

2025 LiveLaw (SC) 971

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJAY KUMAR; J., ALOK ARADHE; J.**

OCTOBER 6, 2025.

CIVIL APPEAL NO. OF 2025 (@ SLP (C) No. 24075 of 2025)

VINISHMA TECHNOLOGIES PVT. LTD. *versus* STATE OF CHHATTISGARH & ANR.

Constitution of India, 1950 - Article 19(1)(g) – Issue - Whether the impugned tender condition prescribing past local supply experience is reasonable, non-arbitrary, and constitutionally valid under Articles 14 and 19(1)(g) of the Constitution, or whether it constitutes an artificial barrier excluding competent bidders and violating the doctrine of level playing field – Held, government discretion in tender conditions is subject to the tests of reasonableness, fairness and non-arbitrariness - The principle of non-discrimination under Article 14 and the right to carry on business under Article 19(1)(g) were applied, including the doctrine of level playing field that mandates equal opportunity to equally placed competitors - The tender condition restricting eligibility to bidders with past supply experience specifically in Chhattisgarh was held arbitrary and disproportionate to the objective of ensuring effective supply - Noted that such restriction encourages cartelization and violates constitutional provisions by closing the market to competent outside bidders without sufficient justification - The State's justification based on Maoist affected areas was rejected as untenable since the tender concerned non-security sensitive goods and localized conditions did not justify exclusion - Held tender condition requiring past supply within one state irrational, violates Article 19(1)(g) - Set aside High Court order and Appeal allowed. [Relied on *Ramana Dayaram Shetty v. International Airport Authority of India* 1973 3 SCC 489; Paras 16-21]

WITH CIVIL APPEAL NO. OF 2025 (@ SLP (C) No. 26192 of 2025) AND CIVIL APPEAL NO. OF 2025 (@ SLP (C) No. 23611 of 2025)

For Petitioner(s): Mr. M. Dutt, Sr. Adv. Mr. Nitish Kumar Singh, Adv. Mr. Abhishek Raj, Adv. Mr. Amit Kumar Thakur, Adv. Mr. Harsh Abhishek, Adv. Mr. Anil Kumar Soni, Adv. Mr. Anand Kumar Soni, Adv. Mr. Niteen Kumar Sinha, AOR

For Respondent(s): For State of Chhattisgarh Mr. Praphulla Kumar Bharat, Sr. Adv./A.G. Ms. Ankita Sharma, Adv./AOR Mr. Arjun D. Singh, Adv. Ms. Ishika Neogi, Adv.

For State Project Director Mr. Balbir Singh, Sr. Adv. Mr. Pallav Mongia, AOR Samagra Shisha Mr. Anubhav Mishra, Adv. Chhattisgarh Ms. Kashish Lalwani, Adv.

For intervenor/ impleader in IA 241372/2025 in SLP(C) 24075/2025 Mr. Sunil Otewani, Sr. Adv. Mr. Amit Soni, Adv. Mr. Rajat Khattri, Adv. Mr. Abhay Kumar, AOR Mr. Shagun Ruhil, Adv.

J U D G M E N T

ALOK ARADHE, J.

- 1. Leave granted.**
- 2. These appeals take exception to orders dated 11.08.2025 and 12.08.2025 passed in three Writ Petitions preferred by the appellant. The High Court of Chhattisgarh by the said orders, has repelled the challenge to the impugned tender condition contained in three tender notices dated 21.07.2025 which were issued for supply of Sports Kits to the students of Government Primary School, Government Upper Primary Schools and Government High and Higher Secondary Schools in the State of Chhattisgarh.**

3. The facts giving rise to filing of these appeals which lie in a narrow compass, are as under:

(I) FACTS

4. The appellant is a Company registered under the Companies Act, 2013 and claims to have experience of supplying Sports Kits to various Departments of the States of Bihar, Karnataka, Gujarat and Government of NCT Delhi. The respondent No. 1 is State of Chhattisgarh whereas respondent No. 2 is State Project Director, Samagra Shiksha Chhattisgarh State Project Office, Department of School Education, Government of Chhattisgarh.

