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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 03.03.2025**
Judgment delivered on: 05.03.2025

+ W.P.(C) 2660/2025 & CM APPL. 12638/2025

SHRI RUCHIT BANSAL & ANR.Petitioners

Through: Mr. Somnath Bharti and Mr. Anand
Prakash Gautam, Advs. with the
petitioners in person.

Versus

GOVT OF NCT OF DELHI & ANR.Respondents

Through: Mr. Sameer Vashisht, SC, GNCTD
with Ms. Harshita Nathrani, Adv. for
R-1.
Mr. Gurpreet Singh, Adv. for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. Proceedings of this petition instituted under Article 226 of the Constitution of India assail the validity of tender condition no. 3, so far as it excludes use of BSIV GPS enabled trucks by the tenderers in relation to an e-tender floated for transportation of specified food articles (wheat and rice) on principal - to - principal basis from six Food Corporation of India (*hereinafter referred to as the 'FCI'*) godowns in Delhi to the fair price shops located in Specified Food Circles of National Capital Territory of Delhi. It has, thus, been prayed to quash the said e-tender.



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2. The petitioners have also prayed for issuance of a *writ of mandamus* directing the Delhi State Civil Supplies Corporation Limited (*hereinafter referred to as the 'respondent no.2/Corporation'*) to grant extension of the ongoing contract works allotted to the petitioner for a further period of one year, in tune with such a provision mentioned in the existing contract and also in tune with the past practices and to allow the petitioners to continue for the entire period of 39 months as allegedly agreed between the petitioners and respondent no.2. Petitioners have also prayed that respondents be directed not to exclude BSIV vehicles for transportation of the food articles. It has also been prayed that a direction be also issued to respondent no.2/Corporation to grant six months' period to the petitioners for converting their vehicles from BSIV to BSVI standard or as CNG vehicles so that they can be in a position to participate in the tender.

3. Challenge to the impugned tender condition, which excludes use of BSIV vehicles, has been made primarily on the ground that the said exclusion runs against various orders passed by the National Green Tribunal (*hereinafter referred to as the 'NGT'*) and the Hon'ble Supreme Court. It has further been contended on behalf of the petitioners that inclusion of use of BSIV vehicles in transportation of the food articles in the earlier tender floated in the year 2022, has been upheld by a Coordinate Bench of this Court by means of a judgment dated 03.03.2023, passed in *W.P.(C) 11749/2022* and other connected writ petitions and accordingly, the submission is that exclusion of use of BSIV vehicles for transportation of specified food articles is not only against the orders passed by NGT and



Hon'ble Supreme Court but also contravenes the judgment dated 03.03.2023, passed by this Court in the aforesaid batch of writ petitions.

4. Learned counsel appearing for the petitioners has also submitted that the impugned exclusion of use of BSIV vehicles by the tenderers is *mala fide* in as much as, in the impugned tender such a provision has been made only to oust the petitioners from participation in the tender and to benefit such tenderers who own BSVI compliant vehicles and vehicles run on CNG. It has thus been contended that the impugned tender condition which provides for exclusion of use of BSIV vehicles is absolutely arbitrary and *mala fide* and hence, is liable to be quashed in these proceedings.

5. Learned counsel for the petitioners has also submitted that change of a BSIV compliant vehicle into a CNG run vehicle, takes some time and accordingly, the petitioners may be given six months' time to convert their BSIV compliant vehicles into CNG run vehicles. It is also the submission on behalf of the petitioners that right from the year 2019, till finalization of the last tender floated in the year 2022, use of BSIV vehicles for transportation of specified food articles has been permitted and in this background the petitioners have made huge investments and in case, use of BSIV compliant vehicles is excluded, they shall suffer huge pecuniary losses. In this view also, the submission is that exclusion of use of BSIV vehicles in respect of the subject tender is arbitrary and does not serve any public purpose.

