

RESERVED ON : 24.06.2026

PRONOUNCED ON : 28.07.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY 2026

BEFORE

THE HON'BLE MR. JUSTICE B. M. SHYAM PRASAD

WRIT PETITION No.29244/2024 [GM-TEN]

BETWEEN:

ONEXTEL LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 2013 AND
HAVING ITS REGISTERED OFFICE AT
C-802, ATS BOUQUET SECTOR-132,
NOIDA-201308

THROUGH ITS MANAGING DIRECTOR
MR. MOHD. RASHID ANWAR

...PETITIONER

(BY SRI. K SHASHIKIRAN SHETTY., SENIOR ADVOCATE A/W
SRI. M.S. SHYAMSUNDAR., SENIOR ADVOCATE
TOGETHER WITH MS. RACHEL RAJU ALICE,
MS. MAMTA TIWARI., MS ANUBHA META.,
SRI. SHAILESH KUMAR AND
SRI. VINAY KUMAR RAVOOL., ADVOCATES)

AND:

- 1 . UNION OF INDIA
THROUGH
THE SECRETARY,
MINISTRY OF FINANCE,
NORTH BLOCK
NEW DELHI - 110001.
- 2 . CANARA BANK
THROUGH THE CHAIRMAN

Digitally
signed by
VANAMALA
N
Location:
HIGH
COURT OF
KARNATAKA

HAVING ITS OFFICE AT
HEAD OFFICE BUILDING
NO. 112, J.C. ROAD
BENGALURU-560002.

3 . CANARA BANK
THROUGH THE DEPUTY GENERAL MANAGER
CENTRALISED PROCUREMENT AND
VENDOR MANAGEMENT WING
1ST FLOOR, NAVEEN COMPLEX
NO. 14, MG ROAD,
BENGALURU-560001.

...RESPONDENTS

(By Sri. ADITHYA SINGH., CGC FOR R1;
SRI. C.K. NANDAKUMAR., SENIOR ADVOCATE FOR
SRI. HEMANTH R RAO., ADVOCATE FOR R2 & R3)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO
QUASH THE REQUEST FOR PROPOSAL BEARING NO.
GEM/2024/B/5494355 DATED 10.10.2024 (ANNEXURE-K) AS
ISSUED BY R-2 AND 3;
DIRECT R-2 AND 3 TO CALL FOR A FRESH TENDER ALIGNED
WITH INDUSTRY STANDARDS WITH COMPETITIVE TERMS
WHICH HAS A WIDER DATABASE;
DIRECTION, RESTRAINING THE RESPONDENTS FROM
TAKING FURTHER STEPS IN ANY MANNER WITH RESPECT
TO THE REQUEST FOR PROPOSAL BEARING NO.
GEM/2024/B/ 5494355 DATED 10.10.2024
AS ISSUED BY R-2 AND 3 ANNEX-K;
DIRECTING R-2 AND 3 TO CONSIDER THE PETITIONER
HEREIN AFTE SUITABLE AMENDMENTS IN ORDER TO MAKE

IT MORE COMPETITIVE IN LINE WITH THE ACCEPTED INDUSTRY STANDARDS IN RESPECT OF THE RFP BEARING NO. GEM/2024/B/5494355 DATED 10.10.2024 (ANNX-K) READ WITH AMENDMENT THERETO.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE B M SHYAM PRASAD

CAV ORDER

The petitioner, who is in the business of providing *Communication Service Platform for SMS and Interactive Voice Responses* [IVR] Services, has impugned **[i]** the Request for Proposal dated 10.10.2024 [*the impugned RFP*] floated by the second and third respondents for the *Selection of a Service Provider for the Delivery of Domestic SMS and Interactive Voice Recording* [IVR] Services and **[ii]** the Corrigendum dated 05.11.2024 to this RFP. The second and third respondents are together referred to

as '*the Bank*'. The petitioner also seeks directions to the Bank to call for a fresh RFP aligned with *Industry standards* on competitive terms enabling wider participation.

2. The petitioner has presented¹ this petition on 29.10.2024. This Court, on 30.10.2024, has granted an interim order permitting the petitioner to submit its bid calling upon the Bank to consider such bid as well without insisting upon the *Pre-eligibility Criteria* based on annual turnover. Thereafter, the Bank has issued two Corrigenda dated 04.11.2024 and 05.11.2024.

3. The first Corrigendum is issued extending the end date and time for submission and opening of bids. The second Corrigendum is issued changing the *Pre-eligibility Criteria and the Technical Evaluation Scoring Criteria*. This Court, on 07.11.2024, has called upon the Bank to consider the petitioner's bid

¹ 30.10.2024 is the last date, as per the RFP, to open the technical bids.

without reference to the modified conditions. Further, this Court, on 09.12.2024, has called upon the Bank to video record the “*presentation*” [*a process that is part of the technical evaluation of the proposals filed by the different participants*]. The Bank has filed an application [I.A. No.4/2024] for recalling the Order dated 09.12.2024. This application is pending consideration, and the petition and the pending application are taken up for consideration with the learned Senior Counsels for both the petitioner and the Bank requesting for a final disposal.

The details of the petitioner

4. The petitioner² is a Company incorporated under the Companies Act, 2013 in the year 2014, and it is registered as a ‘*Telemarketer*’ with the Department of Telecommunications. The petitioner provides Communication Service Platforms to Banks and different public and Private Organizations as an *intermediary*. The Communication Service Platform

² The Petitioner’s name is changed in the year 2024.

enables these Banks and entities to transmit SMS messages to its end users. The petitioner asserts that it has successfully participated in over forty Government Tenders for SMS transmission services and that it can count amongst its clients banks such as DNS Bank, SUCO Bank, DMS Bank, TSCAB Apex Bank.

4.1 The petitioner, as an *intermediary* who provides a Communication Service Platform, sends and circulates SMS messages as desired by its clients through its channel partners such as Airtel, Vodafone, Jio, BSNL. The petitioner handles all SMS transmissions for its clients with *Middleware Solutions*³ that interact with its clients' applications upon tracking the SMS traffic.

