IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA No. 26004 of 2025

With

WPA No. 5195 of 2026

M/s. P.P. Industries Private Limited & Anr.

Versus

The Union of India & Ors.

Mr. Pranit Bag
Ms. Rita Mukherjee
Mr. Ghanashyam Jha
Mr. Ridhiman Mukherjee
Mr. Rowsan Kr. Jha
Ms. Anwesha Chakraborty

.....For the petitioners.

Mr. Kumaresh Dalal
Mr. Amal Kr. Datta

......For the UOI.

Mr. Abhratosh Majumder, Sr. Adv
Dr. Madhusudhan Saha Ray
Ms. Debangana Dey

Mr. Debanjan Chatterjee
Mr. Kausheyo Roy

....For the W.B.S.E.D.C.L.

Hearing Concluded On : 22.07.2026

Judgment Delivered On : 12.08.2026

Judgment Uploaded On : 12.08.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ petitions challenging the Office Order No. 2518 dated 8th September, 2025, wherein Clause No.14 in the revised purchase policy of WBSEDCL is introduced and the respondents have inserted the conditions that "*The bidder should submit the declaration in prescribed format under the Form Folder (Form XI) in their letterhead regarding no legal litigation against WBSEDCL is pending in any Court/ Forum against / by the bidder or its Sister Concern/ Director/Partner/ Proprietor. If any type of legal litigation/ arbitration against WBSEDCL is pending in any Court/ Forum against/ by the bidder or its Sister Concern/Director/Partner/ Proprietor, then purchaser reserves the right to reject their bid/ termination of the contract*".

2. By an Office Order No. 2518 dated 8th September, 2025, Form-XI is prescribed by which the bidder is to declare that "*We hereby declare that, no legal litigation/arbitration is pending/ ongoing against WBSEDCL in any Court/ Forum against/ by the bidder or its sister concern/ Director/ Partner/ Proprietor. If it is found at any stage of* *tendering, our offer will be rejected and I/We don't have any objection on the same".*

3. Mr. Pranit Bag, Learned Advocate representing the petitioners submits that the impugned office orders violate Sections 10, 23 and 28 of the Indian Contract Act, 1872. He submits that the tender conditions, which deters bidders from enforcing their contractual and statutory rights in Courts or in arbitration proceedings, is opposed to public policy, and is an attempt to insulate a State entity from lawful scrutiny, which renders that the consideration and object of the agreement, being forbidden by law, unlawful. He submits that if the said condition is permitted to be continued, the same would defeat the provisions of Section 41 of the Specific Relief Act, 1963.

4. Mr. Bag submits that the said clause is penal in nature being restraint on legal proceedings, which is contrary to the spirit of Section 28 of the Indian Contract Act, 1872 and public policy. He submits that the restrictions imposed by the WBSEDCL do not have any rational nexus with the object of procurement, nor would they be necessary for promoting competition and protection of public exchequer.

5. Mr. Bag submits that a blanket exclusion from participating in tenders issued by the WBSEDCL significantly impairs the rights of the petitioners to conduct business, and the restriction cannot be justified as a reasonable restriction under Article 19(1)(g) of the Constitution of India.

6. Mr. Bag in support of his submissions, has relied upon the judgment in the case of ***Vinishma Technologies Pvt. Ltd. Vs. State of Chhattisgarh and Anr.*** reported in ***2025 SCC OnLine SC 2119*** and submits that in the said case, the Hon'ble Supreme Court struck down the tender condition which allowed only bidders who had supplied sports goods to Chhattisgarh government agencies in the preceding three financial years to participate, and held that the same is arbitrary, unreasonable and discriminatory.

7. Mr. Bag has relied upon the judgment in the case of ***M/s. Erusian Equipment & Chemicals Ltd. vs. State of West Bengal And Another*** reported in ***(1975) 1 SCC 70*** and submits that an exclusion from dealing with the government must follow a fair procedure and cannot be arbitrary.

8. Mr. Bag further relied upon the judgment in the case of ***Kimberley Club Pvt. Ltd. Vs. Krishi Utpadan Mandi Parishad and Others.*** reported in ***2025 SCC OnLine SC 2323*** and submits that tendering authorities cannot Import unwritten conditions to disqualify bids and stressed adherence to fairness and transparency in disqualification criteria.

