) as a pre-qualifying condition is not based on any *intelligible differentia*. It lacks substantial reasoning or justification as to how it serves public interest and effectively excludes many capable suppliers from other parts of the State from participating in the tender process.
- g. Despite possessing all necessary registrations, technical capabilities, and willingness to comply with Government guidelines including the requirement of sourcing 50% raw materials as stubble, straw or crop residue of rice paddy from Punjab, Haryana, or NCR region, the petitioner was disqualified solely due to their location falling outside the arbitrary 100 km radius.

- h. The Central Government through a circular dated January 6, 2023, issued a revised Model Contract which does not impose such a restriction. Therefore, the restriction under Clause 3(i) of the impugned E-Tender is in gross violation of the said circular and contradicts the spirit and intent of various Central Government policies.
- i. The Ministry of Power, through its Model Contract and other advisories, has consistently emphasized promoting the use of biomass to combat air pollution, particularly that is caused by stubble burning in the northern states. However, none of these guidelines prescribe a territorial restriction on who may supply the biomass fuel. In case of any repugnancy between Central and State guidelines, the Central guidelines must prevail. Consequently, the tender floated by the State Government must conform to the Central policies.
- j. The petitioner is left with no alternative remedy except to approach this Court against the arbitrary actions of the respondent authorities.
- k. To buttress his arguments, counsel has placed reliance upon the judgments in **Engineering Kamgar Union v. Electro Steels Castings Ltd. and another** reported in (2004) 6 SCC 36; **Association of UPS and Power Conditioning Systems Manufacturer v. Society of Applied Microwave Electronics Engineering and Research (Sameer) & Ors.** reported in 2002 (65) DRJ 678 ; **Ramana Dayaram Shetty v. International Airport Authority of India and Others** reported in (1979) 3 SCC 489 and **Rashbihari Panda v. State of Orissa** reported in (1969) 1 SCC 414.

CONTENTIONS OF THE RESPONDENT

- 4. Learned counsel appearing on behalf of the respondents has made the

following submissions:

- a. The clause in question imposes certain restrictions aimed at addressing the significant issue of air pollution in the NCR region which is primarily caused by the widespread practice of farm stubble burning. This environmental regulation has been introduced with the objective of reducing the carbon footprints associated with thermal power generation, particularly in the NCR region, where air quality has been a persistent concern.
- b. In this context, the impugned E-Tender was issued with the specific purpose of mitigating environmental pollution in the NCR region by promoting the use of biomass pellets, thereby offering a sustainable alternative to the conventional disposal of agricultural residue through burning. The ultimate aim of the tender is to support eco-friendly initiatives that contribute to cleaner air and align with the broader goals of environmental protection and climate change mitigation.
- c. The clause in question is in consonance with the draft notification dated July 11, 2023, issued by Ministry of Environment, Forest and Climate Change whereby the Environment (Utilisation of Crop residue by Thermal Power Plants) Rules, 2023 directed the thermal power plants to use crop residue in NCR region to reduce air pollution caused by stubble burning.
- d. The tender condition is also in consonance and purposely made to mitigate air pollution caused due to stubble burning in the NCR region as directed vide notification dated October 8, 2024, issued by the Ministry of Power, Government of India concerning significant shortfall in biomass co-firing monthly targets.
- e. It is pertinent to note that the petitioner was not found to be

technically qualified during the bid evaluation process. Following this, the contract was awarded and executed between Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited and twelve successful manufacturers. These manufacturers have already commenced the supply of biomass pellets to the designated thermal power plant, and such supply has been ongoing for over a month.

