



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

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+ **W.P.(C) 2761/2026 & CM APPL. 13466/2026**

RASI NUTRI FOODS INDIA PRIVATE LIMITEDPetitioner

versus

NATIONAL AGRICULTURAL COOPERATIVE
MARKETING FEDERATION OF INDIA & ORS.Respondents

+ **W.P.(C) 2839/2026 & CM APPL. 13780/2026**

KOTA DALL MILL, KOTA & ANR.Petitioners

versus

NATIONAL AGRICULTURE COOPERATIVE
MARKETING FEDERATION OF INDIA LIMITEDRespondent

+ **W.P.(C) 2984/2026 & CM APPL. 14419/2026**

MARIYA MAHILA BACHAT GAT AUTHORIZING
REPRESENTATIVE JANAK RAVINDER AGARWAL.....Petitioner

versus

NATIONAL AGRICULTURAL COOPERATIVE
MARKETING FEDERATION OF INDIA LTD
NAFED THROUGH SECRETARY & ORSRespondents

Advocates who appeared in this case

For the Petitioner : Mr. Rajiv Nayar, Senior Advocate with Mr. Paavan Awasthi, Ms. Manjira Dasgupta, Ms. Tanya Srivastava, Mr. Anmol Kheta, Mr. Naman Maheshwari, Ms Meghna Mishra, Mr Ankit Rajgarhia, Mr Prabhav Bahuguna, Mr Samar Singh, Mr Naman Maheshwari, Mr Siddhant Ahirwal, Advs.



Mr Jayant Mehta, Senior Advocate with Mr. Karthik Sundar, Mr. Rajarshi Roy, Mr. Anmol Agarwal, Mr. Julius Mera Smith, Mr. Arsh Rampal, Mr. Amit Agarwal, Advs.

For the Respondents : Mr. Sandeep Sethi, Mr. Anil Airi Senior Advocates with Mr. Aaditya Vijaykumar, Ms. Akshita Katoch, Mr. Naman Garg, Mr. Anirudh Anand, Mr. Krisna Gambhir, Ms. Shreya Sethi, Harsh Gautam, Mr. Vishal Tyagi, Advocates and Mr. Amit Goel and Ms. Babita Dhawan AR from NAFED.
Ms. Radhika Bishwajit Dubey, CGSC with Ms. Gurleen Kaur Waraich, Mr. Kritarth Upadhyay, Mr. Amulya Dev Mishra, Advs for UOI.
Mr Anil Mittal, Mr Shaurya Mittal Advs. for R-2&3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. As these three writ petitions have been filed seeking identical prayers challenging the tender bearing NIT No. NAFED/HO/ICDS/RECIPE/2025-2026/01 dated 16.02.2026, they were heard together and are being decided by way of this common judgment.

FACTS AND SUBMISSION ON BEHALF OF THE PETITIONERS

W.P.(C) 2761/2026

2. At the outset, we may narrate a brief factual background of the case.
3. The Respondent No.1/National Agricultural Cooperative Marketing



Federation of India (“NAFED”) issued a Notice Inviting Tender (NIT) No.NAFED/HO/ICDS/ RECIPE/2025-2026/01 dated 16.02.2026 for supply of Recipe Based Supplementary Nutrition (‘RBSN’) food items in the State of Uttar Pradesh for Financial Year 2026-27 under Integrated Child Development Services (ICDS) Scheme.

4. The petitioner is a private limited company incorporated under the Companies Act, 2013. It was earlier registered as a partnership firm, and later converted to a private limited company in the year 2021. The petitioner and its predecessor in interest are engaged in the manufacturing and supply of fortified food products and supplementary nutrition since the year 2004.

5. The case of the petitioner/Rasi Nutri Foods India Private Limited as contended by Mr. Rajiv Nayar, learned Senior Counsel, is as under:-

5.1 Clause A (1) of the Eligibility Criteria for Participation in the Tender dated 16.02.2026 which mandates that, a bidder must own a manufacturing unit in the State of Uttar Pradesh prior to the floating date of the tender is arbitrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India and is contrary to public procurement norms.

5.2 Clause A (12) of the Eligibility Criteria for Participation in the Tender, which stipulates that, “*there should not be any pending legal/criminal cases and/or any other cases/disputes associated with THR supplies against them with any State/Central/UT/State Level Agency on the date of submission of this tender by the bidder(s)*”, is *ex facie* vague and arbitrary,



inasmuch as it disqualifies a bidder merely on the ground of pendency of any legal proceedings or disputes, irrespective of their nature, gravity, stage or outcome. Such a stipulation amounts to penalising a bidder exercising its statutory and constitutional right to seek legal remedies and is contrary to settled principles that, mere pendency of proceedings cannot be equated with culpability and lacks intelligible differentia, bears no rational nexus with the object of ensuring quality and timely supply, and is liable to be struck down as arbitrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

6. Mr. Nayar submitted that the petitioner has a production capacity exceeding 1450 metric ton/per day cumulatively across its two major manufacturing units, thereby demonstrating its ability to meet the quantity required under the tender. He also submitted that the petitioner was entrusted with the responsibility of assisting Mahila Supplementary Nutrition Production Centres (“MSPCs”) across the State of Karnataka for improving the quality and standardisation of nutrition supplied under ICDS Scheme.

7. He submitted that, in the earlier tender initiated by the State of Uttar Pradesh on 22.12.2017, the petitioner was found eligible and was awarded the contract for manufacturing and supply of ICDS food supplements in various districts of the State. The petitioner had successfully undertaken the manufacturing and supply of Energy Dense Weaning Food and allied products in accordance with the prescribed specifications and no objections



were raised with regard to deficiency in quality or shortage of supply during the subsistence of the said Tender/contract and the petitioner had duly completed the supply under the Tender.

8. He submitted that the Tender of 2017, neither imposed any requirement that the bidder must own a manufacturing plant within the State of Uttar Pradesh nor was there any blanket disqualification on the ground of pendency of legal proceedings or disputes. In the said tender, the eligibility was determined on objective parameters relating to technical capacity, financial standing, statutory compliance and quality certifications. In other words, in the absence of any such restrictive geographical and litigation-based disqualification in the earlier tender process coupled with the successful execution of the contract by an out-of-State manufacturer/petitioner without any recorded adverse findings, demonstrates that the State Government itself did not consider such conditions necessary for ensuring timely and quality supply. Therefore, the introduction of restrictive stipulations in the impugned tender under Clause A (1) & A (12) represents a material departure from past practice without any discernible rational basis.