6. The impugned tender condition, namely, condition no.3 as can be found in tender document is extracted herein below:-

*"3. The tenderer shall use Delhi state registered BSVI/CNG **GPS enabled trucks** in PDS supplies allowed by concerned Government Authorities/National Green Tribunal, Courts & any other government*



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*establishment and further amendments / guidelines issued by the any authority time to time. **The tenderer shall arrange required number of trucks per day for each godown as per Annexure A. The tenderer should have the owning capacity of vehicles/trucks of 60 MT for each godown with less than 5000 MT per allocation, 120 MT with less than 10000 MT per allocation, 180 MT with less than 15000 MT per allocation, 240 MT with less than 20000 MT per allocation and more than 20000 MT per allocation shall be 260 MT. The tenderers can apply in all godowns and their owing capacity of vehicle/truck should be separate for each godown. The transporter will attach copies of RC certified by Notary or Gazetted officer as a proof of ownership of trucks. All the transporters shall have necessary permission /license /permit for carrying transportation of food items in NCT of Delhi from Food, Safety & Standard Deptt. to ply within NCT of Delhi, if applicable. In support of transporter mustering remaining transport fleet from other sources, he shall be required to furnish written consent with proof of ownership from owners of such trucks/vehicles at the time of executing the contract. Further, the trucks engaged in PDS supply should not be used in any other Government activities.***

7. Apart from challenging the aforementioned tender condition which excludes use of BSIV GPS enabled vehicles for transportation of the specified food articles, the petitioners also rely on Clause 4 of the terms and conditions of the earlier tender (tender floated in the year 2022) pursuant to which the petitioners were awarded work orders and are still operating. Clause 4 of the terms and conditions of the 2022 tender on which reliance has been placed by the petitioners seeking a direction to the respondent no.2/Corporation to extend the term of the work order is extracted herein below:-

“4. The contract shall remain in force initially for a period of two years from the date when the transporter is called upon to perform the services and the said period may be extended for a period of three months on same terms & conditions at the sole discretion of the Corporation and subsequently further one year with mutual consent of the parties in writing.”



8. It has been argued, thus, that Clause 4 of the tender condition of the earlier tender clearly provided that the contract shall initially be in force for a period of two years and thereafter, period may be extended for three months on the same terms and conditions and subsequently, it can further be extended by one year with mutual consent of the parties in writing.

9. Submission is that pursuant to the earlier tender floated in the year 2022, petitioners were initially issued work orders for a period of two years which was extended for a further period of three months in terms of Clause 4 of the tender conditions and thereafter, the petitioners have got a right of seeking extension for a further period of one year of the work order with the consent of respondent no.2/Corporation and respondent no.2/Corporation instead of taking any decision about extension of the work order on the basis of mutual consent, though the petitioners have applied for the same, has floated the fresh tender containing the impugned tender condition and for this reason, the fresh tender cannot be acted upon. The submission is that without considering the right of the petitioners for extension of one year with mutual consent, the decision to float fresh tender runs contrary to the contract entered into between the petitioners and respondent no.2/Corporation on the basis of 2022 tender which action is thus arbitrary and defeats the right of the petitioners flowing from Clause 4 of the tender condition of the earlier tender, as was embodied in the work order and the agreement entered into between the petitioners and respondent no.2/Corporation. On the aforesaid counts that the petitioners have prayed not only for quashing of the impugned tender condition of the 2025 tender but also for issuance of a direction to respondent no.2/Corporation to grant



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extension for a further period of one year of the work order, issued in their favour on the basis of the earlier tender, namely, the tender floated in the year 2022.

