APHC010129532025

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

FRIDAY ,THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION NO: 6508 OF 2025

Between:

1. M/S SRI SAMBASIVA DAIRY PRODUCTS (INDIA) PRIVATE LIMITED, HAVING ITS REGISTERED OFFICE AT 11-14-394-12/1, PLOT NO.24, SIRIS KAMINENI ROAD, ROAD NO.4, LB NAGAR, HYDERABAD, TELANGANA - 500074, REPRESENTED BY ITS AUTHORIZED SIGNATORY, MR. KANCHI PARAMESWARA REDDY

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REP BY ITS PRINCIPAL SECRETARY SCHOOL EDUCATION DEPARTMENT, SECRETARIAT, VELAGAPUDI AMARAVATHI
2. THE DIRECTOR, MID DAY MEAL AND SCHOOL SANITATION, ANDHRA PRADESH (MDMSS, AP) PLOT NO. 129, ROAD NO.5, NAGARJUNA NAGAR, NEAR PARINAYA KALYANA MANDAPAM, VIJAYAWADA, NTR DISTRICT
3. M/S PURI JAGGANATH ENTERPRISES, HAVING ITS UNIT/OFFICE AT 25-3-264, 4TH CROSS ROAD, GOWTHAM NAGAR, SPSR NELLORE, ANDHRA PRADESH-524004

...RESPONDENT(S):

Counsel for the Petitioner:

1. CKR ASSOCIATES

Counsel for the Respondent(S):

1. GP FOR SCHOOL EDUCATION
2. CHILUKURI KARTHIK

The Court made the following ORDER:

Heard Sri S.V.S.S. Siva Ram, learned Counsel representing M/s CKR Associates for the Writ Petitioner; Sri Gurram Rama Chandra Rao, learned Government Pleader for Education appearing for Respondent Nos.1 and 2; and, Sri R.N. Hemandranath Reddy, learned Senior Counsel (appearing through online) assisted by Sri Ch. Karthik, learned Counsel for the Respondent No.3.

2. The prayer made in the Writ Petition is as under:

> "…….to issue a writ, order or direction more particularly one in the nature of the Writ of Mandamus declaring the action of the Respondent No.2 herein in declaring the Respondent No.3 herein as "L1" in respect of the E-procurement Tender Notification after opening the financial bids for Package 6 & NIT No: 36/2024, dated 27.12.2024 for Procurement and Supply of Peanut-Jaggery Chikki to School Children under the Dokka Seethamma Madhyana Badi Bhojanam (MDM Scheme) for the FY 2025-26 contrary to the Eligibility Criteria stipulated in the Section II of the said tender document as being arbitrary, illegal, unjust, and violative of the fundamental rights of the Petitioners guaranteed under Articles 14 and 19(1)g of the Constitution of India and consequently disqualify the Respondent No.3 from the E-procurement Tender Notification process notified vide Package-6 & NIT No: 36/2024, dated 27.12.2024 by directing the Respondent No.2 herein to consider the Petitioner herein as "L1" in respect of the said tender in accordance with the law and/or pass any such other order/order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

<u>SUBMISSIONS OF THE WRIT PETITIONER:</u>

3. Sri S.V.S.S. Siva Ram, learned Counsel appearing on behalf of M/s CKR Associates would submit that the Writ Petitioner herein is a Private Limited Company engaged in supply of trade of fresh milk, pouch milk, milk and milk processed food products and allied products; that the Writ Petitioner claims to be one of the largest suppliers of the listed products herein mentioned and is known for maintaining and supplying quality products; that

the Government of Andhra Pradesh has initiated a policy of School Meal Programme, wherein free lunch/mid-day meal is provided to the students enrolled in the Government recognized schools to aid the disadvantaged children in rural and urban areas with proper nutrition, food security, and school access; that, it is submitted that mid-day meal scheme contemplated by the Government of Andhra Pradesh is through the School Education Department and was primarily to avoid classroom hunger for the children, attend classes and increase the school enrollment and attendance and most importantly malnutrition amongst the children; that, initially the mid-day meal scheme was provided for children upto Class V from 2003 to 2007; that, thereafter, the same scheme was extended to Classes VI to X as well and also to the students in the special training centers (NCLP) and Model Schools.

3.1. It is further submitted by the learned Counsel for the Writ Petitioner that the Government of Andhra Pradesh, in addition to the mid-day meals, has decided to provide Peanut-Jaggery Chikki from the year 2020 as an additional nutritious food; and that the said Peanut-Jaggery Chikki would be provided three times a week from 21.01.2020.

3.2. It is further submitted by the learned Counsel for the Writ Petitioner that vide Proceeding dated 31.01.2024, the Director, Mid Day Meal & School Sanitation (Respondent No.2) has issued Supply Order in favour of the Writ Petitioner, which is valid upto 31.03.2025 and in the execution of Supply Order, the Writ Petitioner has been supplying the Peanut-Jaggery Chikki.