5. The Integrated Child Development Service (ICDS) Scheme is a Scheme for providing for supplementary nutrition, immunization and pre-school education to the children, launched in the year 1975, is a popular flagship program of the Central Government. The said Scheme provides for the integrated package of services, for the holistic development of the child and is a centrally sponsored scheme implemented by State Governments and the Union Territories. The Scheme is largely funded by the Government of India.

6. The Samagra Shiksha Chhattisgarh State Project Office, Department of School Education, Chhattisgarh published three tender notices (hereinafter to be referred to as "impugned tender notices") on 21.07.2025 through Government-e-Market Place Portal for supply of Sports Kits to the students of Primary School, Upper Primary Schools and High and Higher Secondary Schools run by the State Government in the State of Chhattisgarh. The Sports Kits were to be supplied to 5540 cluster resource centres situated across all 33 districts in the State. The tender value of the contract was Rs.15.24 crores, Rs.13.08 crores and Rs.11.49 crores.

7. Section III(A) of the impugned tender notices prescribe qualification criteria with additional terms and conditions. The appellant was aggrieved by additional terms and conditions namely, condition Nos. 1, 4, 11 and 13, which rendered the appellant ineligible for participation in the impugned tender process. It, therefore, submitted a representation on 29.07.2025 to the State Project Director, Samagra Shiksha, School Education Department, Chhattisgarh. The aforesaid representation failed to evoke any response. The appellant thereupon filed three writ petitions, namely, Writ Petition (C) No. 4266 of 2025, Writ Petition (C) No. 4263 of 2025 and Writ Petition (C) No. 4274 of 2025, before the High Court in which validity of the aforesaid impugned tender conditions was challenged.

8. During the pendency of the writ petition by way of corrigendum dated 07.08.2025 condition Nos. 1, 11, and 13 were deleted. The Division Bench of the High Court by a common order dated 11.08.2025 passed in Civil Writ Petition (C) No. 4266 of 2025, Writ Petition (C) No. 4263 of 2025 and by an order dated 12.08.2025 passed in Writ Petition (C) No. 4274 of 2025, *inter alia* held that the impugned eligibility condition namely, condition No. 4 with regard to past performance is of similar nature and purpose, as, the condition in **Association of Registration Plates v. Union of India and Ors**¹. It was further held that respondents have demonstrated that the impugned tender condition is not unique to the State of Chhattisgarh but is prevalent in other States such as Gujarat, Assam, Delhi, Orissa and Jharkhand. It was further found by the High Court that a contract containing a similar condition, was awarded to the appellant in the State of Jharkhand.

¹ (2005) 1 SCC 679

The High Court repelled the challenge to impugned tender condition on the ground of discrimination and unreasonableness.

9. It was further held by the Division Bench that State is entitled to prescribe the condition in the impugned tender notices, to ensure that selection of the most capable and reliable bidder takes place, to execute the public project of significant scale, sensitivity and public importance. It was also held that impugned tender condition is neither violative of Article 14 nor Article 19 (1)(g) of the Constitution of India and relates to legitimate object of ensuring technical competence, financial strength, operational capacity as well as long term reliability of successful bidder. Accordingly, the writ petitions preferred by the appellant were dismissed. In the aforesaid factual background, these appeals arise for our consideration.

(II) SUBMISSIONS OF APPELLANT

10. Learned Senior Counsel for the appellant submitted that High Court has failed to appreciate that decision of this Court in **Association of Registration Plates** (supra) has no application to the obtaining factual matrix of the case and therefore, erred in placing reliance on the said decision while deciding the writ petitions. It is further submitted that the impugned tender condition which prescribes that bidders must have supplied Sports Kits worth at least Rs.6.00 crores (cumulative) to State Government agencies of Chhattisgarh in last 3 financial years is violative of Articles 14 and 19(1) (g) of the Constitution of India, as it excludes competent suppliers from outside the State and discourages wider participation and fosters cartelisation. It is urged that the impugned tender condition excludes the appellant from participating in the impugned tender. It is therefore urged that the impugned common orders are liable to be quashed and set aside and the impugned tender condition is liable to be struck down.