9. He submitted that the petitioner's Namakkal facility in the State of Tamil Nadu has been in operation since 2004 and has been continuously engaged in manufacturing food products for over two decades and has a licensed production capacity of 1200 MT/per day (Manufacturer – General Manufacturing) and 1300 MT per day (Proprietary Food). Similarly, it also has a unit at Rudrapur, Uttarakhand, which has centralised FSSAI License with a production capacity of 250 MT/per day (General Manufacturing &



Proprietary Food) and there is no reason why the petitioner would be unable to supply the Take Home Ration ('THR', for short) to the Anganwadi Centers for providing supplementary nutrition to children aged between 6 months to 6 years, pregnant women and lactating mothers from its unit at Rudrapur, Uttarakhand, which is few kilometers away from Uttar Pradesh. He also submitted that the petitioner is technically competent, financially sound, statutorily compliant and experienced manufacturer of supplementary nutrition food under Government schemes and satisfies all eligibility conditions under the impugned tender except for the arbitrary geographical restriction requiring prior ownership of a manufacturing unit in the State of Uttar Pradesh as on the date of issuance of the tender.

10. He submitted that the State of Uttar Pradesh was procuring and distributing THRs through women based Self-Help Group ("SHG"), these production centers were entrusted with manufacturing and supply of THRs to Anganwadi Centers within specified districts. However, there had been a continuing shortfall in supply vis-à-vis the nutritional demand of the beneficiaries under ICDS. The production capacity of SHG-led THR plants was not sufficient to meet the entire demand of the State. In view of such shortfall and in order to ensure uninterrupted and adequate and quality supply of supplementary nutrition to beneficiaries, the State of Uttar Pradesh decided to engage respondent No.1/NAFED as an additional implementing and procurement agency to meet the balance demand over and above the supply being made by SHG-led THR plants.

11. Mr. Nayar submitted that the estimated value of the tender is approximately ₹2,768 Crores and the State has been divided into 9 clusters



for the purpose of supply and distribution. The tender contemplates supply of RBSN food items to Anganwadi Centers across Uttar Pradesh, intended for children and women beneficiaries under ICDS.

12. According to him, Clause A (1), stipulates pre-existing ownership of a manufacturing unit in Uttar Pradesh as on 16.02.2026. This condition renders all otherwise qualified and experienced manufacturers located outside Uttar Pradesh ineligible, irrespective of their capacity, compliance, certifications or prior ICDS experience. He also submitted that the successful bidders may be permitted a reasonable period of 2-3 months to establish and operationalise manufacturing units within the State of Uttar Pradesh and the interim supply from existing FSSAI-compliant manufacturing facilities, subject to due inspection and regulatory safeguards, until such time as local units are established. He also submitted that the tender itself contemplates establishment of NAFED's manufacturing unit within six months, which demonstrates that manufacturing capacity can be developed post-tender and not pre-exist.

13. With regard to Clause A (12), he submitted that it is a settled principle of law that mere pendency of legal proceedings does not constitute proof of misconduct, wrongdoing or liability. He also submitted that the said Clause lacks any rational nexus with the stated object of ensuring timely and quality supply of nutrition, fails to distinguish between trivial, routine or technical proceedings and serious allegations involving integrity, does not predicate disqualification upon any adjudicated finding of guilt, misconduct or breach, operates in a mechanical and disproportionate manner, without regard to the nature or merits of the proceedings and fails to distinguish between



proceedings by a bidder against the department and the proceedings initiated by the department against the bidder. In effect, it penalises a bidder for exercising its constitutional and statutory right to seek redress before courts and tribunals. In this regard, he has relied upon the judgment of this Court in *Vision Diagnostic India Private Limited v. All India Institute of Medical Sciences and Another*, 2026 SCC OnLine Del 545.

14. He also submitted that the pendency of arbitration proceedings between the petitioner and the State of Uttar Pradesh arises directly from contractual disputes relating to interpretation and compliance of delivery and bar coding provisions under the Agreement dated 25.04.2018, and does not involve any criminal proceedings, conviction, blacklisting, or adjudicated finding of fraud or misconduct against the petitioner. The exercise of arbitration rights by the petitioner is a lawful contractual remedy expressly contemplated under the Agreement executed with the State of Uttar Pradesh.

15. However, by virtue of Clause A (12) of the impugned tender document, which disqualifies bidders having “any pending legal case or dispute”, the petitioner now stands to be rendered ineligible solely because it exercised its contractual and statutory right to initiate arbitration against arbitrary action of the State. The impugned Clause A (12), when applied in the present factual matrix, operates punitively and discriminatorily against the petitioner for having sought redressal of legitimate grievances arising out of the State’s own default. He also submitted that Clause A (12), therefore, operates as a coercive mechanism to deter bidders from seeking judicial or arbitral remedies against the State and is liable to be struck down as arbitrary, unconstitutional and opposed to public policy and the right of



access to justice and judicial review is an integral facet of Articles 14 and 21 of the Constitution of India and forms part of the basic framework of the rule of law.

16. He submitted that the tender also indicates that NAFED is in the process of establishing its own manufacturing facility within Uttar Pradesh and proposes to supply a portion (approximately 20%) of the total requirement from its own unit within a stipulated period. The balance requirement is to be met through empanelled private manufacturers selected pursuant to the tender process.

17. It the submission of Mr. Nayar that the requirement of ownership “*on the date of publication of the tender*” bears no proximate nexus to the stated objective of ensuring timely and quality supply. The same objective could have been secured by permitting establishment of facilities within a reasonable post award period, subject to strict performance safeguards. The impugned condition, therefore, does not merely regulate eligibility but substantially forecloses entry by new participants, and in doing so, restricts competition in a manner inconsistent with the constitutional mandate of fairness, transparency and equal opportunity in public procurement. The impugned eligibility condition mandating prior ownership of a manufacturing unit within the State of Uttar Pradesh as on the date of floating of the tender is unconstitutional, arbitrary and violative of Articles 14, 19 (1) (g) and 21 of the Constitution of India. He submitted that, by excluding all out-of-State manufacturers at the very threshold and *ab initio*, the respondents have effectively denied equal opportunity to a substantial class of competent bidders, thereby distorting competitive neutrality and



undermining the constitutional mandate of equality under Article 14 of the Constitution. Such exclusionary stipulation operates not as a reasonable classification based on intelligible differentia, but as an arbitrary barrier that unfairly narrows the field of competition without lawful justification.

18. He submitted that, Rule 144 of the General Financial Rules, 2017 (“GFR, 2017”, for short) (as amended up to 31.07.2024) mandates that public procurement shall be conducted in a manner that promotes competition, ensures fair and equitable treatment of bidders, and adheres to the principles of transparency, reasonableness and non arbitrariness. The condition restricting eligibility only to bidders having an owned manufacturing unit within the State of Uttar Pradesh operates as a geographical lock, thereby excluding otherwise eligible, technically competent and financially sound bidders operating outside the State. No such statutory compulsion, recorded reasoning, or demonstrable necessity is reflected in the impugned tender which is thereof, is arbitrary, anti-competitive and violative of Rule 144 of the GFR, 2017.

