



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

% Judgment Reserved on: 17.02.2026
Judgment delivered on: 10.03.2026
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+ W.P.(C) 1562/2026 CM APPL. 7584/2026 CM APPL. 9785/2026
E TRAV TECH LIMITEDPetitioner

Through: Mr Parag P. Tripathi, Senior Advocate with Mr Nakul Sachdeva, Mr Shreyansh Rathi, Mr Sagar Arora, Ms Shrinkhla Tiwari, Mr Abhinandan Sharma, Mr Karan Sharma, Advs

versus

UNION OF INDIA & ANR.Respondents

Through: Mr Chetan Sharma, ASG with Mr. Shashank Dixit, Adv. CGSC, Mr. Kunal Raj Adv.

Mr. Saurabh Kirpal, Senior Advocate with Mr Siddharth Dharmadhikari, Ms Devanshi Singh, Mr Bharat Bagla, Ms Kunika Bansal, Ms Aaliya Waziri, Adv.

Mr. Rohan Sharma, Adv for Applicant/ Intervenor.

+ W.P.(C) 1032/2026 CM APPL. 5013/2026 CM APPL. 8771/2026
E TRAV TECH LIMITEDPetitioner

Through: Mr Anurag Ahluwalia, Sr Advocate with Mr Nakul Sachdeva, Mr Shreyansh Rathi, Mr Sagar Arora, Ms Shrinkhla Tiwari, Mr Abhinandan Sharma, Mr Karan Sharma, Adv

versus

UNION OF INDIA & ANRRespondents

Through: Mr Chetan Sharma, ASG with Mr. Shashank Dixit, Adv. CGSC, Mr.



Kunal Raj Adv.
Mr. Rohan Sharma, Adv for
Applicant/Intervenor

- + W.P.(C) 1181/2026 CM APPL. 5768/2026
E TRAV TECH LIMITEDPetitioner
Through: Mr Anurag Ahluwalia, Sr Advocate
with Mr Nakul Sachdeva, Mr
Shreyansh Rathi, Mr Sagar Arora, Ms
Shrinkhla Tiwari, Mr Abhinandan
Sharma, Mr Karan Sharma, Advs
- versus
UNION OF INDIA & ANRRespondents
Through: Mr Chetan Sharma, ASG with Mr.
Shashank Dixit, Adv. CGSC, Mr.
Kunal Raj Adv.
Mr. Rohan Sharma, Adv for
Applicant/Intervenor
- + W.P.(C) 1847/2026 CM APPL. 8931/2026
E TRAV TECH LIMITEDPetitioner
Through: Mr Anurag Ahluwalia, Sr Advocate
with Mr Nakul Sachdeva, Mr
Shreyansh Rathi, Mr Sagar Arora, Ms
Shrinkhla Tiwari, Mr Abhinandan
Sharma, Mr Karan Sharma, Advs
- versus
UNION OF INDIA & ANRRespondents
Through: Mr Chetan Sharma, ASG with Mr.
Shashank Dixit, Adv. CGSC, Mr.
Kunal Raj Adv.
Mr. Rohan Sharma, Adv for
Applicant/Intervenor
- + W.P.(C) 1893/2026 CM APPL. 9186/2026
AL HIND TOURS AND TRAVELS PVT LTDPetitioner
Through: Mr. Santhosh Krishnan, Mr. Zulfiker
Ali P.S., Mr. Ashwin Joseph and Ms.
Lebina Baby, Advs.



- versus
UNION OF INDIA & ANRRespondents
Through: Mr. Chetan Sharma, ASG with Ms. Avshreya Pratap Singh Rudy, CGSC, Ms. Usha Jamnal, Ms. Nyasa Sharma, Mr. Ankit Khatri, Ms. Akshi Bali, LC for MEA, Mr. Ashique Karattil, OSD, MEA, Advs.
- + W.P.(C) 2131/2026 CM APPL. 10366/2026
M/S VERASYS LIMITEDPetitioner
Through: Mr. Dinesh Mathur, Mr. Bhuvnesh Satija, Ms. Vibhooti Malhotra, Mr Yash Baraliya, Mr. Aniket Khanduri, Advs.
- versus
UNION OF INDIA & ANRRespondents
Through: Mr Chetan Sharma, ASG with Mr. Rohan Jaitley, CGSC, Mr. Dev Pratap Shahi, GP, Mr. Varun Pratap, Mr. Yogya Bhatia, Advs.
- + W.P.(C) 2215/2026 CM APPL. 10741/2026
M/S VERASYS LIMITED (FORMERLY KNOWN AS VERASYS TECHNOLOGIES PRIVATE LIMITED)Petitioner
Through: Mr. Harmeet Singh, Adv.
- versus
UNION OF INDIA & ANRRespondents
Through: Mr Chetan Sharma, ASG with Mr. Rohan Jaitley, CGSC, Mr. Dev Pratap Shahi, GP, Mr. Varun Pratap, Mr. Yogya Bhatia, Advs.
- + W.P.(C) 2243/2026 CM APPL. 10823/2026
M/S VERASYS LIMITED (FORMERLY KNOWN AS VERASYS TECHNOLOGIES PRIVATE LIMITED)Petitioner
Through: Mr. Dinesh Mathur, Mr Bhuvnesh Satija, Ms. Vibhooti Malhotra, Mr Yash Baraliya, Mr. Aniket Khanduri,



Advvs.

versus

UNION OF INDIA & ANR

.....Respondents

Through:

Mr Chetan Sharma, ASG with Mr. Rohan Jaitley, CGSC, Mr. Dev Pratap Shahi, GP, Mr. Varun Pratap, Mr. Yogya Bhatia, Advvs.

+ W.P.(C) 2244/2026 CM APPL. 10825/2026
M/S VERASYS LIMITED

.....Petitioner

Through:

Mr. Dinesh Mathur, Mr Bhuvnesh Satija, Ms. Vibhooti Malhotra, Mr Yash Baraliya, Mr. Aniket Khanduri, Advvs.

versus

UNION OF INDIA & ANR.

.....Respondents

Through:

Mr Chetan Sharma, ASG with Mr. Rohan Jaitley, CGSC, Mr. Dev Pratap Shahi, GP, Mr. Varun Pratap, Mr. Yogya Bhatia, Advvs

+ W.P.(C) 2804/2026, CM APPL. 13565/2026

E TRAV TECH LIMITED

.....Petitioner

Through:

Mr. Anurag Ahluwalia, Sr. Adv. with Mr. Nakul Sachdeva, Sagar Arora Shreyansh Rathi, Advvs.

versus

UNION OF INDIA & ANR.

