

Serial No. 1
Supp. cause list

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

WP(C) 2631/2024, CM(2014/2025)
CM(2690/2025) , CM(7135/2024)
CM(7583/2024)

Reserved on: 23.07.2025
Pronounced on: 12.08.2025

1. Zain Electricals, Industrial Estate, Sanat, Srinagar
through its proprietor Waseem Ahmad Khateeb
S/o Khawja Innayatullah Khateeb, R/o Rawalpora, Srinagar.
2. Northern Transformers,
Industrial Estate, Sanat Nagar, Srinagar through
its proprietor Nayeem Khan S/o Mohammad Hussain Khan
R/o 134-Bagat Barzulla, Srinagar
3. North Sun Enterprises
Industrial Estate, Barzulla Srinagar,
through its proprietor Mohammad Altaf
s/o Haji Ghulam Mohi-ud-din r/o Rawalpora, Srinagar

.....Petitioner(s)

Through: *Mr. Azhar ul Amin, Sr. Adv. with
Mr. Hanan Hussain, Adv.*

Versus

1. Union Territory of Jammu & Kashmir
through its Chief Secretary, Civil Sectt. Jammu/Srinagar .
2. Kashmir Power Distribution Corporation (KPDCL) Limited
through its Managing Director, Srinagar.
3. Chief Engineer Projects Kashmir, Kashmir Power Distribution Corporation
(KPDCL) Humhama Srinagar.
4. Chief Engineer Planning and Procurement wing,
Kashmir Power Distribution Corporation (KPDCL) Srinagar.
5. Ministry of Micro Small and Medium Enterprises,
Government of India, through Secretary,
Udyog Bhawan, Rafi Marg Marg, New Delhi,
6. Industries and Commerce Department,
Government of Jammu and Kashmir
through its Principal Secretary, Civil Secretariat, Srinagar/Jammu.
7. Finance Department, Government of Jammu and Kashmir
through its Principal Secretary, Civil Secretariat, Srinagar/Jammu.

.....Respondent(s)

Through: *Mr. Faheem Nissar Shah, GA for respondent Nos.1 to 4
Mr. Nazir Ahmad, Adv. for Respondent No.5
Mr. Waseem Gul, GA for respondent No. 6*

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. Background:

The present petition challenges the issuance of tenders by the respondents pertaining to various projects involving the Supply, Installation and Testing (SIT) of goods and services. It is contended that the respondents have failed to adhere to the provisions of the Public Procurement Policy specifically designed for Micro and Small Enterprises (MSEs). This non-compliance as per the petitioner is in direct violation of the mandatory requirements stipulated under Section 11 of the Micro Small and Medium Enterprises Development (MSMED) Act, 2006. The MSMED Act, enacted with the objective of promoting and facilitating the growth of Micro, Small, and Medium Enterprises, mandates certain procurement preferences and reservations for MSEs in government and public sector tenders. These provisions are crucial to ensure the inclusion, participation and upliftment of MSEs in public procurement processes.

2. Additionally it has been projected that the respondents have disregarded the guidelines enshrined in the Government Order issued vide SO 581(E) dated 23rd March 2012, which operationalizes the Public Procurement Policy for MSEs. This Government Order explicitly requires that a certain percentage of procurement must be reserved for MSEs and that the relevant procedures be followed to give these enterprises a fair opportunity to participate and compete in the

tendering process. By failing to comply with these statutory and policy requirements, the respondents have acted arbitrarily and contrary to the principles of equity and fairness envisioned by the MSMED Act, 2006 and the accompanying Government Order. It is specific case of the petitioner that such non-compliance not only undermines the legislative intent behind protecting MSEs but also adversely affects the livelihood and growth opportunities of these small-scale enterprises.

3. Therefore, the petitioner seeks appropriate direction from this Court to ensure that the respondents strictly comply with the Public Procurement Policy for Micro and Small Enterprises as mandated under the MSMED Act, 2006, and the Government Order dated 23-03-2012, thereby safeguarding the rights and interests of the Micro and Small Enterprises sector.