³ *In common parlance, this expression refers to a software that bridges the gap between different applications, databases, and operating systems, allowing them to communicate seamlessly.*

The details of RFPs floated

5. The Bank has floated tenders inviting proposals to avail Communication Service Platform for delivery of domestic SMS and IVR Services with *Middleware Solutions* to handle the SMS traffic. The Bank has projected SMS Volume of thirteen [13] crores per day. The Bank has floated the first RFP for these services on 10.09.2024 stipulating that a participant [*either as a Telecom Operator or a Telemarketer/ SMS Aggregator*] could participate in the tender but subject to having an annual turnover of Rs.1,000 Crores in the last three financial years of 2020-21, 2021-22 and 2022-23⁴. The Bank has also stipulated that a participant will have to deposit a sum of Rs.25 Crores as Earnest Money Deposit [EMD]. The Bank has permitted a Telecom Operator or a Telemarketer/ SMS Aggregator to participate stipulating that:

⁴ *The further stipulation is that this turnover must be from Indian Operations as an individual company and not of any group of companies.*

- *the participant should have successfully implemented in India [during the last three years from the date of submission of bid] a project of SMS/ IVR Services for Scheduled Public Sector Banks, Scheduled Private Sector Banks, Public Sector Undertaking.*

5.1 The Bank has recalled this RFP dated 10.09.2024 to float the now impugned RFP. The Bank, while revising the EMD to Rs.12 Crores, has also revised the Pre-qualification and Technical Evaluation Scoring Criteria. The Bank has reduced the requirement of Average Annual Turnover for a participant from Rs.1,000 Crores to Rs.500 Crores for the financial years 2021-22, 2022-23 and 2023-24; and as part of Pre-qualification Criteria⁵, the Bank has stipulated that:

- *the participant should have successfully handled services [in*

⁵ *The stipulations are part of Annexure 2, Sl. No. 6 and 12 of the impugned RFP under the title Pre-qualification Criteria.*

India for the previous three years] for Scheduled Public Sector Banks/Private Sector Banks, Public Sector Undertakings, Central Government and Reputed Private Organizations,

- *the Private Reputed organizations should have had a turnover of more than Rs.1000 [one thousand] crores for the financial year 2022-23.*

5.2 The Bank has also notified the changed criteria for *Technical Evaluation Scoring* specifying the marks that would be allotted for each criterion. The *Technical Evaluation Scoring* criteria can be stated in brief thus.

Satisfactory handling of live SMS traffic

5.2.1 A participant should have satisfactorily handled services [*for the three previous years*] for Scheduled Public Sector Banks/Private Sector Banks, Public Sector Undertakings, Central Government and Private Organizations. The services

to a Private Organization would be considered if the Turnover of such organization is more than Rs.1000 [One thousand] crores for the financial year 2022-23. A participant is required to produce, amongst others, Satisfactory Project Completion Certificate/Reference Letter from the concerned A participant will be awarded fifteen [15] marks if this service is satisfactorily extended to four organizations, ten [10] marks for three to two organizations and five [5] marks for an organization.

Number of SMSs processed for a single client

5.2.2 The number of SMSs processed for a single client in a year during any of the three years preceding the date of submission is also marked. Under this Category, fifteen [15] marks are awarded for 1,500 Crores SMS, ten [10] marks for SMSs between 750 Crores and 1,500 Crores and five [5]

marks for SMSs between 350 Crores and 750 Crores⁶.

Successful implementation of a robust Middleware Solution

5.2.3 The first stipulation is that the middleware solution should have successfully processed at least one [1] Crore domestic SMSs for a single client per day with the further stipulation that ten [10] marks will be awarded for processing eight [8] Crore SMSs per day, seven [7] marks for processing SMSs between eight [8] and five [5] Crores, 5 [five] marks for processing SMSs between three [3] and five [5] Crores, and three [3] marks for processing SMSs between one [1] and three [3] Crores.

Other Criteria

5.2.4 The Bank has also stipulated, for scoring, criteria based on the number of years for

⁶ The RFP dated 10.09.2024 provided marking for the SMS processed per day starting from 2000 crore SMS.

which a participant has successfully implemented SMS/IVR services for different organizations while stipulating different marks for an SMS Aggregator and a Telecom Operator based on the association with the number of *Telecom Operators*⁷. Crucially, the participants are called upon to make a presentation, and twenty-five marks is assigned for the presentation as decided by an internal committee on markers as referred to in a Table appended to the RFP. The Bank has also stipulated the timelines for bid submission and the opening of the bid. The End Date/Time for bids is 05.11.2024 at 15.00 and the bid opening date/ time are 05.11.2024 at 15.30.

The Details of Corrigenda issued

6. The Bank has issued the Corrigendum dated 04.11.2024 changing the dates for End of Bid

⁷ These are operators such as BSNL and MTNL and private operators such as Reliance Jio, Vodafone Idea and Bharti Airtel. The Telecom Operators are given 10 marks, and SMS Aggregators, depending upon their association with 2 or 3 or more Telecom Operators, are awarded 7 or 10 marks respectively.

submissions and Opening of Bid to 12.11.2024 retaining the same timelines, and no controversy is presented in these regards. The Bank has next issued the Corrigendum dated 05.11.2024 with certain changes in the *Qualification Criteria* and the *Technical Evaluation Scoring Criteria* Permitting both *Telecom Operators* and *SMS Aggregators* to participate. If the petitioner is aggrieved by the stipulation on a *Participant's Annual Turnover* in the Impugned RFP, the petitioner's grievance is also with the changes published in issuing the Corrigendum dated 05.11.2024 on both the Pre-qualification Criteria and Technical Evaluation Scoring Criteria.

Change in the Pre-qualification Criteria

6.1 The Bank in the impugned RFP stipulated that a participant will be qualified to participate if it had successfully implemented SMS/IVR services even to a Private Sector Organization with a turnover of more than Rs.1,000 [One thousand] Crores for the financial year 2022-23. However, the Bank in issuing

the Corrigendum dated 05.11.2024 has stipulated an additional requirement to this Pre-qualification Criteria. The additional requirement can be stated thus:

- *If a participant has successfully implemented SMS/IVR services for a reputed Private Organization, such organization should have a turnover more than Rs.1000 crores for the financial year 2022-2023 from India operations and it should have itself consumed the SMS services and not as an SMS aggregator or a reseller organization⁸*

Change in the Technical Evaluation Scoring Criteria

6.2 The Bank in Scoring method for the number of organizations to whom service of handling SMS/IVR services is implemented by a participant and the number of years for which a project is implemented by a participant, in consonance with the

⁸ *In the impugned RFP dated 10.10.2024 a comma is placed before “in India” indicating a reference to the Bidder. However, in the Corrigendum dated. 05.11.2024 the comma is placed after “in India” indicating that it relates to the private entity.*

change in Pre-qualification Criteria, has stipulated that if a Project is implemented for a Private Organization, such organization must have an Annual Turnover of more than Rs.1000 Crores for the financial year 2022-23 and that this private organization should have availed the project for its direct consumption and not as an SMS Aggregator or Reseller organization.

A précis of the petitioner's grievance

7. The Petitioner's grievance is as against the two changes that have been wrought by the Bank in issuing the impugned RFP/ Corrigendum dated 05.11.2024, and these changes are as follows.

[A] The stipulation that a participant, whether as a Telecom Operator or a Telemarketer/ SMS Aggregator, must have an Annual Turnover of Rs. 500 crores during the last 3 financial years [2021-2022, 2022-23 and 2023-24].