.....Respondents

Through:

Ms. Avshreya Pratap Singh Rudy, CGSC with Mr. Ankit Khatri, Ms. Usha Jammal, Ms. Nyasa Sharma, Advvs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA



JUDGMENT

V. KAMESWAR RAO, J.

CM APPL. 9877/2026(to file additional documents) in W.P.(C) 1893/2026

1. For the reasons stated in the application, the additional documents are taken on record.
2. The application is disposed of.

CM APPL. 10365/2026 (exemption) in W.P.(C) 2131/2026

3. Exemption is allowed subject to all just exceptions.
4. The application is disposed of.

**W.P.(C) 1562/2026 CM APPL. 7584/2026 CM APPL. 9785/2026;
W.P.(C) 1032/2026 CM APPL. 5013/2026 CM APPL. 8771/2026;
W.P.(C) 1181/2026 CM APPL. 5768/2026;
W.P.(C) 1847/2026 CM APPL. 8931/2026;
W.P.(C) 1893/2026 CM APPL. 9186/2026;
W.P.(C) 2131/2026 CM APPL. 10366/2026;
W.P.(C) 2215/2026 CM APPL. 10741/2026;
W.P.(C) 2243/2026 CM APPL. 10823/2026;
W.P.(C) 2244/2026 CM APPL. 10825/2026; and
W.P.(C) 2804/2026 CM APPL. 13565/2026.**

5. These captioned petitions have been filed assailing the decisions of the respondents whereby the bids of the petitioners in various tenders floated by the respondents have been declared as non-qualified at the technical bid stage, without assigning any reasons. Since all the petitions raise a common issue, we shall proceed to decide them together.



FACTUAL MATRIX

6. The petitioner in W.P.(C) 1562/2026, W.P.(C) 1032/2026, W.P.(C) 1181/2026, and W.P.(C) 1847/2026, E TRAV Tech Limited, is a B2B Travel Tech platform providing flights, hotels, holiday packages, Visa, cruises and advance technology solutions including API and white label services. The respondent no.1 in all four petitions is the Union of India, through the Ministry of External Affairs. The respondent no.2 in W.P.(C) 1562/2026 is the Embassy of India, Abu Dhabi, United Arab Emirates (UAE); in W.P.(C) 1032/2026 is the High Commission of India, Canberra, Australia; and in W.P.(C) 1181/2026 is the Embassy of India, Riyadh, Saudi Arabia and in W.P.(C) 1847/2026 is the Embassy of India, Kuwait.

7. The petitioner in W.P.(C) 1893/2026, Al Hind Tours and Travels Private Limited, is a B2B and B2C Travel tech platform providing flights, hotel, holiday packages, Visa, cruises, and also advance technology solutions including API and white label services. The respondent no.1 is the Union of India, through the Ministry of External Affairs and the respondent no.2 is the Embassy of India, Kuwait.

8. The petitioner in W.P.(C) 2215/2026, W.P.(C) 2243/2026, W.P.(C) 2244/2026, and W.P.(C) 2131/2026 is Verasys Limited, a specialised IT enabled service provider, and a licensed certified authority under Section 21 of the Information and Technology Act, 2000. It has been engaged in critical e-governance projects for the Government of India primarily in the form of issuance, authentication and life cycle management of Digital Signatures Certificates and e-sign services. The respondent no.1 in all four petitions is Union of India, through the Ministry of External Affairs. The



respondent no.2 in W.P.(C) 2215/2026 is the Embassy of India, Riyadh, Saudi Arabia; in W.P.(C) 2243/2026 is the Embassy of India, Kuwait; in W.P.(C) 2244/2026 is the Embassy of India, Abu Dhabi, UAE and in W.P.(C) 2131/2026 is the High Commission of India, Canberra, Australia.

9. After we reserved judgment in the above matters, a fresh writ petition being W.P.(C) No.2804/2026 filed by E-TRAV Tech Limited came up for hearing on 27.02.2026, agitating the same issue. We issued notice in the petition, which was duly accepted. After hearing the learned counsel for the parties, we reserved the matter for judgment along with the other matters. The respondent no.1 in this petition is the Union of India through the Ministry of External Affairs and the respondent no.2 is the High Commission of India, London, United Kingdom (UK).

10. It is the case of the petitioners that the respondents on various dates issued various Request for Proposal (RFP) for the outsourcing of Consular/Passport/Visa (CPV) services at the respective Indian Embassies and High Commissions. The RFPs provide for a two tier tender process consisting of technical bids and financial bids. Chapter XV: Selection of Bidders/Award of Contract, Clause B (II) (a) of the RFPs, specifically provided that the bidding companies that do not qualify in the technical bid stage shall be informed of the reasons for their disqualification by email.

11. The petitioners submitted their technical bids and financial bids on various dates. The technical bids were opened, pursuant to which, the results were published and the petitioners were informed that they have failed to achieve the minimum qualifying score of 70% and as such were not qualified to the financial bid stage of the tender process. The case of the



petitioners is that even though they were informed of the overall marks obtained by them, no reasons or the breakup of marks for each criteria of the technical evaluation were provided by the respondents, which they were obligated to do under the conditions the RFPs.

12. A chart detailing the concerned RFPs, and the marks obtained by the respective petitioners in the technical evaluation is produced hereunder:

S. No	W.P.(C) No.	Petitioner	Location	RFP	Impugned order/ communication	Marks obtained	Statements made by respondents in pre-bid queries	Status
1.	2215/2026	Verasys Limited	Riyadh, Saudi Arabia	RIY/CONS/551/02/2025 dated 21.11.2025	11.01.2026	51.11	Cumulative Marks will be given	Financial Bid not opened
2.	2243/2026	Verasys Limited	Kuwait	KUW/CONS/415/03/2025 dated 20.11.2025	04.02.2026	54.5	Cumulative Marks will be given	Financial Bid not opened
3.	2244/2026	Verasys Limited	Abu Dhabi, UAE	ABU/CONS/415/17/2025 dated 20.11.2025	30.01.2026	61.5	Breakdown will be given	Financial Bid not opened
4.	1562/2026	E TRAV Tech Limited	Abu Dhabi, UAE	ABU/CONS/415/17/2025 dated 20.11.2025	30.01.2026	67.5	Breakdown will be given	Financial Bid not opened
5.	1032/2026	E TRAV Tech Limited	Canberra, Australia	CAN/CONS/415/02/2025 dated 17.11.2025	09.01.2026	62.2	Cumulative Marks will be given	Financial Bid opened
6.	1181/2026	E TRAV Tech Limited	Riyadh, Saudi Arabia	RIY/CONS/551/02/2025 dated 21.11.2025	12.01.2026	59.96	Cumulative Marks will be given	Financial Bid not opened
7.	1847/2026	E TRAV Tech Limited	Kuwait	KUW/CONS/415/03/2025 dated 20.11.2025	04.02.2026	55.5	Cumulative Marks will be given	Financial Bid not opened
8.	1893/2026	Al Hind Tours & Travels Pvt Limited	Kuwait	KUW/CONS/415/03/2025 dated 20.11.2025	04.02.2026	60	Cumulative Marks will be given	Financial Bid not opened
9.	2131/2026	Verasys Limited	Canberra, Australia	CAN/CONS/415/02/2025 dated 17.11.2025	06.01.2026	61.25	Cumulative Marks will be given	Financial Bid opened
10.	2804/2026	E TRAV Tech Limited	London, UK	LON/PPT/415/01/2025-Vol (III) dated 20.11.2025.	20.02.2026	65.63	Cumulative Marks will be given	Financial Bid not opened