ARGUMENTS OF PETITIONER

4. Mr. Azhar ul Amin, learned counsel appearing on behalf of the petitioners has placed reliance upon Section 11 of the MSMED Act, 2006 which deals with the procurement preference policy and authorizes the Central Government or the State Government to notify the said preference policy in respect of the procurement of the goods and services, produced and provided by the Micro and Small Enterprises on the basis of the said statutory provision in conformity with the Act, the said policy has been framed vide SO 581(E).
5. The learned counsel has also drawn the attention of this court that the said policy is not confined to the procurement of goods, but also has

been expanded to the services as well and with a view to fortify his argument, he has placed reliance upon Section 11 of the said Act, which provided that the preference policy has been expanded not only to the goods, but also to the services produced and provided by the Micro and Small Enterprises as well.

6. The, learned counsel has also drawn the attention of this court to the said SO, which according to him makes it mandatory on the Central Government for procurement from Micro and Small Enterprises from the financial year 2012-2013 with the object of achieving an overall procurement of minimum 20% which by virtue of amendment has been increased to 25%, a total annual purchase of products and services rendered by Micro and Small Enterprises in a period of three years.
7. Learned counsel further submits that the aforesaid SO has a statutory backing and has been issued in conformity with Section 11 of the aforesaid Act, and thus, the respondents were under legal obligation qua the petitioners to mandatorily procure the aforesaid items from the Micro and Small Enterprises i.e., petitioners herein and also specified items as provided under Clause 11 of the said SO, wherein, 358 items have been specified and reserved for exclusively to be purchased from them. The aforesaid statutory compulsion is with a view to promote and to see that the Micro and Small Enterprises are not put to a disadvantageous position for their growth and thus, procuring the aforesaid items from the general market and not from the Micro and Small Enterprises defeats the very object of the said SO and is not permissible under law.

8. The learned counsel for the petitioner has also tried to draw distinction between Clause 3 and Clause 11 of the aforesaid SO. Insofar as Clause 3 is concerned that relates to the mandatory procurement for Micro and Small Enterprises for a current financial year with the object of achieving overall procurement of minimum of 25% of the total purchase of products produced and services rendered by Micro and Small Enterprises and insofar as Clause 11 is concerned, the same pertains to the reservation of the specified items for procurement to enable wider dispersal of enterprises in the country, particularly in rural areas, wherein, the Central Government and the Public Sector undertaking have mandatorily to procure 358 items from Micro and Small Enterprises which have been reserved for exclusive purchase from them with the object to promote and growth of Micro and Small Enterprises.
9. Thus, the action of the respondents in issuing the impugned tenders, according to Mr. Azhar ul Amin, learned counsel is in direct conflict with the aforesaid policy which has been framed in pursuant to Section 11 of the Micro Small and Medium Enterprises Development Act, 2006.
10. Lastly, the learned counsel referred to order dated 04.04.2025 in the instant petition, wherein, the learned counsel appearing on behalf of the respondents was directed to file an affidavit, thereby, specifying the number of SITs which have been floated by the respondents in the financial year 2024-25. He was also directed to furnish the percentage of the tenders which has been allotted to MSMED in terms of SO 581

(E) of 2012 in the financial year 2024-25 and the order passed by the Coordinate Bench, has not been complied with.

11. *Per Contra*, it has been submitted by Mr. Faheem Nissar Shah, learned GA that petitioners have not participated in the tender notice and thus, they have no locus to file the instant petition.
12. Mr. Faheem Nissar Shah, learned GA has argued that the instant tender is for the purposes of Supply, Installation and Testing and it involves three components and the said tender cannot be bifurcated. His sole emphasis was that had, the tender been floated for procurement of the supply only, then the petitioner would have been justified in banking their claim under the ambit of SO 581 (E), which has a statutory backing in terms of Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006.
13. For facility of reference, Section 11 of the aforesaid Act, deals with the procurement reference policy which provides as under:

11. For facilitating promotion and development of the Micro, Small and Medium Enterprises, the Central Government or the State Government may notify from time to time preference policies in reference of the procurement of goods and services produced and provided by the Micro Small and Medium Enterprises by its Ministries or Departments as the case may be or its aided institution and public central enterprises.

14. From a bare perusal of the aforesaid statutory provision, much emphasis has been laid upon that the said policy is for procurement only. Thus, the scope of the said policy cannot be widened and made applicable for the installation and testing.