10. *Per contra*, opposing the prayers made in the writ petition, vehemently, learned counsel representing the respondent no.2/Corporation has submitted that it is the tendering authority which is the best judge of the tender conditions and the decision to permit only BSIV compliant vehicles and CNG enabled vehicles is in larger public interest and that such decision does not contravene orders passed by the NGT and the Hon'ble Supreme Court; neither the said decision is in contravention of the judgment and order passed by the Coordinate Bench of this Court, dated 03.03.2023 in *W.P.(C) 11749/2022* and other connected matters. It has been argued on behalf of respondent no.2/Corporation that decision to permit use of BSIV vehicles was taken to meet the contingency and the situation which had arisen on account of the pandemic cause by COVID-19 and also for the reason that earlier respondent no.2/Corporation was required to distribute not only the specified food articles under the National Food Security Act, 2013 (*hereinafter referred to as the 'NFSA'*) but also under *Pradhan Mantri Gareeb Kalyan Anna Yojana (hereinafter referred to as the 'PMGKAY')*, however, PMGKAY Scheme continued only till the year 2023 which has now been withdrawn and accordingly, less number of vehicles will be required for transporting the specified food articles from FCI godowns to the fair price shops.

11. Learned counsel representing respondent no.2/Corporation has also submitted that earlier, decision to continue use of BSIV vehicles for



transporting the specified food articles was taken considering the requirement of large number of vehicles, but now, since the PMGKAY has been withdrawn, less number of vehicles will be required and therefore, use of BSIV vehicles has been excluded as a measure to check the air pollution and therefore, the decision is in public interest.

12. Learned counsel representing respondent no.2/Corporation has also argued that reliance placed by the petitioners on Clause 4 of the conditions of earlier tender is highly misplaced and on the said basis no right can be claimed to exist in the petitioners, permitting extension of the work order issued on the basis of the earlier tender. In this regard, learned counsel representing respondent no.2/Corporation, drawing our attention to Clause 4 of the conditions of the earlier tender, has stated that the contract in terms of the earlier tender was to remain in force for a period of two years and there upon it could have been extended for a period of three months on the same terms and conditions at the sole discretion of respondent no.2/Corporation. His submission is that the extension of three months was at the sole discretion of respondent no.2/Corporation and therefore, such a condition of the tender does not vest any right in the petitioner to seek extension of the work order for a period of three months. He has also stated that the stipulation made in Clause 4 of the earlier tender provides for extension of further one year with the mutual consent of the parties and therefore, the petitioners on the basis of the said clause cannot claim the extension of one year as a matter of their right without the consent of respondent no.2/Corporation.



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13. Opposing the prayer made by learned counsel for the petitioners that petitioners may be granted 6 months time to convert their vehicles from BSIV compliant to CNG run vehicles, it has been stated by learned counsel representing respondent no.2/Corporation that no such right in law can be said to be available to the petitioners to seek extension of time for conversion of their vehicles and further, that respondent no.2/Corporation being the tendering authority is in the best know of what is best suited for executing the work in respect of the subject tender and the decision to exclude use of BSIV vehicles has been taken in public interest with a view to mitigate the air pollution problem being faced by the residents of Delhi. It has, therefore, been urged that prayer made in this regard is also absolutely misconceived and cannot be granted.

14. Before we delve into the respective submissions made by learned counsel representing the respective parties, we may note certain facts which are relevant for the purpose of appropriate consideration and adjudication of the issues involved in this writ petition.

15. The NGT on 11.12.2015 passed an order in *OA No.21/2014*, whereby, registration of new diesel vehicles as well as diesel vehicles having an age of over ten years was prohibited in the National Capital Territory of Delhi. The said order was passed keeping in view the fact that diesel run vehicles have been one of the main causes of ever deteriorating air quality in Delhi.

16. The Hon'ble Supreme Court in *W.P.(C) 13029/1985*, passed another order on 13.04.2017, prohibiting registration of vehicles other than BSIV compliant vehicles which were sold before 13.03.2017. NGT also passed an order on 30.01.2018, permitting registration of BSIV compliant vehicles.



NGT again passed an order dated 27.07.2018, permitting use of BSIV compliant vehicles in supply of essential services.