19. He also submitted that, Rule 160 of the GFR, 2017 (as amended up to 31.07.2024) mandates that all procurements shall be processed through an e-procurement portal, except in narrowly defined circumstances such as national security or strategic confidentiality, and only upon due authorisation and recorded reasons. The present tender, having regard to its scale, subject matter and financial magnitude, does not fall within any of the recognized exceptions contemplated under Rule 160 of the GFR, 2017. Therefore, the stipulation permitting and requiring submission of bids through email is ex facie contrary to Rule 160 of the GFR, 2017, and is



therefore illegal, arbitrary and unsustainable in law.

20. The Rule 159 of the GFR, 2017 (as amended up to 31.07.2024) mandates compulsory e-publishing of all tender enquiries, corrigenda and details of award of contract on the Central Public Procurement Portal (CPPP), so as to ensure transparency, wider participation and public accountability in procurement processes. It is evident that the tender publication is stated to be on the official website of NAFED. However, there is no disclosure or stipulation in the tender document indicating compliance with the mandatory requirement of publication on the Central Public Procurement Portal (CPPP), nor any reference to publication of bid award details thereon. In the absence of any indication of publication on CPPP, the tender process appears to be in deviation from the express mandate of Rule 159 of the GFR, 2017.

21. Another submission of Mr. Nayar is that, Rule 161 of the GFR, 2017, which mandates that, in respect of advertised tenders having an estimated value of Rs. 50 lacs and above, the tender enquiry shall be compulsorily published on the Government e-Marketplace (“GeM”) as well as on the Central Public Procurement Portal, in addition to the website of the procuring organisation, so as to ensure wide publicity, transparency and maximum competition, has not been complied.

22. He relied upon the judgments in *Vinishma Technologies Pvt. Ltd. v. State of Chhattisgarh & Anr.*, 2025 INSC 1182, in support of his contentions that the clauses being discriminatory need to be set aside.

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23. The submissions made by Mr. Nayar in this writ petition are identical to the submission in the above petition in as much as, the respondents had floated impugned tender for supply of RBSN food items in the State of Uttar Pradesh for FY 2026-2027 under ICDS Scheme in violation of the statutory rules namely Integrated Nutrition Support Programme – Saksham Anganwadi and Poshan (2.0) Rules, 2022 (“Rules of 2022”) notified, vide Notification dated 12.09.2022 under National Food Security Act, 2013 mandating that the State or Union Territory must introduce transparent process for procurement.

24. The challenge in this petition is to Clause A (1) of Eligibility Criteria, Clause A (12) of Eligibility Criteria and Clause A (14) (iii) of Eligibility Criteria of the impugned tender.

25. According to Mr. Nayar, the petitioner no. 1 is a Registered Partnership Firm duly engaged in the manufacturing & supply of Supplementary Nutrition Food under ICDS Scheme since 2002 and has vast experience in manufacture and supply of RBSN food items from its manufacturing plant in Kota (Rajasthan) and supplies to various states including State of Uttar Pradesh, State of Madhya Pradesh, Gujarat, Jharkhand, Maharashtra and Rajasthan.

26. He submitted that, earlier a tender was issued by the State of Uttar Pradesh on 22.12.2017, wherein, the petitioner was successful bidder. An Agreement dated 25.04.2018 was executed by the State of Uttar Pradesh. The said work pertained to the manufacturing and supply of supplementary Nutrition Food in Faizabad Division of Uttar Pradesh, which resulted into



extension of the Agreement for a period of 4 months on account of satisfactory performance vide extension order dated 27.05.2020.

27. He submitted that the Government of India through Ministry of Women & Child Development vide Gazette Notification dated 28.06.2021, de-notified the Supplementary Nutrition Rules, 2017 in the light of streamline guidelines dated 13.01.2021 followed by issuance of Office Memorandum dated 29.06.2021 regarding de-notification of Rules, 2017 and emphasizing that States should ensure compliance to the streamlined guidelines dated 13.01.2021 and that the THR as defined under the National Food Security Act, 2013 is not to be misconstrued as Raw Ration. Thereafter, the Government of India through the Ministry of Women & Child Development has notified Integrated Nutrition Support Programme – Saksham Anganwadi and Rules of 2022. Thus, the Rules of 2022 having statutory force, the Guidelines dated 13.01.2021 merged in the said Rules.

28. He submitted that, on account of non-compliance to the provisions of National Food Security Act, 2013 and Rules of 2022, Public Interest Litigations bearing (PIL) No. 960 of 2024 and (PIL) No. 21609 of 2021 were filed before the Lucknow Bench of the Allahabad High Court wherein various directions were issued by the High Court to the State. Pursuant to the said directions the respondents issued the impugned tender.

29. According to Mr. Nayar, the petitioner has been supplying the products to various State governments from its manufacturing unit at Kota. Even the State of Jharkhand had allowed the successful Bidder to install a unit in the State within 6 months. In the meanwhile, supplies from Kota



(Rajasthan) are to continue till the petitioner installs its manufacturing plant in Bokaro (Jharkhand). He submitted that the petitioner is ready and willing to establish a unit once it is allowed to bid for the tender and it is awarded the same. He also stated, putting the impugned stipulation without granting any opportunity to the tenderer to put up a unit in the eventuality it is awarded, would be contrary to public interest for the reason that if the said condition is stipulated then more bidders could apply against the tender and also meet the requirement of having manufacturing units, which they can establish at the earliest from the date of award of the tender.

30. He stated that, in furtherance of GFR, 2017, the Government of India has also issued Manual for Procurement of Goods, which inter alia prescribed in 4.2.1.1 that *“there should be no restriction on participation by prospective Bidder who meet the eligibility criteria”*. The pre-qualification modes of procurement have been prescribed under Clause 4.6, which inter alia include Clause 4.6.1.4, which prescribes that; *“Pre-Qualification Criteria: PQC should be unrestrictive enough not to leave out even one capable vendor/contractor. Otherwise, it can lead to higher procurement/works/services prices”*. He has also relied on Clause 3.4 (4) of *“Uttar Pradesh Procurement Manual (Procurement of Goods), 2016”* to contend that, *“No Bidder should be denied pre-qualification/post-qualifications for reasons unrelated to its capability and resources to successfully perform the contract”*.

31. The stipulation in the tender that there should not be any pending legal/criminal case or any other cases/dispute associated with THR supplies against them with any State/Central/Union Territory/State level agency on



the date of submission of impugned tender by the bidder. Such a stipulation, more so, in any commercial transaction bound to happen and a pendency of litigation have no bearing on the eligibility and the competency of a tenderer to execute the subject work, if awarded the contract. In support of his submission, he has relied upon the judgments in *Vision Diagnostic India Pvt Limited (supra)*.

