APHC010102442025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3328]**
(Special Original Jurisdiction)

TUESDAY ,THE SIXTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

<u>WRIT PETITION NO: 5435 OF 2025</u>

Between:

1. VIKRAM BOOK LINKS PRIVATE LIMITED, REP.BY. ITS AUTHORISED REPRESENTATIVE, CIN. U22219AP2008PTC057907, PLOT.NO.1-12, RAMASWAMY TOWERS, YSR INNER RING ROAD, 0PP. AJITHSINGH NAGAR AREA, VIJAYAWADA, NTR DISTRICT, AP - 520015.

2. .R.SRINIVAS VIKRAM, , S/O. RAVIKRINDI RAMASWAMY, AGE 45 YEARS, OCC AUTHORISED REPRESENTATIVE - CUM - CHIEFEXECUTIVE OFFICER. M/S. VIKRAM BOOK LINKS PRIVATE LIMITED, OFFICE AT PLOT.NO.1-12, RAMASWAMY TOWERS, YSR INNER RING ROAD, 0PP. AJITHSINGH NAGAR AREA, VIJAYAWADA, NTR DISTRICT, AP - 520015.

...PETITIONER(S)

AND

1. THE STATE OF AP, REP.BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF SCHOOL EDUCATION, SECRETARIAT BUILDINGS, VELAGAPUDI VILLAGE, TULLUR MANDAL-GUNTUR DISTRIC ANDHRA PRADESH.

2. THE COMMISSIONER OF SCHOOL EDUCATION, DEPARTMENT OF SCHOOL EDUCATION, ANDHRA PRADESH, D.NO.398/3, VIDYA BHAVAN, VENKATADIRI TOWERS, ATMAKUR(V) MANGALAGIRI(M), GUNTUR DISTRICT -522503.

3. THE DIRECTOR, ANDHRA PRADESH GOVERNMENT TEXTBOOK PRESS, DEPARTMENT OF SCHOOL EDUCATION, ANDHRA PRADESH 5TH FLOOR, VIDHYA BHAVAN, ATMAKURU, MANGALAGIRI, GUNTUR DISRICT, ANDHRA PRADESH.

4. EPROCUREMENT DEPARTMENT, IT, E AND C, DEPARTMENT, REPRESENTED BY ITS DIRECTOR, SECRETARIAT BUILDINGS, VELAGAPUDI, AMARAVATI GUNTUR DISTRICT.

...RESPONDENT(S):

Counsel for the Petitioner(S):

1. TAGORE YADAV YARAGORLA

Counsel for the Respondent(S):

1 GP FOR SCHOOL EDUCATION

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The Court made the following ORDER:

Heard Sri Y. Tagore Yadav, Ld. Counsel for the Writ Petitioners and Sri G. Rama Chandra Rao, Ld. Government Pleader for Education for the Responents.

2. The present Writ Petition is filed seeking the following relief:

> *"It is humbly prayed that this Hon'ble Court may be pleased to issue a Writ or order or direction more particularly one in the nature of **Writ of Mandamus:***
>
> > *i. Declaring the impugned Tender Notification Rc.No.109/T2/2025 dated 18.02.2025 issued by the Respondent/s herein is illegal, Arbitrary, violative of principles of natural justice, Contrary to the A.P. Financial Code and General Financial Rules (GFR), 2017 apart from Article 14, 19 (1)(g) and 21 of the Constitution of India, 1950 and Consequently, to*

set-aside/quash the Notification Rc.No.109/T2/2025 dated 18.02.2025;

ii. Declaring that the failure to conduct a pre-bid meeting in the impugned tender notification Rc.No.109/T2/2025 dated 18.02.2025 is violation of the principles of natural justice, transparency and fair competition in public procurement and consequently, direct the respondents to hold a pre-bid meeting;

iii. and allow bidders to submit revised bids after addressing their concerns.

AND consequently direct the Respondent Authorities to ensure to have wider participation at par with the neighbouring states while having sufficient securities in place in order to achieve affordable education and fair and transparent policy to keep majority of the serious publishers within the zone of eligibility so as to have timely and effective supply of books to the needy students AND/OR to pass such other order or orders as this Hon'ble court may deem fit and proper in the interest of justice."