17. A tender was floated in the month of November 2019 for transportation of specified food articles from FCI godowns to fair price shops. One of the tender conditions was that the tenderer shall use BSIV and CNG trucks allowed by the concerned Government Authorities and NGT. However, in the tender floated in the month of January 2020, by respondent no.2/Corporation, the condition provided therein was that the tenderer shall use only CNG trucks for supplies. The said condition was challenged by petitioner no.2 before this Court by filing *W.P.(C) 201/2020*. Another, writ petition namely, *W.P.(C) 1552/2020*, was also filed by petitioner no.1, challenging the decision of respondent no.2/Corporation which permitted operation of only CNG vehicles for the purpose of supply of specified food articles.

18. In the meantime, the world was faced with the pandemic caused by COVID-19 and therefore, in order to meet the challenges faced by the citizens belonging to lower income group and also in order to provide them food grains, the Government of India introduced PMGKAY under *Atma Nirbhar Bharat* in April 2020. On introduction of PMGKAY, respondent no.2/Corporation was also required to supply and distribute the specified food articles both under the NFSA and PMGKAY. Accordingly, respondent no.2/Corporation issued office note on 20.07.2020, allowing BSIV vehicles as well to be used by the transporters for transporting specified food articles from FCI godowns to the fair price shops. Pursuant to the said office note, a notice inviting tenders was issued in the month of August 2020, which



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permitted the operation of BSIV compliant vehicles. In view of these developments, *W.P.(C) 201/2020* and *W.P.(C) 1552/2020* were permitted to be withdrawn by this Court.

19. Thereafter, in July 2022, respondent no.2/Corporation floated a tender wherein, the eligibility criteria permitted the use of BSIV vehicles as well, in addition to use of BSVI/CNG GPS enabled vehicles. Challenging inclusion of use of BSIV vehicles, *W.P.(C) 11749/2022*, was filed wherein, initially an interim order was passed on 08.08.2022, directing therein that no work order shall be issued by respondent no.2/Corporation until further orders. The said writ petition along with certain other writ petitions, was dismissed by means of judgment and order dated 03.03.2023. Uploading the tender condition challenged therein, which permitted use of BSIV compliant vehicles, this Court observed *inter alia* that the tendering authority being the author of the tender is best placed to determine the terms and conditions governing the award of tender. Thus, use of BSIV compliant vehicles as a condition in the tender floated in the year 2022 by respondent no.2/Corporation was approved of. The petitioners successfully participated in the said tender and accordingly, work orders were also issued to them. After completion of a period of two years, the petitioners were also granted extension for a period of three months on the same terms and conditions; however, in terms of Clause 4 of the conditions of the earlier tender which has been extracted above, they are insisting that they are entitled to seek further extension of three months. Thus, presently the petitioners are executing the work relating to transportation of the specified food articles in terms of the work order and



extension granted to them for a period of three months, pursuant to the earlier tender issued in the year 2022.

20. While the petitioners are continuing in terms of the extension granted to them, the impugned tender has been issued which contains an eligibility condition that tenderers shall use BSVI compliant and CNG run vehicles for the purposes of transporting the specified food articles from FCI godowns to the fair price shops. This tender condition thus excludes the use of BSIV vehicles and accordingly, feeling aggrieved by such exclusion; the proceedings of the instant petition have been instituted challenging the exclusion as also praying for grant of extension of the earlier work order for a further period of one year.

21. On the basis of the pleadings of the respective parties available on record and also the submissions made by learned counsel representing the parties, the issue which can be culled out and which requires our consideration and adjudication are; (a) whether in terms of Clause 4 of the terms and conditions of the earlier tender (2022 tender) the petitioners have got any right to seek extension for a further period of one year; and (b) as to whether, exclusion of use of BSIV vehicles as per the impugned condition of the tender is in any manner illegal being arbitrary or being in violation of the orders passed by the NGT or by the Hon'ble Supreme Court or in derogation of the judgment of this Court dated 03.03.2023, rendered in *W.P.(C) 11749/2022*, and other connected matters.