32. He also contested the case of the respondents by stating that the Food Corporation of India (“FCI”) allocation is not restricted to Uttar Pradesh inasmuch as:

- a) Wheat and rice used in THRs are supplied by FCI from the national food grain pool.
- b) The State Government merely raises its requirement, after which FCI allocates the quantity.
- c) FCI has depots across the country, and allocation can be made from any suitable depot depending on logistics.
- d) Historically also, bidders from outside Uttar Pradesh have participated and supplied successfully lifted grains through the FCI network.
- e) Similar supply mechanisms operate in national welfare schemes such as Mid-Day Meal and Public Distribution System (PDS).
- f) Therefore, the premise that, food grains must necessarily be



- lifted only within Uttar Pradesh is factually incorrect.
- g) Without prejudice, the petitioner is also willing to lift grains from U.P. The transportation, storage, processing and door-to-door delivery are entirely the responsibility of the bidder under the tender.
- h) The petitioner is willing to undertake this at its own cost while strictly adhering to the tender timelines.

33. He submitted that the petitioner requires approximately 2-3 months in establishing its manufacturing unit within the State of Uttar Pradesh and during this limited period, supply will be made from the petitioner's existing operational manufacturing units at Kota (Rajasthan) which is already complying with the tender specifications.

34. He has also placed the impugned tender and the old tender dated 22.12.2017 to show similarity in clauses.

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35. The challenge in this writ petition is against the following clauses of the impugned tender:-

- a) Clause 1 of the Eligibility Criteria for Participation.
- b) Clause 2 of the Eligibility Criteria for Participation requiring annual turnover of Rs. 75 crores exclusively from take home rations.



- c) Clause 11 of the Eligibility Criteria for Participation requiring all bidders to submit a non-compete declaration.
- d) Clause 5(b) of the Scope of Work impugned tender reserving 20% of the tender amount for respondent no.1.

36. Mr. Jayant Mehta, learned Senior Counsel appearing for the petitioner would submit that the impugned tender pertains to supply of THRs, which are nutritionally fortified ready-to-eat processed food items meant for children between 0–6 years of age, pregnant women and lactating mothers through Anganwadi Centers under the Supplementary Nutrition Programme (SNP) under the ICDS.

37. He stated that the petitioner is a cooperative society registered as medium enterprises under the Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED Act”). The petitioner has a registered license from the FSSAI for its manufacturing unit in Maharashtra, and is a large and established player in the market. He stated that, Rule 5 of the Rules of 2022 mandates procurement of THRs must be in compliance with the GFR, 2017.

38. According to Mr. Mehta, the Clauses A (1) and (2) which contemplate that the bidder should have its own manufacturing units in Uttar Pradesh before the date of floating of the impugned tender and the bidder should have minimum annual turnover of Rs. 75 crores from THR supplies for each year for the last three financial years, are arbitrary, irrational and has no nexus with the objective sought to be achieved. He submitted that the requirement of bidders to have prior license manufacturing units in Uttar



Pradesh is contrary to the other eligibility condition in the impugned tender, which permits the bidder to be eligible in case they have successfully supplied THRs across the country and not in Uttar Pradesh.

39. It is his submission that the condition requiring manufacturing units to be established in the State of Uttar Pradesh prior to the floating of the tender tailor made to favour certain prior suppliers of respondent No.1. This, according to him, becomes apparent from the fact that, prior to 2025, only 20 percent of the requirement of THRs in Uttar Pradesh was being met from the manufacturing unit established within the State while the sharp shortfall was being met by supply of Fortified Rations by respondent no. 1.

40. He submitted that the impugned tender has been issued in the backdrop of a severe shortage of THRs in the State of Uttar Pradesh and as per the admitted position, the SHGs entrusted with the responsibility of manufacturing THRs in the State were able to produce only about 20% of the required quantity. In view of the said shortfall, respondent no. 3 subsequently designated respondent no. 1 as the authority responsible for procuring THRs on its behalf in the state. Therefore, the tendering process ought to have been structured in a manner that promotes wider participation and ensures adequate and timely supply of THRs to meet the nutritional requirements of beneficiaries.

41. Mr. Mehta submitted that, even the Clause A (11) of the eligibility criteria requiring all bidders to submit a non-compete declaration, is *ex-facie* arbitrary for the reason that the respondent No.1 cannot abuse its dominant position as procuring authority in Uttar Pradesh to undermine the



competition it faces across the country from the other bidders. It is the respondent no.1's intent to abuse its dominance by imposing anti-competitive restraints not only on supplies which are under the ambit of the impugned tender, but even on supply of raw food materials, which are not even the subject matter of the impugned tender. There is no underlying rationale on part of the respondent No.1 for imposing such onerous anti-competitive constraints in the impugned tender. Such a clause undermines competition in the market.

42. According to Mr. Mehta, the impugned clauses needs to be set aside and the respondents should issue a fresh tender in accordance with GFR, 2017, so that there is participation by the petitioner and the best parties are selected. He has relied upon the judgment in *Shipra Devi v. State of Uttar Pradesh., Public Interest Litigation (PIL) No.960/2024 decided on 01.08.2025, of High Court of Allahabad.*

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

43. On the other hand, Mr. Sandeep Sethi, learned Senior Counsel for the respondent/NAFED in the three writ petitions, would submit that, it is a settled law that the tender can only be challenged when the tender does not create a level playing field for everyone. It is the mandate of the Supreme Court that, Constitutional Courts must refrain from rewriting the eligibility criteria. He also submitted that the petitioners have failed to show as to how the level playing field has been diluted in any manner, whatsoever. The tender is open to all tenderers' who meet the eligibility criteria. Allowing these petitions would effectively amount to rewriting the eligibility criteria,



which would run contrary to the law laid down. He submitted that the supply under the tender has to begin by 01.04.2026 and any change or variation in the terms of the tender would adversely affect the implementation of the tender and will affect the manner in which National Food Security Act, 2013 is to be implemented as the tender is for a period of 1 year and it would not be in the benefit of the public at large to allow any prayers in these writ petitions.

44. He stated that the challenge to Clause 1 of the tender condition relates to owning a manufacturing unit in the State of Uttar Pradesh and that the Department of Child Development and Nutrition has provided detailed guidelines to the Director, Child Development Services and Nutrition, through Government Letter No. 4363 dated 24.12.2025, regarding supply of RBSN food items in accordance with Saksham Anganwadi and Nutrition 2.0, and Schedule 2 of the National Food Security Act, 2013, which inter-alia contemplates that, supplementary nutrition is to be provided to children between 6 months to 6 years, pregnant and lactating women, and adolescent girls between 14 and 18 years (only for aspirational districts) at Anganwadi Centers in the state. The participation of the Government of India and the State Government in the Supplementary Nutrition Scheme is fixed at 50-50 percent.

45. According to Mr. Sethi, the RBSN food items will be manufactured through the following production units on the cost norms of the year 2017 till it is revised by the Government of India and will be supplied to the Child Development Projects, in the following manner:-



- i. Recipe based supplementary nutrition manufactured through 204 production units of Uttar Pradesh State Rural Livelihood Mission by getting it supplied to 288 Child Development Projects in 43 districts of the state.
- ii. In districts/projects other than those for which demand for manufacturing and supply of recipe based supplementary nutrition will be sent by Uttar Pradesh State Rural Livelihood Mission (UPSRLM). The services of NAFED will be availed for providing recipe based supplementary nutrition under interim arrangement on the cost norms of the year 2017 till it is revised by the Government of India.