3.3. It is further submitted by the learned Counsel for the Writ Petitioner that on 27.12.2024 the State Government of A.P has issued e-procurement tender notification for procurement and supply of Peanut-Jaggery Chikki to school children under “Dokka Seethamma Madhyhna Badi Bhojanam” (“MDM Scheme”) for the financial year 2025-2026; that the e-procurement tender notification is divided into six packages; and that each package is meant for a group of districts for supply of Peanut-Jaggery Chikki in the said area.

3.4. A table providing six Packages, the value of Tender (in crores) in respect of each Package, the group of districts ear-marked under each Package and the Bidders' ranking is provided as under:

Package No.	Value of the Tender (in Crs)	Extent of Supply	Bid Ranking of Writ Petitioner and Respondent No.3
Package 1	26.37	Srikakulam,Manyam, Vizianagaram, ASR & Anakapalli	--
Package 2	24.38	Kakinada, East Godavari, Konaseema, Eluru, WG District.	Writ Petitioner– L.3 Respondent No.3 – L.2
Package 3	22.31	Krishna, NTR, Guntur, Palnadu & Baptla.	Respondent No.3 – L.1
Package 4	21.21	Prakasam, Nellore, Tirupathi	Writ Petitioner– L.5 Respondent No.3 – L.1
Package 5	23.36	Chittoor, Annamayya, YSR Kadapa, Sri Sathya Sai	--
Package 6	26.56	Ananthapuram, Kurnool, Nandyal.	Writ Petitioner– L.2 Respondent No.3 – L.1

3.5. It is submitted by the Ld. Counsel for the Writ Petitioner that the bidders are required to adopt a three cover system (Pre-qualification, Technical and Financial Bids) from the eligible bidders. Learned Counsel would further submit that the highest annual turnover of any one financial-year in the last three financial years of bidders will be considered as the turnover of the respective bidder. That, every bidder is permitted to bid for any number of Packages but the individual annual turnover shown for one bid (package) will not be considered another bid (package).

3.6. It is further submitted that the Writ Petitioner's turnover for the financial year 2022-2023 is Rs.90.20 crores, which is the highest in the last three financial years. The Writ Petitioner has bidded for Package Nos.2, 4 & 6. It is further submitted that the Unofficial Respondent No.3 has turnover of ₹.56.66 crores and it has bidded for Package Nos.2,3,4 and 6. It is submitted that the Unofficial Respondent No.3 is declared as L.1 in respect of Package Nos.3, 4 & 6, whereas the Writ Petitioner was declared as L.3 in Package No.2, L.5 in Package No.4 and L.2 in Package No.6.

3.7. Learned Counsel for the Writ Petitioner has drawn the attention of this Court to various clauses of tender conditions. Insofar as the Package No.6 is concerned, it is meant for supply of Peanut-Jaggery Chikki for the Districts of Ananthapuramu, Kurnool and Nandyal. The number of schools under the said Package No.6 are 4,487 in number and the total number of children are about 6,03,612 in number. Therefore, the quantity of Peanut-Jaggery Chikki which is required to be supplied is 16,59,936 kgs. The other clauses are common for all the Packages.

3.8. Section-II of the tender document deals with eligibility criteria. The relevant clauses of the tender notification that fall for consideration before this Court are usefully extracted hereunder:

SECTION-II

INSTRUCTIONS TO BIDDERS

1. ELIGIBILITY CRITERIA

(a) xxxxx.

(b)xxxxx.

(c) The Annual Turnover in Peanut Jaggery Chikki/Food products / Confectioneries of the Bidder in any one year of last 03 years shall be equal to or more than the tender value of the bid. A certificate (with UDIN number) from Chartered Accountant shall be submitted for confirmation.

i. ***The turnover shown for one bid (Package) will not be considered for another bid (Package)***

ii. ***However, the Tender Committee/ Tender Inviting Authority reserves the right in this regard.***

(d) The Bidder should have satisfactorily executed supply of Peanut Jaggery Chikki equal to or more than 50% of the bid value of the tender value in any one year of the preceding three financial years. The experience of Peanut Jaggery Chikki works and satisfactorily executed orders towards any State or Central Government Departments/Organizations/PSU/Local Body/ Public Sector Undertakings/ in any reputed private company will only be counted as experience. A copy of supply order, proof of supply order along with turnover tax receipt should be enclosed." (emphasis supplied)

3.9. The particulars of Technical Bid are provided under clause 5.1 of the tender document. Subclauses (iv) & (v) of Clause 5.1 of the technical-bid reads as under:

iv. The Bidder shall have a minimum Turn Over of **Rs.26.56 crores**, in any one of the Financial Year of the last three (3) financial years.

v. A certificate (With UDIN number) of Chartered Accountant for the Annual Turnover in Food products and/or Confectioneries of the Bidders in any one year of last 03 years shall be equal to or more than the tender value of the bid"

3.10. It is submitted by the learned Counsel for the Writ Petitioner that, after the Technical Bid evaluation was done, the Writ Petitioner has addressed a letter to the Respondent No.2 on 10.03.2025 (Ex.P.2) raising certain technical objections with regard to the tender submitted by the Unofficial Respondent No.3.