13. We note that the tender processes are at the stage of security



clearance/verification, except in W.P.(C) 1032/2026 and W.P.(C) 2131/2026 (the Australia tender), wherein financial bids have been opened.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

14. Mr Parag P. Tripathi, learned Senior Counsel for the petitioners submitted at the outset that tender processes are subject to judicial review within the parameters of interference which have been laid down by the Courts. Therefore, any construction of the RFPs that insulates technical evaluation from meaningful scrutiny would be inconsistent with the principle of judicial review and merits rejection.

15. He stated that the tendering process has been deliberately made opaque by the respondents for three main reasons:-

- i) The breakup of marks for each criteria of technical evaluation has not been provided by the respondents;
- ii) No reasons have been provided to the petitioners to justify the evaluation / marks awarded; and
- iii) There is no disclosure of the marks which have been awarded to the competitors of the petitioners, or the reasons thereof.

16. It is his case that the respondents were obligated under the RFPs to provide reasons for rejection of technical bids. Clause 6 of the RFPs clearly provide for the applicability of the General Financial Rules, 2017 (GFR) to the RFPs. As such, the respondents were bound to follow Rule 173(iv) of the



GFR 2017 which reads as under:-

“(iv) Suitable provision should be kept in the bidding document to enable the bidder to question the bidding conditions, bidding process and /or rejection of its bid. The reasons for rejecting a tender or non-issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder.”

17. That apart, Clause B(II) of Chapter XV of the RFPs specifically provides that *“the bidding companies that do not qualify the technical bid stage, shall be informed of the reason(s) for the disqualification by email.”*

18. Mr. Tripathi submitted that the impugned communications declaring the petitioners non-qualified at the technical bid stage are completely non-speaking and bereft of reasons. No explanation, evaluation details or score-wise break up has been provided to demonstrate how the petitioners failed to meet the qualifying threshold of 70% marks in the technical bid evaluation.

19. He has stated that this Court has held that the tendering authority is required to explain the reasons for rejection of the technical bids in the case titled ***GMDB Enterprises v. Sr Deputy CGDA AM, 2024 SCC OnLine 4281*** (co-authored by one of us, Manmeet Pritam Singh Arora, J.) wherein the petitioner’s bid for providing security manpower services was rejected at the technical evaluation stage. In the online portal, the remark ‘not evaluated’ was found against the name of the petitioner. However, no information was provided/communicated to the petitioner. This Court directed that the tendering authority is required to supply information to the petitioner as regards the reason for the rejection of their bid. Relevant part of the judgment as relied upon by Mr. Tripathi is reproduced as under:-

“7...The Petitioner having participated in the impugned



tender process is entitled to know the reasons for the disqualification of its bid and not providing these answers is contrary to the requirement of transparency. This is also essential, so as to enable the Petitioner, to resolve the deficiencies in its documents to participate in the future tender”

20. He has also drawn our attention to a judgment of a co-ordinate bench of this Court in ***Amit Brothers v. Chief Engineer, W.P(C)292/2012*** wherein it was stated as under:-

“We may note that we have repeatedly emphasized in various orders/judgments that whenever a tender is rejected or tender documents are not issued and a party enquires reasons, it is necessary that the reasons be communicated to such a party to avoid unnecessary litigation as otherwise the first round of litigation is to find out the reasons and the second round of litigation is to challenge the reasons. Despite this, the authorities persist in keeping silent over such representations, which we strongly deprecate. We call upon the learned standing counsel for UOI to ensure that all the Government departments are circulated a communication to disclose reasons in such cases where enquiries are made by a contracting party to avoid unnecessary litigation and a compliance report be filed within two weeks. A copy of this order be circulated along with the communication.

Insofar as the present case is concerned, learned standing counsel for UOI states that the reasons why tender documents have not been issued to the petitioner shall be communicated on or before 16.04.2012 through a written communication with a copy being handed over to learned counsel for the petitioner.”

21. Pursuant to the orders of this Court in ***Amit Brothers (supra)***, the Department of Expenditure, Ministry of Finance, issued Office Memoranda dated 25.04.2013 and 20.05.2013 requiring all Ministries and government



departments to follow Rule 160 (ii) of the GFR, 2005 [which is now Clause 173 (iv) of the GFR, 2017].

22. He stated that even in cases where the bid documents specified that the tendering authority will have complete discretion in rejecting the bids, the reasons for such rejection are to be mandatorily communicated. In this regard, he has placed reliance on the judgment of the Supreme Court in *Star Enterprises v. CIDCO, (1990) 3 SCC 280*. It is his submission that the petitioners are entitled to ‘reasons sufficient to indicate the stand of the appropriate authority’ which would enable the petitioners to exercise their right of judicial review against the decision of the respondents. This would necessarily include information regarding the marks awarded to all the bidders criterion-wise, the benchmark / best offer reference used for relative criteria and also the evaluation committee’s recorded remarks/reasons. It must also explain the manner in which the petitioners’ bid have been evaluated, as merely giving the breakup of the marks obtained in each individual criteria would not be sufficient to indicate the reasons for evaluation.

23. He has drawn our attention to the Annexure J of the RFPs to contend that the nature of evaluation contemplated under Part III thereof, makes it clear that the petitioners must be provided with the reasons on the basis of which, other bidders were not disqualified. As per Part III of Annexure J of the RFPs, the marks to be provided for different criteria at the technical evaluation stage are based on ‘Mission’s judgment’. On several other criteria, the marks are awarded on comparative / relative basis, related to the ‘best’ offer in those particular criteria. In this regard, our attention has been



drawn to the following criteria contained in Annexure J of the RFPs.