The facts as presented by the Writ Petitioner are that:

3. The Writ Petitioners are the Printers and Suppliers of the Textbooks to various State Governments. The Writ Petitioner No.1, through Writ Petitioner No.2, had been printing and supplying the Textbooks to the Department of Education for supply of Textbooks to the schools in the state.

4. The Director, Andhra Pradesh Government Textbooks Press (Respondent No.3) has issued a Tender Notification bearing Notification vide Rc.No.109/T2/2025, dated 18.02.2025 (Ex.P.1) calling for "Expression of

Interest (EoI)" for Empanelment of Printers/Publishers/Book Distributors of Andhra Pradesh for printing and distribution of school textbooks/workbooks (with paper) for sale component to the students studying in private schools for the Academic Years 2025-2026 & 2026-2027. The notable tender conditions would include Clause-5 in Section-I dealing with the 'Scope of Work'. Clauses 8 and 9 of Section-II of the Tender Notification dated 18.02.2025 (Ex.P.1) deals with supply of sample copies at the earliest point of time so that the textbooks should be made available and also with regard to 'Annual Turnover'.

5. In the original Tender Notification that was issued on 18.02.2025, Clause 9 of Section-II read as under:

> *"**9. <u>ANNUAL TURNOVER</u>:** The annual turnover for submission of Expression of Interest (EoI) for Empanelment of the printers/publishers/Book distributors is Rs.10.00 crores for each year for the last three financial years i.e., 2022-23, 2023-24 and 2024-25. In support of this they have to submit the necessary documentary evidence (i.e., Xerox copies of the annual accounts) and audited statements certified by Charted Accountant with a valid UDIN Number etc.,"*

6. In the original Tender Notification that was issued on 18.02.2025, Clause 14 of Section-II read as under:

> "*14. The bidder who wish to participate in this tender should have an experience of minimum of two years in last three years i.e., 2022-23, 2023-24 and 2024-25 in printing and publication of school books in Andhra Pradesh."*

7. Within three days thereafter, a Corrigendum was issued on 20.02.2025 amending the Clause-9 of Section-II. The Corrigendum that was issued on 20.02.2025 by amending the clause-9 reads as under:

> "***9. Annual Turnover:*** *As per Tender Condition to point No.9. The annual turnover for submission of expression of Interest (EoI) for empanelment of the printers/ publishers/book distributors is Rs.10 crores for each year for the last 3 financial years i.e. 2021-22, 2022-23 and 2023-24 for annual turnover and Income tax returns."*

8. Another Corrigendum was also issued on 21.02.2025 by amending Clause-14 of Section-II in the original Tender Notification. Amended Clause-14 of Section-II reads as under:

> *"The bidder who wishes to participate in this tender should have an experience of minimum of two years in last five years i.e., 2020-2021, 2021-2022, 2022-23, 2023-24 and 2024-25 in printing, publication and distribution of school textbooks and workbooks in Andhra Pradesh"*

SUBMISSIONS OF THE LD. COUNSEL FOR THE WRIT PETITIONERS:

9. Sri Y. Tagore Yadav, Ld. Counsel for the Writ Petitioners has made the following submissions:

9.1. That the tender conditions as laid down by the Government of Andhra Pradesh during the yesteryears had fixed a minimum turnover of five crores during the last three financial years. Whereas, Clause-9 of the Section-II Tender Notification had doubled the minimum turnover and made it as ten crores for the last three financial years i.e., 2022-2023, 2023-2024 and 2024-2025.

9.2. Prior to the issue of the Tender Notification on 18.02.2025, the Writ Petitioner No.1 had addressed a Letter dated 05.02.2025 (Ex.P.2) to the Director of School Education informing the Government that the price of the paper has got significantly reduced in the market from Rs.115 per kg to Rs.80 per kg leading to a substantial decrease in the overall production cost. It is also stated in the said Letter that considering this reduction, the per-page rate can be adjusted by 15% lower than the previously fixed rate, which would directly benefit the students by making the subject textbooks more affordable. It was also requested by the Writ Petitioners that this development of reduced cost of the paper may be factored-in while issuing the Tender Notification.