22. So far as the issue relating to the alleged right of the petitioners to seek extension for a further period of one year on the basis of the earlier tender is concerned, we may refer to Clause 4 of the earlier tender, which



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has already been extracted above. A bare perusal of Clause 4 of the terms and conditions of the earlier tender reveals that on successful participation the tenderer was to be awarded a contract which was to remain in force initially for a period of two years from the date the tenderer was called upon to perform the services. Clause 4 further provides that this period of two years 'may be' extended for a period of three months on the same terms and condition 'at the sole discretion of respondent no.2/Corporation'. Further provision as embodied in Clause 4 of the tender condition of the earlier tender is that subsequent to the first extension for a period of three months on the same terms and conditions, the term of contract may further be extended for a period of one more year '**with mutual consent of the parties**' in writing. Thus, Clause 4 of the terms and conditions of the earlier tender provides for possible three terms of the contract. The first term of the contract was to remain in force for a period of two years, whereas, the second term of the contract was permissible to be extended for a period of three months, however, such extension was permissible on the same terms and conditions, that too, at the sole discretion of respondent no.2/Corporation. The third term permitting extension for a period of one year is permissible only '**with mutual consent of the parties**' in writing. In the instant case the petitioners' contract was in force for a period of two years initially and, thereafter, they have been granted extension for a period of three months on the same terms and conditions. The question which now falls for our consideration is as to whether Clause 4 of the terms and conditions vests any right in the petitioners to seek extension for a period of one more year.



23. As is apparent from a plain reading of the language in which Clause 4 of the terms and conditions of the earlier tender is couched that the second extension of one year is permissible only in case there is a mutual consent of both the parties. Therefore, the extension of one year after completion of the first extension of three months period is permissible only in a situation where both the parties arrive at a mutual consent for extension. It would simply mean that in absence of consent of either of the parties, one year extension is not legally permissible in terms of what has been provided for in Clause 4 of the terms and conditions of the earlier tender.

24. The submission made by learned counsel for the petitioners that petitioners have made an application for seeking extension for a period of one year is of no avail to the petitioners unless respondent no.2/Corporation expresses its consent to grant extension on the basis of such a provision as is contained in Clause 4 of the terms and conditions of the earlier tender. We are of the considered opinion that petitioners do not have any indefeasible right to seek extension; such extension is legally permissible only if respondent no.2/Corporation also expresses its consent. In this view, the prayer seeking a direction to respondent no.2/Corporation for grant of extension made by the petitioner is not legally tenable.

25. Coming to the issue (b) as culled out above, we do not find any good ground to sustain the submission made on behalf of the petitioners that exclusion of use of BSIV compliant vehicles is in any manner in contravention of the orders passed by the NGT, Hon'ble Supreme Court or it infringes, in any manner, the judgment dated 03.03.2023 passed by a



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Coordinate Bench of this Court in *W.P.(C.) No. 11749/ 2022* and other connected matters.

26. In this regard, we may observe that the orders passed by the NGT and the Hon'ble Supreme Court only permitted registration of BSIV compliant vehicles to be used for essential service, however, such orders passed by the NGT or the Hon'ble Supreme Court cannot be construed to mean that a tendering authority which is the best judge of its requirement is under any obligation to necessarily include use of BSIV compliant vehicles for transportation of specified food articles or for that matter for any other work.

27. The judgment dated 03.03.2023 was rendered by this Court in a situation where a condition permitting use of BSIV compliant vehicles was grafted in the tender conditions having regard to various factors, including the situation caused by COVID-19 and the mandate to respondent no.2/Corporation not only to transport and distribute the food articles under NFSA, but also under PMGKAY. Admittedly, PMGKAY continued till the year 2023 which has now been withdrawn and as such considering that less number of vehicles will be required, if the use of BSIV compliant vehicles has not been permitted, the same cannot be said to arbitrary for the reason that such exclusion appears to be one of the measures taken for mitigating the ever deteriorating air quality in NCT of Delhi.