- f. To buttress his arguments, counsel has placed reliance upon judgments in **Tata Cellular v. Union of India** reported in (1994) 6 SCC 651 ; **Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.** reported in (2019) 14 SCC 81 ; **Silppi Constructions Contractors v. Union of India** reported in (2020) 16 SCC 489 ; **Montecarlo Ltd. v. NTPC Ltd.** reported in (2016) 15 SCC 272 ; **Agmatel India (P) Ltd. v. ResourSYS Telecom** reported in (2022) 5 SCC 362; **Balaji Ventures (P) Ltd. v. Maharashtra State Power Generation Co. Ltd.** reported in 2022 SCC OnLine SC 1967; **N.G. Projects Ltd. v. Vinod Kumar Jain** reported in (2022) 6 SCC 127 ; **Airport Authority of India v. Centre for Aviation Policy, Safety & Research (CAPSR)** reported in 2022 SCC OnLine SC 1334.

ANALYSIS

5. We have considered the rival submissions and have perused the materials placed on record.

6. Before delving into the rival contentions canvassed by both the sides, it is necessary to examine Clause 3(i) as a pre-qualifying condition of the E-Tender dated July 10, 2024. The said clause in verbatim is as follows:

“(1) Only Existing Pellets manufacturers having their Manufacturing Plant location in NCR region only shall be allowed to participate in the tender. Every bidder shall confirm the same in Part-1 of the Tender Only”.

7. Subsequently, the said tender was amended on August 13, 2024. The

amended clause in verbatim is as follows:

“1. Only Existing Pellets manufacturers having their Manufacturing Plant location in NCR region shall be allowed to participate in the tender. Every bidder shall confirm the same in Part-I of the Tender Only.

OR

2. Only those manufacturers whose manufacturing plant location is within the radius of 100 Km from Truck Gate (Material Entry Gate), Harduaganj Thermal Power station, Kasimpur Aligarh shall also be allowed to participate in the tender. Every bidder shall confirm the same in Part-I of the Tender Only

Note: For measurement of Km (Kilometer) from Truck Gate (Material Entry Gate), Harduaganj Thermal Power station, Kasimpur Aligarh to the manufacturing plant location, Google Map shall be applicable only.”

8. Clause 2(b) of the Technical Specification in the tender documents mandates the manufacturers to purchase raw materials for manufacturing pellets only from Punjab, Haryana or National Capital Region (NCR). The said clause in verbatim is as follows:

“Since Harduaganj Thermal Power Station is within 300 km of NCR, use of minimum 50% raw material as stubble/straw/crop residue of rice paddy sourced from Punjab, Haryana or National Capital Region only is mandatory. Successful Bidder has to submit documentary evidence in the form of Certificate from State Authority from where the paddy straw has been sourced/ any amendment regarding this by SAMARTH (if any) may be incorporated from time to time.”

9. The Standard Operating Procedure (SOP) for biomass pellets co-firing published by the Ministry of Power, Government of India on November 17, 2017, highlights the need, advantages and impact of utilization of biomass in coal-based power plants. It also directs the development of site-specific SOPs based on the Model SOP.

10. The Ministry of Power subsequently issued an advisory dated November 24, 2017, to all State Power Secretaries, addressing smog in North-West India caused by stubble burning. The relevant paragraphs of the advisory in verbatim are as follows:

“As you may be aware that stubble burning has been cited as a major cause of recent smog in North-West India. Stubble burning is been cited as a major the straw stubble that remains after harvesting of paddy and other crops. Instead of burning in open fields, these can be collected, processed and can be used as Biomass fuel to generate power.

Biomass Co-firing is a well proven technology. With increasing environmental awareness, power plants all over the world have adopted Biomass Co-firing as a strategy to combat pollution. UNFCCC recognizes Biomass Co-firing as a carbon neutral technology for mitigation of carbon emission from coal based power plants.

NTPC have successfully demonstrated the Co-firing of 7% blend of Biomass pellets with coal in its Dadri Power Plant. This can be replicated in other coal fired power plants having bowl mills/vertical roller mills/ beater mills.”