[B] The stipulation that even a Telecom Operator or a Telemarketer/ SMS Aggregator could participate if they have executed a project even for a Private Organization but such organization should have had an Annual Turnover of Rs.1000 crores from Indian Operations for the financial year 2022-23 and such organization should have availed the project for its *direct consumption* and not as an SMS Aggregator or a Reseller Organization

On the Petitioner's Locus

8. The petitioner, as of the date of this writ petition, had not submitted its bid. It is only after this Court's interim order dated 30.10.2024 directing the Bank to receive its bid subject to the outcome of the petition, the petitioner has submitted its bid. The petitioner's locus is called in question because **[i]** it has not submitted its bid as of the date of the petition and **[ii]** it did not satisfy the pre-qualification condition on the Average Annual Turnover.

8.1 The petitioner, in challenging the Pre-qualification/ Technical Evaluation Scoring Criteria as aforesaid, seeks directions to the Bank to modify the RFP in terms of what it describes as the commercial practice/ norm. Whether the petitioner can succeed in such a challenge will have to be examined, and as part of this examination, this Court must also examine the petitioner's *locus*.

8.2 The Bank has first floated an RFP on 10.09.2024 for the *Selection of a Service Provider for the Delivery of Domestic SMS and Interactive Voice Recording [IVR] Services*. The Bank has recalled the first RFP, and the impugned RFP is issued on 10.10.2024. The RFP has a set of specific terms on the Pre-bid Meeting⁹. These terms are as follows.

- The Pre-bid queries should be sent in writing to the Bank's designated e-mail by 5:00 p.m. on 16.10.2024.

⁹ These terms are as part of Sections A and D of the RFP.

- The Pre-bid meeting of the intending participants will be held on the date and time¹⁰ and at the venue specified in the RFP document.
- No queries will be entertained after the date mentioned in the RFP.

8.3 The petitioner has submitted its pre-bid queries on 16.10.2024¹¹ raising *inter alia* the following two queries.

[a] On EMD:

The EMD of Rs. 25 Crores is higher, and like the State Bank of India, which had floated a similar tender, the EMD must be 2% on *the bifurcated value* across all three participants. The petitioner is alluding to the possibility of the Bank awarding the contract to three participants [*L1, L2 and L3*] in the

¹⁰ *Though the RFP mentions that a meeting of the Intending Participants will be held as on the specified date and time in the RFP with the stipulation that no separate information will be sent for this meeting, the RFP does not mention the date or time of such meeting*

¹¹ *These queries are part of Annexure – L.*

ratio of 50:30:20¹². The Bank could also onboard¹³ two participants [L1 and L2] in the ratio of 60:40. The petitioner relies upon the terms of the RFP floated other banks.

[b] On Annual Turnover:

According to the market trends leading banks like State Bank of India Punjab National Bank have awarded contracts at rates between 3.9 and 4.9 paisa per SMS. The estimated value of the RFP for three [3] years even at the 4.5 paisa will approximately be Rs. 635 crores for three [3] years and Rs 211 crores for one [1] year. If the Bank awards the contract to two [2] participants, the revenue generated will be Rs. 126.6 crores and Rs. 85 crores respectively for L1 and L2 bidders in the ratio of 60:40. A turnover of Rs. 500 crores as a measure of financial capability is

¹² The clause in this regard is part of section F of the RFP in Clause 4.7

¹³ The clause in this regard is part of section F of the RFP in Clause 4.8.

unjustified, and therefore, the Bank must re-consider the stipulation on Rs. 500 crores Average Annual Turnover during the three financial years from the Indian Operations.

8.4 The Bank has considered these queries as also the queries raised by the other prospective participants. On the petitioner's query on EMD of Rs. 25 Crores, the Bank has responded referring to the Corrigendum dated 23.10.2024. This Corrigendum reduces the EMD to Rs. 12 crores. As regards the query on Annual Turnover, the Bank has responded stating that the petitioner must comply with the RFP conditions but without elaboration.

8.5 The petitioner has filed this petition on 29.10.2024 premising its grievance in the Bank's response to its queries asserting that the stipulations on the EMD and Annual Turnover are arbitrary, restrictive and designed to favour the existing vendors. The petitioner, in terms of this Court's order dated 30.10.2024, has submitted its bid along with

the EMD, and with this Court permitting the petitioner to make its presentation on its bid, the Bank has also permitted the petitioner to make its presentation.

8.6 In the interregnum, the Bank has issued the Corrigendum dated 05.11.2024 changing certain stipulations in the RFP. At this stage, this Court must refer to the change in the EMD and record that the petitioner has deposited Rs 12 Crores as EMD with the Bank. The question is: *whether this Court must conclude that the petitioner could have asserted locus only if it had submitted its bid before invoking this Court's jurisdiction under Article 226 of the Constitution of India.*

8.7 The Bank relies upon the decision of a Division Bench of this Court in WA No. 381/2024¹⁴. The Division Bench, while observing that the petitioner in the case on hand was aggrieved by the restricted timelines permitted by the RFP had not

¹⁴ This intra court appeal is decided on 25.04.2024

submitted its bid, has opined that a party who does not participate in the tender process would lose the right to challenge the process relying upon the decision of the Apex Court in *National Highways Authority of India v. Gwalior-Jhansi Expressway Ltd.*¹⁵. The Division Bench has concluded that a *participating bidder* can call in question the tender process which is irrationally designed or being completed arbitrarily.

8.8 The Bank has floated the impugned RFP on 10.10.2024 after recalling its earlier RFP dated 10.09.2024. The Bank has permitted *the Prospective Participants* to raise queries until 16.10.2024. The Bank has tabulated and published the queries raised by the *Prospective Participants*, including the petitioner, on 23.10.2024. The petitioner has raised queries, and these queries, amongst others, relate to the insistence for EMD of Rs. 25 Crores and an Annual Turnover from the Indian operations in a sum

¹⁵ [2018] 8 SCC 243

of Rs. 500 crores for three financial years ending as of 2023-24. The petitioner's query on EMD has elicited a positive response with the Bank reducing the EMD to Rs. 12 Crores.

8.9 The petitioner has filed its petition a day prior to the date fixed for the opening of the bids. This Court has permitted the petitioner to submit its bid subject to the outcome in the petition. The petitioner, unlike the petitioner in the case on hand with the Division Bench, has submitted its bid along with the reduced EMD, and it has also made a presentation on its bid to the Bank. This Court has directed the Bank to examine the petitioner's bid as also the other bids without reference to the stipulation on Average Annual Turnover [*including the change in the Corrigendum dated 05.11.2024*]. The Bank has not opened the technical bids for its reasons.