9. Mr. Abhratosh Majumder, Learned Senior Advocate representing the WBSEDCL submits that the Clause 14 has been inserted in the purchase policy to examine and assess the litigation history of the participants in the tender process and arrived at a conclusion at the stage of evaluating technical bids as to whether the award of contract to such bidders would facilitate the execution of works or supply of goods or would impede rendition of essential services. He submits that the said policy is an economic decision of WBSEDCL which is neither arbitrary nor discriminatory so as to offend Article 14 and Article 19(1)(g) of the Constitution of India. In support of his submissions, he has relied upon the judgment in the case of ***Manohar Lal Sharma Vs. Union of India and Another*** reported in ***(2013) 6 SCC 616*** and submits that unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power, the Court does not interfere with the policy.

10. Mr. Majumder has relied upon the judgment in the case of ***Bhagyanagar Energy & Telecom Ltd. and Anr. Vs. Bharat Sanchar Nigam Limited and Anr.*** reported in ***2003 (2) A.P.L.J. 431 (HC),*** it is not for the Court to go into the wisdom of the policy decision and judge its pros and cons and say whether it is beneficial or equitable and it shall not interfere with the policy decision unless it is demonstrated and shown that the policy decision taken is capricious or arbitrary.

11. Mr. Majumder has relied upon the judgment in the case of ***Bajaj Hindustan Limited Vs. Sir Shadi Lal Enterprises Limited and Another*** reported in ***(2011) 1 SCC 640*** and submits that the Court can invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution or is shockingly arbitrary but not otherwise.

12. Mr. Majumder submits that as per the record of WBSEDCL at present altogether 137 MSMEs are participating in different tenders but none of the tenderers have challenged the said clause except the petitioners and the petitioners have a long history of litigation against many power utilities in India. He submits that identical provisions regarding declaration of litigation history have been introduced by different power utilities.

13. Mr. Mazumder submits that Sections 10, 23 and 28 of the Indian Contract Act, 1872, is not applicable before formation of the contract. He submits that there is no contract between the petitioners and the WBSEDCL and thus, the said sections are not applicable in the present case. He has relied upon the judgment in the case of ***Anil Kumar Srivastava vs. State of UP and Another*** reported in ***(2004) 8 SCC 671*** and submits that an invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin.

14. The issue in the present proceeding whether the condition imposed by the WBSEDCL that the bidder should submit declaration in prescribed format under Form–XI by declaring that no legal litigation/arbitration is pending against the WBSEDCL in any Court or forum is bad or illegal.

15. Section 10 of the Indian Contract Act, 1872, reads as follows:

> *"**10. What agreements are contracts.**—All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.*
>
> *Nothing herein contained shall affect any law in force in [India] and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."*

Essential elements of a valid contract under Section 10 of the Indian Contract Act, 1872, is when there are at least two parties, one of whom makes an offer, and the other accepts it, a contract can develop. To proceed, one side must make an offer, and the other party must accept it. When the offer is accepted, a contract is formed. The offeror is the one who makes the offer, and the offeree is the party to whom offer is made. The parties entering into the contract must agree upon the same item in the same sense, or they cannot enter into the deal. It implies that there must be agreement in that regard. A contract must be intended to create a legal relationship between the parties. It only becomes a problem when both parties are aware that if one of them breaks his commitment, the other would be held responsible for the contract's failure. There is no contract between the parties if there is no desire to establish a formal relationship. Because they do not consider or give birth to a legal relationship, agreements of a social or domestic character are not regarded as contract.

16. Section 23 of the Indian Contract Act, 1872, reads as follows:

> *“**23. What considerations and objects are lawful, and what not.—**The consideration or object of an agreement is lawful, unless—*
>
> *it is forbidden by law; or*
>
> *is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or*
>
> *involves or implies injury to the person or property of another; or*
>
> *the Court regards it as immoral, or opposed to public policy.*
>
> *In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”*

This Section lays down five specific heads under which an agreement may be rendered void due to the unlawfulness of its consideration or object. These categories are pivotal in maintaining the sanctity of contractual relations and ensuring that they operate within the framework of law and public good. An agreement is void, if its consideration or object is expressly or implicitly forbidden by any statute or legal rule. This limb applies when the law directly prohibits the act or transaction contemplated by the agreement.

17. Section 28 of the Indian Contract Act, 1872, reads as follows:

> ***28. Agreements in restraint of legal proceedings, void.—*** *[Every agreement,—*
>
> *(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which*

limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,

is void to the extent.]