11. The aforementioned advisory was later revised on October 8, 2021, specifically for coal-based power plants. The relevant paragraph of the advisory in verbatim is as follows:

“(1). All coal based thermal power plants of power generation utilities with bowl mill, shall on annual basis mandatorily use 5 percent blend of biomass pellets made, primarily, of agro residue along with coal with effect from one year of the date of issue of this guideline. The obligation shall increase to 7 percent with effect from two years after the date of issue of this order and thereafter.”

12. The Revised Model Contract dated January 6, 2023, for the use of biomass in thermal power plants mandated the purchase of stubble from specific regions. The relevant paragraph from the aforesaid Model Contract in verbatim is as follows:

“ For power stations within 300 km of NCR use of minimum 50% raw material as stubble/straw/crop residue of rice paddy sourced from Punjab, Haryana or NCR Region only is mandatory. Successful Bidder has to submit documentary evidence in the form of Certificate from State Authority from where the paddy straw has been sourced.”

13. The submissions canvassed by the learned counsel for the petitioner is mainly two-fold. Firstly, there is allegedly no nexus between the requirement to procure biomass from specific regions and the location of

manufacturing units within a defined geographical area. Secondly, the guidelines issued by the Central Government regarding biomass utilization do not impose such stringent territorial restrictions. Thus, in the event of any inconsistency, the Central Government's guidelines should prevail over the State's tender conditions.

14. Per contra, the learned counsel appearing for respondents submitted that although Article 19(1)(g) and Article 301 of the Constitution of India, guarantees the right to carry profession, trade, occupation or business to all its citizens throughout the country but this right is subject to reasonable restrictions in the public interest. The primary objective behind the restrictive clause is mainly to reduce air pollution, a concern repeatedly addressed by the Hon'ble Supreme Court and the Central Government through its various guidelines in view of the persistent obnoxious environmental condition of NCR region. The clause limits participation to local manufacturers, ensuring they source biomass from Punjab, Haryana or NCR region. This directly reduces the availability of stubble for open burning by farmers in these regions, thereby addressing the root cause of the pollution. Thus, there exists a rational nexus between sourcing biomass from specified regions and locating manufacturing units nearby. The pre-qualification condition imposed by the State in the tender is accordingly, reasonable and serves a legitimate purpose.

15. The tender in question was floated for the supply of agro-based non-torrefied biomass pellets to Harduaganj Thermal Power Station in Aligarh. Non-torrefied biomass pellets are made from agro-based residue without undergoing torrefaction (a process to transform biomass into coal-like material). Biomass including wood, crops, seaweed, stubble, and animal waste, is an organic matter which contains stored energy from the Sun. Historically used for heating and cooking, biomass is now being traversed by large-scale energy production. Stubble, a residual product after harvesting of crops, is often burnt by farmers to quickly clear fields and make it ready for the next sowing. This practice results in severe air pollution releasing

large amounts of unburnt carbon along with ashes which reduces soil fertility. Through torrefaction and densification (pelletisation or briquetting), biomass becomes more suitable for transport and storage. When used as fuel in coal-based power plants, biomass pellets combust more efficiently, and their ashes is captured by electrostatic precipitators, thereby reducing the pollution. Co-firing biomass with coal significantly reduces greenhouse gas emissions. Recognized by the United Nations Framework Convention on Climate Change (UNFCCC) as a carbon-neutral practice, this method allows carbon released during biomass combustion to be absorbed in the next crop cycle via photosynthesis. Moreover, emissions from processing and transporting biomass are negligible as compared to the resulting carbon emissions from its utilization in large coal-based power plants. Biomass co-firing thus presents a viable path towards a cleaner environment.

16. Additionally, utilization of agro-based residue pellets in thermal power plants lowers carbon emissions and mitigates air pollution caused by manual stubble burning, which emits huge amounts of unburnt carbon, ashes, Sulphur and Mercury. Biomass also has a higher oxygen content compared to coal.

