

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

Appellate Side

Present:

The Hon'ble Justice Shampa Sarkar

And

The Hon'ble Justice Ajay Kumar Gupta

FMA 241 of 2026

With

CAN 1 of 2026

Steel Authority of India Limited & Ors.

Vs.

Shree Jagdamba Coke Industries Private Limited & Ors.

For the Appellants : Mr. Kishore Dutta, Ld. Sr. Adv.
Mr. Lakshmi Kanta Pal, Adv.
Ms. Supriya Dubey, Adv.

For the Respondent Nos. 1& 2: Mr. Saptangshu Basu, Ld. Sr. Adv.
Mr. Sakya Sen, Ld. Sr. Adv.
Mr. Amritam Mondal, Adv.
Mr. Abhisheak Dey, Adv.
Mr. Suprovat Banerjee, Adv.
Mr. Jyotirmay Jha, Adv.

For the Union of India : Mr. Ram Chandra Agarwal, Ld. Adv.
Mr. Amal Kumar Datta, Ld. Adv.

Reserved on : 21.05.2026

Judgment on : 25.06.2026

Judgment uploaded on : 25.06.2026

Ajay Kumar Gupta, J:

1. Being aggrieved by and dissatisfied with the Judgment and Order dated 08.01.2026, passed by the Learned Single Judge in WPA 29996 of 2025, this intra-court appeal has been filed by the tendering authorities.
2. The learned Single Judge allowed the writ petition and directed the appellants to proceed with the tender process without imposing the condition for supply of the coke breeze by rail only.
3. The brief facts which are discernible from the records are that the Steel Authority of India Limited (in short, 'SAIL') floated a tender, inviting bids for supply of Coke breeze of 92,500 metric tonnes (MT) for six months, at their steel plants at IISCO, Rourkela and Durgapur.
4. The writ petitioners challenged the eligibility criteria in the tender document mentioned under Clause 5(2)(b). Under the said clause, in case of supply to ISP x RSP market, the bidders were required to have supplied a minimum amount of 24,500 MT of Coke breeze by Rail, to any Central/State Govt. organization/PSU/Public Limited Company, over a period of 12 consecutive months, during the previous five financial years and current financial year, ending on the last day of the month prior to the month in which the tender was issued, and in case of DSP Market 15750 MT.
5. Upon considering the report submitted by the appellants in justification of the eligibility criteria as mentioned under clause 5(2)(b) of the tender, the Hon'ble Single Judge held that, the impugned condition restricted many firms

from participating in the tender process and the reasons assigned by the appellants were not acceptable.

6. The learned Single Judge was not satisfied with the justification offered by the authorities in imposing such a condition as one of the eligibility criterion. The learned Single Judge further held that the justifications were not relevant to the purpose sought to be achieved, either at the time of dispatch or delivery of the material to the plants. Even if poor quality materials were supplied or the materials supplied were not in conformity with the terms, the appellants would have every option to check the actual weight and quality of coke breeze at the time of delivery. Upon delivery, if the appellants found that the quality and quantity of materials supplied by the parties were not in conformity with the specifications as per the tender document, they would be at liberty to refuse such materials and require fresh supply in terms of the tender conditions.

7. According to His Lordship, the supply of materials could also be effected by road. His Lordship accepted the allegation that the condition was tailor made and that the same had been included in the tender document in order to favour a chosen supplier, i.e., M/s Maha Laxmi Wellman Fuel.

8. The learned Single Judge also rejected the objection of the appellants with regard to the lack of territorial jurisdiction of this court to entertain the writ petition. It was observed that, as per the tender notice, the tenderer had to supply coke breeze at the Durgapur Steel Plant as well, which was within the State of West Bengal.