- a) Criteria 1a (location of Indian Consular Application Centers) [ICAC]);
- b) Criteria 2b (layout and physical infrastructure of the ICACs);
- c) Criteria 3b (operational efficiency of submission process);
- d) Criteria 4a (provision for application facilities at ICACs);
- e) Criteria 4b (quality of organizational structure);
- f) Criteria 6 (call centers);
- g) Criteria 7a (online enterprise web application and innovative web design);
- h) Criteria 7b (grievance redress mechanism arrangement and analysis);
- i) Criteria 9 (reputation of the bidding company)

24. Mr. Tripathi submitted that there is no issue of State interest or official secrets in the information which is supplied by the bidders with regard to the technical specifications of the ICACs, which are being proposed to be developed. The information on the basis of which the technical evaluation is made by the respondents is also not confidential. In any case, the information relating to the area / layout of the incumbent ICACs would be known once the tender process is completed. It is his contention that once the decision is taken as regards the matter relating to



the grant of tender, there is no justification to keep it secret. In this regard, he has relied upon the judgment of the High Court of Jharkhand in *State of Jharkhand & Others v. Navin Kumar Sinha & Another, 2007 SCC OnLine Jhar 221*. Even assuming that there is a State interest/confidentiality attached to the reason, justifying the manner of evaluation of the bids, the same should nevertheless be provided to the petitioners in a redacted form. He has relied upon the judgment of the Supreme Court in *Madhyamam Broadcasting Limited v. Union of India, (2023) 13 SCC 401* wherein it was held that even in cases where issues of national security are involved, there is no blanket immunity from disclosure of all investigative reports/reasons. Any non disclosure on the ground of confidentiality/national security must satisfy the test of proportionality. Even where documents are fairly excluded on such grounds, the Court may always permit disclosure of the same, after redacting confidential portions.

25. He stated that though the respondents in the pre-bid responses provided that the breakup of the marks of the technical bid evaluation shall not be provided to the bidders, such bid clarifications cannot be relied upon as a means to override the statutory position as well as specific mandate of the tender conditions. Any response given by the respondents to a pre-bid query raised by a bidder cannot preclude this Court from exercising the power of judicial review. Such a clarification, at best, may bind the bidders *inter se*, but it cannot shield an arbitrary, discriminatory or opaque evaluation process from scrutiny under Article 14 and Article 226 of the Constitution of India. In this regard, he has referred to the judgment of this Court in *Indian Hotels Company Limited v. Union of India, 2022 SCC OnLine Del 912*.



26. It is also submitted that the petitioners have a reasonable suspicion of cartelisation on the part of certain bidders participating the bidding process, which further necessitates the need for a fair disclosure of the reasons for rejection of the bids. Presently, a firm namely VFS Global is providing CPV services in Australia for the price of 5 AUD, which has been the benchmark from the year 2020 till 2025. The term of the contract with the bidder is specified at Clause 25(i) and extension of the term would be as per mutual consent. VFS Global provided CPV services for an additional two years at 5AUD as per mutually agreed extensions. The CPV services for Australia were re-tendered in March, 2025. VFS Global quoted 50 AUD and was declared as L3, while the L1 bidder quoted a price less than 5 AUD. However, the tender was subsequently annulled due to the non-execution of the contract by the L1 bidder. From November 2025, the CPV works are up for re-tendering, which has been impugned in a writ petition bearing W.P.(C) 1203/2026. He stated that as per rumors in the market, the present bid of VFS Global has increased the quotation upto 25 times the current CPV service fee. In the Australia tender, out of 6 participants, 4 have been disqualified and VFS Global and another firm namely IVS Global are the only parties that have qualified. This reflects a sharp and unexplained escalation, nearly 30 times the last approved service fee of 5 AUD, and raises a strong *prima facie* inference of cartelisation and bid rigging.

27. It is also stated that out of 24 locations where the respondents have outsourced CPV services, 8 are presently being operated by VFS Global and 4 by IVS Global. Thus, the two bidders together control 50% of the total outsourced operations. Such concentration of market share, in the hands of only two entities, particularly in a competitive tendering frame work,



strongly indicates the existence of a cartel or at the very least, a coordinated understanding between them to retain and consolidate control over the outsourced locations. The continued dominance of these two bidders, across multiple locations demonstrates a pattern that undermines genuine competition. It is also submitted that one of the bidders that failed to qualify at the technical stage, was TCIL, which is presently contracted by the Ministry of External Affairs to manage passport services across India. The disqualification of such an entity on account of failure to meet the requisite technical criteria is absurd, which further makes the petitioners doubt the evaluation process carried out by the respondents.

28. While acknowledging that the scope of judicial review in matters of tender is limited and Courts ordinarily refrain from interfering with technical and commercial decisions of the procuring authority, Mr. Tripathi stated that the present cases squarely cross the threshold for judicial interference inasmuch as the disqualification of the petitioners is non-speaking, contrary to contractual obligations to record and disclose reasons, and violative of settled procurement norms of transparency. The continued refusal to disclose the reasons, coupled with the obstinate stands of the respondents raise serious doubts about the fairness of the tender process.

29. Mr. Tripathi has submitted that transparency in public procurement is a universally recognised principle. He has referred to the manner in which tender processes are carried out in Brazil, where bidding procedures are governed by the 'publicity principle' ensuing societal participation, regulatory oversight and proportionality. While proposals remain confidential until opening of the bids, they become public thereafter for



scrutiny by the participants and the public. Similarly, he has drawn our attention to the European Union procurement laws, which place transparency at the core of the award process. The contracting authorities are remained to promptly inform bidders of award decisions, and upon request, provide reasons for rejection and details of the successful tenders, reinforcing accountability while maintaining limited safeguards for confidentiality.

30. In support of his submissions that reasons for disqualification must be provided to the petitioners, he has referred to the following judgments:-

- a) *Subodh Kumar Singh Rathour v. Chief Executive Officer and Ors, (2024) 15 SCC 461;*
- b) *Insituform Pipeline Rehabilitation Private Limited v. New Delhi Municipal Council, 2022 SCC OnLine Del 73;*
- c) *PKF Sridhar and Santharaman v. Airport Economic Regulatory Authority of India, 2022 SCC OnLine Del 122;*
- d) *BLS International Services Limited v. Union of India & Anr. WP (C) 15997/2023, Order dated 12.12.2023;*
- e) *Kranti Associates Private Limited v. Masood Ahmed Khan,(2010) 9 SCC 496; and*
- f) *S.N. Mukherjee v. Union of India, (1990) 4 SCC 594.*

31. Further, to demonstrate the importance of transparency and fairness in State tenders, he has referred to the following judgments:-



- i) ***Banshidhar Construction Pvt. Ltd. v . Bharat Coking Coal Limited & Ors, 2024 SCC OnLine SC 2700;***
- ii) ***Dutta Associates Pvt. Ltd. v. Indo Mercantiles Pvt.Ltd, (1997) 1 SCC 53; and***
- iii) ***Siemens Healthcare Pvt. Ltd. & Anr. v. Directorate General of Health Services, Central Procurement Agency & Ors, (2021) SCC OnLine Del 216.***

