

2025 LiveLaw (SC) 230

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SURYA KANT; J., NONGMEIKAPAM KOTISWAR SINGH; J.
SLP(C) Nos.13716-13717/2020; February 04, 2025
OMEGA ELEVATORS *versus* STATE OF M.P. & ANR.

Tender Process - Judicial Review - Arbitrary Exclusion - The Supreme Court criticized the Gwalior Municipal Corporation (GMC) for arbitrarily restricting a tender for lift supply, installation, testing, commissioning, and maintenance under the Pradhan Mantri Awas Yojana to 10 multinational corporations, excluding Indian firms like Omega Elevators. The Court found GMC's presumption that Indian manufacturers are inherently incapable of competing with foreign companies to be "wholly untenable" and disapproved of such discriminatory practices. While the Court disposed of the appeal as infructuous due to the completion of the tendered work, it emphasized that tender processes must not be arbitrary or favor multinational entities without justification. [Relied on: *Union of India v. International Trading Co.*, (2003) 5 SCC 437; Para 12]

[Arising out of impugned final judgment and order dated 20-03-2020 in WP No.1358/2020, 12-10-2020 in RP No.544/2020 passed by the High Court of Madhya Pradesh at Gwalior]

For Petitioner(s): Mr. Bhargav Hasurkar, Adv. Ms. Jesal Wahi, AOR Mr. Kabir Hathi, Adv.

For Respondent(s): Mr. Sandeep Singh, AOR

ORDER

1. Leave granted.
2. The appellant-Company before us is aggrieved by the judgment dated 20.03.2020, passed by the High Court of Madhya Pradesh at Gwalior as well as the order dated 12.10.2020, whereby their Review Petition was also declined. These dual orders thus form the subject-matter of challenge in these appeals.
3. We may briefly advert to the facts of the instant case, before making any observation on merits. The Gwalior Municipal Corporation (in short, the "GMC") issued a Notice Inviting Tender (in short, the "NIT") on 17.12.2019: inviting certain permitted bidders to submit their bid(s) for the work of supply, installation, testing, commissioning, and maintenance of lifts, including allied works under the Pradhan Mantri Awas Yojana at Mahal Gaon Ki Pahadi and Manpur, Gwalior, Madhya Pradesh. Notably, the work was required to be completed within six months, and the value of the tender was approximately Rs. 1460.60 lakhs.
4. The appellant-Company firstly submitted a representation to the GMC to partake in the aforementioned NIT. When it failed to receive any response therefrom, it submitted its bid online, on 10.01.2020.
5. At this juncture, it is apposite to point out that the reason why the appellant was not permitted to participate in the NIT or submit bids towards securing the tender was that the GMC had annexed a list of 10 companies to the NIT, who alone would be eligible and permitted to submit bids for the particular contract. Statedly, these companies were considered to be the 10 most reputed firms in the business of manufacturing lifts/elevators and were accordingly selected by the GMC to ensure quality services.
6. The aggrieved appellant eventually approached the High Court, but its writ petition has been dismissed, primarily on the strength of a decision of this Court in Global Energy Ltd. and another vs. Adani Exports Ltd. and others, (2005) 4 SCC 435. Needless to say, the ruling in *Global Energy (supra)* chiefly held that the terms of a tender notice by a statutory authority

must not be generally interfered with, unless wholly arbitrary, discriminatory, or actuated by malice.

7. As noticed earlier, the lift installation work was to be executed within six months, and since no *interim* stay was granted either by the High Court or by this Court, it is not in dispute that the work has since been completed by the successful bidder, who, incidentally, has not been arrayed as one of the respondents. No effective relief, therefore, can be granted to the appellant.

8. The short question, however, that survives for consideration is whether the GMC's decision to restrict the bidding process to only 10 companies—and thereby exclude all other potential bidders—can be justified in light of the precedent cited above, and whether the High Court correctly applied the *ratio decidendi* of that decision.

9. We have heard learned Counsel for the parties, and minutely perused the record.

10. The legal principle that the terms of a public tender notice are not generally open to judicial scrutiny and interference, unless found to be *per se* arbitrary—is well known. It is trite law that judicial review would apply to the exercise of contractual powers by the Government, to the limited extent of preventing arbitrariness or favouritism.¹ Of course, what constitutes an arbitrary action is ultimately to be answered in the facts and circumstances of any given case.²

11. We have already set out the factual backdrop of these appeals hereinabove. It appears to us that the assertion that an open tender would render the allotment process cumbersome and time-consuming, or the claim that permitting bidders beyond the designated 10 would result in the installation of inferior quality lifts, is seemingly conjectural — and a mere presumption based on surmises.

12. Admittedly, all 10 companies flagged by the GMC as eligible in the NIT are multi-national corporations, and are all based outside India. This fact clearly indicates that the GMC ostensibly believes that a company's status as a global entity *ipso facto* confers on it the requisite repute and expertise necessary to undertake the specified works. In our considered opinion, it is wholly untenable to argue that Indian manufacturers (such as the present appellant) are inherently incapable of competing with international products, or that any service tendered by them would be of an inferior nature. We, in no uncertain terms, disapprove of such presumptive practices. Save and except in a case where the competent authority, after following an objective analysis by an expert team, arrives at a well-reasoned, non-discriminatory, and scientifically supported conclusion. No such argument or supporting material was submitted by the GMC before the High Court or before us. We further believe that there are several other remedial measures which could have been taken by the GMC, including the prescription of stricter standards and criterions in the NIT, to ensure that there is no compromise with the quality or post-installation services.

13. That being so, while we dispose of these appeals as infructuous, we caution and expect the GMC to act in a more transparent manner keeping the observations made hereinabove in the future. The impugned judgment and orders of the High Court stand modified/explained to the extent above.

14. The appeals are disposed of in the above terms.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)

¹ Tata Cellular v. Union of India, (1994) 6 SCC 651.

² Union of India v. International Trading Co., (2003) 5 SCC 437