Exception 1.— ***Saving of contract to refer to arbitration dispute that may arise.****—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.*

[*****]

*Exception 2.—****Saving of contract to refer questions that have already arisen.****— Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.*

*[Exception 3.—****Saving of a guarantee agreement of a bank or a financial institution****.— This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.*

Explanation.—

(i) In Exception 3, the expression “bank” means—

> ***(a)*** *a "banking company" as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);*
>
> ***(b)*** *"a corresponding new bank" as defined in clause (da) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);*
>
> ***(c)*** *"State Bank of India" constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);*
>
> ***(d)*** *"a subsidiary bank" as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);*
>
> ***(e)*** *"a Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);*
>
> ***(f)*** *"a Co-operative Bank" as defined in clause (cci) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);*
>
> ***(g)*** *"a multi-State co-operative bank" as defined in clause (cciiia) of section 5 of the Banking Regulation Act, 1949 (10 of 1949); and*
>
> *(ii) In Exception 3, the expression "a financial institution" means any public financial institution within the meaning of section 4A of the Companies Act, 1956(1 of 1956).]*

Section 28 strictly deals with agreements in restraint of legal proceedings. It renders a contract void only if the clauses absolutely restrict a party from enforcing their contractual rights through ordinary Courts or Tribunal. Limits the time period within which a party can enforce their legal rights. Extinguishes the rights or releases any party from liability after specific period. A mandatory declaration clause does not stop a bidder from suing WBSEDCL, nor does it limit their timeframe to approach Court. It is merely a transparency and eligibility evaluation requirement.

18. The petitioner has challenged Clause 14 of the revised purchase policy of WBSEDCL wherein respondents have inserted the conditions that "*The bidder should submit the declaration in prescribed format under the Form Folder (Form XI) in their letterhead regarding no legal litigation against WBSEDCL is pending in any Court/ Forum against / by the bidder or its Sister Concern/ Director/ Partner/ Proprietor. If any type of legal litigation / arbitration against WBSEDCL is pending in any Court/ Forum against/ by the bidder or its Sister Concern/ Director/ Partner/ Proprietor, then purchaser reserves the right to reject their bid/ termination of the contract".*

As of now there is no contract between the parties. The petitioners have challenged the condition of the purchase policy. The WBSEDCL has invited tender by introducing the new clause. Unless the bidder accepts the conditions, no agreement can be executed. It is the choice of bidder either to accept the condition or not. In the case of ***Anil Kumar Srivastava (supra),*** the Hon'ble Supreme Court held that an invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin. Considering the above, this Court finds that none of the Sections relied by the petitioners is applicable in the present case.

19. It is the specific case of the WBSEDCL that the respondents have inserted the said clause to examine and assess the litigation history of the participants in the tender process and the said policy is an economic decision. In the case of ***Manohar Lal Sharma (supra),*** the Hon'ble Supreme Court held that:

> *"**14.** On matters affecting policy, this Court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power. The impugned Policy that allows FDI up to 51% in multi-brand retail trading does not appear to suffer from any of these vices."*

20. In the case of ***Bhagyanagar Energy & Telecom Ltd. (supra),*** the Hon'ble Andhra Pradesh High Court held that:

> *"**12.** From the aforesaid decisions, it is clear that it is not for the Court to go into the wisdom of the policy decision and judge its pros and cons and say whether it is beneficial or equitable, and it shall not interfere with the policy decision unless it is demonstrated and shown that the policy decision taken is capricious or arbitrary or is not informed by any reason or if it suffers from the vice of discrimination or infringes any provisions of the statute or the Constitution. Even if the policy favours a particular class of persons or individuals, the Court shall not interfere, if the policy seeks to protect the vital interests of the community and does not affect the economy of the country."*

21. In the case of ***Bajaj Hindustan Ltd. (supra),*** the Hon'ble Supreme Court held that:

> ***"39.*** *We should not be understood to have meant that the judiciary should never interfere with administrative decisions. However, such interference should be only within narrow limits e.g. when there is clear violation of the statute or a constitutional provision, or there is arbitrariness in*

the Wednesbury sense. It is the administrators and legislators who are entitled to frame policies and take such administrative decisions as they think necessary in the public interest. The Court should not ordinarily interfere with policy decisions, unless clearly illegal.