(III) SUBMISSIONS OF RESPONDENT

11. On the other hand, learned Senior Counsel for respondent No. 2 submitted that the tendering authority is well within its power to frame the impugned tender condition. It is further submitted that in view of geographic/social conditions of State of Chhattisgarh, the impugned tender condition is incorporated to safeguard timely delivery, ensure quality compliance and prevent supply chain disruptions. It is also submitted that impugned condition is prevalent in other States as well. It is pointed out that on 21.08.2025, financial bids have already been opened and the successful bidders have been identified. It is urged that in case this Court interferes with the impugned tender process, the consequent re-tendering would consume a considerable time and substantial portion of academic year would stand forfeited.

12. Learned Senior counsel for respondent No. 1 has adopted the submissions made on behalf of respondent No. 2 and has submitted that the impugned tender condition has been incorporated with an object to ensure that successful bidder has the knowledge of the topography of the State of Chhattisgarh which is a Naxal affected State, so that Sports Kits could be timely delivered to the children of Government Schools in the State.

(IV) ANALYSIS

13. We have considered the rival submissions and have perused the record. For the facility of reference the impugned tender condition is extracted below:

“(4) Past Performance Restriction : Bidders must have supplied sports goods worth at least Rs.6.00 crores (cumulative) to State Government agencies of Chhattisgarh in the last three financial years (2021-22, 2022-23, 2023-24 or 2022-23, 2023-24, 2024-25).”

14. The solitary question which arises for consideration in the instant appeals is whether the aforesaid impugned tender condition meets the test of reasonableness and fairness and or whether the same constitutes an arbitrary criteria which excludes the other eligible bidders from participation thereby violating, the mandate contained in Articles 14 and 19(1)(g) of the Constitution of India.

15. Before proceeding further, it is apposite to briefly advert to contours of judicial review with regard to tender conditions which are well delineated. A three Judge Bench of this Court in **Ramana Dayaram Shetty v. International Airport Authority of India & Ors.**², held that discretion of the Government in granting the largesse, is not unlimited and the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. It has further been held that Government cannot without adequate reason exclude any person from dealing with it or take away largesse arbitrarily. It also held that activities of the Government have a public element and therefore there should be fairness and equality. It is well settled in law that Government must have free hand in setting the terms of the tender and the Court cannot strike down the terms of the tender prescribed by the Authority merely because it feels some other terms in the tender would have been fairer, wiser or more logical³. It is equally well settled legal proposition that in the matter of formulating conditions of tender document unless the action of tendering authority is found to be arbitrary and malicious the Court would not interfere⁴. It is also well settled in law that a Court cannot sit over judgment on what should be the eligibility criteria in the tender notice unless the same is arbitrary, discriminatory or actuated by *mala fides*.⁵

16. The principle of non-discrimination is embodied in Article 14 of the Constitution of India. Article 14 has to be read in conjunction with Rights conferred by other Articles like Article 21 of the Constitution of India. Article 21 of the Constitution of India refers to Right to Life which includes 'opportunity' as well. The doctrine of level playing field is an important concept while construing Article 19 (1) (g) of the Constitution of India. Article 19(1) (g) confers Fundamental Right to carry out business to a company, it is entitled to invoke the doctrine of level playing field which is however, subject to public interest. The doctrine of level playing field provides the space within which equally placed competitors are allowed to bid so as to subserve larger public interest.⁶

17. In the backdrop of well settled legal principles, we advert to the fact of the case in hand. The present tender is for supply of Sports Kits to the students of Primary School, Upper Primary School and High and Higher Secondary School run by the State Government in the State of Chhattisgarh. The eligibility criteria mentioned in the impugned tender notices must have rational nexus with the object sought to be achieved i.e., supply of good quality Sports Kits to students of the school, at the best price. The eligibility criteria in impugned notices therefore, should be framed in a manner which encourages wider participation and secures the best prize for the State, which in turn safeguards the public exchequer.