3.11. It is the submission of the learned Counsel for the Writ Petitioner that since Unofficial Respondent No.3 has bidded for Package Nos.2,3,4 & 6, when it comes to Package No.6, the Financial Bid of Unofficial Respondent

No.3 ought not have been opened because the turnover capacity which is reckoned for one package cannot be utilized for any other package. In other words, if the value of tender Package No.2 is 24.38 crores and Package-3 is Rs.22.31 crores, the total value of tender for Package Nos.2 & 3 would be Rs.46.69 crores. Therefore, since the total turnover is only Rs.56.66 crores for the financial year 2021-2022 for the Unofficial Respondent No.3, the Financial Bid of Unofficial Respondent No.3 in respect of Package Nos.4 & 6 ought not to have been opened at all.

3.12. Learned Counsel for the Writ Petitioner places reliance on Subclause - c (i) of Clause-1 of Section-II of the tender document pertaining to Package No.6 dealing with eligibility criteria. It is stated in the said clause that the turnover shown for one bid (Package) will not be considered for another bid (Package). At this stage, it is necessary to point out that Subclause - c (ii) of Clause (1) of Section-II provides as "*However, the Tender Committee/ Tender inviting Authority reserves the right in this regard*".

SUBMISSIONS OF OFFICIAL RESPONDENTS:

4. The Counter Affidavit has been filed by the Director, Mid-Day Meal & School Sanitation (Respondent No.2). Sri Gurram Rama Chandra Rao, learned Government Pleader for Education appearing for Respondent Nos.1 and 2 has taken through the relevant portions of the Counter Affidavit and also relevant documents filed along with the Counter Affidavit. He would submit that the Writ Petitioner herein, though had bidded for Package Nos.2,4 & 6, had been declared as L.2 only in Package No.6. The Writ Petitioner is declared as L.3 in Package No.2 and as L.5 in Package No.4. This indicates that the Writ Petitioner is no way close to L.1 in Package Nos.2 & 4. He would submit that the Writ Petitioner became L.2 only in Package No.6, and therefore, the Writ Petitioner is trying to ensure that the bids of the Unofficial Respondent No.3 shall be considered only for Package Nos.3 & 4 and it shall not be considered for Package No.6. Learned Government Pleader would submit that the tender condition in Subclause - c (i) of Clause (1) of Section-II

cannot be read in isolation, inasmuch as Subclause - c (ii) of Clause (1) of Section-II has clearly provided that it is the Tender Committee which has a right to decide as to the applicability of turnover *vis-à-vis* the value of tender in terms of each package. Learned Government Pleader would submit that the Writ Petitioner has approached this Court prematurely even before the authority has exercised its discretion under Subclause - c (ii) of clause-1 of Section-II by insisting on the authority that Subclause - c (i) of Clause (1) of Section-II shall alone be applied, thereby subjecting the Unofficial Respondent No.3 to be eliminated from being considered for Package No.6 despite the fact that the Unofficial Respondent No.3 has been declared as L.1 for Package No.6.

4.1. Learned Government Pleader would submit that a bidder cannot dictate terms to the Employer (the State) as to who should be considered for which Package, since the said procedure is exclusively reserved for the Employer.

<u>Submissions of the Unofficial Respondent No.3</u>

5. Sri R.N. Hemandranath Reddy, Learned Senior Counsel (appearing online) would submit that the Writ Petitioner has neither pleaded arbitrariness nor malafides nor has been able to prove the same. Learned Senior Counsel would submit that, if at all malafides are pleaded, standard of proof that required to prove the same is very high. He would also submit that a Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a Tenderer. Referring to a decision in ***M/s. N.G Projects Vs. Vinod Kumar Jain (MANU/SC/0341/2022).,*** he would submit that the Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in mind by the Writ Courts.