17. In a celebrated case of **Tata Cellular v. Union of India (Supra)**, the Supreme Court had laid down significant principles regarding judicial review of administrative decisions, particularly emphasizing the concept of judicial restraint. The Court emphasized that judicial review is concerned with the decision-making process, not the decision itself. It emphasized that Courts should not act as appellate authorities over administrative decisions and must not substitute their own judgment for that of the authority. The relevant paragraphs of the judgment are quoted hereinbelow:

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always

available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

18. In **Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.** reported in (2007) 8 SCC 1, the Supreme Court held that necessary conditions in the contract have to satisfy the test of ‘reasonableness’. The relevant paragraph of the judgment is quoted hereinbelow:

“36. We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of “non-discrimination”. However, it is not a free-standing provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to “right to life”. It includes “opportunity”. In our view, as held in the latest judgment of the Constitution Bench of nine Judges in I.R. Coelho v. State of T.N. [(2007) 2 SCC 1] , Articles 21/14 are the heart of the chapter on fundamental rights. They cover various aspects of life. “Level playing field” is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is invoked by rel/hdec in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of “level playing field”. We may clarify that this doctrine is, however, subject to public interest. In the world of globalisation, competition is an important factor to be kept in mind. The doctrine of “level playing field” is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest. “Globalisation”, in essence, is liberalisation of trade. Today India has dismantled licence raj. The economic reforms introduced after 1992 have brought in the concept of “globalisation”. Decisions or acts which result in unequal and discriminatory treatment, would violate the doctrine of “level playing field” embodied in Article 19(1)(g). Time has come, therefore, to say that Article 14 which refers to the principle of “equality” should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of “level playing field”. According to Lord Goldsmith, commitment to the “rule of law” is the heart of parliamentary democracy. One of the important elements of the “rule of law” is legal certainty. Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of “reasonableness”, then such an act or decision would be unconstitutional.”

19. In the case of **Maa Binda Express Carrier v. North-East Frontier Railway** reported in (2014) 3 SCC 760, the Apex Court held that although fairness and transparency are essential in public procurement, administrative

authorities must be granted the necessary autonomy to make decisions that best serves the public interest. The relevant paragraphs of the judgment are quoted hereinbelow:

“8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

*9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest. (See *Meerut Development Authority v. Assn. of Management Studies* [(2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803] and *Air India Ltd. v. Cochin International Airport Ltd.* [(2000) 2 SCC 617 : (2000) 1 SCR 505])”*

(Emphasis Supplied)

20. The Supreme Court in **Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.** (Supra), has held that the interpretation of terms and conditions of tender by the project owner or the employer should be

respected, unless it is arbitrary or *mala fide*. The owner is best positioned to understand its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings. This case reinforces the limited scope of judicial intervention in administrative decisions, highlighting the discretion of the tendering authority and its expertise in relation to formulate the terms and conditions of the tender. The relevant paragraph of the judgment is quoted hereinbelow:

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

21. In **Silppi Constructions Contractors v. Union of India** (Supra), the Supreme Court citing precedents like *Tata Cellular* (Supra), *Afcons Infrastructure Ltd.* (Supra), *Air India Ltd.* (Supra), *Raunaq International Ltd.* (Supra) amongst others, reiterated that the evaluation of tenders falls within the exclusive domain of the tendering authority, and the Courts should refrain from substituting their judgment with that of authority unless there is a clear violation of constitutional or legal provisions. The decision reinforces the principle that administrative authorities have the discretion to assess and decide on tender matters, and judicial interference is warranted only in exceptional circumstances where the decision-making process is flawed. The relevant paragraphs of the judgment are quoted hereinbelow:

“8. In Raunaq International Ltd. v. I.V.R. Construction Ltd. [Raunaq International Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492] , this Court held that the superior courts should not interfere in matters of tenders unless substantial public interest was involved or the transaction was mala fide.

9. In Air India Ltd. v. Cochin International Airport Ltd. [Air India Ltd. v. Cochin International Airport Ltd., (2000) 2 SCC 617] , this

Court once again stressed the need for overwhelming public interest to justify judicial intervention in contracts involving the State and its instrumentalities. It was held that the courts must proceed with great caution while exercising their discretionary powers and should exercise these powers only in furtherance of public interest and not merely on making out a legal point.

11. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. [Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138] it was held that while exercising power of judicial review in respect of contracts, the court should concern itself primarily with the question, whether there has been any infirmity in the decision-making process. By way of judicial review, the court cannot examine details of terms of contract which have been entered into by public bodies or the State.

14. In Michigan Rubber (India) Ltd. v. State of Karnataka [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216] it was held that if the State or its instrumentalities acted reasonably, fairly and in public interest in awarding contract, interference by court would be very restrictive since no person could claim fundamental right to carry on business with the Government. Therefore, the courts would not normally interfere in policy decisions and in matters challenging award of contract by the State or public authorities.

15. In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] it was held that a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision. The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.

17. In Municipal Corpn., Ujjain v. BVG (India) Ltd. [Municipal

Corpn., Ujjain v. BVG (India) Ltd., (2018) 5 SCC 462 : (2018) 3 SCC (Civ) 291] it was held that the authority concerned is in the best position to find out the best person or the best quotation depending on the work to be entrusted under the contract. The court cannot compel the authority to choose such undeserving person/company to carry out the work. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work.

(Emphasis Supplied)

22. Upon a perusal of the umpteen judgments cited by both the parties and sifting through the ratios laid down by the Apex Court in the various judgments, it emerges that Courts can scrutinize the award of contracts by Government or its agencies in exercise of its power of judicial review to prevent arbitrariness or favouritism, but there are inherent limitations in the exercise of such power. It becomes crystal clear that conventionally the Writ Court does not intermeddle with the terms and conditions mentioned in the tender documents, unless, there is a *prima facie* arbitrariness, favouritism, irrationalism or perversity. After examining a *catena* of judgments cited before this Court, one may carve out the principles for judicial intervention in tender cases as follows:-

A. Emerging trend of globalisation and competition equates judicial review with judicial restraint in tender matters. The Writ Court does not act as a Court of appeal but merely reviews the *modus operandi* adopted by the tender making authority (either private or public) in arriving at a decision as it is not equipped with the expertise to correct the administrative decision. In arriving at a commercial decision considerations which are paramount are commercial consideration. The authority can choose its own method to arrive at a decision. If a review of administrative decision is permitted by Writ Court without necessary expertise, it will lead to manifest injustice. Principles of equity and natural justice would normally stay at a distance in tender matter, unless there is patent illegality.

B. The terms of the invitation to tender cannot be open to judicial

scrutiny because the invitation to tender equates with invitation to offer which is in the realm of contract. While scrutinizing the terms and conditions of the tender documents, one has to keep in mind that particular terms and conditions are framed by the tender making authorities in order to achieve a specific goal that would serve the purpose of the authority in the interest of general public, even though the conditions are at the cost of the interest of individual applicants. The *raison d'être* of tender conditions must not be unreasonable or perverse, but must serve a meaningful purpose.

C. Tender making authority must have the freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body to perform its function in administrative sphere or quasi-administrative sphere and that freedom will not be curtailed unless it is detrimental to public interest.

D. Tender making authority is the best person to understand and appreciate its requirements and has the right to choose the best quotation as per its requirement. It is free to grant any relaxation or impose any restriction, for *bona fide* reasons. If the tender conditions permit such relaxation or restriction, it may not accept the offer even though it happens to be the highest or the lowest. A term is essential or not is a decision taken by the employer, which should be respected and soundness of that decision cannot be questioned by Writ Court. Reasonableness of restriction is to be determined in an objective manner from the standpoint of interests of the general public and not from the standpoint of the interest of persons upon whom the restrictions have been imposed or upon abstract consideration.