15. Mr. Faheem Nissar Shah, learned GA has further drawn the attention of this court to the aforesaid SO which has been issued by the Ministry of the Micro, Small and Medium Enterprises dated 23.03.2012 on which the petitioner has based his claim reflects that the same has been issued in exercise of the powers conferred in Section 11 of MSMED Act, wherein, it has been defined that the Public Procurement Policy shall be applicable to Micro and Small Enterprises registered with District Industries Centers or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by the Ministry of Micro, Small and Medium Enterprises.
16. Thus, a cumulative reading of the scheme of the Micro Small and Medium Enterprises Development Act, 2006 and the aforesaid SO, it can safely be concluded that the same is applicable only for procurement purpose. However, the learned counsel submits that the tender was a cumulative/joint tender and was applicable for Supply, Installation and Testing, which by no stretch of imagination can be bifurcated. He further submits that had the tender been issued only for the purposes of supply, then perhaps the aforesaid SO would have been made applicable and the Government in that eventuality was under a legal obligation qua the petitioners to have procured the items from the Micro, Small and Medium Enterprises.
17. Mr. Faheem Nissar Shah, learned GA has also drawn the attention of this court to Clause 11 of the aforesaid SO which provides certain

reservation of specific items for procurement to enable wider dispersal of enterprises in the country, particularly in rural areas and it has been made obligatory for the Central Government Ministries, Departments, and Public Sector Undertakings (PSUs) to continue procuring 358 items from the Micro Small and Medium Enterprises which have been reserved for exclusively to be purchased from them and the object is laudable i.e., for promotion and growth of the Micro Small and Medium Enterprises.

18. There is no denying the fact that the certain items have been reserved for procurement from the Micro, Small and Medium Enterprises in terms of Clause 11 of the said SO and there are generalized items as well, which are required to be procured annually in terms of the aforesaid SO, but both the Clauses are obligatory only with a view to facilitate the procurement policy only.
19. It has also been urged by the learned counsel for the respondent, who has filed the application for vacation of the interim order stating that the MSMED Act, is not applicable to the impugned NIT which deals with the Supply, Installation and Testing.
20. A specific stand has been taken by the respondents 1 to 4 that these projects pertain to electrification, distribution, Sub-transmission in Kupwara, Kanzalwan and Tulail which were approved under CSS or DSS and the said projects are SIT i.e. Supply, Installation and Testing type and are not limited to procurement of the material only.
21. It is a specific case projected by the learned counsel for the respondents that projects being SIT in nature are outside the purview/domain of

Public Procurement Policy for the Micro, Small and Medium Enterprises order 2012, issued vide SO 581 (E) under Section 11 of MSMED Act, with the sole object to promote the participation of Micro and Small Enterprises in Government projects for procurements only.

22. From a bare perusal of the scheme envisaged under the MSMED Act, it requires the Central Government Ministries, Departments and Public Sector Undertakings (PSUs) to mandatorily procure 25% of their annual requirement from Micro and Small Enterprises, but the learned GA has drawn a distinction that the said policy is applicable only for the purposes of Public Procurement Process rather than a specific condition for RDSS or any other centrally sponsored project.
23. He further argued that the procurement for the projects under CSS is governed by the respective guidelines finalized, approved and reflected in terms and conditions of the tender document which is the subject matter of the instant petition, which leads to an irresistible conclusion, that the scheme, guidelines, standard bidding documents of RDSS does not specify adherence to MSMED Act or Public Procurement Policy for Micro and Small Enterprises, 2012.
24. Thus, a bare reading of Micro and Small Enterprises (MSEs) Order, 2012, which has a statutory backing under Section 11 of the Act, it lays emphasis on annual procurement rather than a specific condition for RDSS or any other centrally sponsored project which is for the purposes of Supply Installation and Testing only.

25. Lastly, he has submitted that the interim order passed by this court dated 13.11.2024 by virtue of which all the three NITs have been stayed is harshly working against the interest of the respondents and is liable to be vacated.
26. Heard learned counsel for the parties and perused the record.

LEGAL ANALYSIS:

27. In light of the foregoing discussion and upon careful consideration of the submissions and counter-submissions advanced by the learned counsel for the parties, this Court is of the considered opinion that the outcome of the present petition rests upon the determination of the following issues:

- i. ***Whether the Public Procurement Policy for Micro and Small Enterprises (MSEs), issued vide S.O. 581(E) dated 23.03.2012, framed under Section 11 of the MSMED Act, 2006, is applicable to composite contracts involving Supply, Installation, and Testing (SIT)?***
- ii. ***Whether Clause 3 and Clause 11 of the said Procurement Policy impose a binding obligation on Government departments and PSUs to procure all items including those forming part of SIT projects exclusively from MSEs?***
- iii. ***Whether the petitioner, who did not participate in the tender process, has the requisite locus standi to challenge the tender notifications in question?***

ISSUE No.i: Whether the Public Procurement Policy for Micro and Small Enterprises (MSEs), issued vide S.O. 581(E) dated 23.03.2012, framed under Section 11 of the MSMED Act, 2006, is applicable to composite contracts involving Supply, Installation, and Testing (SIT)?