9.3. The Writ Petitioner No.1 has also addressed another Letter on 24.02.2025 i.e., after the Tender Notification was issued on 18.02.2025 stating that the Writ Petitioners were not invited for any discussion despite informing the Government about the reduced cost of the paper.

9.4 . That up to the previous academic year (2024-2025) the eligibility criteria for the bidders to participate in the Tender notification for supply of text books was ‘five crores’ turnover per annum; whereas, the present Tender Notification has fixed minimum turnover per annum as ‘ten crores’ atleast for two financial years in the three previous financial years. Ld. Counsel would submit that this condition is not only arbitrary, but has been tailor-made so as to exclude certain bidders and to reduce the competition with a view to provide benefit to certain bidders.

9.5. That the case of the Writ Petitioners may be considered for empanelment for the purpose of encouraging micro and small scale industries which are registered with the National Small Industries Corporation Ltd (NSIC). Since the Writ Petitioner No.1 is also a small scale industry, which is registered with the NSIC, the Ld. Counsel for the Writ Petitioners would submit that the modification of the condition that was prevailing during the yesteryears i.e., the increase of the turnover from five crores to ten crores, is highly arbitrary. Ld. Counsel for the Writ Petitioners has also taken this Court through various clauses of the Tender Notification issued by the Government of Telangana for the academic year 2024-2025. He has also drawn the attention of this Court to the Tender Notification issued by the Government of Andhra Pradesh for the academic years 2023-2024, 2024-2025 (Ex.P.4). He has drawn the attention of this Court to clause 19 of the Tender Condition of the earlier Tender issued on 09-03-2023 for the academic years (2023-2024 & 2024-2025) to state that the five crores turnover was the minimum threshold that was fixed.

9.6. He would submit that the thresholds have been raised only with a view to accommodate M/s. Vyjayanti Printers. However, M/s. Vyjayanti printers have not been impleaded as a party Respondent in the present Writ Petition.

9.7. The reason for increase of the turnover threshold from five crores to ten crores was justified by the Official Respondents by stating that the suppliers have defaulted in payment of Royalty in the earlier Tender Notifications for the academic years 2023-2024 & 2024-2025. It is stated by the Ld. Counsel for the Writ Petitioners that the reason shown by the Government of Andhra Pradesh for increase of the turnover from five crores to ten crores due to the defaults by the suppliers in payment of the Royalty to the Government is factually incorrect. He would submit that several publishers were empanelled during the academic years 2023-2024, 2024-2025, but not a single supplier has defaulted the payment of Royalty to the Government of Andhra Pradesh.

COUNTER-AFFIDAVIT OF RESPONDENTS:

10. The Official Respondents have filed Counter-Affidavit. They have contended in the Counter-Affidavit that fixation of the threshold of turnover by increasing from five crores to ten crores is not arbitrary and inasmuch as the Government has the right to fix the thresholds depending on the previous experiences as well as to ensure seamless supply of Textbooks. The Government has also contended that no favoritism is shown to any one nor are the Tender conditions tailor-made to favour some firms and to discriminate certain other firms. It was also stated in the Counter-Affidavit that the threshold was raised for avoiding default in payment of royalty in the future.

SUBMISSIONS OF LD. GOVERNMENT PLEADER FOR EDUCATION:

11. Sri Gurram Ramachandra Rao, Ld. Government Pleader for Education would submit that the total number of bidders who had bidded in the present Tender Notification are ‘13’ in number. He would submit that out of the ‘13’ bidders, ‘8’ bidders were qualified in the technical bid. Amongst the five bidders who were not qualified in the technical bid, two bidders were not

qualified on account of lack of turnover of ten crores and the other three bidders were disqualified for other reasons.