8.10 These circumstances are significant, as would be the crucial circumstance that in the case on hand with the Division Bench the petitioner therein had not availed an opportunity to submit its bid despite an interim order. This Court is of the considered view that the question of the petitioner's *locus* must be examined in the light of the decision of the Apex Court in *NHAI [supra]* making a distinction in the facts and circumstances alluding to the facts in which the Apex Court has expounded that *only the entities who participate in the tender process pursuant to a tender notice can be allowed to urge grievances about the terms and conditions of the tender document.*

8.11 In the case on hand with the Apex Court there was a pending arbitral dispute, and after an interim order in this pending arbitral proceedings, the employer has floated a tender for completion of construction/ widening of a highway [*which was the subject matter of the dispute*] expressly stipulating

that the respondent therein [*the existing contractor and a party to the dispute*] must participate in the tender, and if it participates in the tender, it will be extended the Right of First Refusal on terms. This respondent-contractor, without participating in the tender, has moved an application in the pending arbitral proceedings for leave to complete the balance work.

8.12 The NHAI, having failed in resisting this application with the Arbitral Tribunal and being unsuccessful in the writ proceedings, has approached the Apex Court. The Apex Court has held that the *respondent, who stayed away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible participants who had participated in the tender process based on the written and express terms and conditions* expositing thus.

The objective of the tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal

opportunity to all tenderers with the result of getting a fair offer or value for money.

8.13 The present petitioner has approached this Court before the last date for opening the bids upon coming to know about the Bank's response to its queries. This Court has permitted the petitioner to offer bids, and it has offered its bid. The petitioner, in this Court's carefully examined view, has invoked this Court's jurisdiction without delay and much before the technical evaluation which would have created rights in the other participants. In these circumstances, if the petitioner has invoked this Court's jurisdiction without delay after having participated in the Pre-bid queries and if it has submitted its bid availing the opportunity so extended, this Court is of the view that the petitioner must have an opportunity to show that the Pre-qualification stipulations are restrictive eliminating competition in an open field.

8.14 This Court must refer to the decision of a Division Bench of the Delhi High Court in ***Rotoffset Corpn. v. Security Printing & Mining Corpn. of India Ltd***,¹⁶. The Division Bench has held as follows:

From an examination of law enunciated not only in Gwalior-Jhansi (supra) but also the judgment of this Court in Primatel (supra), Maisur (supra) and Brijesh Kumar (supra) undoubtedly the principle that emerges is very clear. In that, an entity which claims to be aggrieved by the conditions of a tender but has not participated on the premise of such condition impacting its eligibility, is required under law, to challenge those conditions within a reasonable period preferably before the last date of the submission of a bid or at least before the date of evaluation of the techno commercial bid. Such of those entities/participants who do participate in the tender may also, depending upon the facts of each case, be entitled to prefer a writ petition which too must be filed within a reasonable period of such closing date of the submission of the bid, so as to ensure that third party rights

¹⁶ 2025 SCC OnLine Del 5546

are not created in the meanwhile or contract being awarded or the execution of work by a third party commences.

On the petitioner's grievance with the RFP dated 10.10.2024 [the impugned RFP]

9. Sri K Shashikiran Shetty, the learned Senior Counsel for the petitioner, argues that this Court must quash the impugned RFP because the terms are arbitrary, restrictive and contrary to the industry standards. The learned Senior Counsel's submissions in these regards are as follows.

On the impugned RFP being arbitrary and restrictive

9.1 The Bank, in the RFP dated 10.09.2024, stipulated that a bidder should have an Average Annual Turnover of Rs.1,000 Crores during the three preceding financial years [2020-21, 2021-22, 2022-23] from Indian operations. The Bank also stipulated that this turnover must be the bidder's turnover as an individual company and cannot be the turnover of the group of companies. The Bank has recalled this

RFP and reissued the impugned RFP retaining the same stipulation but, with no basis, has reduced the Average Annual Turnover value from Rs.1,000 Crores to Rs.500 Crores. The Bank's decision to reduce the value of the Average Annual Turnover from Rs.1,000 Crores even to Rs.500 Crores is arbitrary.

9.1.1 The impugned RFP also stipulates that **[a]** a participant must have successfully implemented in India during the last three years SMS/IVR services in Scheduled Public/Private Banks, Public Sector Undertakings, Central Government and reputed Private Organizations, **[b]** that insofar as the Private Organization, the stipulation was that these entities must have had a turnover of more than Rs.1,000 Crores for the financial year 2022-23. The Bank has issued the Corrigendum dated 05.11.2024 retaining the term on the participant's qualification but revisiting the Pre-qualification Criteria for those participants who have executed the contract for Private Organisations.

9.1.2 The Bank's decision to issue the Corrigendum dated 05.11.2024 cannot be justified unless seen as intended to limit the playing field by changing the criteria for a participant who has extended such services to a Private Organization. The Bank, retaining the stipulation that the Annual Turnover of a Private Organization must be Rs.1,000 Crores for the financial year 2022-23 [which in itself is arbitrary], has further stipulated that the Private Organization should have consumed the SMS/IVR services by itself and not as an SMS aggregator or a reseller organization. This stipulation is arbitrary and it does not subserve the intention of inviting proposals from bidders to avail SMS/IVR services competitively.

9.2 A bidder, apart from satisfying the *Pre-qualification Criteria* on Average Annual Turnover of Rs.500 Crores in three financial years preceding the date of the RFP, will also have to satisfy, amongst others, three specific conditions if the SMS/ IVR

project is implemented for a Private Organization.

These three stipulations are that:

- [i]** the private organization must have had a turnover of Rs.1,000 Crores,
- [ii]** this turnover must be from Indian operations for the financial year 2022-23, and
- [iii]** a Private Organization should have consumed the SMS/IVR services offered as a project directly [by itself] and not as an SMS aggregator or a reseller organization.

The Bank in the past has availed these services from three vendors who will satisfy these requirements and only these three existing vendors will be successful participants. Therefore, these terms are restrictive and therefore arbitrary.

9.2.1 The Bank has retained to itself the liberty of dividing the contract between two of these

vendors or amongst three of the vendors selected through a restrictive procedure in the ratio of either 60:40 or 50:30:20. The Bank will finalize the contract either between the two vendors or amongst the three vendors depending on the bids offered under the Reverse Auction Mechanism. The reliance is upon *Clause Nos.4.7 and 4.8 of Section F (Ownership and Awarding of Contract)* of the impugned RFP, which read as under:

“4.7 If the Bank decides to onboard three vendors, the award of contract will be in the ratio of 50:30:20 among L1, 2nd selected Bidder and 3rd selected Bidder respectively.

4.8 If Bank decides to onboard two vendors, the award of contract will be in the ratio of 60:40 among L1, 2nd selected Bidder respectively”.

On the impugned RFP being contrary to the Industry Standards

9.3 The Bank has issued the impugned RFP projecting an SMS requirement of 13 Crores per day. The Bank of Baroda and the State Bank of India have floated RFPs to avail the services of SMS/IVR; these banks have projected SMS requirements of 21 Crores and 27.75 Crores respectively. However, unlike the Bank, both the Bank of Baroda and State Bank of India have stipulated Rs.120 Crores and Rs.150 Crores Annual Turnover [for the bidder].