9. The relevant portions of the order impugned are quoted below:-

“22. This Court considers the justification provided by the authorities. The authorities have issued the tender for supply of coke breeze. In Clause 6 of the tender conditions mode of dispatch is prescribed. In the said conditions also it is mandatory to supply the coke breeze by rail rack. If the bidders will supply the coke breeze by road transport also, the coke breeze supplied by the bidder to the actual weight and quality is to be checked by the purchaser. If the purchaser finds that the materials supplied by the bidder the quality and quantity is not complied with the terms and conditions of the tender document, the purchaser is at liberty to refuse to accept with the direction to supply in terms of the tender condition. If the condition of mode of dispatch is taken into consideration, the same condition can be imposed if the coke breeze is supplied through road transport.

23. Considering the above, this Court is not satisfied with the justification given by the authorities for imposing condition for supply of coke breeze by rail.

24. This Court also finds that in paragraph 21 of the writ application, the petitioners have made a specific averment that the respondents have deliberately and intentionally to give favour to one supplier imposed such condition.

25. In the report submitted by the authorities it is mentioned that two successful parties namely, M/s. Mahalaxmi Wellman Fuel and M/s. Vimla Fuel and Metals Private Limited are the successful parties.

26. It is the submission made by the petitioners that M/s. Vimla Fuel and Metals Private Limited is closed and only M/s. Mahalaxmi Wellman Fuel is supplying the coke by rail rack.

27. Considering the above, this Court finds that by incorporating the condition to supply coke breeze by Rail refrains many firms for participating in the tender process and the reasons assigned for incorporation of the said condition is not justifiable.

28. Accordingly, this Court has entertained the writ application.

29. As regards the jurisdiction of this Court, admittedly the authorities have published the tender from Rourkela and the tender process is to be completed at the office of Rourkela but as per the tender document the tenderer has to supply the coke at IISCO Steel Plant which is situated at West Bengal and also to Durgapur Steel Plant which is also situated at the State of West Bengal.

30. The judgment relied by the petitioners in the case of Kusum Ingots & Alloys Ltd. (supra) and Oil and Natural Gas Commission (supra) are distinguishable from the facts of the present case. In the case in hand, cause of action arose at Rourkela as well as in the State of West Bengal, thus this Court is also having jurisdiction to entertain the writ application.

31. Considering the above, the respondent authorities are directed to proceed with the tender process without imposing the condition for supply of the coke breeze by rail only.”

10. Mr. Dutta, learned Sr. Counsel, appearing on behalf of the appellants, raised the preliminary issue of maintainability of the writ petition on the ground of lack of territorial jurisdiction, as the cause of action arose outside West Bengal. The tender was floated from the office of SAIL at Rourkela Steel plant. The writ petition was filed at the stage of issuance of the notice inviting tender. Thus, it was contended that, the jurisdiction of this court could not have been invoked. If the dispute arose after the supply had been initiated, the situation would be otherwise, as one of the delivery points would be Durgapur Steel Plant.

11. On the merits, it was submitted that, the writ petition ought to have been dismissed. The writ court had limited jurisdiction to entertain a challenge to a tender condition. The writ court could not interfere with the eligibility criterion imposed by the authorities, which was in consonance with their business requirements. Buyers had the freedom to stipulate the eligibility criteria and/or fix the terms and conditions for participation of bidders. Unless those conditions were palpably arbitrary, discriminatory, mala fide and/or tailor-made, the writ court should stay its hands in matters relating to contractual relationships. A prospective bidder/tenderer was bound to comply with the requirements and submit their bid. The writ court lacked the expertise to examine the terms and conditions of the tender document. The author of the bid document was an expert and the best judge

to decide what conditions should be incorporated in order to serve the purchaser. The tendering authority should have a free hand in prescribing the terms and conditions of the tender. Some fair play in the joints should be allowed to them.

12. Denying that allegation of favouritism and the contract being tailor made, it was submitted that the condition for supply of coke breeze by rail was applied in respect of all bidders. Such condition was imposed to avoid potential future complications, disputes and administrative inconvenience. The condition was not tailor made, in order to favour a chosen bidder.

13. On an earlier occasion in respect of an open tender in the GeM Portal, six offers had been received from different firms. Those firms were M/S Mahalaxmi Wellman Fuel, M/S Bengal Energy, M/S Aqua Terra Coke and Energy Ltd, M/S Vimla Fuel and Metals Pvt. Ltd, M/S Narayani Coke Pvt. Ltd and M/S Harsh Fuels Pvt. Ltd. Thus, it could never be alleged that the impugned tender condition was designed for a particular supplier.