28. What was upheld by this Court in its judgment dated 03.03.2023 was inclusion of use of BSIV vehicles, however, the said decision will not mean that in case exclusion of use of BSIV compliant vehicles is required under changed circumstances and also in larger public interest, the same cannot be provided for.



29. Even otherwise, it is well settled principle of law that though State, its agencies or other instrumentalities owe a public duty to act fairly, however, unless some defect is found in the decision making process of such a public authority or the decision is absolutely arbitrary, the jurisdiction under Article 226 of the Constitution of India should be exercised with great caution and only in furtherance of public interest and not merely on making out of a legal point.

30. In this respect regard may be had to the judgment of Hon'ble Supreme Court in the case of ***Municipal Corpn., Ujjain v. BVG India Ltd., (2018) 5 SCC 462.*** Paragraphs 14, 15 and 16 of the said judgment are extracted herein below:-

“14. The judicial review of administrative action is intended to prevent arbitrariness. The purpose of judicial review of administrative action is to check whether the choice or decision is made lawfully and not to check whether the choice or decision is sound. If the process adopted or decision made by the authority is not mala fide and not intended to favour someone; if the process adopted or decision made is neither so arbitrary nor irrational that under the facts of the case it can be concluded that no responsible authority acting reasonably and in accordance with relevant law could have reached such a decision; and if the public interest is not affected, there should be no interference under Article 226.

15. It is well settled that the award of contract, whether it is by a private party or by a public body or by the State, is essentially a commercial transaction. In arriving at a commercial decision, the considerations which are of paramount importance are commercial considerations. These would include, inter alia, the price at which the party is willing to work; whether the goods or services offered are of the requisite specifications; and whether the person tendering the bid has the ability to deliver the goods or services as per the specifications. It is also by now well settled that the authorities/State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation.



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16. The State, its corporations, instrumentalities and agencies have a public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary power under Article 226 with great caution and should exercise them only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere. (See the judgment in Air India Ltd. v. Cochin International Airport Ltd. [Air India Ltd. v. Cochin International Airport Ltd., (2000) 2 SCC 617])”

31. Certain observations made by Hon’ble Supreme Court in ***Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489*** may also be relevant which are quoted hereunder:-

“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.



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.”

32. In ***N.G. Projects Ltd. v. Vinod Kumar Jain***, (2022) 6 SCC 127, Hon’ble Supreme Court has held that Courts lack the expertise in respect of the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Hon’ble Supreme Court further holds in the said judgment that approach of the Court should be to examine as to whether the decision making process suffers from any flaw after complying with the procedure contemplated by the tender conditions. Paragraph 23 in ***NG Projects Limited*** (supra) reads as under:-

“23. In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead



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relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work.”

33. In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818, Hon’ble Supreme Court has held that unless the tendering authority is found to have explicitly contravened any statutory provisions or orders of Court of law, there is a degree of deference which is to be owed to its decision as the author of the contract.

34. In fact, it is a well settled principle of law that it is the tendering authority, being the author of the tender, which is best placed to determine the terms and conditions governing the award of tender and that it is not the Court to sit in appeal over such decision of the tendering authority concerning the terms and conditions of the tender. This principle permits interference in tender conditions only in a situation where the tendering authority’s decision in determining the terms and conditions of a tender is manifestly arbitrary or suffers from the vice of *mala fide*.

35. In our opinion, exclusion of use of BSIV vehicles cannot be said to be arbitrary; neither does it suffer from any *mala fide* for the reason that apart from asserting the ground of *mala fide*, the petition does not contain any material to establish that the use of BSIV vehicles has been excluded from the subject tender with a view to favor any particular tenderer or oust the participation of the petitioner from the tender process.



36. As far as the prayer made by the petitioner to direct respondent no.2/Corporation to grant six months time period to enable them to seek conversion of their BSIV compliant vehicles to CNG vehicles, we may only state that acceding to such a prayer would amount to the Court re-writing the tender conditions which is impermissible for the reason that it is the tendering authority which is the best judge of its requirement.