18. This Court in **BHARAT FORGE** supra has enunciated the doctrine level playing field and has stated that the same finds expression in Article 19(1)(g) of the Constitution. The

² (1979) 3 SCC 489; AIR 1979 SC 1628

³ Directorate of Education & Ors. v. EDUCOMP Datamatics Ltd. & Ors. (2004) 4 SCC 19

⁴ Global Energy Ltd. & Anr. v. Adani Exports Ltd. & Ors. (2005) 4 SCC 435 - Shimni Utsch India Pvt. Ltd. & Anr. v. West Bengal Transport Infrastructure Development Corporation Ltd. & Ors (2010) 6 SCC 303.

⁵ Icomm Tele Ltd vs. Punjab State Water Supply and Sewerage Board & Anr. (2019) 4 SCC 401; Uflex Ltd. V. Government of Tamil Nadu & Ors. (2022) 1 SCC 165

⁶ UOI & Ors. Bharat Forge Ltd. & ANR. (2022) 17 SCC 188.

doctrine of level playing field requires that all equally placed competitors must be given an equal opportunity to participate in trade and commerce. It is designed to prevent the State from skewing the market in favour of few by erecting artificial barriers. In the instant case, the impugned tender condition has the effect of excluding bidders who though otherwise financially sound and technically competent, have no experience of supply of sports goods to the State Government agencies of Chhattisgarh in past three years. The State by linking the eligibility criteria with past local supplies has created an artificial barrier, against the suppliers who had no past dealing with the State of Chhattisgarh. The impugned condition curtails the fundamental rights of the bidders, who have been ineligible to participate in the tenders.

19. The object of public procurement is to secure quality goods and services for the benefit of public exchequer. The said object can be achieved by requiring the bidders to demonstrate financial capacity, technical experience, and past performance in contracts of similar nature, regardless of place of performance of the contract. To confine the eligibility to participate in the tender, within one State is not only irrational but is also disproportionate to the goal of ensuring effective delivery of Sports Kits.

20. Such a restriction, therefore, cannot be justified as reasonable within the meaning of 19(6) of the Constitution of India. The State while it enjoys the freedom to prescribe the conditions in the tender, cannot exercise that power in a manner that infringes upon constitutional guarantees, by closing the market to outsiders without just cause. The doctrine of level playing field requires that gates of competition be opened to all who are equally placed. The impugned tender condition excludes the competent and experienced suppliers, who may have executed contracts of far greater magnitude in other States or for the Central Government departments, from participating in the tender and has the impact of promoting cartelisation. The impugned condition operates as a closed door to outsiders and restricts the wider participation of bidders and restricts competition. The impugned tender condition, therefore, is violative of Article 14 and also offends Article 19(1)(g) of the Constitution of India.

21. The justification advanced by the State that Chhattisgarh being a Maoist affected area and only those with past experience of supply in the State to State Government agencies of Chhattisgarh can be relied upon, is untenable for several reasons. Firstly, the tender in question is not for security sensitive equipment but is for supply of Sports Kits which does not involve, any special risk or security repercussions. Secondly, only some districts of Chhattisgarh are affected by Maoist activities, and it is incorrect to treat the entire State, as uniformly affected by Naxalites, for exclusion of other eligible bidders. Thirdly, a successful bidder, who may not be conversant with the topography can engage a local supply chain to supply the Sports Kits.

22. In the light of aforesaid discussion this Court finds that impugned tender condition is arbitrary, unreasonable and is discriminatory. The same does not have any rational nexus to the object of ensuring effective supply of Sports Kits to the children in State. It offends the mandate of Article 14 and freedom of trade guaranteed by Article 19(1)(g) of the Constitution of India.

(V) CONCLUSION

23. In the result, the impugned orders dated 11.08.2025 and 12.08.2025 passed in Writ Petition (C) No. 4266 of 2025, Writ Petition (C) No. 4263 of 2025 and Writ Petition (C) No. 4274 of 2025 respectively by the High Court as well as impugned tender notices dated 21.07.2025 issued by Department of School Education, Government of Chhattisgarh for

supply of Sports Kits to students of Government Primary, Upper Primary, High and Higher Secondary Schools are quashed and set aside. Needless to state that respondents are at liberty to issue fresh notices inviting tenders. Accordingly, the appeals are allowed.

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