32. Mr. Tripathi has contested the reliance placed by the respondents on the judgment of the Supreme Court in ***Agmatel India Pvt Limited v. Resoursys Telecom, (2022) 5 SCC 362***, by stating that the petitioner therein was disqualified from the tender for the supply of Tablets for school children. The past performance criteria therein included a mandatory requirement that the bidder should have supplied ‘similar category products’ for 80% of the bid quantity. Since the petitioners had previously only supplied smart phones, the tendering authority decided the same would not constitute ‘similar category products’ for the purpose of the bid. The Supreme Court held that the author of the tender was the authority best placed to interpret the tender requirements. He stated that the present case has nothing to do with the interpretations of the conditions of the RFPs. The challenge of the petitioners is to the manner in which the respondents have evaluated technical qualification criteria as per the terms of the RFPs. He has stated that where there have been allegations of *mala fide* or arbitrariness in the bid process, the Supreme Court has permitted bidders to inspect the records of the tendering authority. Reference in this regard has been made to the judgment of the Supreme Court in ***Rochem Separations***



Systems v. Mazagon Boch Limited, (2006) 12 SCC 439.

33. He has prayed this Court direct the respondents to:

- 1) Communicate the criterion/sub criterion-wise technical scores awarded to the petitioners;
- 2) Communicate brief recorded reasons/re-evaluation remarks forming the basis of the technical disqualification and the scoring of the petitioners;
- 3) Disclose the criterion-wise marks of all technically evaluated bidders and the benchmarks/best offer references used for relative criteria subject to redaction of commercially sensitive particulars, if any.

34. Mr. Anurag Ahluwalia, learned Senior Counsel for the petitioners has adopted the submissions made by Mr. Tripathi. Additionally, he stated that the petitioners have complied with all mandatory and essential requirements of the RFPs and there exists no material breach or deviation that could justify the award of marks below the qualifying threshold of 70% marks. In the absence of any identified non-compliance, the decision to declare the petitioners technically non-qualified is perverse and unsustainable.

35. He submitted that Part III: Technical bid Evaluation Performa at Sr. no. 1a provides for technical evaluation parameters relating to “location of ICACs” and prescribes relative marking based on what is perceived as the “best offer”, without defining any reference area, geographical limits, or objective benchmarks against which accessibility, proximity, or primeness



are to be assessed. In the absence of a disclosed reference zone or uniform geographical frame, bidders are left to make assumptions as to the Mission's expectations, rendering *inter se* comparison inherently subjective and arbitrary. Further, relative marking without pre-defined spatial parameters confers unfettered discretion on the evaluating authority to decide *post facto*, what constitutes a "prime location", "convenient access", or "proximity", in violation of Article 14 of the Constitution of India. In the absence of any disclosed scoring or reasons, it is inexplicable how the petitioners could have been awarded anything less than the highest marks under this parameter, which itself demonstrates the opacity and arbitrariness of the evaluation process. He stated that such an open-ended criterion permits shifting and undisclosed standards to be applied during evaluation, depriving bidders of a fair and level playing field and making the evaluation incapable of objective or judicial scrutiny.

36. He has contended that Part III: Technical Bid Evaluation Performa of the RFPs at Sr. no. 8 provides for technical evaluation based on "*record of past performance with the Mission*", which inherently disadvantages new entrants and, if applied mechanically, creates an impermissible entry barrier in a public tender. The petitioners, being first-time bidders for the respective Missions, could not have any prior performance record. However, the petitioners cannot be penalised or awarded lesser marks solely on the ground of them being newcomers, for such an approach would have the effect of structurally favouring incumbents or entrenched players and defeats the very object of competitive public procurement.

37. Mr. Santhosh Krishnan, learned Counsel for the petitioner in W.P.(C)



1893/2026 has adopted the submissions made by Mr. Tripathi and Mr. Ahluwalia. Additionally, he stated that the conditions of the RFPs have been drawn up by the Government of India embodying the binding GFR 2017 which indicates that:

1. There must be transparency, fairness and elimination of arbitrariness in the procurement process (Rule 173), in that:
 - a) The text of the bidding documents must be self contained and comprehensive.
 - b) Notification or clarification to bidding documents should be published in the same manner as the initial bidding documents.
 - c) Reasons for rejection of the tender must be disclosed when enquiry is made by the bidder.
2. Technical bids must be analysed by the committee which should record reasons for accepting or rejecting technical proposals (Rule 189).

38. He stated that Annexure-J to the RFPs provide nine parameters for which the scoring criteria is prescribed such that the evaluation happens on a relative basis- almost every criterion involves negative marking where the best or the optimal bid is given a higher score and the rest are given relatively lower marks. The respondents have admitted that the marks awarded were on a relative basis. Going by the scoring mechanism prescribed in the tender, the reasons for acceptance of the successful candidates is by necessity the reasons for rejections of the petitioners. In other words, the success of other bidders is the reason that animates the failure of the unsuccessful participants.



39. He has also contested the reliance placed by the respondents on the pre-bid clarifications, by stating that any response to anonymous queries at the pre-bid conference is not determinative of the issue. No waiver can be inferred from the same for the following reasons:

1. The response is inconsistent with the wordings of the tender.
2. The tender does not stipulate any response to queries at the pre-bid stage.
3. In respect of the pre-bid query for the same RFPs with regard to the Abu Dhabi tender, the Indian Embassy has given a contrary clarification that marks obtained by the bidder in each of the respective items will be communicated to the concern bidder.
4. The GFR 2017, permits modifications or clarifications to bidding documents only in the same mode and manner adopted for issuance of the RFPs.
5. The Government of India, who is the author of the RFP has issued no clarifications/ modifications.

40. Further, Mr. Krishnan submitted that there can be no prejudice caused to the Government of India or other bidders by the disclosure for the following reasons:-

- a) The disclosure will be *post-facto* and cannot enable the bidder to now improve its bid.
- b) It is meant to enable the bidder to improve for the future and



also for the purpose of a potential judicial review.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

41. Mr. Chetan Sharma, learned Additional Solicitor General appearing for the respondents has stated at the outset that the power of judicial review in matters of tender is very limited, inasmuch as Courts would only examine whether the decision making process is lawful, and would not venture into the merits of the decision taken. Any interference by Courts in tender matters would be warranted only when perversity is writ so large in a decision that it results in unreasonableness or arbitrariness. Reliance in this regard is placed on the judgment of the Supreme Court in the cases of *Tata Motors Limited v. The Brihan Mumbai Electric Supply & Transport Undertaking and Ors, Civil Appeal No. 3897/2023* and *Uflex Ltd. v. Government of Tamil Nadu & Ors, Civil Appeal 4862-4863/2021*.