9.3.1 The petitioner relies upon a chart which reads as under:

<i>The Bank</i>	<i>The Year of Tender</i>	<i>Number of SMSs per day</i>	<i>Estimated Value of tender [in Rs.]</i>	<i>Turnover Requirement [In Rs.]</i>
The State Bank of India	2024	27.5 Crores	701.6 Crores	150 Crores
The Bank of Baroda	2025	21 Crores	1016.8 Crores	120 Crores
The Petitioner	2022	7 – 13 Crores		
	2024	13 Crores		500 Crores

The Bank cannot justify the higher insistence on the Average Annual Turnover of Rs.1000 Crores under the RFP dated 10.09.2024 or Rs.500 Crores under the impugned RFP / Corrigendum dated 05.11.2024].

9.3.2 The Government of India has published Manual for Procurement of Consultancy services– [Second Edition, 2024]¹⁷ stipulating that minimum annual turnover should not be a blind multiplier of the contract value but there may be an upper cap on the demanded turnover without restricting the competition only to a few. The stipulation of Rs. 500 Crores as the Average Annual Turnover for a participant is intended only to favour the existing three vendors, viz., M/s Karix Mobile Pvt. Ltd., M/s Route Mobile Pvt. Ltd. and M/s Sinch India and that only these three vendors will qualify with this high turnover stipulation.

¹⁷ This manual is referred to as ‘the Consultancy Manual 2024’.

The Bank's failure to reason these stipulations

9.4 The Apex Court in ***Subodh Kumar Singh Rathour v. Chief Executive Officer and Others***¹⁸ has declared that if a decision is not *a good faith decision*, or if it is actuated by an oblique motive, such decision will have the characteristics of being arbitrary and capricious, especially when the Authority cannot offer a genuine and a sound rationale for devising the terms of an RFP.

9.5 The object of floating an RFP and inviting bids is to ensure competition amongst the duly qualified, but the Bank has evolved the offending terms to restrict the participation only to a few, especially to those who are existing vendors, defeating the very purpose of the RFP. The Bank cannot justifiably reason these changes in the *Pre-qualification Criteria* and *Technical Evaluation Scoring Criteria*, and these terms are also contrary to the *Consultancy Manual 2024* and Industry Standards.

¹⁸ [2024] 15 SCC 461

The Other Grounds

9.6 Sri K Shashikiran Shetty canvasses that the petitioner's Turnover for the year 2024-25 from the Indian operations is Rs.650 Crores and the petitioner's turnover for the years 2022-23 and 2023-24 is Rs.352 Crores and Rs.122 Crores respectively. The petitioner's Average Annual Turnover for the three years [2022-23, 2023-24 and 2024-25] will be approximately Rs.374 Crores, and that the Bank has deliberately, with no justification, stipulated an Average Annual Turnover of Rs.500 Crores.

9.6.1 Sri K Shashikiran Shetty argues that the petitioner has participated in the RFP floated by the Bank of Baroda with Reverse Auction Mechanism [as with the impugned RFP], and because the petitioner was able to participate [*though the petitioner is unsuccessful*] in such RFP, the contract therein is concluded at a rate of 3.5 paise per SMS. The learned Senior Counsel submits that the Bank, for the tender floated in the year 2022, has issued a

Work Order with 6.7 paise per SMS, and the Bank, to favour its existing vendors, is setting the bar high for participation so that the per SMS rate hovers around this higher end rather than permitting competitive participation yielding a better result.

9.6.2 Sri K. Shashikiran Shetty relies upon the following authorities/precedents for interference with the impugned RFP and the Corrigendum dated 05.11.2024 on the ground that the terms are restrictive helping cartelisation and arbitrary, and that they do not promote wider participation.

[a] On Cartelisation:

B.S.N. Joshi and Sons Ltd. v. Ajoy Mehta and another reported in ***(2009) 3 SCC 458***.

[b] On Arbitrary and Vague Terms:

Association of UPS and Power Conditioning v. Society of Applied Microwave Electronics

***Engineering and Research reported in 2002
SCC OnLine Del 877.***

[c] On promoting wider participation:

***Esteco Coal Services Limited versus
Karnataka Power Corporation Limited and
others reported in 1996 SCC OnLine Kar 413.***

The Bank's Response

10. Sri C K Nandakumar, the learned Senior Counsel for the Bank, rebuts the contention that the Bank's decision to stipulate ***[i]*** an Average Annual Turnover of Rs.500 Crores for three years [2021-22, 2022-23 and 2023-24], ***[ii]*** that a Private Organization, for whom a project is executed by a participant, must have consumed the SMS directly and must have had an Annual Turnover of Rs.1,000 Crores for the financial year 2022-23 from the Indian operations, are arbitrary, restrictive and contrary to industry standards. The learned Senior Counsel's elaboration in the rebuttal is as follows.

The Scope of Work in the Impugned RFP is different

10.1 The scope of work in the RFP floated by the State Bank of India and Bank of Baroda differs from the scope of work in the impugned RFP. The Bank's RFP is for both SMS and IVR services requiring the successful bidder:

- [a]** to install requisite hardware with three tier architecture at the Data Centre and Disaster Recovery sites,
- [b]** to install IVR including all necessary hardware, operating system, application software, interface software and cards, voice prompts, system speech, and cables and connections, and
- [c]** the successful bidder must support Oracle database or provide a licensed database with no cost.

These are specific to the Bank's impugned RFP, and the Bank of Baroda and State Bank of India have

only requested SMS, WhatsApp Banking Messages, or that a bidder must *size the infrastructure*. In fact, the State Bank of India does not require any hardware installation. Similarly, neither of these two Banks have asked for a licensed database.

10.2 The Bank's Project, with these specifications including Interactive Voice Recorded [IVR] messages, will be distinct and separate from the services for which these two Banks have floated their respective RFPs. As such, there cannot be a comparison between the impugned RFP floated by the Bank and the RFPs floated by the two other Banks to compel an opinion on the difference in qualification criteria of a bidder.

Other reasons for the impermissibility of the petitioner's reliance on the RFP floated by other Banks

10.3 The petitioner cannot even otherwise draw any support from the RFP floated by the State Bank of India or Bank of Baroda because these

tenders relate to the year 2022, and in fact, the petitioner has suppressed the RFP floated by the State Bank of India in the year 2024. The SBI in its RFP dated 11.10.2024 has stipulated an average minimum annual turnover of Rs.500 Crores. If the Scope of Work in the impugned RFP, which differs from the Scope of Work floated by the other Banks, justifies a higher annual turnover, the pre-bid requests for reducing the annual turnover to between Rs.80 to 763 Crores, the applicable Guidelines issued and the terms of the RFP dated 11.10.2024 floated by SBI completely undermine the petitioner's case that the prescription of Average Annual Turnover of Rs.500 Crores is excessive and contrary to the industry standards.