14. Mr. Dutta submitted that the Learned Single Judge, however, failed to appreciate the facts of the case vis-a-vis the law applicable to tenders. Interference with the tender condition amounted to illegal exercise of jurisdiction and was contrary to the catena of decisions of the Hon'ble Supreme Court.

15. It was finally submitted that the findings of the learned Single Bench were based on surmise and conjecture. The contents of the report were mechanically rejected. The learned Judge did not consider the rationale

behind the imposition of the condition by the tendering authority. The bids were invited from suppliers who had the experience in transportation of the materials by railway rakes. The question of favouritism did not arise. Thus, a prayer was made for setting aside the impugned order.

16. Learned counsel appearing on behalf of the Union of the India supported the submissions advanced by the Learned Sr. Counsel appearing on behalf the appellants.

17. Mr. Dutta relied on the following decisions:-

(i) Kohli Roadlines, Nagpur Versus Maharashtra State Power Generation Company Ltd.¹;

(ii) Food Safety Services, Bhandara Versus State of Maharashtra and Others²;

(iii) Kusum Ingots & Alloys Ltd -Versus- Union of India and Another³.

(iv) Balaji Ventures Pvt. Ltd. vs Maharashtra State Power Generation Company Ltd. and Anr⁴ .

(v) Michigan Rubber (India) Limited vs State of Karnataka and Others.⁵

(vi) Jagdish Mandal vs State of Orissa and Ors.⁶

(vii) Airport Authority of India vs Centre for Aviation Policy, Safety & Research (CAPSR) & Ors.⁷

¹ 2023 SCC OnLine BOM 638

² 2023 SCC OnLine Bom 3045

³ (2004) 6 SCC 254

⁴ 2022 SCC OnLine SC 1967

⁵ (2012)8 SCC 216

⁶ (2007)14 SCC 517

⁷ (2022)SCC OnLine SC 1334

18. Per contra, Mr. Basu, learned Sr. Counsel, appearing for the writ petitioner submitted that the eligibility criteria mentioned in Clause 5(2)(b) of the tender document, was wholly arbitrary, mala fide and had been incorporated only to favour a particular supplier, by eliminating other bona fide bidders. The said condition had never been imposed in case of earlier tenders. The condition effectively excluded all small and medium manufacturers, including the petitioners, which is an MSME, from participating in the tender process. In spite of a long standing record of supplying the same material to SAIL, both by road and rail, the writ petitioner was unable to participate in the present tender process. It was also alleged that, SAIL deviated from past practice. The tender document had been deliberately designed to favour a single supplier, thereby, eliminating fair competition. The principles of equality, transparency and natural justice had been violated, thereby, infringing Articles 14 and 19(1)(g) of the Constitution of India. It was urged that the writ court in exercise of the power of judicial review rightly interfered with the arbitrariness and irrationality in the condition imposed.

19. Reliance was placed on the decision of the Hon'ble Supreme Court in ***Meerut Development Authority v. Association of Management Studies and Another***⁸, particularly on paragraph nos. 26 and 27, wherein it was held that, although the authority issuing the tender was entitled to prescribe eligibility conditions and determine the terms of invitation to tender, such

⁸ (2009)6 SCC 171

power was not unfettered and the conditions stipulated must satisfy the test of reasonableness and fairness and must not be arbitrary or actuated by mala fide.

20. Reliance was further placed on the judgment in ***Vinishma Technologies Private Limited v. State of Chhattisgarh***⁹, particularly in paragraph nos. 14, 15, 17, 18, 19 and 23, wherein it was observed that tender conditions which had the effect of eliminating competition and creating a monopoly in favour of a select few, without any discernible nexus with the object of the contract, would be amenable to judicial review.

21. It was, therefore, contended that the eligibility condition relating to prior experience of supply through railway rakes was manifestly arbitrary, discriminatory and consequently deserved to be struck down. The Learned Single Judge had rightly interfered with the said eligibility criterion in the tender document.