42. He has outlined the following five issues that need determination in these petitions:

- (i) Whether the respondents are obligated to provide a breakup of the marks along with reasonings rendered with respect to the technical evaluation of the technical bid submitted by the petitioners in the absence of any such provisions/mandate in the RFP.
- (ii) Whether the petitioners are entitled to disclosure of the corresponding breakup of marks awarded to the technically qualified bidders.



(iii) Whether the petitioners can challenge the entire tender process after being declared not qualified by the tendering authority at the technical bid stage for not meeting the prescribed criteria expressed in the RFP.

(iv) Whether the petitioners can side-step the undertaking (Annexure E of the RFP) submitted by them along with the bid to the tendering authority.

(v) Whether a writ of mandamus can be issued directing the respondents to freshly re-evaluate the technical bid.

43. He stated that the petitioners by participating in the bidding process impliedly accepted all the terms and conditions of the RFPs including the evaluation methodology and the stipulation that only the total technical scores would be communicated to the bidders. He has referred to Annexure-E of the RFPs titled “*Declaration by the Bidding Company*” wherein, Clause G states that the bidding company fully understands the provisions of Annexure-K (financial bid), Annexure-D (mandatory criteria) and Annexure-J (technical bid) and shall abide by the same. As such, it is clear that the petitioners have accepted all terms and conditions of the RFPs, and are now seeking to challenge the result of the technical bid after being unsuccessful.

44. It has been submitted that any challenge to the terms and conditions prescribed in the RFPs after participation in the tender process invites the principle of ‘*approbate and reprobate*’ and constitutes violation of the undertaking provided by the petitioners. Reliance in this regard is placed on



the judgment of the Supreme Court in the case of *State of Uttar Pradesh v. Karunesh Kumar and Ors, 2022 SSC OnLine SC 1706*.

45. The primary grievance raised by the petitioners is with regard to the alleged non-disclosure of parameter-wise or section-wise score breakups, evaluation criteria and detailed reasons for the scores. These issues were explicitly addressed during the pre-bid query stage, when a query was raised regarding Chapter XV, Clause B(II)(c) of the RFPs which states “*Before the opening of the Financial Bids, the marks obtained by the various bidders in the Technical Bid stage will be communicated by e-mail. For the sake of transparency, will the mission also provide the score provided to the bidder for each of the respective sections in the technical bid?*” In response, the respondent no.2 clarified that “*Total scores of technical evaluation only will be shared.*” The petitioners had full knowledge of this clarification and without any objections proceeded to submit their bids, thereby, waiving any right to challenge the non-disclosure of detailed breakups at this stage.

46. He submitted that the decision to share only the total technical score is a policy choice embedded in the RFPs to maintain the integrity and confidentiality of the evaluation process, to prevent undue influence and ensure efficiency in tender proceedings. This approach is neither arbitrary nor opaque but is consistent with standard practices in government tenders, where detailed internal evaluations are not routinely disclosed unless expressly required by the tender document itself. The technical evaluation was conducted by a duly constituted committee comprising of experts familiar with CPV services, in a fair, objective, and non-discriminatory manner. The parameters for evaluation, as detailed in Part III of the RFPs



(Technical Bid Evaluation Performa), include aspects such as the location of ICACs, offered area, records of past performance, manpower deployment, software and technical solutions, call centre setup, biometric equipment, value-added services, and experience in CPV services. The marks under these parameters were awarded on a relative basis, comparing each bidder's proposal against the best offer received, as explicitly provided in the RFPs to foster competition and select the most suitable service provider for sensitive diplomatic services. The scores of the petitioners in the technical evaluation reflect their comparative performance across these parameters and do not indicate any unwarranted deduction or bias; rather, they demonstrate that other bidders presented better proposals in certain areas. Each Mission's RFP is tailored to local requirements, involves different bidders, proposals, and evaluation contexts, and cannot be used to infer inconsistency or *malafide*, more so when the petitioners have failed to substantiate any specific error, deviation or non-compliance in the evaluation process with evidence.

47. Further, he has stated that Chapter XV: Selection of Bidders/Award of Contract of the RFPs states that the bids will be opened in two stages i.e. Stage 1 – Technical Bid and Stage 2 – Financial Bid. The Chapter further elucidates the Technical Bid Evaluation Criteria and how the technical bids will be examined and evaluated by the Outsourcing Committee and those technical bids that do not fulfill the mandatory eligibility criteria will be disqualified. The bidders are also required to make presentations at the time of the evaluations of technical bids so as to evaluate the bidding company's understanding of the requirements of the tender and to assess the company's ability to meet them through the solutions proposed in the bid. Clause (f) of



Chapter XV categorically states that marks will be given as per the Mission's judgment on the basis of the information provided by the bidding company in Annexure-J and the explanation provided during the presentation made by the bidder. It further notes that the detailed scoring criteria can be found in the Technical Evaluation Proforma in Part-III of Annexure-J. Clause (g) states that bidding companies that do not obtain a minimum 70% qualifying marks (i.e. 70 marks out of total 100 marks) in the technical evaluation as per Annexure-J will not be considered for qualification to the financial evaluation stage.

48. Mr. Sharma also submitted that marks are awarded based on relative quality and suitability of the proposal of the bidding company, which can be assessed only by the Outsourcing Committee formed by the respective Indian Embassy, as it is fully apprised of the local conditions and operational requirements prevailing in the country where the ICAC is to be established.

49. He has contested the allegation that the evaluation criteria are vague or subjective, particularly regarding ICAC location ('prime location' and 'proximity') and area offered (beyond minimum without specified gradation), by stating that the RFPs provide clear guidelines, and relative marking allows for flexible yet fair assessment based on the proposals submitted. Such criteria are standard in service-oriented tenders to ensure practicality and applicant-centric setups, and they do not vest unfettered discretion but are guided by the overarching objective of efficient CPV service delivery.

50. He has also sought to controvert the issue raised by the petitioners



with respect to the parameter of past performance, which the petitioners claim as a disadvantage for new entrants, by stating that this criterion rewards proven reliability in handling sensitive consular services, which is essential for public interest and national security. The RFPs do not bar new bidders but evaluates them holistically; the petitioners were not disqualified solely on this ground but based on overall comparative scoring.

51. It is his submission that while the respondents do not allege any specific violations of the RFP conditions by the petitioners; the non-qualification stems purely from failing the minimum score threshold after fair evaluation. No opportunity for clarification or hearing is mandated under the RFPs for technical evaluations in a competitive bidding, and the principles of natural justice are satisfied through the transparent pre-bid process and communication of total scores.