37. We may also refer to two judgments relied upon by learned counsel for the petitioners in support of his case. The first judgment cited on behalf of the petitioners is *Subodh Kumar Singh Rathour v. Chief Executive Officer and Others, 2024 SCC OnLine SC 1682*. Drawing our attention to paragraph 124, 125, 126 and 127 of the aforesaid judgment, it has been argued on behalf of the petitioners that public tenders should necessarily ensure transparency, competition and fairness in allocation of public resources and that public tenders are to be designed to provide a level playing field for all potential bidders and further that the sanctity of public tenders lies in upholding the principles of equal opportunity and fairness. The submission, thus, is that exclusion of use of BSIV vehicles has resulted in uneven playing field and also that such a condition debars the petitioner from participation in the public tender process.

38. In our opinion, the submission made by learned counsel for the petitioners based on *Subodh Kumar Singh Rathour* (supra) is highly misconceived. There cannot be any quarrel so far as the principles laid down by Hon'ble Supreme Court in *Subodh Kumar Singh Rathour* (supra) are concerned, however, as already discussed above the exclusion of use of BSIV vehicles has resulted on account of valid reasons and also to achieve



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larger public interest of mitigating ever-deteriorating air quality in NCT of Delhi.

39. Reliance has also been placed by learned counsel for the petitioners on yet another judgment of the Hon'ble Supreme Court in the case of *Madras City Wine Merchants' Assn. v. State of T.N., (1994) 5 SCC 509* to submit that the action on the part of respondent no.2/Corporation in not extending the term of the work order issued earlier on the basis of 2022 tender and further exclusion of use of BSIV compliant vehicles is arbitrary. Having gone through the said judgment in the case of *Madras City Wine Merchants' Assn.* (supra), we have no hesitation to hold that the said judgment does not have any application to the facts of the instant case.

40. To substantiate that no interference in impugned condition of the tender, in the facts of the present case, is warranted, we may refer to *Airport Authority of India v. Centre for Aviation Policy, Safety & Research (CAPSR), 2022 SCC OnLine SC 1334* wherein, it has been observed by Hon'ble Supreme Court that provisions relating to the terms and conditions of tender are the preserve of the tendering authority and the same are not open to judicial scrutiny unless they are found to be arbitrary, discriminatory or such conditions suffer from *mala fide*. Paragraph 27, 28, 29 and 31 of the judgment in *Airport Authority of India* (supra) are extracted herein below:-

“27. Even otherwise, even on merits also, the High Court has erred in quashing and setting aside the eligibility criteria/tender conditions mentioned in the respective RFPs, while exercising the powers under Article 226 of the Constitution of India. As per the settled position of law, the terms and conditions of the Invitation to Tender are within the domain of the tenderer/tender making authority and are not open to judicial scrutiny, unless they are arbitrary, discriminatory or mala fide. As per the settled position of law, the terms of the Invitation to Tender are not open to judicial scrutiny, the same being in the realm of



contract. The Government/tenderer/tender making authority must have a free hand in setting the terms of the tender.

28. While considering the scope and ambit of the High Court under Article 226 of the Constitution of India with respect to judicial scrutiny of the eligibility criteria/tender conditions, few decisions of this Court are required to be referred to, which are as under:

29. In the case of Maa Binda Express Carrier (supra), in paragraph 8, this Court observed and held as under:

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

31. In the aforesaid decision, it is further observed that the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. It is further observed that the courts cannot interfere with the terms of the tender prescribed by the



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Government because it feels that some other terms in the tender would have been fair, wiser or logical.”

41. For the reasons given and discussions made above, we have no option but to conclude that the writ petition is bereft of any merit which is hereby dismissed along with pending application.

42. However, there will be no order as to costs.

**(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE**

**(TUSHAR RAO GEDELA)
JUDGE**

MARCH 05, 2025/MJ