ANALYSIS AND FINDINGS OF THIS COURT:

22. As both parties urged us to decide the issues raised on merits, we proceed to deal with the rival contentions. A detailed report was filed before the learned Single Judge by SAIL, justifying incorporation of the impugned clause. The clause is set out hereunder:-

“For ISP & RSP market: Bidder should have supplied minimum 24500MT of coke breeze by Rail to any Central/State govt. Organization/PSU/Public limited company over a period of any consecutive 12 months during the last five financial years and

⁹ 2025 SCC OnLine SC 2119

current financial year ending last day of the month prior to the month in which this Tender is issued.

For DSP market: Bidder should have supplied minimum 15750MT of coke breeze by Rail to any Central/State govt. Organization/PSU/Public limited company over a period of any consecutive 12 months during the last five financial years and current financial year ending last day of the month prior to the month in which this Tender is issued.

The Tender shall submit self attested copies of the Purchase order(s) and a consolidated statement duly certified by Chartered Accountant with valid UDIN & registration no. mentioning purchase order no. & data, Customer name & city, dispatch details [RR no. RR date and RR quantity) and total supplied Quantity in support of their meeting the eligibility criteria.”

23. The justification provided by SAIL, in our opinion, are not apparently unreasonable. The report highlights a well-recognised operational, logistical, and quality-control consideration, specific to the bulk movement of a dust-prone material, like coke breeze. The track record of successful rail-based procurement cited in the report lends further credibility to the authority’s position.

24. The justifications behind including the particular clause 5(2)(b) in the tender document are quoted below:-

“i) That Pilferage of material during road transit is a significant and persistent issue in India, with the logistics sector losing an estimated Rs.13,000 crore annually to cargo theft and pilferage.

ii) A full railway rake movement is generally a more cost-effective freight solution than road transportation methods, especially for large volumes of goods over long distances.

iii) Rail rakes (trains) protect material quality better than road transport in India.

iv) Trucks involve multiple loading/unloading points and road travel vibrations, causing significant breakage and creating fine dust (fines) from coke breeze, which degrades quality.

v) Rakes move large quantities in one go with fewer transfers, and wagons offer a more stable journey, preserving the particle size distribution crucial for coke quality.

vi) Railways move massive volumes (e.g., 3,000- 4,000 tons per rake) much faster than numerous trucks, reducing the time coke breeze is exposed to adverse weather and handling, ensuring it reaches the plant in better condition.

vii) The requirement of Coke breeze in bulk quantities is essential for maintaining continuous production at SAIL units. Any delay in supply will lead to loss of production having significant adverse monetary impact. Hence, prior experience in terms of proven supply capability including the mode of transport opted (in this case rail) is considered essential.

viii) In case such bulk requirement of Coke breeze is transported by road in trucks, there is high chance of spillage even after covering of the material being transported. Past experience of transportation of this material through road shows that it has led to spillage enroute to the Plant as also inside the Plant thereby causing pollution and safety hazard.

ix) For aforesaid reasons, SAIL/RSP had a reasonable basis for preferring the Suppliers having the capacity to send the material supplied through Rail Rakes over that of road transport. Rourkela Steel Plant, the Central Procurement Agency in present case, is constantly and successfully receiving the 11 supplies of material through Rail Rake and not from the road transport. We are citing an example of previous procurement of material by SAIL/RSP through Rail as under."

25. The learned Single Judge, however, disregarded those justifications on the ground that SAIL could simply check the weight and quality of the material at the time of delivery and refuse to accept supplies which were not in conformity with the specifications in the contract. Such reasoning fundamentally misconstrued the eligibility criterion. Eligibility conditions are not mere delivery guarantees. They serve as prospective filters to ensure that, from the outset the bidders possess demonstrable capacity to meet the authority's operational requirements. The purpose sought to be achieved by SAIL was a guarantee of uninterrupted supply of coke breeze, by minimising pilferage of material, ensuring cost effectiveness, eliminating multiple loading

and unloading points, smooth movement of the materials directly into the plant's weigh bridge, without any stop. The right to reject supplies after delivery, cannot be a viable option. The coke breeze is required to be supplied continuously at the plant and delay in supply will result in significant monetary loss to a public sector undertaking. The option of refusal to accept the materials is not a solution when operation of the plant is affected. The eligibility criterion for bidders, was fixed in order to ensure prior experience in supply of coke breeze by railway rakes. This was not alien to the purpose sought to be achieved.