46. In accordance with the guidelines received from the government, vide Directorate Letter dated 02.01.2026, instructions have been given to ensure arrangements regarding new supply shall be in compliance with Saksham Anganwadi and Nutrition 2.0 and Schedule-2 of National Food Security Act-2013 dated 30.12.2025 of the Department of Child Development and Nutrition. As per the said decision, NAFED shall ensure the arrangements regarding the new supply as under:-

- “1. NAFED will supply recipe based supplementary nutrition as per the details mentioned in Government Order No. 4363/58-1-2025-54-2099/12/2022 (Part-1) (C-1899543), dated 24-12-2025, regarding which NAFED has been informed by Directorate Letter No. C-4103, dated 26-12-2025.*
- 2. NAFED will supply recipe based supplementary nutrition directly to Anganwadi Centers at the cost norms of the year 2017.*



3. *NAFED will provide the supply rates for the respective quarter 15 days before the commencement of the quarter.*
4. *Supply of new recipe requires huge investment, for which, keeping in view the need for assured business to NAFED and other investors, supply of new recipe based THR will be procured from the suppliers selected by NAFED for a period of one year.*
5. *NAFED will ensure that the supplier is financially and technically competent, capable of making timely and quality supplies and does not have any dispute or litigation pending with the department.*
6. *Under the new arrangement, NAFED will directly supply THR to Anganwadi centers of rural projects, just like in urban projects, for which NAFED should ensure necessary logistics, storage, etc. arrangements.*
7. *Packaging of recipe based supplementary nutrition will be done by NAFED, for which a separate design will be provided to NAFED.*
8. *For the new arrangement, a draft MoU will be prepared between the department and NAFED, in which the quality and timeliness of supply and all other conditions required as per the new arrangement will be clearly included.*
9. *Proper arrangements should be made for supplier selection, capacity assessment, availability of raw materials, storage, packaging and labeling.*
10. *The FRS system has been implemented in the department, and it will be essential to implement it 100% from the next financial year. Therefore, appropriate arrangements should be made so that supplies can be made in the month for which the supply order is issued.*
11. *All backlogs should be cleared in any case before NAFED starts supplying new recipes.”*

47. He submitted that, as per the guidelines of the Government of India dated 30.05.2025, the distribution of supplementary nutrition in the department has been mandated to be done through Facial Recognition System (FRS) in which the supply is required to be done in a timely manner,



For the timely supply of supplementary nutrition, the wheat and rice subsidised by the Government of India are lifted by NAFED from the depot of FCI, Uttar Pradesh.

48. Mr. Sethi submitted that the supplementary nutrition is provided to approximately 16 million beneficiaries of the department, including every pregnant women, lactating mother and child (for six months after birth) and from six months to six years of age. He submitted that the terms and conditions of the tender have been made by NAFED in the interest of State government. There is no basis for any discrimination in it. He has made a reference to *Shipra Devi (supra)*, wherein a direction was issued to the State for complete compliance of the mandate set out in Section 4 and 5 of the National Food Security Act, 2013 in a time bound manner. It is also mandated that the State shall ensure procurement of THRs, strictly as per the Rules formulated in the year 2022 and as per the procurement procedure under the GFR, 2017.

49. According to Mr. Sethi, keeping in view the aforesaid decision and directions, the respondent/NAFED floated the impugned tender. The petitioners herein had challenged the terms of the tender, which stipulates that:-

- i. Bidder(s) should have owned a manufacturing unit of recipe based supplementary nutrition food items in the State of Uttar Pradesh by providing unit ownership, title deed, factory license, electricity connection proof and FSSAI certificate as a proof of ownership of the unit.



- ii. Bidder(s) should neither be blacklisted nor debarred, nor should there be any pending legal/criminal cases and or any other cases/disputes associated with THR supplies against them with any State Central/UT/State Level Agency on the date of submission of this tender.
- iii. The condition of turnover of Rs. 75 crores, is illegal without any objection sought to be attained.
- iv. The stipulation of non-competent clause is arbitrary.

50. According to Mr. Sethi, all these challenges have no basis. Insofar as the stipulation that the tenderer must have a manufacturing unit within the State is concerned, the stipulation is in consonance with the order in *Shipra Devi (supra)*, which urged the State to have adequate infrastructure within the State.

51. According to him, the said clause is justified because the successful bidder would be provided raw materials like Wheat and Rice by the State. It is strictly stipulated that the raw material of wheat and rice shall mandatorily be provided at a highly subsidised rate on ex-godown basis, which the stock is allocated to the State government by the Government of India. It is logistically impossible, economically disastrous and highly prone to pilferage to permit an out-of-State bidder to transport thousands of metric tons of wheat and rice (Central Government allocated, subsidised U.P. quota) to an alternate state, process it and then transport the highly perishable finished THRs for daily doorstep delivery to Uttar Pradesh Anganwadis. Since, time is of the essence in this contract and local



manufacturing is strictly physical and operational imperative, is not an arbitrary geographical barrier.

52. According to him, it has to be borne in mind that, RBSN food items have limited shelf life of about three (3) months. This implies that, it would be necessary to utilise the raw ingredients, process the same, transport it to the respective anganwadis with an element of immediacy and give the respective anganwadis adequate time for distribution to various households. He stressed on the fact that, at least a lead time of about one (1) month is required by the anganwadis for this process. If the manufacturing facility is outside the state, the time would be utilised just for transportation of the raw ingredients, processing the ingredients and transporting the same to the State. The entire purpose of distribution of RBSN with high nutritional value to various age groups would be lost on this account.

53. That apart, it is his submission that, having a manufacturing unit within the State would also ensure that the preparation of RBSN food items and the ultimate product, distributed are fit for consumption. This entire process can be supervised by the respondents, and the State of Uttar Pradesh and the Government could also, if required, can carry out inspection of RBSN food items, packaging and other associated works. This was a perennial problem which was observed by the respondents after the order of the Allahabad High Court in *Shipra Devi (supra)*.

54. According to Mr. Sethi, ensuring that, a manufacturing unit is within the state would reduce the cost of transportation of the bidder, at the same time, it is complying with the cost norms of 2017. Accordingly, the



respondents would get the most commercially viable bid on this account.

55. According to Mr. Sethi, the objection of the petitioner that it is not necessary for a bidder to own the manufacturing unit to carry out the tender is absurd because if the manufacturing unit is not owned by the bidder, there can be multiple issues, such as disputes with landlords, repeated change in statutory licenses, change in quality and quantity parameters, issues in respect of supervision and inspection, delays in restarting production and issues of limitation of liability. If a bidder during the period of the tender is required to change its address, then it would take time for the bidder to relocate to an alternate manufacturing unit and to setup a unit to meet the respondent's requirement. All of these issues would be at the cost of delay in supplying RBSN food items to various households.