5.1. It is submitted by the learned Senior Counsel that the Unofficial Respondent No.3 has submitted the Certificate issued by the Chartered

Accountant dated 08.01.2025 for the financial years 2021-2022, 2022-2023 & 2023-2024. Learned Senior Counsel would submit that the highest annual turnover for supply of Peanut-Jaggery Chikki, as per the Turnover Certificate issued by the Chartered Accountant, is Rs.59.66 crores. Whereas, the annual turnover Certificate issued by the Assistant Commissioner (Sales Tax) dated 08.01.2025 would indicate that the Unofficial Respondent No.3 has turnover of Rs.56.66 crores for the financial year 2021-2022. During the course of arguments, he would submit that, in view of the difference of annual turnover for the financial year 2021-2022 between the Certificate issued by the Chartered Accountant and the Assistant Commissioner (Sales Tax), the Unofficial Respondent No.3 has shown the lower annual turnover only which is as Rs.56.66 crores instead of 59.66 crores for the financial year 2021-2022.

5.2. Learned Senior Counsel appearing for the Unofficial Respondent No.3 has placed on record the Judgment rendered by the Hon'ble Apex Court in ***Suraz Earth Movers and Engineering Works Vs. The State of Andhra Pradesh and Ors : MANU/AP/0743/2022.*** He had relied on Para Nos.10 to 13 of the said Judgment.

5.3. Learned Senior Counsel has also placed reliance on Para Nos.23 to 26 of the Judgment in ***Agmatel India Private Limited Vs. Resoursys Telecom and Others : (2022) 5 SCC 362.***

Rejoinder by the Writ Petitioner:

6. The Writ Petitioner has filed Rejoinder along with the letter addressed by the Writ Petitioner to Respondent No.2 dated 03.03.2025 stating that although the Writ Petitioner is ranked as L.2 for Package-6 in the bidding process, the Writ Petitioner is willing to supply Peanut-Jaggery Chikki at L.1 rates.

7. A Memo has also been filed by the Writ Petitioner on 20.03.2025, which shows that the highest annual turnover of the Writ Petitioner for the

financial year 2021-2022 is for Rs.51.45 crores with regard to the supply of Peanut-Jaggery Chikki.

8. Learned Counsel for the Writ Petitioner has placed reliance on the Judgment of the Hon'ble Apex Court in ***Subodh Kumar Singh Rathour Vs. Chief Executive Officer and Others : 2024 SCC OnLine 1682***. He has relied on Para No.69 of the said Judgment. This Court has gone through the content of Para No.69 of the Judgment relied on by the learned Counsel for the Writ Petitioner. This Court is of the opinion that this would not help the Writ Petitioner in any manner and rather it reiterates the principle that where there is no arbitrariness or caprice in the decision making process, in the ordinary course, the Courts should not interfere.

ANALYSIS:

9. During the first hearing on 13.03.2025, learned Counsel for the Writ Petitioner had submitted that the Writ Petitioner has submitted a Representation to the Respondent No.2 on 10.03.2025 and the same is under consideration. During the course of hearing, the learned Assistant Government Pleader for School Education had conceded to consider and dispose of the Representation made by the Writ Petitioner in accordance with law. Keeping in mind the submission of the learned Assistant Government Pleader that the Representation of the Writ Petitioner would be disposed of, this Court has given a direction to the Official Respondents to pass a reasoned Order on the Representation of the Writ Petitioner within one week. The said Representation is to the effect that the Writ Petitioner, though has been declared as L.2, is willing to match the price of Unofficial Respondent No.3 who stood as L.1 insofar as Package No.6 is concerned. In this view of the matter, this Court had directed the Respondent No.2 not to finalise the tender insofar as the Package No.6 is concerned.

10. Since the pleadings are about to be completed, this Court had continued with the Interim Order on 20.03.2025. However, this Court, vide

Order dated 21.03.2025, had modified the earlier Order to the effect that the process of tender will be subject to the final outcome in this Writ Petition.

11. The Order dated 21.03.2025 would clearly indicate that this Court has not laid any fretters on the Official Respondents in proceeding with the tender process.

12. Subclause - c (i) & (ii) of Clause-1 of Section-II are the only clauses that fall for consideration before this Court. It is an admitted fact that after Financial Bids were opened and after declaring the Unofficial Respondent No.3 as L.1 and the Writ Petitioner as L.2 insofar as Package No.6 is concerned, before the Employer took a decision on all the packages, the Writ Petitioner has approached this Court. At this stage, the Employer has not rendered its decision. The Writ Petitioner is seeking a direction from this Court against the Official Respondents declaring Unofficial Respondent No.3 (who stood as L.1 for Package No.6) as disqualified on the ground that the turnover of Unofficial Respondent No.3 got exhausted in respect of Package Nos.2 & 3, and therefore, the Financial Bid of Unofficial Respondent No.3 for Package No.4 & 6 ought not to have been opened. The Writ Petitioner has projected the present case in a myopic manner insisting this Court to read and follow only Subclause - c (i) of Clause-1 of Section-II of the tender document and by completely ignoring the content in Subclause - c (ii) of Section-II of the tender document.