28.To adjudge the applicability of the Public Procurement Policy to composite contracts, it is imperative to begin with a clear understanding of the legislative intent and scope of Section 11 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). Section 11 mandates the Central Government and its agencies to promote the procurement of goods and services from Micro and Small Enterprises (MSEs). Specifically, Section 11 empowers the Central Government to notify a scheme for facilitating this public procurement, which culminated in the issuance of S.O. 581(E), dated 23.03.2012, known as the Public Procurement Policy for MSEs.

29.This policy mandates that a minimum of 25% of the total annual procurement of goods and services by Central Government Ministries, Departments and Central Public Sector Enterprises (CPSEs) must be made from MSEs.

With a view to discuss issue No.1 it would be appropriate to understand the nature of the Impugned Contracts: Supply, Installation, and Testing (SIT).

30.The tenders in question involve composite contracts for Supply, Installation and Testing (SIT) of electrical infrastructure. These contracts cover a wide range of work including (i) the supply of electrical components and equipment, (ii) installation and commissioning at project sites, and (iii) testing and ensuring operational readiness. The entirety of the contract is executed as an integrated package, where the supply of goods is not a standalone

deliverable component of the contract but is intertwined with the components of services and works also.

31. Thus, such SIT contracts do not constitute mere procurement of goods or services in isolation, but involve performance obligations that are dependent on seamless execution of all elements together. In such circumstances, it would be artificial and legally impermissible to bifurcate the contract into “goods” and “services” for the sake of applying procurement preferences under the MSMED framework.

Further to understand the nature of the contract it is important to distinguish between policy procurement guidelines, which provides a standardized framework and project specific guidelines which are tailored according to the demands of any individual project.

Policy vs. Project-Specific Procurement Guidelines

32. It must also be recognized that the impugned tenders are issued under the framework of Centrally Sponsored Schemes (CSS) or Revamped Distribution Sector Scheme (RDSS) large-scale, mission-mode infrastructure programs of the Government of India. These programs typically include stringent implementation timelines, quality control mechanisms and integrated project delivery models. The procurement guidelines under such schemes are distinct and customized, and the general procurement obligations under Section 11 of the MSMED Act are not intended to override or conflict with such scheme-specific contractual and technical requirements.

33.Hence, while the Public Procurement Policy for MSEs is intended to encourage procurement from MSEs, it cannot operate in derogation of specialized and composite contracting structures formulated for critical infrastructure projects, unless the policy or the tender explicitly incorporates provisions for such inclusion.

34.The issue of whether composite contracts can be divided into supply and service elements for the purposes of applying a particular statute or policy has been squarely addressed by the Hon'ble Supreme Court of India in various authoritative decisions. The consistent judicial view is that composite contracts are indivisible, and any attempt to dissect them artificially is not tenable in law.

35. The Hon'ble Apex Court in **Bharat Sanchar Nigam Ltd. (BSNL) v. Union of India, (2006) 3 SCC 1**, has dealt with the nature of contracts involving both goods and services (such as telephone services involving supply of equipment). The Court held that where a contract is composite in nature, the dominant intention test must be applied to assess its true character. The Court emphasized as under:

“A composite contract for providing a service which also includes incidental supply of goods does not amount to a sale unless the parties intend so.”

36.Therefore, the law laid down by the Apex Court in the aforesaid case discourages any attempt to artificially segregate goods from services where both are integral to the execution of the contract.

37. Reliance is placed on the decision rendered by the Apex Court in the case titled, **Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu, (2014) 7 SCC 1**, wherein the issue was whether contracts for supply and installation of elevators could be split for VAT purposes. The Court held that installation and commissioning are not incidental but integral parts of the transaction.

“When the consumer places an order for lift, he expects delivery, installation, and commissioning of the lift, and hence it is a works contract in entirety.”

38. The judgment reinforces that composite contracts have to be viewed holistically, particularly where the installation and testing components are not optional but essential.