11.1. He would also submit that not only the Writ Petitioners but also all the other bidders were registered with NSIC and they all possess NSIC Certificates, either under Micro Industries or Small Industries. He would also submit that the Corrigendum dated 21.02.2025 is not arbitrary. He would submit that out of the 13 bidders, 12 bidders are qualified even without applying the Corrigendum dated 21.02.2025.

11.2. Ld. Government Pleader for Education would also submit that while the bidders are expected to have a minimum turnover of ten crores for 2 years out of the last five years (as per the Corrigendum dated 21.02.2025), the Writ Petitioners herein has a turnover of ten crores for the academic year 2023-2024, but the Writ Petitioners does not have the ten crores turnover for the financial years 2020-2021, 2021-2022, 2022-2023 and 2024-2025.

12. Ld. Counsel for the Writ Petitioners has placed on record the following judgments:

(1) ***Tata Cellular Vs. Union of India; (1994) 6 Supreme Court Cases 651***. (Para Nos. 77, 79 and 80).

(2) ***Small Scale Industrial Manufactures Association (Registered) Vs. Union of India and Others; (2021) 8 SCC 511.*** (Para Nos. 73, 75, 81, 103).

(3) ***Reliance Energy Ltd. and another Vs. Maharashtra State Road Development Corpn. Ltd. And others; (2007) 8 SCC 1***. (Para No.36)

(4) ***Meerut Development Authority Vs. Association of Management Studies and Another; (2009) 6 SCC 171.*** (Para No.36).

(5) ***New Horizons Limited and another Vs. Union of India and others; (1995) 1 SCC 478***. (Para No.17)

(6) ***Raunaq International Ltd. Vs. I.V.R. Construction Ltd. and others;(1999) 1 SCC 492.*** (Para Nos.19 & 22)

13. Sri Gurram Ramachandra Rao, Ld. Government Pleader has relied on certain decisions and would contend that the aspects relating to the technical bid cannot be judicially reviewed inasmuch as the Government has the absolute right to fix its' own criteria. He has also cited certain judgments relating to the turnover to say that the employer has the right to fix the turnover basing on its' past experiences and the smooth supply of the goods/products in the future.

14. Sri Gurram Ramachandra Rao, Ld. Government Pleader for Education has referred to the following Judgments:

(1) ***Banshidhar Construction Private Limited Vs. Bharat Coking Coal Limited and Others; (2024) 10 SCC 273.***

(2) ***Tata Motors Limited Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others; 2023 SCC Online SC 671.***

(3) ***Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs. New J.K. Roadways, Fleet Owners and Transport Contractors and Others; (2021) 16 SCC 808.***

(4) ***Central Coalfields Limited and another Vs. SIl-SML (Joint Venture Consortium) and others; (2016) 8 SCC 622.***

(5) ***Director of Education and Ors., Vs. Educomp Datamatics Ltd., and Ors.,;(2004) 4 SCC 19.***

(6) ***Michigan Rubber (India) Ltd., Vs. State of Karnataka and Ors.,; (2012) 8 SCC 216.***

15. Insofar as the issue of technical bid is concerned, this Court is of the opinion that issue is squarely covered by the judgment of the Hon'ble Apex Court ***in Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs. New J.K. Roadways, Fleet Owners and Transport Contractors and Others***; ***(2021) 16 SCC 808.*** In Para Nos. 14 to 19 the Hon'ble Apex court had analysed the nature of tender document and the dominant position of the Authority in prescribing the 'conditions' in the tender document. Para Nos. 14 to 19 are usefully extracted hereunder:

> ***14.*** *In a series of judgments, this Court has held that* ***the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings****. In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] , this Court held : (SCC p. 825, para 15)*

> *"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."*
>
> *(emphasis supplied)*

15. *In the judgment in Bharat Coking Coal Ltd. v. AMR Dev Prabha [Bharat Coking Coal Ltd. v. AMR Dev Prabha, (2020) 16 SCC 759] , under the heading "Deference to authority's interpretation", this Court stated : (SCC p. 776, paras 50-52)*

