



HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Misc. Bench No. 35 of 2026

10 January, 2026

Vinishma Technologies

...Petitioner

Versus

Directorate Women Empowerment And Child
Development Department

... Respondent

Presence:-

Mr. Bhupesh Kandpal, learned counsel for the petitioner.

Mr. Yogesh Chandra Tiwari & Mr. Gajendra Tripathi, Standing Counsel
for the State of Uttarakhand.

JUDGMENT

Hon'ble Manoj Kumar Tiwari, J.

Hon'ble Siddhartha Sah, J.

(Per: Hon'ble Manoj Kumar Tiwari, J.)

1. Directorate of Women Empowerment and Child Development, Uttarakhand invited bids for supply of Educational School Kits by issuing a notice inviting tender dated 18.12.2025. Petitioner submitted bid pursuant to said notice, as is apparent from averments made in para 11 and 13 of the writ petition.

2. Petitioner apprehends that his bid may be rejected due to certain conditions mentioned in the bid document, therefore, he has approached this Court, seeking the following relief:-

- (i) A writ order, order direction in the nature of certiorari quashing the impugned clause 1(Ga) and 1 (Da) of the additional terms and conditions of bid document bearing no. GEM/2025/B7019467 dated 18.12.2025 (Annexure No. 1 to the writ petition) as well as the condition no. 2(4) of the corrigendum dated 29.12.2025 (Annexure No. 2 to the writ petition) issued by the Directorate of Women Empowerment and Child Development Department.



3. Petitioner has challenged Clause 1(ग) and 1(ड) of the additional terms and conditions of the bid document. Clause 1(ग) requires every bidder to submit an affidavit that he is not black listed by any Agency/Central or State Government and; further that he is not involved in any litigation with any Agency/Central or State. Clause 1(घ) requires each bidder to submit test report from a Government Laboratory, certifying that the material used in the Pre-School Kit is Food Grade, Non-Toxic and Non-Hazardous.

4. Clause 1(ड) requires each bidder to submit sealed sample of items mentioned in Serial No. 1 to 17 of pre-school kit in corrugated cardboard carton. Petitioner has also challenged the condition of submitting “no dues certificate” issued by Jurisdictional Goods and Service Tax (GST) Authority, which was added by Corrigendum issued on 29.12.2025.

5. Learned counsel for the petitioner submits that the requirement of submitting affidavit by each bidder “that it is not involved in any litigation with any Agency/State or Centre Government”, is arbitrary and it does not have any nexus with the object sought to be achieved. Learned counsel for the petitioner submits that the condition of submitting test report from Government Laboratory that the material used in pre-school kit is Food Grade, Non-Toxic and Non-Hazardous, is also arbitrary, which restricts competition. He further submits that the condition mentioned in Clause (ड) is



contrary to Office Memorandum dated 15.10.2003 issued by Central Vigilance Commission, Government of India, as it makes the decision too subjective and may result in award of contract at higher rates.

6. This Court is not impressed by the submissions made by learned counsel for the petitioner. In the case of *Directorate of Education & others vs. Educomp Datamatics Ltd. & others*, reported as 2004 (4) SCC 19, Hon'ble Supreme Court has held as under:-

“9. It is well settled now that the courts can scrutinise the award of the contracts by the Government or its agencies in exercise of their powers of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth by this Court in *Tata Cellular v. Union of India* [(1994) 6 SCC 651] . After examining the entire case-law the following principles have been deduced: (SCC pp. 687-88, para 94)

“94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of *Wednesbury* principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.



(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

10. In *Air India Ltd. v. Cochin International Airport Ltd.* [(2000) 2 SCC 617] this Court observed: (SCC p. 623, para 7)

“The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedure laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness.”

(emphasis supplied)

11. This principle was again restated by this Court in *Monarch Infrastructure (P) Ltd. v. Commr., Ulhasnagar Municipal Corpn.* [(2000) 5 SCC 287] It was held that the terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the courts to say whether the conditions prescribed in the tender under consideration were better than the ones prescribed in the earlier tender invitations.