52. As regards the plea of urgency and irreparable harm raised by the petitioners, he submitted that financial bids have not yet been opened (except in the Australia tender), pending necessary security verifications of qualified bidders. The petitioners have suffered no immediate prejudice, and granting any interim relief would unduly delay the outsourcing of critical CPV services, causing greater harm to public interest, applicants in the Missions, in particular the Indian Diaspora in those countries, which need to be given more regard than the commercial interests of the petitioners. He stated that therefore, the present petitions do not establish a case for interference, lacks balance of convenience, and would cause irreparable injury to public interest if entertained.

53. With respect to the pre-bid queries for the RFP for the Mission at Abu



Dhabi, in particular “S.No. 51”, he stated that the Outsourcing Committees which are constituted in the Indian Embassies where RFPs for outsourcing of the CPV are floated, are independent tendering authorities. The reply to the pre-bid query situated at “S.No. 51” is interpreted by the Outsourcing Committee that the section-wise marks shall be provided to the respective bidders after the conclusion of the tender process, with the objective of providing an opportunity to the bidding companies to improve their technical bids in subsequent tenders in the future. This approach is neither arbitrary nor opaque but is consistent with the standard practices in government tenders, where detailed internal evaluations are not routinely disclosed before the conclusion of the tender process, unless expressly required by the tender document itself.

54. Mr. Sharma has submitted that the terms and conditions of the RFPs are in consonance with the GFR 2017, and conform to the measures enshrined in Rule 173- Transparency, competition, fairness and elimination of arbitrariness in the procurement process. The text of the RFPs is self contained, comprehensive and without any ambiguities. As per Clause (xii) of Rule 173, bids received should be evaluated in terms of the conditions already incorporated in the bidding documents. The technical bids of the petitioners were evaluated as per the criteria mentioned in Annexure J of the RFPs, making the same in congruence with Rule 173 of the GFR 2017.

55. He has drawn our attention to the judgment of the Supreme Court in the case of *Agmatel India Pvt. Ltd. (supra)*, to contend that interpretation of the terms and conditions of the RFP squarely falls in the domain of the tendering authority, and this Court may not interfere with the same, more so



when no case of arbitrariness, unreasonableness, bias or *mala fide* has been made out by the petitioners. Relevant part of the judgment reads as under:

“The High Court, while supporting its process of reasoning, has referred to such principles which, with respect, we find entirely inapposite and beyond the periphery of the question involved in the present case. As noticed, in such matter of contracts, the process of interpretation of terms and 6 conditions is essentially left to the author of the tender document and the occasion for interference by the Court would arise only if the questioned decision fails on the salutary tests laid down and settled by this Court in consistent decisions, namely, irrationality or unreasonableness or bias or procedural impropriety.” The Impugned actions fully comply with these tests, exhibiting no irrationality, unreasonableness, bias, or impropriety.”

56. During the course of oral arguments, Mr. Sharma stated that the respondents are willing to release the detailed breakup of the marks of the petitioners, however, such an exercise may only be carried out once the tender process is complete and a successful bidder has been selected. Halting the tender process now would have serious ramifications, and would be detrimental to public interest, especially with regard to the Indian Diaspora in the Mission countries, who are being adversely affected by the delay in CPV services. Commercial interests of the petitioners cannot be allowed to trump larger public interest, and as such, the petitioners cannot claim to have any vested rights to receive the complete breakup of their marks or the reasons for their rejection, at this stage of the tender process.

57. According to him, the present petitions do not establish a case for interference, lacks balance of convenience, and would cause irreparable injury to public interest if entertained, and they need to be dismissed with



exemplary costs to deter frivolous litigation in contractual matters.

ANALYSIS AND CONCLUSION

58. Having heard the learned counsel for the parties, the issues which arise for consideration are whether the petitioners having secured less than 70% marks in the technical evaluation of their bids, have been rightly disqualified, and whether they are to be provided detailed breakup of their marks along with reasons for the disqualification.

59. At the outset, we may state that the law with regard to the scope of judicial review in matters of tender has been well settled by the Supreme Court in a multitude of judgments. In *Tata Cellular v. Union of India*, (1994) 6 SCC 651, the Supreme Court weighed the need for administrative discretion and judicial intervention, and observed as under:

“94. (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.

(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.”

60. Following this decision, the Supreme Court in ***Jagdish Mandal*** (*supra*), held 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 bonafide 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 licenses, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

Going by the law laid down above, we shall now decide the instant controversy.

61. Though the petitioners had initially raised a challenge to the terms of the RFPs, during oral submissions, Mr. Tripathi stated that the petitioners shall not press the same and would limit their contentions to disclosure of the detailed breakup of marks and the reasons for their disqualification.

62. It is not the case of the petitioners that the respondents have disqualified them for *mala fide* or extraneous reasons. Their case is primarily that the evaluation of the *inter-se* merit undertaken by the respondents resulted in shortlisting of some bidders and disqualification of the petitioners and the reasons for the disqualification were not



communicated to the petitioners. In that sense, the ground for challenge is not that the impugned technical evaluations undertaken by the respondents are *ex-facie* illegal and arbitrary, but as stated above is primarily on the *inter-se* merit of the bidders in the evaluation carried out by the respondents. Keeping in mind the narrow scope of judicial review in matters of tender, it is not for this Court to venture into evaluating relative merits and marks of the bidders *inter-se*, more so, when no *mala fide*, discrimination or arbitrariness has been demonstrated. Further, the challenge to the disqualification of the petitioners has been made primarily by drawing a comparison between the petitioners and the shortlisted bidders. It is a conceded fact that as of now, the financial bids of the shortlisted candidates have not been opened (except in the Australia tender). Successful bidders have not been identified in any of the bids (including the Australia tender), and as such, no comparative examination can be made between the bids of each of the petitioners herein and the bid of the successful/selected bidder. So in that sense, challenge made to the disqualification on the grounds urged above are premature at this stage.

63. Having said that, one of the submissions of Mr. Tripathi and Mr. Ahluwalia is that the respondents, except giving the final cumulative marks secured by each of the petitioners, have not provided the reasons for their disqualification, or the breakup of the marks on each of the parameters. They have heavily relied upon Clause B(II) of Chapter XV of the RFPs to contend that the tender conditions provide that reasons for any disqualification shall be communicated to the bidders who have not been shortlisted. They have also heavily relied upon Rule 173 of the GFR 2017, to contend that there is a statutory obligation on the part of the respondents



to disclose the reasons for disqualification to the petitioners.