39. Further it is important to examine the role of administrative clarification and how departmental interpretation can effect the application of policies and procedure.

Administrative Clarifications and Departmental Interpretation.

40. The Ministry of MSME, in its Office Memorandum and responses to representations, has clarified that the Public Procurement Policy does not apply to "works contracts". Where a contract involves construction, installation or commissioning activities along with supply of materials, it is deemed outside the scope of the policy unless the tender specifically calls for discrete procurement of goods or services from MSEs. These clarifications align with the judicial understanding of composite contracts.

41. In the light of above statutory interpretation, judicial pronouncements, and administrative understanding, it is abundantly clear that the Public Procurement Policy for MSEs under S.O. 581(E), dated 23.03.2012, issued under Section 11 of the MSMED Act, 2006, is not applicable to composite contracts involving Supply, Installation, and Testing (SIT) of electrical infrastructure as these contracts are integrated in nature, and cannot be artificially bifurcated into goods and services to attract procurement preferences which are meant for standalone procurement transactions. Further, this Court is of the view that such tenders are issued under Centrally Sponsored Schemes like RDSS, their project-specific procurement frameworks take precedence unless a conscious decision is taken by the procuring authority to incorporate MSME-specific provisions. Absence of such explicit inclusion in composite SIT contracts fall outside the ambit of the said procurement policy.

42. In **TATA Power Company Limited Versus Genesis Engineering Company** reported as 2023 SCC OnLine Del 2366 wherein, it has held :

“19. In order to ascertain whether the scope of work as awarded to Petitioner would qualify as a ‘work contract’ or ‘composite supply’, the judgment of the Hon’ble Supreme Court of India in Kone Elevator India Private Limited v. State of Tamil Nadu, (2014) 7 SCC 1 is relevant to appreciate the categories of contract, i.e. (a) Contract for work to be done for remuneration and for supply of materials to be used in the execution of work for a price (b) Contract for work in which the use of the materials is necessary or incidental to the execution of the work (c) Contract for supply of goods where some work is required to be done as incidental to the sale. The Hon’ble Supreme Court has opined that category (a) as composite contract consisting of two contracts, one of which is for the sale of goods and the other which is for work and labour. It was

held that the involvement of supply of goods and material as well as installation of the lift had concluded that the contracts awarded to Kone Elevators satisfy the characteristics of Works Contract and held that it cannot be considered as contract of sale.

....20. Applying the judgment to the instant case, the Works Orders as executed by the parties in the instant case falls within category (a) as it comprises of two contracts which include supply of goods such as Cables, wire, connectors, street lights and poles and subsequent involvement of work and labour for its installation. Further, the element of both supply of goods and element of labour and service is involved in the Work Orders. It is also a settled principle of law that that dispute/claims arising from Works Contract are not amenable to the jurisdiction of Facilitation Council constituted under the MSME Act.”

43. Therefore the Public Procurement Policy under S.O. 581(E) applies strictly to the procurement of goods and services from MSEs. However, the impugned tenders relate to composite SIT contracts, which include elements of design, supply, physical installation and testing forming an integrated work package. Such contracts are distinct from pure procurement contracts and cannot be brought within the ambit of the said policy unless explicitly provided. Judicial interpretation discourages artificially segmenting composite contracts for the purpose of applying procurement preferences.

44. This Court is also of the considered view that the Public Procurement Policy for Micro and Small Enterprises, 2012, issued vide S.O. 581(E) under Section 11 of the MSMED Act, is confined to the procurement of goods and standalone services, and does not extend to composite works contracts involving Supply, Installation and Testing. The impugned tenders, being indivisible SIT contracts governed by specific scheme guidelines, fall outside the purview of the said policy, and the

respondents cannot be faulted for not extending the procurement preference to such contracts.

45. Since the instant tenders pertains to the Supply, Installation and Testing (SIT) of electrical infrastructure projects as a part of composite contract, where the scope of the work is integrated and cannot be divided into separate procurements for goods, installation or testing alone.

So issue No.i is accordingly answered in favour of respondents.

ISSUE No.ii: Whether Clause 3 and Clause 11 of the said Procurement Policy impose a binding obligation on government departments and PSUs to procure all items including those forming part of SIT projects exclusively from MSEs?