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

(emphasis supplied)”



7. In the case of *M/s Michigan Rubber (India) Ltd. Vs. State of Karnaaka & others, reported as (2012) 8 SCC 216*, Hon'ble Supreme Court while considering validity of pre-qualification criteria inserted in a tender notice for supply of tyres, tubes and flaps by Karnataka Road Transport Corporation. After considering the law on the point challenge to pre-qualification criteria was settled by Hon'ble Supreme Court. The relevant extract of the judgment rendered by Hon'ble Supreme Court, are reproduced below:-

"12. In *Raunaq International Ltd. v. I.V.R. Construction Ltd.* [(1999) 1 SCC 492] this Court reiterated the principle governing the process of judicial review and held that the writ court would not be justified in interfering with commercial transactions in which the State is one of the parties except where there is substantial public interest involved and in cases where the transaction is mala fide.

13. In *Union of India v. International Trading Co.* [(2003) 5 SCC 437] this Court, in similar circumstances, held as under: (SCC pp. 445 & 447, paras 15-16 & 22-23)

"15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. 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. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.



* * *

22. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed.

23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See *Parbhani Transport Coop. Society Ltd. v. RTA* [AIR 1960 SC 801] , *Shree Meenakshi Mills Ltd. v. Union of India* [(1974) 1 SCC 468] , *Hari Chand Sarda v. Mizo District Council* [AIR 1967 SC 829] and *Krishnan Kakkanth v. Govt. of Kerala* [(1997) 9 SCC 495].)

14. In *Jespar I. Slong v. State of Meghalaya* [(2004) 11 SCC 485] this Court, in para 17, held as under: (SCC p. 494)

“17. ...fixation of a value of the tender is entirely within the purview of the executive and 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.”

15. In *Assn. of Registration Plates v. Union of India* [(2005) 1 SCC 679] a similar issue was considered by a Bench of three Judges. In that case, the dispute was about the terms and conditions of notices inviting tenders (NITs) for supply of high security registration plates for motor vehicles. The tenders had been issued by various State Governments on the guidelines circulated by the Central Government for implementing the provisions of the Motor Vehicles Act, 1988 and the newly amended Central Motor Vehicles Rules, 1989. The main grievance of the appellant therein was that all notices inviting tenders (NITs) which were issued by various State Governments, contained conditions which were tailored to favour companies having foreign collaboration. Their further grievance was that the tender conditions were discriminatory as per Article 14 of the Constitution and were being aimed at excluding indigenous manufacturers from the tender process. It was also contended that in all the cases, the work of supply of high security registration plates for all existing vehicles and new vehicles was being entrusted to a single licence plates manufacturer in a State or a region and for a long period of 15 years, thus creating monopoly in favour of selected bidders to the complete exclusion of all others in the field.



16. The further contention advanced in Assn. of Registration Plates case [(2005) 1 SCC 679] was that creation of monopoly in favour of a few parties having connection with foreign concerns is violative of the fundamental right of trade under Article 19(1)(g) and discriminatory under Article 14 of the Constitution. It was also pointed out that in the name of implementing the amended Rule 50 of the Motor Vehicles Rules, 1989, the States are imposing conditions in the tender that would take away the existing rights of the manufacturers of plates in India.

17. On the condition laid down for prescribed minimum turnover of business, the challenge made on behalf of the petitioners in Assn. of Registration Plates case [(2005) 1 SCC 679] was that fixing such high turnover for such a new business is only for the purpose of advancing the business interests of a group of companies having foreign links and support. That it was impossible for any indigenous manufacturer of security plates to have a turnover of approximately Rs 12.5 crores from the high security registration plates which were sought to be introduced in India for the first time and the implementation of the project has not yet started in any of the States.

18. On behalf of the Union of India, the State authorities and the counsel appearing for the contesting manufacturers, in their replies, have tried to justify the manner and implementation of the policy contained in Rule 50 of the Motor Vehicles Rules. On behalf of the Union of India, the learned ASG submitted that under Rule 50 read with the Statutory Order of 2001 issued under Section 109(3) of the Motor Vehicles Act, the State Governments are legally competent to formulate an appropriate policy for choosing a sole or more manufacturers in order to fulfil the object of affixation of security plates. The Scheme contained in Rule 50 read with the Statutory Order of 2001 leaves it to the discretion of the State concerned to even choose a single manufacturer for the entire State or more than one manufacturer regionwise. It was pointed out that such a selection cannot be said to confer any monopoly right by the State on any private individual or concern. He further pointed out that the tender conditions were formulated taking into account the public interest consideration and aspects of high security.