The requirement on Annual Turnover in the RFP dated 10.09.2024 and the Pre-bid queries

10.4 The Bank, in the RFP dated 10.09.2024, had stipulated an Average Annual Turnover for a participant at Rs.1000 Crores. The

proposal, among others, is examined by the Online Banking Technology Section, and even the Tender Processing Section has confirmed that the RFP is in terms of the public procurement policy. The Bank's Purchase Committee, after deliberations on the Eligibility Criteria, Technical Specifications and Scope of Work, has permitted proceeding with the RFP dated 10.09.2024 subject to obtaining permission from the competent authority.

10.5 The petitioner participated in the pre-bid discussions raising queries on the Annual Turnover stipulation. The other participants also raised queries. The petitioner requested for an Average Annual Turnover between Rs.80 and 100 Crores, while the other participants sought for annual turnover between Rs. 80 and 750 Crores. In the queries, the following were suggested by the participants.

Sl. No.	Participants	Reduction Requested [In Rs.]
1.	M/s Advent Global Solutions Private Limited	750 crores
2.	M/s Smart Ping	350 crores
3.	M/s Sinch India	360 crores
4.	M/s Infobip India Private Limited	300 crores
5.	OneXtel Media Private limited	80- 100 crores
6.	M/s OPW IT Solutions India	80 crores

In view of these queries, the Bank, for the present RFP [*the impugned RFP*] has reduced the Average Annual Turnover requirement for a participant from Rs.1000 Crores to Rs. 500 Crores.

The Guidelines in the different Manuals

10.6 The *Consultancy Manual 2024* applies for consultancy, and the impugned RFP is not for consultancy. The impugned RFP, as discerned from the Scope of Work, is for availing goods/ a specific service. Even if the *Consultancy Manual 2024* is applied, the stipulation is that the financial capability [*the Annual Gross Receipt*] should be at a

minimum of 30% of the estimated value of the contract. However, the relevant guidelines would be the *Manual for Procurement of Goods [Second Edition, 2024]* [which is referred to as '*the Goods Manual, 2024*'] or the *Manual for Procurement of Non-consultancy Services 2024* [which is referred to as '*the Non-consultancy Services Manual 2024*'].

10.7 *The Goods Manual, 2024* stipulates, in paragraph-3, that *the Financial Standing* of a participant that the average annual financial turnover of a participant must be 40-80% or any other percentage of the estimated cost of the quantity in the tender document. The *Non-Consultancy Services Manual 2024* stipulates, among others, that:

[a] *the Qualification Criteria should not be advantageous to the foreign manufactured goods at the cost of domestically manufactured goods,*

[b] *the Qualification Criteria must be fixed keeping in view the type of service, scope,*

delivery and the volume of the procurement, and

[c] *the Government of India in setting out a sample example in this Manual has stipulated that the average annual gross billing of related services during the previous three years should be at least 10 times the annual estimated cost appending an explanation stating that the multiple of 10 is mentioned because a Service Provider has to sustain the services over a long period.*

The Government of India has also published the *Manual for Procurement of Non-Consultancy Services* defining *Consultancy Services 2025* [*the Non-Consultancy Services Manual, 2025*] stipulating that the Procuring Authority may, to assess financial capability, insist upon 3-7 times the estimated cost/value. The estimated value of the impugned RFP is about Rs.837 Crores and as such the insistence on a participant having an Average Annual Turnover of Rs.500 Crores is not excessive.

On the allegation of Cartelisation

10.8 The petitioner alleges that the Annual Turnover requirement of Rs.500 Crores for the three years [2021-22, 2022-23 and 2023-24] and that *the requirement of direct consumption of service* [when the service is extended to a Private Organisation by a participant], is to favour the Bank's existing vendors viz., M/s Karix Mobile Pvt. Ltd., M/s Route Mobile Pvt. Ltd., and M/s Sinch India. However, it cannot be denied that established entities, viz., M/s Reliance Jio Infocomm Limited, M/s Bharti Airtel Limited and M/s Bharat Sanchar Nigam Limited have offered their bids and made their presentations.

10.9 It is possible that one or more amongst these can also be between/ amongst those who can be given the advantage of a contract in view of *Clauses 4.7 or 4.8 of Section F* in the impugned RFP. The allegation of cartelisation is therefore incorrect. Further, the entire allegation of

cartelisation is based on the possibility of the petitioner ensuring a reduced cost to the Bank only because it asserts that its participation in a similar tender by the other banks resulted in a lower price under the reverse auction process. This premise is not only presumptuous and contrary to the facts but also premature.

On the allegations of the impugned RFP violating Industry standards

10.10 The petitioner seeks for quashing of the impugned RFP while also seeking a direction to the Bank to permit it to participate in the tender process but upon revision of the impugned RFP in accordance with the *Industry Standards*. The prayers are incongruous. If the impugned RFP is quashed, there would be no occasion to extend an opportunity to the petitioner, and if the petitioner is to be permitted an opportunity, the impugned RFP cannot be quashed.

On the Corrigendum dated 05.11.2024

10.11 The Bank has issued the Corrigendum dated 05.11.2024 stipulating that if a participant has offered the services to a Private Organization, such private entity must be a direct consumer as against being an SMS aggregator or a reseller because the Bank is keen on the deployment of certain hardware/ software solutions with IVR services which cannot be managed by an SMS Aggregator or a reseller without the requisite business volume in the immediate past. This requirement is also evaluated by the Internal Online Banking Technology Section, the Internal Tender Processing Section, and the Procurement Committee. Therefore, these stipulations are in the Bank's commercial wisdom to achieve a robust service.

On the Judicial Review of Tender Terms

10.12 The Bank has availed similar services under the RFP published in the year 2021 with the requirement Rs. 100 crores as the Annual

turnover of a participant, and after three years, the Bank has floated the impugned RFP [*after cancellation of the RFP dated 10.09.2024*] based on the specific Scope of Work, and proper verification by the Online Banking Technology Section and the Internal Tender Processing Section and with the approval of the Procurement Committee in its commercial wisdom. The threshold for interference by the Courts with tenders is higher; a petitioner to succeed against a tender must demonstrate that the decision violates the Wednesbury Principle of Reasonableness and not just some inconsistency or discrepancy or a desiring participant's inability. As such, there cannot be any judicial review of the impugned RFP at the petitioner's insistence. The Bank places reliance on the following decisions to buttress its case on the afore;

[a] Directorate of Education & Ors. v. Educomp Datamatics Ltd. & Ors.
reported in (2004) 4 SCC 19

[b] Ratnagiri Gas and Power Private Limited v. RDS Projects Limited and Others reported in **(2013) 1 SCC 524.**

[c] Central Coalfields Limited and Another v. SLL-SML (Joint Venture Consortium) and Others and connected matters reported in **(2016) 8 SCC 622**

[d] Vinishma Technologies Pvt. Ltd v. State of Chattisgarh and Another reported in **[2025 SCC OnLine SC 2119]**

The petitioner's Rejoinder

11. Sri Shashikiran Shetty, relying upon the Rejoinder/ Notes on Rejoinder, canvasses the following on why this Court must not accept the Bank's response and quash the impugned RFP with directions to the Bank to ensure that the Pre-qualification Criterion [*the Financial Ability of a participant*] is not unreasonably high and that the participation of an entity which has rendered similar

service to a Private Organisation, is not restricted only because the turnover of the private entity from Indian Operations in a specific year is not high.