13. The Writ Petitioner is attempting to elbow-out the Unofficial Respondent No.3 for Package No.6 for the reasons stated above. Admittedly, the turnover of Unofficial Respondent No.3 is Rs.56.66 crores for the financial year 2021-2022 in respect of supply of Peanut-Jaggary Chikki. The Unofficial Respondent No.3 has stood successful as L.1 insofar as Package Nos.3, 4 & 6 are concerned. Whereas the Writ Petitioner has stood as L.3 in Package No.2 and as L.5 in Package No.4. It is Package No.6 in which the Writ Petitioner has stood as L.2. It is for this reason that the Writ Petitioner is contending that the turnover of Rs.56.66 crores for the financial year 2021-

2022 of Unofficial Respondent No.3 shall be set off insofar as Package Nos.3 & 4 are concerned, and consequently, for Package No.6, Financial Bid of the Unofficial Respondent No.3 ought not to have been opened at all.

14. This Court is unable to accept the contention of the Writ Petitioner in view of the settled position of law with regard to flexibility and discretion that is available to an Employer. The law is well settled in this regard to the effect that the Writ Courts shall not interfere into the decision making process of the Employer.

15. In the present case, the Employer has not even rendered its decision. Whereas, prematurely, the Writ Petitioner has approached this Court. The terms of the Tender are very clear. The Tendering Authority had reserved its rights to apply the turnover according to its discretion. This condition has been expressly stated in Subclause - c (ii) of Clause-1 of Section-II to the effect that the Tender Committee/Tender inviting Authority reserves the right with regard to the application of the turnover as against the Packages. In this view of the matter, the plea of the Writ Petitioner to read Subclause - c (i) of Clause (1) of Section-II in isolation cannot be accepted by this Court.

16. Even in the absence of Subclause - c (ii) of Clause (1) of Section-II, the law is to the effect that the flexibility and discretion are vested with the employer. In other words, 'play in the joints' is very much available to an Employer (***Sterling Computers Limited Vs. M/s M & N Publications Limited and Others : (1993) 1 SCC 445*** – Para No.12); and ***Directorate of Education and Others Vs. Educomp Datamatics Ltd., and Others : (2004) 4 SCC 19*** – Para No.12).

17. In ***State of Madhya Pradesh and Another Vs. Uttar Pradesh State Bridge Corporation Limited and Another : (2022) 16 SCC 633***. The Hon'ble Apex Court, in Para Nos.21 to 26, held as under:

“21. We have heard all the learned counsel for the parties. The parameters of judicial review in matters such as the present have been well stated in many decisions of this Court, beginning with the celebrated *Tata Cellular* v. *Union of India* [*Tata Cellular* v. *Union of India*, (1994) 6 SCC 651] , in which a three-Judge Bench of this Court laid down the following principles : (SCC pp. 687-88, para 94)

> ***“94. The principles deducible from the above are:***
>
> ***(1) The modern trend points to judicial restraint in administrative action.***
>
> ***(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.***
>
> ***(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.***
>
> ***(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.***
>
> ***(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.***
>
> ***(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure****.”*

(emphasis supplied)

22. Likewise, in *Jagdish Mandal* v. *State of Orissa* [*Jagdish Mandal* v. *State of Orissa*, (2007) 14 SCC 517] , this Court held : (SCC pp. 531-32, para 22)

> ***“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether***

choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. ***The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:***

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say:'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached';

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of

> ***licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."***
>
> (emphasis supplied)

23. In *Central Coalfields Ltd.* v. *SLL-SML (Joint Venture Consortium)* [*Central Coalfields Ltd.* v. *SLL-SML (Joint Venture Consortium)*, (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106] , this Court held as follows : (SCC p. 638, paras 47-48)

> "*47*. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in *Ramana Dayaram Shetty* [*Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and necessary significance. As pointed out in *Tata Cellular* [*Tata Cellular* v. *Union of India*, (1994) 6 SCC 651] there must be judicial restraint in interfering with administrative action. **Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision 'that no responsible authority acting reasonably and in accordance with relevant law could have reached' as held in *Jagdish Mandal* [*Jagdish Mandal* v. *State of Orissa*, (2007) 14 SCC 517] followed in *Michigan Rubbe* [*Michigan Rubber (India) Ltd.* v. *State of Karnataka*, (2012) 8 SCC 216]**.
>
> (emphasis supplied)
>
> *48*. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in *Ramana Dayaram Shetty* [*Ramana Dayaram Shetty* v. *International Airport Authority of*

> *India*, (1979) 3 SCC 489] . However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot."