19. While considering the above submissions, the three-Judge Bench held as under: (Assn. of Registration Plates case [(2005) 1 SCC 679] , SCC pp. 698-701, paras 38-40 & 43-44)

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



of formulation of scheme in Rule 50 and issuance of guidelines thereunder by the Central Government, there were not many indigenous manufacturers in India with technical and financial capability to undertake the job of supply of such high dimension, on a long-term basis and in a manner to ensure safety and security which is the prime object to be achieved by the introduction of new sophisticated registration plates.

39. The notice inviting tender is open to response by all and even if one single manufacturer is ultimately selected for a region or State, it cannot be said that the State has created a monopoly of business in favour of a private party. Rule 50 permits the RTOs concerned themselves to implement the policy or to get it implemented through a selected approved manufacturer.

40. Selecting one manufacturer through a process of open competition is not creation of any monopoly, as contended, in violation of Article 19(1)(g) of the Constitution read with clause (6) of the said article. As is sought to be pointed out, the implementation involves large network of operations of highly sophisticated materials. The manufacturer has to have embossing stations within the premises of the RTO. He has to maintain the data of each plate which he would be getting from his main unit. It has to be cross-checked by the RTO data. There has to be a server in the RTO's office which is linked with all RTOs in each State and thereon linked to the whole nation. Maintenance of the record by one and supervision over its activity would be simpler for the State if there is one manufacturer instead of multi-manufacturers as suppliers. The actual operation of the scheme through the RTOs in their premises would get complicated and confused if multi-manufacturers are involved. That would also seriously impair the high security concept in affixation of new plates on the vehicles. If there is a single manufacturer he can be forced to go and serve rural areas with thin vehicular population and less volume of business. Multi-manufacturers might concentrate only on urban areas with higher vehicular population.

* * *

43. 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. Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim a fundamental right to carry on business with the Government. All that he can claim is that in competing for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest. Undisputedly, the legal position which has been firmly established from various decisions of this Court, cited at the Bar [Ed.: Reference may be made to the decisions in *Air India Ltd. v. Cochin International Airport Ltd.*, (2000) 2 SCC 617; *Asia Foundation & Construction Ltd. v. Trafalgar House Construction (I) Ltd.*, (1997) 1 SCC 738; *Krishnan Kakkanth v. Govt. of Kerala*, (1997) 9 SCC 495; *Ugar Sugar Works Ltd. v. Delhi Admn.*, (2001) 3 SCC 635; *Sterling Computers Ltd. v. M&N Publications Ltd.*, (1993) 1 SCC 445; *Union of India v. Dinesh Engg. Corpn.*, (2001) 8 SCC 491.] is that government contracts are highly valuable assets and the court should be prepared to enforce standards of fairness on the Government in its dealings with tenderers and contractors.



44. The grievance that the terms of notice inviting tenders in the present case virtually create a monopoly in favour of parties having foreign collaborations, is without substance. Selection of a competent contractor for assigning job of supply of a sophisticated article through an open-tender procedure, is not an act of creating monopoly, as is sought to be suggested on behalf of the petitioners. What has been argued is that the terms of the notices inviting tenders deliberately exclude domestic manufacturers and new entrepreneurs in the field. In the absence of any indication from the record that the terms and conditions were tailor-made to promote parties with foreign collaborations and to exclude indigenous manufacturers, judicial interference is uncalled for.”

After observing so, this Court dismissed all the writ petitions directly filed in this Court and transferred to this Court from the High Courts.

20. In *Reliance Airport Developers (P) Ltd. v. Airports Authority of India* [(2006) 10 SCC 1] this Court held that while judicial review cannot be denied in contractual matters or matters in which the Government exercises its contractual powers, such review is intended to prevent arbitrariness and must be exercised in larger public interest.

21. In *Jagdish Mandal v. State of Orissa* [(2007) 14 SCC 517] the following conclusion is relevant: (SCC pp. 531-32, para 22)

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

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

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: ‘the decision is



such that no responsible authority acting reasonably and in accordance with relevant law could have reached’;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

22. The same principles have been reiterated in a recent decision of this Court in *Tejas Constructions & Infrastructure (P) Ltd. v. Municipal Council, Sendhwa* [(2012) 6 SCC 464] .