11.1 This Court, on 07.11.2024, has directed the Bank to complete the technical evaluation of the bids received and continue with the tender process subject to further orders, but the Bank, without complying with this direction, has filed the application for vacating the interim order insisting upon an early disposal of the petition. This circumstance bolsters the petitioner's case that the impugned RFP is floated to favour the existing vendors, and there can be no explanation otherwise.

11.2 The Bank asserts that the Scope of Work as contemplated in the impugned RFP is different from the RFPs floated by the State Bank of India and Bank of Baroda. It is emphasized that the Bank is insisting upon Interactive Voice Recorded Promotion messages and the Interactive Voice Recorded OTP

based services, but the ratio of Interactive Voice Recorded Promotion messages and the Interactive Voice Recorded OTP based services is below even 1% of the estimated SMS services. The normal priority SMS constitute 83.42% of the expected SMS traffic with the Interactive Voice Recorded Promotion messages and the interactive Voice Recorded OTP based services constituting only 0.001584% of the estimated SMS traffic. Therefore, the argument that the Scope of Work contemplated is very different is nebulous.

11.3 The Bank has relied upon the *Goods Manual, 2024* and the *Non-Consultancy Services Manuals of 2024 and 2025* to justify a high Annual Turnover of Rs.500 crores without referring to the *Manual for Procurement of Consultancy Services [Second Edition, 2024]*. The Bank, in floating the impugned RFP, is not purchasing *goods* but is availing consultancy services. As such, the applicable Manual will be *the Consultancy Services Manual*,

2024, which envisages that the financial capability (the Annual Gross Receipt) should be at a minimum of 30% of the estimated value of contract.

11.4 The Bank's existing consumer base, as available on the Bank's portal is only about 6.5-7 lakhs, but the impugned RFP is floated with an estimate of 13 Crores SMSs. This increases the threshold and justifies a higher Average Annual Turnover. The value of the impugned RFP cannot be Rs. 835 Crores if the volume of the SMS is reduced and the price per SMS is between 3.5–4.5 paisa.

11.5 The Courts have accepted that the tendering authority has greater latitude in determining the terms of a tender, but to sustain the terms when called in question, the rationale for the same must be brought out. The Bank has stipulated, as part of the Corrigendum dated 05.11.2024 that if a participant has implemented a project for a Private Organization, such Private Organization must have

an Annual Turnover of Rs.1000 Crores from Indian operations for a specific year and that it must have directly consumed such SMS services, but the Bank has offered no rationale to justify the same.

The question for consideration and this Court's reasoning for a conclusion on such question

12. The rival submissions are elaborate and the records are voluminous, but this Court must at the very outset observe that there is no quarrel on the legal propositions on judicial review of the tender terms. It is trite that the Courts will test the tender terms on Wednesbury Principles of Reasonableness. The Courts will interfere when it is shown that the terms of the tender are entirely arbitrary with no rationale and are intended to support a few excluding competition and disturbing fair competition. This Court in ***Aurashine Essentials (P) Ltd. v. Karnataka Soaps & Detergents Ltd.***,¹⁹ on the

¹⁹ 2025 SCC OnLine Kar 20185

scope of Judicial Review in tender matters has held thus:

11. The settled law on the power of judicial review of a decision by the Government [and its undertakings] in floating tenders and issuing work orders on completion of the procedure is that the courts do not sit as courts of appeal but merely review the manner in which a government [its undertakings] has made a decision because the courts will not have the expertise to correct the administrative decision. It is also settled that the judicial intervention with an administrative action such as to issue work orders on completion of the tender process is to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides; and that if a decision to award a contract is bona fide and in public interest, the Courts will not, in exercise of the power of judicial review, intervene.

12. In this context, this Court must not only refer to the decision of the Apex Court in Tata Cellular v. Union of India and in Jagadish Mandal v. State of Orissa but must observe that, in some circumstances, a petitioner may demonstrate a procedural aberration, an error in assessment or a

prejudice, and the question is should the Courts intervene only because of such aberration or error in assessment or because a tenderer is prejudiced. The Apex Court in Jagadish Manda v. State of Orissa [supra] has clearly stated that;

.....If the decision relating to the award of contract is bona fide and is in public interest, courts will not, in the exercise of the power of judicial review, intervene 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 interests at the cost of the public interest or to decide contractual disputes.

12.1 A Division Bench of the High Court of Bombay in **Watergrace Products v. Nashik Municipal Corpn.**,²⁰ referring to the Apex Court's decision in **Tata Cellular v. Union of India [supra]** has held thus:

15. The scope of interference with tender conditions in exercise of powers of judicial

²⁰ 2025 SCC OnLine Bom 330

review is well delineated by catena of decisions of Supreme Court. The discretion to grant largesse including contracts, quotas and license and so on must be structured by rationale, relevant and non-discretionary standard or norms. (See: Narendra Kumar Maheshwari v. Union of India). It is well settled legal preposition that it is open to the State to impose conditions in the tender prescribing the eligibility criteria and if the State can justify the tender conditions in the context of a particular contract, the Courts will not interfere and whenever there are different alternatives, it is not for the Courts to suggest that a particular alternative is justified. In celebrated case of Tata Cellular v. Union of India, it was held that terms of invitation to tender are not open to judicial scrutiny because invitation to tender is in the realm of contract. However, it has been held that decisions taken by a body functioning in an administrative or quasi-administrative sphere can be tested on the application of the Wednesbury principle of reasonableness and has to be free from arbitrariness, not effectuated by bias or mala fide.....”.

The question for consideration in the light of the circumstances canvassed on behalf of the petitioner and the Bank is: *whether the petitioner has made out a case for interference with the impugned RFP dated 10.10.2024 and the Corrigendum dated 05.11.2024 as against the afore parameters.*

12.2 The petitioner's grievance with the impugned RFP and the Corrigendum dated 05.11.2024 is with the following stipulations as Pre-qualification Criteria.

[i] The Average Annual Turnover of Rs.500 Crores for a participant during the three financial years 2021-22 to 2023-24.

[ii] A participant who extends SMS/IVR services to a Private Organization would be qualified if such Private Organization has a turnover of Rs.1,000 Crores during the financial year 2022-23 from Indian operations.

[iii] Such SMS/IVR services must be consumed directly by the Private Organization for its own services and not as an SMS aggregator or a reseller Organization.

The petitioner specifically asserts that these stipulations are designed by the Bank to favour its existing vendors, and the underlying assertion is that the Bank has ensured the participation of its existing vendors, excluding others such as the Petitioner.