24.*Afcons Infrastructure Ltd.* v. *Nagpur Metro Rail Corpn. Ltd.* [*Afcons Infrastructure Ltd.* v. *Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818] puts the proposition extremely well when it states : (SCC p. 825, paras 14-15)

> "*14*. We must reiterate the words of caution that this Court has stated right from the time when *Ramana Dayaram Shetty* v. *International Airport Authority of India* [*Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489] was decided almost 40 years ago, namely, that the words used in the tender documents cannot be ignored or treated as redundant or superfluous — they must be given meaning and their necessary significance. In this context, the use of the word "metro" in Clause 4.2(*a*) of Section III of the bid documents and its connotation in ordinary parlance cannot be overlooked.
>
> ***15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."***
>
> **(emphasis supplied)**

25. This view of the law has been subsequently reiterated and followed in *Montecarlo Ltd.* v. *NTPC* [*Montecarlo*

Ltd. v. *NTPC*, (2016) 15 SCC 272] (see para 25 at p. 287) and *Caretel Infotech* [*Caretel Infotech Ltd.* v. *Hindustan Petroleum Corpn. Ltd.*, (2019) 14 SCC 81] (see paras 38-39 at pp. 92-93).

***26. Judged by these parameters, it is clear that this Court must defer to the understanding of clauses in tender documents by the author thereof unless, pithily put, there is perversity in the author's construction of the documents or mala fides…...*”**

18. In ***N.G. Projects Limited Vs. Vinod Kumar Jain and Others : (2022) 6 SCC 127***. The Hon'ble Apex Court, in Para No.13, held as under:

"13. This Court sounded a word of caution in another judgment reported as Silppi Constructions Contractors v. Union of India [Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489] , wherein it was held that the courts must realise their limitations and the havoc which needless interference in commercial matters could cause. In contracts involving technical issues, the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above, the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. The courts must also not interfere where such interference would cause unnecessary loss to the public exchequer. It was held as under : (SCC p. 501, paras 19-20)

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

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

(emphasis supplied)

19. In ***Tata Motors Limited Vs. Brihan Mumbai Electric Supply & Transport Undertaking (Best) and Others : (2023) SCC OnLine SC 671***. The Hon'ble Apex Court in Para No.52 held as under:

> "52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in *Association of Registration Plates* v. *Union of India*, reported in (2005) 1 SCC 679."

20. In ***Bangalore Electricity Supply Company Limited (BESCOM) Vs. E.S. Solar Power Private Limited and Others : (2021) 6 SCC 718***. The Hon'ble Apex Court, in Para Nos.16 & 17, held as under:

> "16. Before embarking on the exercise of interpretation of the agreement it is necessary to take stock of the well-settled canons of construction of contracts. Lord Hoffmann in *Investors Compensation Scheme Ltd.* v. *West Bromwich Building Society* [*Investors Compensation Scheme Ltd.* v. *West Bromwich Building Society*, (1998) 1 WLR 896 : (1998) 1 All ER 98 (HL)] summarised the broad principles of interpretation of contract as follows : (WLR pp. 912-13)
>
> > "(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
> >
> > (2) The background was famously referred to by Lord Wilberforce as the "matrix of fact", but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which

would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax : see *Mannai Investment Co. Ltd.* v. *Eagle Star Life Assurance Co. Ltd.* [*Mannai Investment Co. Ltd.* v. *Eagle Star Life Assurance Co. Ltd.*, 1997 AC 749 : (1997) 2 WLR 945 (HL)]

(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require Judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *Antaios Compania Naviera S.A.* v. *Salen Rederierna A.B.* [*Antaios Compania Naviera S.A.* v. *Salen Rederierna A.B.*, 1985 AC 191 : (1984) 3 WLR 592 (HL)] , AC at p. 201 : (AC p. 201)

'… if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense.'"

> 17. The duty of the court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions (*Kamla Devi* v. *Takhatmal Land* [*Kamla Devi* v. *Takhatmal Land*, (1964) 2 SCR 152 : AIR 1964 SC 859]). In seeking to construe a clause in a contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose the former or rather than the latter. *Ashville Investments Ltd.* v. *Elmer Contractors Ltd.* [*Ashville Investments Ltd.* v. *Elmer Contractors Ltd.*, 1989 QB 488 : (1988) 3 WLR 867 : (1988) 2 All ER 577 (CA)] The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract. *Bank of India* v. *K. Mohandas* [*Bank of India* v. *K. Mohandas*, (2009) 5 SCC 313 : (2009) 2 SCC (Civ) 524 : (2009) 2 SCC (L&S) 32] . Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause. *Bihar SEB* v. *Green Rubber Industries* [*Bihar SEB* v. *Green Rubber Industries*, (1990) 1 SCC 731] ."

21. In ***Meerut Development Authority Vs. Association of Management Studies and Another : (2009) 6 SCC 171***. The Hon'ble Apex Court, in Para Nos.26, 27 & 29, held as under:

> "26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

> 27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.
>
> 28. xxx
>
> 29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism.”