56. Mr. Sethi stated that, it is only keeping in view the aforesaid position, the tender conditions were insisted upon the bidder to have a manufacturing unit within the state. That apart, the manufacturing unit within the state would simultaneously create employment, generate revenue and have the twin effect of benefiting the workmen as well as providing for the families of the workmen and the public at large. It is his submission that even if the petitioners does not have a manufacturing unit now, surely they can consider having such a unit if they wishes to become eligible for future tenders.

57. According to him, insofar as the challenge to the stipulation that the bidder should not have been blacklisted or debarred and should not have any pending legal and criminal cases in courts with regard to THR supplies against them is concerned, the respondents obviously do not wish to deal



with an agency that has been barred by an alternate government agency. This has no correlation with there being a level playing field or not rather the covenant only ensures that the credibility of the tenderer does not come into question. He lays stress on the fact that the eligibility requirement is extremely specific and only relate to disputes over THR supplies. If a bidder has defaulted in the past relating to these activities of public importance, the respondents should not be awarding a contract to such a bidder. Similarly, if a bidder, in the past, has a criminal case associated with THR supplies, awarding a tender to such a bidder would only give a premium to dishonesty, and that the stipulation is justified.

58. He submitted that, even the challenge in W.P.(C) No.2984/2026 to the condition that the bidder should have annual turnover of Rs.75 crores from THR supplies for each year for the last three financial years is concerned, he would justify the same by referring to the fact that the total tender value is Rs.2,768 crores and the whole of the State of Uttar Pradesh have been divided into 9 clusters with two tenderers getting awarded for each of the clusters. Given the magnitude of the tender value and contract awarded to two tenderers in each district would be around Rs. 600 crores, each tenderer would get approximate contract value of Rs.300 crores and surely, if the insistence of the tender is for a tenderer having the annual turnover of Rs. 75 crores for THR supplies for each year for the three financial year, is not an onerous stipulation and there is no arbitrariness in the said stipulation and should not be interfered by this Court.

59. That apart, it is his submission that the Clause 11 of the Eligibility Criteria which requires all bidders to submit a non-competent declaration is



not directed against the petitioners herein.

60. Mr. Sethi in support of his submissions has relied upon the following judgments and seeks dismissal of these petitions:

a. Directorate of Education and Others v. Educomp Datamatics Ltd. and Others, (2004) 4 SCC 19;

b. Association of Registration Plates v. Union of India and Others, (2005) 1 SCC 679;

c. Municipal Corporation, Ujjain and Another v. BVG India Ltd. and Others, (2018) 5 SCC 462;

d. Montecarlo Ltd. v. National Thermal Power Corporation Ltd., (2016) 15 SCC 272;

e. Rishi Kiran Logistics Pvt. Ltd. v. Board of Trustees of Kandla Port Trust and Others, (2015) 13 SCC 233;

f. Raunaq International Ltd. v. I. V. R. Construction Ltd. and Others, (1999) 1 SCC 492; and

g. Haffkine Bio-Pharmaceutical Corporation Ltd., A Government of Maharashtra undertaking through Manager v. Nirlac Chemicals through its Manager and Others & connected matters, (2018) 12 SCC 790.

61. Mr. Anil Mittal appearing for State of Uttar Pradesh adopt the arguments advanced by Mr. Sethi and seeks dismissal of these petitions.

ANALYSIS AND CONCLUSION

62. Having heard the learned counsel for the parties, we shall examine whether the clauses which have been challenged by the petitioner need to be set aside for the grounds as urged by the petitioners.



63. For this purpose, we deem it appropriate to reproduce Clauses no.1, 2, 11 & 12 of Section A of the General Terms and Conditions of the impugned tender, which are as follows:-

“1. Bidder(s) should have owned manufacturing unit of recipe based supplementary nutrition food items in the State of Uttar Pradesh, complying with all the Statutory requirements. The bidder(s) should provide unit ownership title deed, factory license, electricity connection proof and FSSAI certificate as a proof of ownership of the unit. The unit ownership title deed should be dated before the floating date of this tender. (Factory License and FSSAI issuing date should be before the date of floating of tender).

2. The bidder(s) should have minimum annual turnover of Rs.75 Crore from THR supplies for each year for last 3 financial years) (2022-23, 2023-24 & 2024-25). The bidder(s) is required to submit a CA certificate, with a valid UDIN, for turnover along with copies of audited balance sheets and profit & loss accounts as supporting document.

11. Interested bidder(s) shall submit Undertaking for Non-compete clause C.10. of this tender on letterhead of firm duly stamped & signed (Format attached as Annexure-6 of this tender).

12. The bidder(s) should neither be blacklisted or debarred, nor should there be any pending legal/criminal cases and or any other cases/disputes associated with THR supplies against them with any State/Central/UT/State Level Agency on the date of submission of this tender by the bidder(s). Bidder(s) to provide an affidavit (on the stamp paper of Rs.100) for the same.”

64. At the outset, we may state here that the Clause no.1 contemplates that the bidder should own manufacturing unit of RBSN food items within the State of Uttar Pradesh. The reasoning given by the respondents for this can be found in paragraph no.17 of the reply, as reproduced hereunder:-



“17. As far as Clause A (1) of the tender is concerned, the objection is ill founded because the requirement of a manufacturing unit in the State of U.P was in consonance with the order of the Allahabad High Court dated 01.08.2025, which urged the State Government to have adequate infrastructure within the State of U.P. Petitioner's challenge to Clause A (1) i.e. the requirement of a pre-existing local manufacturing unit in U.P. is absurd and ignores the reality of the scheme. Under the Scope of Work, the successful bidder would be provided raw materials like Wheat and Rice from U.P. It is strictly stipulated that the raw material of wheat and rice shall mandatorily be provided at a highly subsidized issue rate on ex-godown basis, which is the stock allocated to the State Govt. by the Government of India. It is logistically impossible, economically disastrous and highly prone to pilferage to permit an out-of-state bidder to transport thousands of metric tons of Central Government allocated, subsidized U.P quota wheat and rice to an alternate state, process it and then transport the highly perishable finished Take-Home Ration for daily doorstep delivery to U.P. Anganwadis. Time is essence of this contract and local manufacturing is strict physical and operational imperative, not an arbitrary geographical barrier.”

(emphasis supplied)

65. The above being the reason, the incorporation of the said clause in the tender notification cannot be contested.

66. We also find merit in the submission of Mr. Sethi that, after the judgment in *Shipra Devi (supra)*, it was found that the limited supplies with longer shelf life made by various agencies operating within the State of Uttar Pradesh, (but manufactured in other States and transported to the State of Uttar Pradesh) under the National Food Security Act, 2013 were found not fit for consumption, which led to the requirement for infrastructure to be



created within the State for RSBN, as the same requires constant supervision and inspection.