12.3 This Court must observe that though the petitioner asserts the above, it has not placed on record any detail that would justify the conclusion that the Bank's existing vendors [or an existing vendor] would be the only ones to qualify with these specific Pre-qualification criteria. This Court must next observe that the Bank specifically contends that not only the existing vendors but major players in the sector *viz.*, M/s Reliance Jio Infocomm Ltd., M/s

Bharti Airtel Ltd. and M/s Bharat Sanchar Nigam Ltd. have also offered their bids and made their presentations.

12.4 If the technical bids by these and the others are evaluated, admittedly, there will be a Reverse Auction with the participants who have submitted technically valid bids who will then bid against each other on the price per SMS. It is after this process, that the Bank, acting in terms of *Clauses- 4.7 and 4.8 of Section F* of the impugned RFP will decide on awarding the contract to either L1 and L2 [*in the ratio of 60:40*] or to L1, L2 and L3 [*in the ratio of 50:30:20*]. In these circumstances, this Court opines that the petitioner's case that the Pre-qualification criteria in the impugned RFP/Corrigendum dated 05.11.2024 favours the existing vendors cannot be readily accepted.

12.5 The petitioner further asserts that tenders have been floated by other Banks for the same services with similar terms on Reverse Auction but

with a lower Average Annual Turnover threshold and that the cost per SMS is drastically reduced in such projects owing to the petitioner's participation. There are elaborate pleadings in this regard. However, this will not be germane for the present purposes because those participants who have submitted technically valid bids will participate in the Reverse Auction, and there could be rationalized pricing given the scope of work that is specific to the impugned RFP. The outcome will be in the realm of the commercial wisdom of the participants as well.

12.6 The Bank contends that the impugned RFP requires a successful participant to provide, amongst others, a licensed database with no cost, a Middleware Solution with all the necessary hardware and software and a three-tier architecture at the Data Centre and Disaster Recovery Sites²¹, and that this could make a difference in the final price per SMS. The petitioner proposes to undermine this in

²¹ *The Bank has brought out a chart to explain the difference in the specifications*

canvassing that the Scope of Work in the impugned RFP and the RFPs floated by the other Banks are similar emphasizing that the normal priority SMS constitutes the bulk of the estimated SMS Services and that the IVR promotional/IVR based OTP messages is only about 0.001584% of the estimated 13 Crores SMSs.

12.7 The Bank has placed on record material to demonstrate that its Online Banking Technology Section and Tender Processing Section have confirmed that the impugned RFP is in terms of public procurement policy, that its Purchasing Committee has deliberated on the Eligibility Criteria, Technical Specifications and Scope of work and that it is only after this due process and with the approval of the Competent Authority, that the first RFP dated 10.09.2024 was floated. The Bank has also brought on record material that demonstrates that it has recalled this RFP dated 10.09.2024 and floated the impugned RFP on similar terms but subject to a

change in the Average Annual Turnover requirement for a participant from Rs.1,000 Crores to Rs.500 Crores and including implementation of SMS/IVR Services during the last three years to a Private Organization with an Annual Turnover of more than Rs.1000 crores for the financial year 2022-23. These circumstances persuade this Court to opine that the Bank has floated the impugned RFP following due process.

12.8 This Court must at this stage observe that the petitioner has participated in the Query proceedings as have other intending participants. The request for a revision of the Average Annual Turnover for a participant during the three relevant years is between Rs.750 Crores and Rs.80 Crores. The Query proceedings are on 16.10.2024. This will be material because the technical specifications between the two RFPs [10.9.2024 and 10.10.2024] have remained the same and the impugned RFP is issued immediately after recalling the RFP dated 10.09.2024. This

circumstance would be dispositive rather than the stipulation on the Average Annual Turnover for a participant in the RFPs floated by the other Banks, especially when it is not in dispute that these RFPs by the other Banks are for the years from 2021 to 2023.

12.9 *The Goods Manual, 2024* stipulates that the prescribed average annual turnover of a participant must be 40- 80% or any other percentage of the estimated cost, and *the Non-consultancy Services Manual, 2024* mentions that a multiple of 10 times would be permissible because a service provider has to sustain services for a long period. *The Non-consultancy Services Manual, 2025* contemplates 3-7 times the estimated cost, and *the Consultancy Services Manual, 2024* refers to a minimum of 30% of the estimated values. These show the standard adopted by the Sector/ Industry.

12.10 The petitioner relies upon *the Consultancy Services Manual, 2024* to contend that the impugned RFP's Pre-qualification criteria violate the Guidelines, but the Bank relies upon the *Non-Consultancy Services Manuals, 2024 and 2025* and *the Goods Manual, 2024*. The application of these *Non-consultancy Services Manuals/Goods Manual, 2024* is contested on the assertion that the Bank has called for consultancy services and not for the purchase of goods.

12.11 There could be a debate on whether the Bank has called for *consultancy services or goods*, but what is not in dispute is that these Manuals lay down Guidelines, and these cannot be mandatory. A Procuring Authority, for commercial reasons and in its commercial wisdom, must have the elbow room to develop the participation criteria that are close to these Guidelines and according to the Industry standards. As observed earlier, the Sector/ Industry standards is also shown with the petitioner and the

other participants requesting for an Average Annual Turnover between Rs. 750 and Rs. 80 Crores.

12.12 The Bank has changed the Pre-qualification criteria regarding a participant extending the SMS/IVR services to a Private Organization. This change is with the Corrigendum dated 05.11.2024. The change includes the following components which can be stated thus. **[a]** The private organization should have had a turnover of more than Rs.1,000 Crores for the year 2022-23 from Indian operations and **[b]** that the Private Organization must be a direct consumer of these services and not as an SMS aggregator or a reseller organization. The petitioner asserts that these changes are to accommodate the existing vendors.

12.13 However, as first observed, there is nothing on record to indicate that these changes accommodate a particular vendor or a participant. This undermines the petitioner's challenge to these

changes on the ground of being arbitrary. Further, the Bank contends that these changes are necessary because the scope of work involves hardware/software solutions for domestic SMS/ IVR services and security for tele banking, and that unless a participant has extended services to a Private Organization which is not an SMS Aggregator or a Reseller, the ability to handle the services, which includes IVR services will not be established. These are technical aspects and are best described by the Bank [*the Procuring Entity*]. In this Court's considered view, these circumstances also undermine the petitioner's challenge to these changes on the grounds of being restrictive intending to favour either an existing vendor or a particular participant.

ORDER

In view of the afore discussion, this Court is not persuaded to opine that the petitioner has made out a case for interference with the impugned RFP based

on the Wednesbury Principle of Reasonableness, or Cartelisation, or on the impugned RFP being contrary to Sector/Industry standards. As such, the petition is ***rejected***.

**Sd/-
(B M SHYAM PRASAD)
JUDGE**

NV*