22. In the light of the above discussion and the law laid down by the Hon’ble Apex Court, this Court does not find any arbitrariness or malafide insofar as the conduct of the Official Respondents are concerned. The Employer has a ‘play in the joints’ and has an absolute discretion in choosing its supplier. Writ Courts would not go into the nitty-gritties of a contract, inasmuch as a Writ Court would not substitute its wisdom with the wisdom of the Executive in selecting its Contractors/Suppliers. An African proverb states that - “a *monkey cannot decide the affairs of the forest”;* somuchso, a bidder cannot seek a Mandamus to compel the Employer to reject the bid of another bidder. In this case, the admitted fact is that the Subclause - c (ii) of Clause (1) of Section-II clearly provides for application of discretion by an Employer in applying the turnovers vis-à-vis the Packages. It is an admitted fact that the Unofficial Respondent No.3 stood as L.1 insofar as the Package Nos.3,4 & 6 are concerned and only in respect of Package No.6, that the Writ Petitioner has come anywhere close by being declared as L.2. The endeavour of the Writ Petitioner to elbow-out, the Unofficial Respondent No.3 from Package No.6 by reading Subclause - c (i) of Clause-1 of Section-II in isolation and by

completely ignoring the effect of Subclause - c (ii) of clause-1 of Section-II is not only unacceptable but it is also impermissible.

23. The attempt made by the Writ Petitioner by submitting the Representation on 10.03.2025 (Ex.P.2) making an offer to match the prices of L.1 had been rightly rejected by the Official Respondents. This apart, this Court is also of the opinion that the Writ Petitioner approached this Court prematurely inasmuch as the Employer has not even finalised the tenders by applying Subclause - c (ii) of Clause (1) of Section-II of the Tender Document.

24. **<u>Abuse of process</u>**

The Writ Petitioner had made pleadings which are contrary to the tender conditions with a view to mislead this Court. The Writ Petitioner has stated in Para-16 of the Affidavit filed in support of the Writ Petition that the Writ Petitioner's turnover for the supply of Peanut-Jaggery Chikki for the financial year 2022-2023 is Rs.90.20 crores, and therefore, the said turnover of Rs.90.20 crores being the highest among the last three years, it has quoted the said turnover and as such the Writ Petitioner herein has participated in the tender process in respect of Package Nos.2, 4 & 6. The said Para – 16 of the Affidavit filed in support of the Writ Petition is usefully extracted hereunder:

> "***It is respectfully submitted that the turnover of the Petitioner herein in supply of the Peanut Jaggery Chikki during the last three financial years is Rs. 8476.21 Lakhs, Rs. 9020.25 Lakhs and Rs. 2858.00 Lakhs.*** As per the eligibility requirements, as the petitioner's turnover for the financial year 2022-23 is Rs.90.20 crores and it being the highest amongst the last three years, it has quoted the said turnover and as such the Petitioner herein has participated in the tender process in respect of the Package No. 2, 4 and 6 as stated supra in as much as the cumulative value of these three packages (70.98 crores) is within the threshold of Rs.90.20 crores. It has qualified in the pre-qualification stages of the respective packages. However, the Petitioner herein is declared as L-3 in respect of the Package - 2, L-5 in respect of the Package 4 and L2 in respect of the Package 6 in the financial bids opened on 10.01.2025."

(emphasis supplied)

25. The attempt made by the Writ Petitioner to aver that its highest annual turnover among the three financial years is Rs.90.20 crores for the supply of Peanut-Jaggery Chikki for the financial year 2022-2023 is to project that the Writ Petitioner is eligible to bid for all the three packages (Package Nos.2, 4 & 6). This averment made by the Writ Petitioner is completely contrary to the record. As indicated above the annual turnover of a bidder shall be in respect of supply of Peanut-Jaggery Chikki/Food products/Confectioneries of the bidder in any one year of last three years. Whereas the Writ Petitioner has submitted the two certificates issued by its Chartered Accountant dated 02.01.2025. One certificate issued by the Chartered Accountant pertains to the annual turnover of three financial years in respect of supply of Peanut-Jaggery Chikki only i.e., for financial years 2021-2022, 2022-2023 and 2023-2024. Among the three financial years, the Writ Petitioner has the highest turnover of Rs.51.45 crores in the financial year 2021-2022 in respect of supply of Peanut-Jaggery Chikki. This certificate of the Chartered Accountant dated 02.01.2025 is filed as Page No.2 along with the Memo dated 20.03.2025. The Writ Petitioner has filed an another certificate dated 02.01.2025 issued by the same Chartered Accountant, which shows the annual turnover of the Writ Petitioner's company, without indicating the nature of the business done for the above mentioned financial years. The said certificate dated 02.01.2025 would indicate that the annual turnover for the financial year 2022-2023 as the highest among the three financial years indicating a turnover of Rs.90.20 crores. This certificate of the Chartered Accountant dated 02.01.2025 at Page No.3 of the Memo filed by the Writ Petitioner dated 20.03.2025, does not indicate the nature of the businesses undertaken by the Writ Petitioner, which shows the volume of turnover for the financial year as Rs.90.20 crores.