46. In the aforesaid background, let us examine the nature and scope of Clauses 3 and 11 of the said policy:

Clause 3 of the Public Procurement Policy mandates that a minimum of 25% of the *annual procurement* of goods and services by Ministries, Departments and Public Sector Undertakings (PSUs) should be sourced from Micro and Small Enterprises (MSEs). This clause is designed to ensure that MSEs have a guaranteed share in the government's procurement market, thereby promoting their growth and sustainability.

Clause 11 specifically reserves 358 items for exclusive procurement from MSEs, facilitating wider dispersal of economic opportunities and supporting rural and semi-urban enterprise growth.

Both clauses explicitly focus on procurement, the act of purchasing goods or services and thus are naturally tailored to contracts which involve straightforward acquisition of goods or standalone services.

47. On a cumulative reading of the statutory provisions, the Policy under S.O. 581(E), and the practical realities of SIT contracts, it is clear that clauses 3 and clause 11 of the policy do not impose a binding obligation to procure all components of SIT contracts exclusively from MSEs.
48. Consequently, the respondents were well within their rights to issue tender covering the SIT of the electrical infrastructure as a part of composite contract. Given the integrated nature of work, there was no obligation to rigidly apply the procurement preference to each component alone. Instead a holistic view of the contract was appropriate, recognizing that the supply of goods was inseparable from the associated services of installation and testing.
49. Keeping in view the aforesaid discussion, it is clear that the both clauses apply only to direct procurement activities. They do not extend to contracts where supply is merely a component of a broader work contract. Therefore, these obligations do not bind public authorities in the context of SIT projects, where procurement, installation and testing are intrinsically linked and are inseparable.
50. Clause 3 of the Public Procurement Policy mandates that a minimum of 25% of the annual procurement by Ministries, Departments and PSUs be sourced from Micro and Small Enterprises (MSEs), while Clause 11 exclusively reserves 358 items for procurement from MSEs. However,

in *Lifecare Innovations Pvt. Ltd. v. Union of India* (2025) reported as 2025 SCC OnLine SC 436, the Hon'ble Supreme Court clarified that while these clauses carry the force of law under the MSMED Act, they apply only to direct procurement of goods and services and do not confer enforceable rights on individual MSEs. The Court emphasized that the procurement obligation is institutional and cannot be rigidly extended to integrated contracts such as SIT (Supply, Installation and Testing) projects, where the supply component is inseparably linked to installation and commissioning services. Consequently, these provisions do not impose a binding obligation on government bodies to source all SIT project components exclusively from MSEs. The Court acknowledged that the practical complexities of such bundled contracts and upheld the discretion of procuring entities in structuring tenders, so long as the overall 25% procurement target is met across their annual procurement activities. Therefore, Clauses 3 and 11 do not override the composite nature of SIT contracts and cannot be applied mechanically to all their elements.

51. Similarly, in the case of *Sterling and Wilson Private Limited v. Union of India*, 2017 SCC OnLine Bom 6829, the Bombay High Court held as under:

“42. The provisions of Section 11 of the Act and clause 3 of the Policy envisage procurement of “goods and services” produced and provided by MSEs. The provisions of the Act and the Policy are therefore applicable to procurement of “goods and services” produced and provided by MSEs. Answer to FAQ No. 18 also makes it abundantly clear that the policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders are excluded from purview of Public Procurement Policy.

43. The provisions of the Act would therefore not be applicable to work contracts, which are essentially contracts of composite nature involving supply of goods as well as labour/services etc. Similar view has been taken by Delhi High Court in *Shree Gee Enterprises (supra)* wherein it has been held that the policy is not applicable to work contracts simplicitor and that it is only meant for goods produced and services rendered by MSEs.

52. A perusal of these clauses reveal that the contract under tender is a composite contract, which involves supply of goods, as well as erection, installation and commissioning in accordance with the plans/drawings, procedures, and specific specifications. The nature of work requires expertise, special skill in designing, engineering and various other technical aspects in erecting, installing, commissioning and making the firewater spray system operational and functional. The tender contract of this nature is not for sale of goods simplicitor, but is a composite contract, which has to be treated as work contract.

56. In the instant case, as stated earlier, the contract under tender is a composite contract for supply of goods as well as installation of fire water spray system, which is a permanent fixture. The goods supplied under the contract are eventually assembled and installed at site and become part of the permanent fixture. The said contract satisfies fundamental characteristics of work contract and hence cannot be considered as a contract simplicitor for sale of goods and services.