> *"50. Lastly, we deem it necessary to deal with another fundamental problem. It is obvious that Respondent 1 seeks to only enforce terms of the NIT. Inherent in such exercise is interpretation of contractual terms.* ***However, it must be noted that judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting statutes****.*
>
> *51. In the present facts, it is clear that BCCL and C1-India have laid recourse to clauses of the NIT, whether it be to justify condonation of delay of Respondent 6 in submitting performance bank guarantees or their decision to resume auction on grounds of technical failure. BCCL having authored these documents, is better placed to appreciate their requirements and interpret them. (Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] , SCC para 15)*

52. The High Court [Amr-Dev Prabha v. Union of India, 2018 SCC OnLine Jhar 2708] ought to have deferred to this understanding, unless it was patently perverse or mala fide. ***Given how BCCL's interpretation of these clauses was plausible and not absurd, solely differences in opinion of contractual interpretation ought not to have been grounds for the High Court to come to a finding that the appellant committed illegality.****"*

(emphasis supplied)

16. *Further, in the recent judgment in Silppi Constructions Contractors v. Union of India [Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489] , this Court held as follows : (SCC pp. 502-503, para 20)*

"*20.* ***The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case****."*

(emphasis supplied)

17. *In accordance with these judgments and noting that the interpretation of the tendering authority in this case cannot be said to be a perverse one, the Division Bench ought not to have interfered with it by giving its own interpretation and not giving proper credence to the word "both" appearing in Condition 31 of the NIT. For this reason, the Division Bench's [New J.K. Roadways v. State (UT of J&K), 2020 SCC OnLine J&K 733] conclusion that J.K. Roadways was wrongly declared to be ineligible, is set aside.*

18. *Insofar as Condition 27 of the NIT prescribing work experience of at least 5 years of not less than the value of Rs 2 crores is concerned, suffice it to say that the expert body, being the Tender Opening Committee, consisting of four members, clearly found that this eligibility condition had been satisfied by the appellant before us. Without therefore going into the assessment of the documents that have been supplied to this Court, it is well settled that unless arbitrariness or mala fide on the part of the tendering authority is alleged, the expert evaluation of a particular tender, particularly when it comes to technical evaluation, is not to be second-guessed by a writ court. Thus, in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] , this Court noted : (SCC pp. 531-32, para 22)*

> *"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be*

> *permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:*
>
> *(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;*
>
> *OR*
>
> *Whether the process adopted or decision made is so arbitrary and irrational that the court can say:'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached';*
>
> *(ii) Whether public interest is affected.*
>
> *If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."*

(emphasis supplied)

19. *Similarly, in Montecarlo Ltd. v. NTPC [Montecarlo Ltd. v. NTPC, (2016) 15 SCC 272] , this Court stated as follows : (SCC p. 288, para 26)*

> *"26. We respectfully concur with the aforesaid statement of law. We have*

reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender

> *documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints."*

16. In ***Director of Education and Ors., Vs. Educomp Datamatics Ltd., and Ors.,;(2004) 4 SCC 19,*** the Hon'ble Apex Court had with the fixation of thresholds with regard to the turnover in public contracts. Para Nos. 9 to 13 of the judgment is usefully extracted hereunder:

> "9*. It is well settled now that the courts can scrutinise the award of the contracts by the Government or its agencies in exercise of their powers of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth by this Court in Tata Cellular v. Union of India [(1994) 6 SCC 651] .After examining the entire case-law the following principles have been deduced: (SCC pp. 687-88, para 94)*
>
> > *"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."

(emphasis supplied)

10. In Air India Ltd. v. Cochin International Airport Ltd. [(2000) 2 SCC 617] this Court observed: (SCC p. 623, para 7)

"The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedure laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process

> *and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness."*

(emphasis supplied)

11. This principle was again restated by this Court in Monarch Infrastructure (P) Ltd. v. Commr., Ulhasnagar Municipal Corpn. [(2000) 5 SCC 287] It was held that the terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the courts to say whether the conditions prescribed in the tender under consideration were better than the ones prescribed in the earlier tender invitations.

12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.