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;

(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.

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.”



8. In the case of *Central Coalfields Limited & another vs SLL-SML (Joint Venture Consortium) & others*, reported as 2016 (8) SCC 622, Apex Court has held as under:-

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

48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in *Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]* . However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.

49. Again, looked at from the point of view of the employer if the courts take over the decision-making function of the employer and make a distinction between essential and non-essential terms contrary to the intention of the employer and thereby rewrite the arrangement, it could lead to all sorts of problems including the one that we are grappling with. For example, the GTC that we are concerned with specifically states in Clause 15.2 that “Any bid not accompanied by an acceptable Bid Security/EMD shall be rejected by the employer as non-responsive”. Surely, CCL ex facie intended this term to be mandatory, yet the High Court held that the bank guarantee in a format not prescribed by it ought to be accepted since that requirement was a non-essential term of the GTC. From the point of view of CCL, the GTC has been impermissibly rewritten by the High Court.”



9. From the aforesaid judgments, it is revealed that in the matter of formulating conditions of a tender document, greater latitude is required to be conferred to the State Authorities unless the action of Tendering Authority is found to be malicious or misuse of its statutory powers. Certain preconditions or qualifications for bidders have to be laid down in the tender document to ensure that only a bidder, with the required resources to execute the work, is awarded the contract.

10. The condition added by the corrigendum is aimed at ensuring that every bidder complies with applicable tax laws, therefore, the said condition also cannot be said to be arbitrary or illegal. Every employer is bound to ensure compliance of tax laws and here the employer is a authority under the State, therefore, it has greater responsibility of complying with the all laws on the related fields.

11. Similarly the undertaking required to be given by bidder, that he is not in litigation with any other employer, cannot be said to be so arbitrary or illegal which may warrant interference. While awarding contract, employer is entitled to get information regarding litigation, if pending, between the bidder and some other agency which awarded contract to him earlier.

12. Similarly, the condition of furnishing test report from a Government Laboratory that the material used in pre-school kit is Food Grade, Non-Toxic and Non-Hazardous is necessary to ensure that the material



supplied by the bidder, upon award of contract to him, does not pose a health hazard to the children, to whom the kits are to be supplied.

13. Similarly the condition, which requires bidders to provide sealed sample of the items supplied in pre-school kit, cannot be said to be arbitrary, as the employer is entitled to monitor quality of the material supplied, and the sample can also be used for comparing the material, which a bidder supplies after award of contract.

14. Petitioner has relied upon Clause 8 of bid document under caption “Disclaimer” for questioning validity of Clause 1(३) of the tender document. Clause 8 under caption “Disclaimer” is reproduced below:-

“8. Seeking sample with bid or approval of samples during bid evaluation process. (However, in bids for attached categories, trials are allowed as per approved procurement policy of the buyer nodal Ministries).”

15. Learned State Counsel is right in submitting that trials are allowed as per approved procurement policy for Buyer Nodal Ministries in respect of bids of certain categories which were attached with the tender document, as is apparent from Clause 8, however, petitioner has not enclosed the list with the writ petition. In the absence of list of items of excepted categories, this Court has no other option but to draw adverse inference that trial was allowed for the educational school kit.

16. As held in the case of *Directorate of Education & others vs. Educomp Datamatics Ltd. &*



others (supra), terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract, government must have a free hand in settling terms of the tender and it must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. Courts can interfere with the administrative policy decision only if it is arbitrary, discriminatory, *mala fide* or actuated by bias.

17. This Court while exercising power under Section 226 of the Constitution, cannot strike down the terms of tender prescribed by the Government, merely because it feels that some other term in the tender would have been fair, wise or logical. This Court can interfere only if the policy decision is arbitrary discriminatory or *mala fide*.

18. Since, this is not the case here and there is no allegation that the impugned condition has been tailor-made to suit the interest of any bidder, therefore, this Court do not find any reason to interfere in the matter.

19. Accordingly, the writ petition fails and is dismissed.

(Siddhartha Sah, J.)

(Manoj Kumar Tiwari, J.)

10.01.2026

Aswal

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