57. As stated earlier, the MSMED Act and the Public Procurement Policy is applicable only to procurement of goods and services. The contract under tender not being a contract for sale of goods and predominantly a work contract, the benefits of the Act and the Policy could not be extended to the MSEs registered under the Act...”

52. In light of the foregoing discussion, it is evident that Clauses 3 and 11 of the Public Procurement Policy are intended to promote inclusivity and growth for Micro and Small Enterprises (MSEs) by ensuring their participation in Government procurement processes. Clause 3 mandates that at least 25% of the total annual procurement by Ministries, Departments and Public Sector Undertakings (PSUs) be sourced from MSEs, establishing an institutional obligation to support these

enterprises. Clause 11 further strengthens this mandate by reserving 358 items exclusively for procurement from MSEs, thereby aiming to foster economic decentralization and boost rural and semi-urban entrepreneurship. However, a cumulative reading of the policy provisions, statutory notifications (such as S.O. 581(E)), and judicial interpretation in *Lifecare Innovations Pvt. Ltd. v. Union of India (2025)* underscores a crucial distinction between direct procurement contracts and composite contracts such as SIT (Supply, Installation, and Testing) projects. The Hon'ble Supreme Court, while recognizing the statutory force of Clauses 3 and 11 under the MSMED Act, clarified that these provisions do not create enforceable rights in favor of individual MSEs for each and every contract. Instead, the obligation is systemic, requiring compliance with the overall 25% procurement target on an annual basis rather than at the individual contract level. Particularly in the case of SIT contracts, where the supply of goods is intrinsically linked and inseparable from services like installation and testing, it is neither feasible nor legally mandated to apply the MSE procurement preferences to each component. The Court further acknowledged the operational and technical complexities involved in such bundled contracts and emphasized the need for flexibility in tender structuring. As such, procuring entities retain the discretion to issue composite tenders for SIT projects without violating the policy, provided they adhere to the broader procurement targets set by Clause 3. Therefore, Clauses 3 and 11, while significant in their role of empowering MSEs, are not absolute in their application and do not

override the integrated and composite nature of SIT contracts. Their scope remains confined to direct procurement scenarios, and any mechanical application to complex contracts would undermine both the intent and practicality of the procurement framework.

So issue No.ii is also answered in favour of respondents.

ISSUE No. iii: Whether the petitioner, who did not participate in the tender process, has the requisite locus standi to challenge the tender notifications in question?

53. With a view to answer this question, it would be apt to analyze the law laid down by the Hon'ble Apex Court in this regard. This Court is fortified with the judgment passed by the Apex Court rendered in case titled "***NHAI v. Gwalior-Jhansi Expressway Limited reported in 2018 (8) SCC 243***" The relevant para 20 reads as under:

20. While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent forum. Going by the terms and conditions in the tender documents, as already alluded to in para 10 above, there is no tittle of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money. The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was

to participate in the bidding process, it shall be deemed to fulfil all the requirements of the tender Clauses 3 to 6 of RFP, being the existing concessionaire of the project, does not exempt the respondent from participating in the tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered as a responsive bidder, along with others. Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.

54. The Petitioner herein admittedly did not participate in the bidding process and elected to remain outside the said process. The fact that Petitioner was the intended supplier would not give any locus to the Petitioner to challenge the tender process and maintain the instant petition.
55. In the present case, the petitioner did not submit a bid in response to the impugned Notice Inviting Tender (NIT). There is no allegation, nor any material on record, to show that the petitioner was prevented from participating due to an illegal tender condition, discriminatory

eligibility criteria, or any deliberate exclusion by the respondents. In the absence of such factors, the petitioner cannot claim to be an “aggrieved party” under Article 226 of the Constitution.

56. This Court is fortified with the judgment passed by the Apex Court rendered in case titled, ***“Raunaq International Limited Vs. I.V.R. Construction limited, reported in (1999) 1 SCC 492***, wherein it has been observed as under:-

“In the present case, however, the relaxation was permissible under the terms of the tender. The relaxation which the Board has granted to M/s Raunaq International Ltd. is on valid principles looking to the expertise of the tenderer and his past experience although it does not exactly tally with the prescribed criteria. What is more relevant, M/s I.V.R. Construction Ltd. who have challenged this award of tender themselves do not fulfill the requisite criteria. They do not possess the prescribed experience qualification. Therefore, any judicial relief at the instance of a party which does not fulfill the requisite criteria seems to be misplaced. Even if the criteria can be relaxed both for M/s Raunaq International Ltd. and M/s I.V.R. Construction Ltd., it is clear that the offer of M/s Raunaq International Ltd. is lower and it is on this ground that the Board has accepted the offer of M/s Raunaq International Ltd. We fail to see how the award of tender can be stayed at the instance of a party which does not fulfill the requisite criteria itself and whose offer is higher than the offer which has been accepted.”