13. Directorate of Education, Government of NCT of Delhi had invited open tender with prescribed eligibility criteria in general terms and conditions under tender document for leasing of supply, installation and commissioning of computer systems, peripherals and provision of computer education services in various government/government-aided senior secondary, secondary and middle schools under the Directorate of Education, Delhi. In the year 2002-03, 748 schools were to be covered. Since the expenditure involved per annum was to the tune of Rs. 100 crores, the competent authority took a decision after consulting the Technical Advisory

Committee for finalisation of the terms and conditions of the tender documents providing therein that tenders be invited from firms having a turnover of more than Rs. 20 crores over the last three years. The hardware cost itself was to be Rs. 40-45 crores. The Government introduced the criterion of turnover of Rs. 20 crores to enable the companies with real competence having financial stability and capacity to participate in the tender, particularly in view of the past experience. We do not agree with the view taken by the High Court that the term providing a turnover of at least Rs. 20 crores did not have a nexus with either the increase in the number of schools or the quality of education to be provided. Because of the increase in the number of schools the hardware cost itself went up to Rs. 40-50 crores. The total cost of the project was more than Rs. 100 crores. A company having a turnover of Rs. 2 crores may not have the financial viability to implement such a project. As a matter of policy the Government took a conscious decision to deal with one firm having financial capacity to take up such a big project instead of dealing with multiple small companies which is a relevant consideration while awarding such a big project. Moreover, it was for the authority to set the terms of the tender. The courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice the court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. The provision of the terms inviting tenders from firms having a turnover of more than Rs. 20 crores has not been shown to be either arbitrary or discriminatory or actuated by malice."

ANALYSIS:

17. Although, Ld. Counsel for the Writ Petitioners has placed heavy reliance on the Tender conditions in various Tender Notifications of the State of Telangana as well as the State of Andhra Pradesh, particularly with regard to

the academic years 2023-2024, 2024-2025, this Court is of the view that reference to such Tender conditions has no relevance inasmuch as every individual Authority has always right to either prescribe or to modify the Tender conditions ‘at will’. One idiomatic expression states that ‘Monkeys cannot decide the affairs of the forest’ likewise, a bidder can never dictate the employer or the Government Authority with regard to the fixation of tender conditions or the parameters. Even with regard to the offer made by the Writ Petitioners through their Letter dated 05.02.2025 (Ex.P.2), by which the Writ Petitioners had acted like a whistle-blower to the Government informing the Government that the price of the paper has significantly reduced from Rs.150/- per Kg to Rs.80/- per Kg with a request to the Government to factor-in this reduction in price in the Tender document which is likely to be issued in the near future, the said intimation may not enure to the benefit of the Writ Petitioners. It can always be reasonably assumed that the Government and its Authorities are also keeping themselves abreast of the changes in the market price with regard to the cost of paper from time to time. Therefore, no benefit can be attached to the Writ Petitioners in informing the Government with regard to the reduction of price of paper.

18. In the ultimate analysis, this Court is of the opinion that the increase of the threshold with regard to the turnover from five crores per annum to ten crores per annum is neither unreasonable nor arbitrary. This Court is also of the opinion that giving latitude to the bidders to show the minimum turnover of ten crores for two years period during the last five financial years is also not

arbitrary. The facts in the present case would also indicate that out of the 13 bidders, 8 bidders have reached the threshold of turnover of ten crores. Therefore, it cannot be said that fixation of the 10 crores threshold is arbitrary in nature nor is it discriminative in any manner because out of the 13 bidders, 8 bidders were qualified in the technical bid.

19. At this stage, the Court is also reminded of the fact that about 12 bidders got qualified even without the Corrigendum dated 21.02.2025 and therefore, it cannot be said that the Corrigendum that was issued within three days of the earlier Tender Notification is bad in law.

20. In the above premise, this Court is of the opinion that the Writ Petition is devoid of any merit. Accordingly, this Writ Petition is dismissed. No order as to costs.

21. Interlocutory Applications, if any, stand closed in terms of this order.

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GANNAMANENIRAMAKRISHNA PRASAD, J

Dt: 06.05.2025
Mnr/JKS

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HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION No.5435 OF 2025

Dt: 06.05.2025
Mnr/JKS