26. The finding of the learned Single Judge that Clause 5(2)(b) was imposed only to favour someone deliberately and intentionally; is not supported by any materials on record. The record discloses that in a prior open tender on the GeM Portal with a similar condition, six different firms participated, namely, M/s Mahalaxmi Wellman Fuel, M/s Bengal Energy, M/s Aqua Terra Coke and Energy Ltd., M/s Vimla Fuel and Metals Pvt. Ltd., M/s Narayani Coke Pvt. Ltd., and M/s Harsh Fuels Pvt. Ltd. This specifically demonstrates that the tender was not crafted to restrict the participation to a single pre-selected entity. The finding of favouritism or mala fide must be grounded in evidence and cannot be inferred from the mere fact that a condition excludes those who do not possess the required capability. In this context, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Silpi Constructions**

Contractors v. Union of India And Anr.¹⁰, wherein the Hon'ble Supreme Court, while affirming its duty to interfere in case of arbitrariness, irrationality, mala fides and bias, cautioned distinctly that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. The relevant paragraph is quoted below :-

“**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.”

27. The law relating to tenders are discussed below:-

a) In *Airport Authority of India v. Centre for Aviation Policy, Safety & Research (CAPSR) & Ors.*¹¹ it was held as hereunder: -

“**30.** In the case of *Michigan Rubber (India) Ltd. (supra)*, after considering the law on the judicial scrutiny with respect to tender conditions, ultimately it is concluded in paragraph 23 as under:

“**23.** From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

¹⁰ (2020) 16 SCC 489 : 2019 SCC OnLine SC 1133

¹¹ 2022 SCC OnLine SC 1334

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”

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

b) In Jagdish Mandal v. State of Orissa and Ors. WITH Laxman

Sharma Vs. State of Orissa and Ors.¹² it was held as hereunder: -

“**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

¹² (2007) 14 SCC 517

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."

c) In **Michigan Rubber (India) Limited vs. State of Karnataka and Ors.**¹³ it was held as hereunder:-

24. 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"? and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226.

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35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or

¹³ (2012)8 SCC 216

unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with 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. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide.”

d) In **Balaji Ventures Pvt. Ltd. (supra)**, the Hon’ble Apex Court held as follows:-

“9. Now so far as the impugned Judgment and order passed by the High Court dismissing the writ petitions is concerned, what was challenged before the High Court was one of the tender conditions/clauses. The High Court has specifically observed and noted the justification for providing clause 1.12(V). The said clause was to be applied to all the tenderers/bidders. It cannot be said that such clause was a tailor made to suit a particular bidder. It was applicable to all. Owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is found to be arbitrary, mala fide and/or tailor made. The bidder/tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or convenient to him. As per the settled proposition of law as such it is an offer to the prospective bidder/tenderer to compete and submit the tender considering the terms and conditions mentioned in the tender document.

10. In the case of Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489, it is observed in para 20 as under:

“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."

11. In the case of Montecarlo Limited v. National Thermal Power Corporation Limited, (2016) 15 SCC 272, it is observed and held that the tender inviting authority is the best person to understand and appreciate its requirement and tender documents, so long as there are no mala fides/arbitrariness etc. It is further observed and held that the Government must have freedom of contract and such action can be tested by applying Wednesbury principle and also examining whether it suffers from arbitrariness or bias or mala fides.

12. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and when it is found that clause 1.12(V) cannot be said to be arbitrary, mala fide and/or tailor made and the same shall be applicable to all the bidders/tenderers and there is justification also shown providing such a clause and even subsequently a corrigendum has been issued and even the Respondent No. 2 - private bidders also made it clear that uniform charge shall be quoted for each bidder and even clause 1.12(V) was modified to the extent the necessary permission/consent/no objection certificate that was required at the time of submission of the bid was now required to be submitted before the opening of the price bid and the date for submission of the bid was extended, the High Court has rightly dismissed the writ petition and has rightly refused to interfere with the decisions of the respondents providing clause 1.12(V) of the tender document."

28. The writ petitioners also contended that the condition was stipulated for the first time in the subject tender, by deviating from past practice, and that it violated MSE and Make in India preferences. It is noted that a tendering authority is not perpetually bound by past tender conditions. Operational learning and the evolving requirements of production facilities may legitimately lead to the introduction of new conditions. The argument that deviation from past practice was inherently arbitrary, is not tenable in law. Moreover, the report of SAIL indicated that on an earlier occasion a similar

condition had been imposed. What is required is that, the current conditions have a rational nexus with the legitimate procurement objective, a requirement which SAIL has satisfactorily demonstrated.

29. As regards the alleged violation of Articles 14 and 19(1)(g), it is settled law that Article 14 does not forbid classification of tenderers on the basis of relevant capabilities. The classification was based on a clearly relevant criterion, i.e., the preference towards bulk supply via rail rakes. The condition does not violate the guarantee of equality. Article 19(1)(g) guarantees the right to practice any profession, occupation, trade, or business, but this right is subject to reasonable restrictions in the public interest under Article 19(6). The condition was linked to operational efficiency, safety, quality assurance, and continuity of production to a major public sector undertaking. It constitutes a reasonable restriction and does not infringe Article 19(1)(g).

30. We are, therefore, of the view that the learned Single Judge erred in setting aside the tender process by setting aside Clause 5(2)(b) of the tender document, despite the fact that the eligibility criteria imposed by SAIL had been justified in its report before the learned Single Bench. The report filed by SAIL before the Single Bench demolished the contention of the writ petitioners to the effect that the clause was arbitrary, discriminatory and tailor made.

31. The decision in ***Vinishma Technologies Pvt. Ltd. (supra)*** is distinguishable on facts. The said tender was for supply of sport kits of students in primary, upper primary, high and higher secondary schools run

by the state government in the state of Chhattisgarh. The eligibility criteria was as follows:-

“(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).”

32. The Hon’ble Apex Court held that object of public procurement was to secure good quality goods and services for the benefit of public exchequer. The object could be achieved by requiring the bidders to demonstrate financial capacity, technical experienced and passed performance in contracts of similar nature regardless of the place of performance of such contracts. To confine the eligibility to participants in one state was disproportionate to the goal of ensuring effective supply of sports kits. The decision is distinguishable on facts and does not apply to the subject tender.

33. Learned Sr. Counsel for the appellants placed reliance on a decision of the Hon’ble Apex Court in the case of **Balaji Ventures Pvt. Ltd. (supra)**, on what is a tailor made condition. It was held as follows:-

“9. Now so far as the impugned Judgment and order passed by the High Court dismissing the writ petitions is concerned, what was challenged before the High Court was one of the tender conditions/clauses. The High Court has specifically observed and noted the justification for providing clause 1.12(V). The said clause was to be applied to all the tenderers/bidders. It cannot be said that such clause was a tailor made to suit a particular bidder. It was applicable to all. Owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is found to be arbitrary, mala fide and/or tailor made. The bidder/tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or convenient to him. As per the settled proposition of law as such it is an offer to the prospective bidder/tenderer to compete and

submit the tender considering the terms and conditions mentioned in the tender document.”

34. In view of the discussions above, the issue of jurisdiction need not be answered.

35. Accordingly, **FMA 241 of 2026** is **allowed**. **CAN 1 of 2026** is disposed of.

36. Consequently, the judgment and order dated 8th January, 2026 passed by the Learned Single Judge in WPA 29996 of 2025, is set aside. The impugned tender condition is upheld. The tender process shall proceed accordingly.

37. Urgent photostat certified copy of this Judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

I Agree.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)