67. Another, the submission of Mr. Nayar is that the petitioners in W.P.(C) No.2761/2026 and W.P.(C) 2839/2026, have the capacity to bid for the tenders, but because of the stipulation of owning the manufacturing unit, they have been ousted for even applying for the tender, and petitioners require at least a period of 2-3 months to establish its manufacturing unit in the State of Uttar Pradesh and the petitioners must be allowed to bid for the tender, so that, if the contract is awarded to them, they would be in a position to establish a manufacturing unit within the State and during the interregnum period, supply will be made from the petitioners' existing operational manufacturing units, which are in compliance with the tender specifications. This submission is not appealing, because the contract contemplates that the supply should be made from the State of Uttar Pradesh if permission as sought by Mr. Nayar is granted, surely, that would be contrary to the tender conditions where the manufacturing unit must be permanent in nature and existing on the date when the bidder is applying for the tender/contract. That apart, it is expected that the supplies are to be made within a period of 15 days from the date of the award of the tender/contract and no later than 01.04.2026, even such stipulation would not be fulfilled by the petitioners, as any supply which the petitioners intended to do, if they are awarded the contract, shall be from outside the State of Uttar Pradesh.

68. We note, it is the stand of the respondents that, under the scope of work, the successful bidder would be provided raw material like wheat and rice at a highly subsidised issue rate on ex-godown basis, allocated by the



Government of India to the State Government, and if an out-of-State bidder is permitted to transport thousands of metric tons of raw materials subsidised under the State Government quota, process it and then transport the highly perishable finished THRs for daily door step delivery to U.P. Anganwadis, would be prone to pilferage. Further, the shelf life of the RBSN food items are three months, therefore, it would be necessary to utilise the raw material, process it and transport the same to the respective anganwadis with three months and anganwadis would require a lead period of one month for distributing of THRs. In the eventuality, where the manufacturing facility is established outside the State, the time would be utilised simply in transportation of raw material, processing the raw materials and transporting the material back to the State of Uttar Pradesh, whereas when the manufacturing is within the State of Uttar Pradesh, the entire process can be supervised by the respondent No.1 and if the need arises, the State of Uttar Pradesh and the Government of India could also carry out inspection of the RBSN for packaging and associated works, which was perennial problem, observed by the respondents pursuant to the judgment in *Shipra Devi (supra)*. This stand of the respondents in support of the Clause A (1) of the Eligibility Criteria shows that the condition is not arbitrary but has been incorporated to achieve timely and quality controlled supplies.

69. The petitioners contention that physical inspection of the manufacturing unit(s) is not necessary for supervision/quality check and the same can be achieved through electronic monitoring by referring to Section B(8) of the General Terms and Conditions fails to persuade us to exercise the powers of judicial review so as to interfere with the impugned tender



conditions. It cannot be disputed that physical supervision for achieving quality may be desirable and would be feasible for respondent and the State of Uttar Pradesh if the unit(s) are located in the State of Uttar Pradesh as opposed to another State. We therefore find the reasons given by the respondent for prescribing this condition to be reasonable. Another submission of Mr. Sethi is that, if the manufacturing unit is not owned by the successful bidder, there may arise multiple issues including dispute with landlords, which may lead to the bidder relocating to the alternative manufacturing unit thereby requiring change in the statutory licenses in quality and quantity parameters, delay in restarting the production, issues relating to limitation of liability and issue in respect of supervision and inspection, which would ultimately affect the timely delivery of RBSN food items. We find that the reasons advanced by Mr. Sethi that the stipulation under Clause A (1) of the impugned tender that the bidder should own the manufacturing unit of RBSN food items within the State of Uttar Pradesh, is not arbitrary, keeping in view the timelines of delivery and the essential nature of the service so as to require interference.

70. The submission of Mr. Sethi is that one of the reasons for insisting the bidder to own manufacturing unit within the State of Uttar Pradesh, also flows from the National Food Security Act, 2013. The obligation is on the part of the State Government to provide supplementary nutrition foods to all the stake holders regularly without any interruption. In that sense, the State Government was of the view that the bidder, who ultimately would be awarded the contract for supply of RBSN food items must have a permanency and shall commence supply within a period of 15 days of the



award of the contract and no later than 01.04.2026. This stand of the respondent as canvassed by Mr. Sethi is also appealing.

71. In any case, it is the prerogative of the State to stipulate such conditions as they deem appropriate. More so, in a tender of this nature, which has been floated to comply with the provisions of the National Food Security Act, 2013 and also in view of the directions of the Allahabad High Court in the case of *Shipra Devi (supra)*, Mr. Sethi is justified in contending that prescription of the tender conditions is the prerogative of the employer and the Court cannot substitute the view of the employer with its own view.

72. The plea of Mr. Mehta is that the condition in Clause 11 of the Eligibility Criteria for Participation in the tender document that, an undertaking is sought to be taken for non-compete with NAFED in future shall result in abuse of dominant position of the respondent no.1 as procuring authority in the State of Uttar Pradesh and undermine the competition it faces across the country from other bidders. During the course of submissions, Mr.Sethi has stated that said clause is not applicable to the petitioners in these cases. In view of the said submission, the challenge to that extent shall fail.

73. Though Mr. Mehta has raised an issue that, Clause 5(b) of the Scope of Work in the impugned tender reserving 20% of the tender amount for respondent no.1 is arbitrary and contrary to the Rules of 2022 in these facts, we do not see any illegality to the same.

74. In so far as the challenge raised by Mr. Mehta to the prescription of annual turnover of Rs.75 crores from THR supplier for each year for the last



three financial years, is concerned, it is contended by Mr. Sethi that the entire State of Uttar Pradesh has been divided into 9 clusters and one bidder can be allotted upto 2 clusters each and average estimated tender value of each cluster is Rs. 300 crores (approximately); thus the successful bidder could potentially be awarded the contract to the extent of Rs.600 crore (approx.) for two clusters. Since the tender is specifically for the large quantity and value of THR supplies of RBSN food items, it is important to ensure that the bidder can undertake the required quantity and uninterrupted supply. Therefore, the rationale behind the respondents' seeking annual turnover of Rs.75 Crores for the three preceding years in supplying the THRs is to ensure that the bidder possesses the experience and the financial capacity to successfully carry out the tender. This stipulation cannot be said to be arbitrary or tailored in favor of certain suppliers of the respondent no.1.

75. During the course of his submissions, Mr. Mehta has relied upon the judgment in *Shipra Devi* (*supra*) to state that the same is required to be followed. We do not see any ground to hold that the said judgment of the High Court is not being followed. In fact, the action which is sought to be taken is in furtherance thereof.