40. *Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. The impugned policy parameters were fixed by experts in the Central Government, and it is not ordinarily open to this Court to sit in appeal over the decisions of these experts. We have not been shown any violation of law in the impugned notification or press note.*

41. *The power to lay policy by executive decisions or by legislation includes power to withdraw the same unless it is by mala fide exercise of power, or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is settled law that the court gives a large leeway to the executive and the legislature. Granting licences for import or export is an executive or legislative policy. The Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country. When the Government is satisfied that change in the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy.*

44. *In the words of Chief Justice Neely:*

> *"I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financer, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a*

> *super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."*
>
> ***45.*** *In our opinion there should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the Court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated this inevitably entails special treatment for distinct social phenomena. The State must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field.*
>
> ***46.*** *In our opinion, it will make no difference whether the policy has been framed by the legislature or the executive and in either case there should be judicial restraint. The Court can invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution or is shockingly arbitrary but not otherwise."*

22. In the case of ***Federation Haj PTOS of India vs. Union of India*** reported in ***(2020) 18 SCC 527,*** the Hon'ble Supreme Court held that :

> ***"18.*** *Going by the aforesaid considerations, the respondent has carved out the categories of HGOs on the parameters of experience as well as financial strength of HGOs. Such a decision is based on policy considerations. It cannot be said that this decision is manifestly arbitrary or unreasonable. It is settled law that policy decisions of the executive are best left to it and a court cannot be propelled into the unchartered ocean of government policy. Public authorities must have liberty and freedom in framing the policies. It is well-accepted principle that in complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for the*

courts to consider competing claims and to conclude which way the balance tilts. Courts are ill-equipped to substitute their decisions. It is not within the realm of the courts to go into the issue as to whether there could have been a better policy and on that parameters direct the executive to formulate, change, vary and/or modify the policy which appears better to the court. Such an exercise is impermissible in policy matters. In Bennett Coleman case, the Court explained this principle in the following manner :

> *"125. … The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietor to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the unchartered ocean of governmental policy."*

19. *The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or mala fide, the Court would interfere with such policy decisions. No such case is made out. On the contrary, views of the petitioners have not only been considered but accommodated to the extent possible and permissible. We may, at this junction, recall the following observations from the judgment in Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*

> *"16. … The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really*

> *serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution."*

23. WBSEDCL requires vendors, contractors and bidders to submit a declaration confirming that no legal litigation or arbitration is pending against the utility to mitigate commercial risk, ensure seamless project execution, and prevent conflicts of interest. The mandatory clause serves several distinct functional and legal purposes. A company cannot effectively act as a trusted partner or contractor for WBSEDCL while simultaneously suing them in Court. If an active dispute involves financial claims for damages, it creates an unstable financial relationship between the two parties.

24. Pending litigation can lead to sudden stay orders, gridlocks or frozen funds. WBSEDCL enforces this Clause to prevent to protect public infrastructure projects from delays caused by judicial interventions involving the contractor. The undertaking forces bidders to legally declare their historical compliance and corporate governance track record.

25. The judgment relied by the petitioners in the case of ***Vinishma Technologies Pvt. Ltd. (supra)*** is distinguishable. In the said case, the State of Chhattisgarh stipulated the condition that the bidders must have supplied sports goods worth of Rs. 6.00 crores to the State Government agencies of Chhattisgarh but the Hon'ble Supreme Court held that the said object can be achieved by the requiring bidders to demonstrate financial capacity, technical experience and past performance in contracts of similar nature, regardless of place or performance of the contract. Thus, the facts of this case are distinguishable from the facts of the case referred to by the petitioners.

26. The judgment relied by the petitioners in the case of ***Kimberly Club (supra),*** the Hon'ble Supreme Court held that only in cases where such decision is dehors the terms of the NIT or is patently arbitrary would the Court exercise powers of judicial review and set aside such a decision but in the present case, this Court did not find any arbitrariness on the part of the WBSEDCL.

27. In the case of ***M/s Erusian Equipment & Chemicals Ltd. (supra),*** the Hon'ble Supreme Court held that :

> ***"19.*** *Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to*

> *disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein."*

It is not the case of the petitioners that the condition is incorporated only for the petitioners. The said conditions apply to all contractors or bidders who proposed to participate in the bid process. As per condition, the bidders should declare that no legal litigation/ arbitration is pending against the WBSEDCL.

28. This Court did not find any arbitrary action on the part of the WBESEDCL by incorporating Clause-14 in Form–XI in the purchase policy or the said clause is unconstitutional or contrary to the statutory provisions.

29. In view of the above, **WPA No. 26004 of 2025** and **WPA No. 5195 of 2026** are accordingly **dismissed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)