26. For this purpose, this Court is required to once again examine the Subclause - c of Clause – (1) of Section-II of tender conditions. Subclause - c of Section-II in its entirety has already been re-produced (Para – 3.8 supra).

Subclause - c (i) of Clause – (1) of Section-II has specifically stipulated that the annual turnover shall be in respect of Peanut-Jaggery Chikki/Food products/Confectioneries only. This apart, Subclause (v) of Clause 5.1 also stipulates the same requirement (mentioned in Para - 3.9 supra). Whereas the Chartered Accountant's certificate produced by the Writ Petitioner dated 02.01.2025 (Page No.3 of the Memo dated 20.03.2025) does not at all disclose the nature of the products that are supplied by the Writ Petitioner which aggregated to the highest annual turnover of Rs.90.20 crores for the financial year 2022-2023. Therefore, this non-descriptive certificate issued by the Charted Accountant dated 02.01.2025 cannot be considered at all.

27. In this view of the matter, the Writ Petitioner ought not to have placed reliance on the annual financial turnover of Rs.90.20 crores because the said certificate is neither in compliance with Subclause – c of Clause-1 of Section-II nor in compliance with Subclause (v) of Clause 5.1 of Section-II of the tender conditions. In fact, the Writ Petitioner is also conscious of the fact that the certificate of the Chartered Accountant dated 02.01.2025 indicating the annual financial turnover of Rs.90.20 crores for the financial year 2022-2023, cannot pass the muster and rigor of the tender condition mentioned in Subclause – c of Clause-1 of Section-II of tender condition. Being conscious of this fact, the Writ Petitioner has also submitted an another certificate issued by the same Chartered Accountant i.e., 02.01.2025 indicating the annual turnover for three years for supply of Peanut-Jaggery Chikki only. In the said certificate, the Peanut-Jaggery Chikki supplied by the Writ Petitioner for the financial year 2021-2022 is the highest which is for a sum of Rs.51.45 crores only.

28. If the highest annual turnover among the three financial years for the supply of Peanut-Jaggery Chikki is Rs.51.45 crores for the financial year 2021-2022, the submission made by the Writ Petitioner against the Unofficial Respondent No.3, if accepted, would directly hit the Writ Petitioner as well inasmuch as the bids in respect of Package Nos.2 & 4 bidded by the Writ

Petitioner would itself aggregate to Rs.45.49 crores. In such an event, if the submission of the Writ Petitioner is logically applied to the Financial Bid of the Writ Petitioner, such a bid ought not to be opened for the Package No.6.

29. In view of the above discussion, this Court is of the opinion that the Writ Petitioner has made averments in Paras-16 of the Affidavit filed in support of the Writ Petition which are completely contrary to the tender conditions and the contentions of the Writ Petitioner against the Unofficial Respondent No.3 would directly hit the Writ Petitioner as well. Therefore, this Court is also of the opinion that the Writ Petition, apart from being premature is also an abuse of process, inasmuch as the case made out by the Writ Petitioner against the Unofficial Respondent No.3 would also militate against the Writ Petitioner itself.

30. In this view of the matter, the instant Writ Petition is a gross abuse of process apart from being premature and being devoid of any merit.

31. In the above premise, this Court is of the opinion that the present Writ Petition is not only devoid of merit but is also an abuse of process. Accordingly, the Writ Petition is dismissed with Costs of Rs.1,00,000/- (Rupees One Lakh only) to be paid by the Writ Petitioner within eight weeks from the date of uploading of this Order in the web-site of this Court. Out of the Costs of Rs.1,00,000/-, an amount of Rs.50,000/- shall be paid in favour of the Andhra Pradesh High Court Legal Services Committee. The balance of Rs.50,000/- shall be paid in favour of the Andhra Pradesh High Court Advocates' Association for the purpose of purchasing Law Books and add them to the Association's Library. Registry is directed to supply copies of this Order to the Secretary, Andhra Pradesh High Court Legal Services Committee and the President, Andhra Pradesh High Court Advocates' Association for effective compliance.

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

GANNAMANENI RAMAKRISHNA PRASAD, J

Dt: 09.05.2025
Note: LR copy to be marked.
B/o. JKS/MNR

313

HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION No. 6508 OF 2025

Dt: 09.05.2025
Note: LR copy to be marked.
B/o. JKS/MNR