76. In so far as the challenge to Clause 12 of the Eligibility Criteria for Participation in the tender, which mandates that the bidder should neither be blacklisted/debarred, nor should there be any pending legal /criminal cases and or any other cases/disputes associated with THR supplies against them with any State/Central/UT/State Level Agency on the date of submission of the tender and to provide an affidavit in that respect, is concerned, it is clear that the same is relatable to legal/ criminal proceedings associated with THR



supplies only, with which the tender is concerned.

77. Mr. Sethi has submitted that, in the earlier tender process, the petitioner/ Rasi Nutri Food India Pvt. Limited was awarded the contract for manufacturing and supply of ICDC food supplements for the period 2017-18. However, a violation, i.e., supplying the THRs without bar code, led to doubtfulness of supply of supplementary nutrition to the beneficiaries, such as children between 6 months to 6 years, pregnant and lactating mothers, which led to recovery of an amount of Rs.27,79,78,240.56. The issue is pending adjudication.

78. According to Mr. Sethi, Clause 12 Eligibility Criteria for Participation has been prescribed as the respondents do not wish to deal with any agency that has been barred by any alternative government agency and same is specific to THR supplies. The justification is that, if a bidder has defaulted in the past activities of public importance, the respondents would not award any contract to such a bidder.

79. However, Mr. Nayar appearing on behalf of Rasi Nutri Food (in W.P.(C) 2761/2026) submitted that the petitioner has initiated arbitration proceedings for recovery of its dues wrongfully withheld by the client. He stated that, Arbitral Tribunal has been constituted and statement of claim has been filed. He states that there is no finding by any competent authority on the allegation of any deficiency in supply. He states that in the absence of adjudication by the competent authority, the petitioner cannot be precluded from participating in this tender.

80. Similarly, Mr. Nayar appearing on behalf of Kota Dall Mill, Kota (in



W.P.(C) 2839/2026), during oral submissions stated that the petitioner herein has an award in its favor against State of Uttar Pradesh and it is the respondent who has filed a petition under Section 34 of Act¹. He stated that, therefore, the petitioner cannot be excluded from the tender on the basis of the pendency of the said proceedings.

81. We note at the outset that none of the petitioners have been blacklisted or debarred. The issue arising for consideration is whether a bidder can be debarred only on the basis of the pendency of legal proceedings between the bidder and its client/employer for recoveries under a contract in respect of THR supplies.

82. Prima facie the submission of Mr. Nayar is appealing, as the above reveals that the petitioner in W.P.(C) 2839/2026 has an award in its favour and it would be unjust for the respondents to disqualify a bidder on the basis of pendency of a petition under Section 34 of the Act. Similarly, there is no finding of any competent authority against the petitioner in W.P.(C) 2761/2026 holding that the services rendered by it were indeed deficient. But the fact is, as the petitioners fail to comply with the mandatory conditions of Clause A(1) of the tender, this issue has become academic.

83. Mr. Sethi is justified in replying upon the judgments:-

a) In *Directorate of Education and Others (supra)* the Supreme Court has held as under:-

“12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial

¹ Arbitration and Conciliation Act, 1996



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

b) In ***Association of Registration Plates*** (*supra*) the Supreme Court held as under:-

“38. In the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring supply of high security registration plates, greater latitude is required to be conceded to the State authorities. Unless the action of tendering Authority is found to be malicious and misuse of its statutory powers, tender conditions are unassailable. On intensive examination of tender conditions, we do not find that they violate the equality clause under Article 14 or encroach on fundamental rights of a class of intending tenderer under Article 19 of the Constitution. On the basis of the submissions made on behalf of the Union and State authorities and the justification shown for the terms of the impugned tender conditions, we do not find that the clauses requiring experience in the field of supplying registration plates in foreign countries and the quantum of business turnover are intended only to keep out of field indigenous manufacturers. It is explained that on the date of formulation of scheme in rule 50 and issuance of



guidelines thereunder by Central Government, there were not many indigenous manufacturers in India with technical and financial capability to undertake the job of supply of such high dimension, on a long term basis and in a manner to ensure safety and security which is the prime object to be achieved by the introduction of new sophisticated registration plates.”

c) In ***Municipal Corporation, Ujjain and Another*** (*supra*) the Supreme Court held as under:-

*“61. The authority concerned is in the best position to find out the best person or the best quotation depending on the work to be entrusted under the contract. If a bidder had faced a number of show-cause notices from various municipal corporations in the matter of non-performance of door to door collection of garbage etc., the Court cannot compel the authority to choose such undeserving person/company to carry out the work. **Ultimately, the public interest must be safeguarded. The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously and effectively. The public would also be interested in the quality of work undertaken. 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 re-doing the entire work.**”*

(Emphasis supplied)

d) In ***Montecarlo Limited*** (*supra*) the Supreme Court held as under:-

“61. We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature



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



out the purpose and there has to be allowance of free play in the joints.”

(Emphasis supplied)

e) In ***Haffkine Bio-Pharmaceutical Corporation Ltd., A Government of Maharashtra undertaking through Manager (supra)*** the Supreme Court has held as under:-

“16. It has been urged by Mr. Banerji, learned senior counsel that Haffkine has about 550 employees and at the time of floating of tender it had virtually no orders. Therefore, it wanted that the bulk supplier should be able to give some commitment with regard to repurchase of the finished products, that is, oral polio vaccine. Therefore, this condition was incorporated and since Nirlac did not fulfil this condition, its tender was not found to be technically qualified. We find merit in this submission. It is for the party issuing a tender to decide what conditions should be incorporated in the tender. The party floating a tender is the best judge of its own requirements and there is nothing wrong if Haffkine wanted that the successful tenderer, who supplied the raw material, should take responsibility to sell or generate business for sale of some portion of the finished product.”

84. Insofar as decision of the Supreme Court in the case of ***Vinishma Technologies Pvt Limited (supra)*** is concerned, the challenge in this case was with regard to the tender condition no.4, as encapsulated in paragraph no.13 of the decision, which we reproduce as under:-

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

“(4) Past Performance Restriction : Bidders must have supplied sports goods worth at least Rs.6.00 crores (cumulative) to State Government agencies of



Chhattisgarh in the last three financial years (2021-22, 2022-23, 2023-24 or 2022-23, 2023-24, 2024-25).”

85. The stipulation in that case, that the bidder must have supplied sport goods worth Rs.6.00 crore to State Government Agency of Chhattisgarh in the last three financial years was held to be bad. But the facts in the cases at hand clearly demonstrate that there is no such stipulation in the tender in question. The prescriptions are primarily that the manufacturing unit must be situated in the State of Uttar Pradesh. The justification thereof has already been given by the State of Uttar Pradesh and NAFED for prescribing such a condition. Hence, the said judgment has no applicability to the facts in these cases.

86. In view of our above discussions, we are of the view that these petitions lack merit and are liable to be dismissed. It is ordered accordingly.

87. The pending applications are also dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MARCH 19, 2026/sr