64. We must state, it is a law well settled that recording of reasons acts as a safeguard against arbitrariness in actions of the State. It ensures that the decision taken by an authority is not arbitrary or actuated by extraneous reasons. It also makes it possible for the entity against whom the decision has been taken to move the court by way of judicial review. It is to serve such salutary purposes that the Ministry of Finance, Government of India, has issued the Office Memoranda dated 20.05.2013 and 25.04.2013 pursuant to observations of this Court in the case of *Amit Brothers (supra)*, requiring all Ministries and government departments to follow *inter-alia* Rule 160 (ii) of the GFR 2015 (which is now Rule 173 (iv) of GFR 2017). Even Clause B (II) of Chapter XV of the RFPs in the instant case clearly states that the companies that do not qualify the technical bid stage shall be informed of the reasons for their disqualification, making such disclosure a contractual requirement. As such, the submission of Mr. Tripathi and Mr. Ahluwalia that the respondents are bound to provide reasons for the disqualification of the petitioners cannot be contested.

65. However, on this issue, the submission of Mr. Sharma is that the respondents are ready and willing to disclose the breakup of the marks received by each of the petitioners, but only after all the financial bids are opened and the successful bidders are identified. According to him, any disclosure of marks at this present stage would jeopardise the tendering process and shall not be in public interest. The tenders having been floated for important CPV services, there are many expatriate Indians, living in the countries for which the tenders have been issued, who are waiting for the



commencement of the services so that they can apply for Consular Visa and Passport services to travel to their homeland India. In that sense, time is of the essence and any challenge mounted by the petitioners before identifying the successful bidder would further delay the said process and defeat public interest. That apart, it is his contention that while the RFPs provide that reasons of disqualification shall be communicated to the bidders, it does not stipulate a time period within which the communication is to be made. He has heavily relied upon the judgment in *Agmatel India Pvt Limited (supra)* to submit that interpretation of the said provision on the RFPs should be left to the tendering authority who is the author of the tender documents, and this Court shall not interfere with the same.

66. As noted above, judicial review of administrative action is no doubt intended to prevent arbitrariness, irrationality, unreasonableness, bias and *malafide*. However, if the decision relating to the award of contracts is *bonafide* and in public interest, Courts would not interfere with the same in exercise of powers of judicial review, as such interference either at interim or final stage may hold up public work for years or delay relief or succor to millions of people and may increase the project cost manifold, defeating public interest.

67. At this stage, we may refer to the judgment of the Supreme Court in *Raunaq International Ltd. v. IVR Construction Ltd and Ors., (1999) 1 SCC 492*, wherein while dealing with an interim order passed by the High Court of Bombay, the Court interpreted 'public interest' in matters of tender *inter-alia* to mean timely fulfillment of the contract so that services become available to the public expeditiously. The Court after much discussion held



that interference under Article 226 of the Constitution of India is only warranted when there is an overwhelming public interest requiring such intervention, or when *mala fide* has been established. Relevant part of the judgment is reproduced hereunder:

*“10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) **The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously.** (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work — thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.*

11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the



court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.

....

13. Hence before entertaining a writ petition and passing any interim orders in such petitions, the court must carefully weigh conflicting public interests. Only when it comes to a conclusion that there is an overwhelming public interest in entertaining the petition, the court should intervene.”

68. While we agree that the petitioners do have a right to know the reasons for their disqualification, to answer the question as to whether any direction from this Court to disclose the detailed breakup of marks is warranted at this stage, we need to weigh the commercial interest of the petitioners against public interest at large. We find merit in the submission of Mr. Sharma that any interference by this Court at this stage would disrupt and further delay the tender process. This we say so, for the reason that the impugned RFPs have been floated for a critical purpose, i.e., to serve the Indian Diaspora in the respective countries. Allowing the prayers of the petitioners and the halting the tender processes at this stage when even the financial bids have not been opened (except in the Australia tender), would cause great harm to the interests of the Indian expatriates in these countries. We are fortified in our view also by the fact that the petitioners have not alleged any *mala fide* on part of the respondents and have failed to demonstrate any arbitrariness in their actions, for this Court to intervene at this stage.

69. One of the submissions of Mr. Sharma is that one of the pre-bid queries put forth by the bidders raised a question as to whether the marks of each of the respective sections will be provided, to which the respondent no.



2 clarified that only the total score of the technical evaluation will be provided. However, in the Abu Dhabi tender, the respondents replied that they shall provide the marks in respect of each of the items. We find that this issue has been answered by a Single Judge of this Court in the case of *Indian Hotels Company Limited (supra)* relied upon by Mr. Tripathi and Mr. Santhosh Krishnan, wherein it was held that an answer to a pre-bid query cannot be said to override or amend the terms of the RFP, and cannot be interpreted to be part of the substantial terms and conditions of the tender.

70. Another submission of the learned counsel for the petitioners is that the petitioners have a reasonable suspicion of bid-rigging and cartelisation by two entities-VFS Global and IVF Global. However, this submission appears premature, as the tender processes are not yet complete and no successful bidder has been selected in any of the tenders.

71. Even the allegation with regard to the escalation of CPV service fee in the Australia tender is not substantiated by any evidence. Further, it is not the case of the petitioners that pursuant to the opening of the financial bids, the amounts, for which the bids have been submitted, have been put in the public domain.

72. Another plea that was taken by Mr. Tripathi and Mr. Ahluwalia during the course of the hearing is that the criterion-wise marks of other bidders and the benchmark/best offer references used for relative criteria also be provided to the petitioners. The plea was opposed by Mr. Saurabh Kirpal, learned Senior Counsel appearing for the interveners in some of the petitions, by stating that the marks received by the bidders are commercial confidentialities, and cannot be disclosed to third parties. To this, Mr.



Tripathi submitted that the disclosure may be subject to redaction of any commercially sensitive particulars. In any case, we are of the view that this plea of the learned counsel for the petitioners is also liable to be rejected at this stage in view of our conclusion above, and also as no successful bidder has been identified for the petitioners to compare their marks.

73. Even the submission of Mr. Krishnan that there can be no prejudice caused to the respondents or other bidders by the disclosure of the breakup of marks is liable to be rejected in view of our finding that such disclosure at this stage would be contrary to public interest.

74. That being said, we take on record the submission of the learned Additional Solicitor General that the reasons for disqualification and the detailed breakup of the marks of the petitioners shall be provided to them once the tender processes are complete. If the petitioners are aggrieved by the reasons or marks so provided, they shall be at liberty to seek any remedy available in law.

75. In view of the discussion above, we find no merit in the writ petitions. They are dismissed.

76. Interim orders, wherever passed stand vacated.

77. All pending applications are dismissed as infructuous.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MARCH 10, 2026/M