57. This Court is fortified with the judgment passed by this Court in the case titled as ***“R6 Technologies Private Limited Through its Managing Director/Chief Executive Officer-Riyaz Amin Malik v. UT of J&K & Ors”*** reported in 2024 LiveLaw (JKL) 22, the relevant paras are reproduced as under:

“34. With a view to decide the controversy in question, this Court deems it proper to define and emphasize the enlarged role of the Government in economic activity and its corresponding ability to give economic „largesse” which was the bedrock of creating what is commonly called the „tender jurisdiction”. The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality which is being observed by the Constitutional Courts today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender as it has happened in the instant case, seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The Public Interest Litigation (PIL) jurisdiction is also invoked towards the same objective, an aspect normally deterred by the Court because this causes proxy litigation in purely contractual matters.

35. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that the Apex Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fide. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by the principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.”

58. Further the Hon^{ble} Apex Court in **“Jagdish Mandal v. State of Orissa**, reported in (2007) 14 SCC 517 has been pleased to observe as under:-

“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"; 14 (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." (pages 531-532)"

59. Applying these settled principles, the petitioner's failure to participate in the tender process coupled with their subsequent attempt to challenge the same, amounts to an attempt to obtain judicial intervention without being directly affected, which is impermissible under the law.
60. Keeping in view the law discussed above, it is clear that the Court being the guardian of fundamental right is duty-bound to interfere when there is a strong foundation of arbitrariness, irrationality, mala fide and bias. And it is also settled legal principle that a person who has not participated in the tender process lacks the locus standi to challenge the outcome unless they can establish a case of illegality, mala fides, or

discriminatory exclusion. In the instant petition the petitioner has neither participated in the process nor shown any bar or condition that precluded such participation. As such, the petitioner cannot be considered an “aggrieved party” and the writ petition is not maintainable on this ground alone.

61. However, in this case, the petitioner neither submitted a bid nor has placed on record any substantive allegation or evidence to suggest that the terms of the NIT were illegal, irrational, or designed to exclude them unfairly. There is no material to demonstrate that any condition in the tender notice was violative of constitutional principles or that the petitioner’s non-participation was the result of any mala fide action on the part of the respondents. In such circumstances, the petitioner lacks the requisite legal standing to invoke the writ jurisdiction of the High Court under Article 226, which is reserved for parties who are directly and adversely affected by administrative or executive actions. Courts have consistently held that a person who voluntarily stays away from the bidding process cannot subsequently assail the same merely on the basis of a perceived entitlement or general interest. Accordingly, in the absence of any actionable illegality or denial of opportunity, the present writ petition is not maintainable and is liable to be dismissed on the ground of lack of locus standi.

Accordingly, issue no.iii is also decided in favour of respondents.

CONCLUSION:

62. In the light of foregoing, the petitioners have failed to present any compelling legal grounds or any factual evidence to substantiate their claims regarding the issuance of the impugned tenders by the respondent. Their assertion lacks the necessary foundation to demonstrate any irregularity or illegality in the tender process, thereby rendering their challenge ill founded, both in terms of law and fact.
63. Thus it can be safely concluded that the respondents have acted in accordance with the relevant project-specific procurement guidelines, and there is no statutory obligation to apply the MSE procurement policy in the context of composite SIT tenders for these projects.
64. In view of the above, this Court holds that the challenge of the petitioner to the impugned notice inviting tender (NIT) is ill-founded and the writ petition being devoid of any merit, is liable to be dismissed and the same is accordingly **dismissed** alongwith all connected applications, if any. The **interim order dated 13.11.2024 is vacated** forthwith. As a necessary corollary, the respondents are at liberty to proceed ahead with the tender in question.
65. The writ petition is, accordingly, **dismissed** alongwith connected applications.

(WASIM SADIQ NARGAL)
JUDGE

Jammu
12.08.2025
"Gh. Nabi/Secy"

Whether the order is speaking: Yes
Whether the order is reportable: Yes