E. No person could claim a fundamental right to carry on business with the government. If the authority is exercising its right to choose in order to get the best person or the best quotation, there can be no question of infringement of fundamental rights. Article 14 read with Article 19(1)(g) of the Constitution of India embodies the principle of

non-discrimination in practising trade or business. However, this right is not absolute and is subject to restrictions imposed reasonably. The doctrine of level-playing field is an important concept embedded under Article 19(1)(g) of the Constitution of India, but is subject to public interest. The said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest.

F. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

23. In the present case, considering the hazardous environmental conditions in the NCR region, the respondent authority floated the tender with a pre-qualifying condition allowing only manufacturers located either in NCR region or within 100 km from the Truck Gate (main gate) of the power plant to participate in the tender process. This ensures that the raw materials are procured from nearby areas such as Punjab, Haryana and NCR region. If manufacturers from outside this region were permitted, they might source biomass from their local areas rather than the targeted regions, defeating the objective of reducing stubble burning in NCR adjacent agricultural zones. Thus, the restriction serves the specific environmental goal of curbing local pollution.

24. This Court is of the view that the impugned conditions are tailor-made and incorporated with a specific motive for public interest and no material has been placed on record to show as to how the petitioner has been targeted for their exclusion in the tender process. There is no material to show that the impugned condition is designed to favour a particular bidder. For want of necessary particulars, we are not inclined to accept the submissions of the learned counsel for the petitioner.

25. It is contended by the learned counsel for the respondents that there are twelve firms in the fray which were selected and they had also placed the order for supplying of pellets. This means that, there were bidders who were

interested in participating in the tender process and were also complying with the conditions of the tender of being manufacturers in close proximity as per the tender condition.

CONCLUSION

26. The tender condition is also in consonance with the policy of the Government. The purpose of incorporating such conditions can be clearly understood from the policy framed by the Government, followed by the advisory issued in this regard. The respondents, in its counter-affidavit, has also averred that the purpose behind incorporating such stringent clause as a pre-qualifying condition of the tender is the distressing environmental condition in the NCR region. This indicates that the *raison d'être* of imposition of a stringent condition, that is, allowing only the existing pellet manufacturers having their plant location in NCR region or within 100 km from the truck gate of the power station to participate in the tender proces is to reduce stubble burning by farmers which is the persistent and root cause for air pollution in the NCR region.

(Emphasis Added)

27. Ergo, the restrictive condition in the tender cannot be considered to be arbitrary and discriminatory. It is within the wisdom and discretion of the employer to determine the conditions/clauses that are best suited for the work to be performed in the public interest.

28. In the present case, respondent no.3 floated a tender dated July 10, 2024 for supply of biomass pellets at Harduaganj Thermal Power Station. Clause 3(i) of the tender imposes restrictions on participants to keep a tight rein on persistent obnoxious air condition in the NCR region. This clause is also at consensus with the revised Model Contract dated January 6, 2023 issued by the Ministry of Power, Government of India. It is the prerogative of the respondents to frame the terms and conditions of the tender in accordance with policy decisions. We, therefore, do not find any substance in the arguments raised on behalf of the petitioner.

29. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest. It is a well settled principle that judicial review in contractual matters is limited, particularly when the decision of the tendering authority is *bona fide* and taken in the public interest.

30. This Court, being the guardian of fundamental rights is duty-bound to interfere only in cases when there is arbitrariness, irrationality, *mala fide* and biasness and not otherwise.

31. The essence of the law laid down in a *catena* of judgments referred to above emphasizes the need for judicial restraint and caution, and that only overwhelming public interest can justify judicial intervention in contractual matters involving the State instrumentalities. The court must acknowledge that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal.

32. The Court found no evidence of *mala fide* intent or partisanship aimed at excluding manufacturers outside the NCR region. Rather, the conditions were structured to advance the public interest by ensuring the effective and secure implementation of the Government's policy, which is crucial for public safety and welfare.

33. The writ petition is, accordingly, dismissed.

(Shekhar B. Saraf, J.)

I agree

(Vipin Chandra Dixit, J.)

18.04.2025
Kuldeep