HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.43853 and 43889 of 2016

DATE: 29.12.2016

WP NO.43853 of 2016:

Between:

M/s. Rajesh Corporation, Proprietorship firm,
rep. by its Proprietor, Rajesh Agarwal
S/o Roshan Lal Agarwal, R/o 16-2-147/1A,
Akbarbagh, Malakpet, Hyderabad.

.... Petitioner

And

Tirumala Tirupati Devasthanams
Tirupati, rep. by its Executive Officer,
Tirupati, Chittoor and another.

.... Respondents

This Court made the following :

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.43853 and 43889 of 2016

COMMON ORDER:

Petitioners are dealers in commodities. In these two writ petitions, petitioners challenge the tenders called by Tirumala Tirupati Devastanam (for short TTD) on 9.12.2016 to supply 16,00,000 kgs of Bengal Gram Dhall (Bold) with Agmark for a period of four months from Dhall millers/manufacturers. Petitioners challenge the tender notification on the ground that the tender notification restricts participation only to millers/ manufacturers and excludes the dealers like petitioners.

2. Heard learned senior counsel Sri M.V.Suresh Kumar for petitioner and Smt Sundari R.Pisulati learned standing counsel for TTD in W.P.No.43853 of 2016, Sri Kowturu Vinay Kumar for petitioner and Sri Sivaraju Srinivas, learned Special standing counsel for TTD in W.P.No.43889 of 2016 and with their consent these writ petitions are taken up for disposal at the admission stage.

3.1 The tender notification is challenged on two grounds. Firstly on the ground that the Executive Officer is not competent to issue tender notification and secondly the exclusion of dealers from participation in tenders amounts to arbitrary exercise of power; imposing unreasonable restriction; not supported by reasons; and such exclusion is not in public interest.

3.2 Elaborating the submissions, learned senior counsel submitted that Andhra Pradesh Charitable & Hindu Religious Institutions and Endowments Act, 1987 (for short, 'Act, 1987') was amended on 21.1.1991 and Section 97-A and Section 97-B are introduced into the Act. Section 97-A envisages constitution of the Management Committee, Section 97-B prescribes the powers and functions exercisable by the Management Committee. In terms of these provisions, it is the Management Committee which has to exercise all the administrative powers of TTD and Executive Officer is not competent to exercise administrative powers. By referring to provision in Section 110, he would submit that Executive Officer is granted limited discretion for execution of any work or doing of any act, which is not provided for in the budget for the Year and in case of emergency. Thus, except in case of fulfillment of contingency provided in Section 110, the Executive Officer is not competent to take administrative decisions and to issue tender notifications.

3.3. By referring to reliance placed by TTD on 'Powers and Functions of TTD Board Rules, 1990' notified vide G.O.Ms.No.311, Revenue (Endowments-I) Dated 9.4.1990 (for short, 'Rules, 1990') to support their contention, he would submit that Rule 193 of the Rules, 1990, though vests power in the Board of Trustees, it only speaks about exemptions to be granted to any work. He would further submit that these Rules, have no force of law as a consequence to the amendment of the Act, 1987 on 21.1.1991. After introduction of Sections 97-A and 97-B, these powers are no more available to the Board of Trustees and they have to be exercised only by the Management Committee.

3.4. He would further submit that even Rule 193 of the Rules, 1990, does not contemplate delegation, whereas, the resolution passed by the Board, relied upon by the respondent talks of delegation of power to the Executive Officer. When the Rule itself does not contemplate delegation of power, assuming that these Rules have application, to confer power in the Executive Officer by way of delegation is ex-facie illegal. He would therefore submit, that notification issued by the Executive Officer being per-se without competence and jurisdiction, is liable to be set aside on that ground alone.

3.5. He further submitted that even assuming that the Executive Officer is competent, the decision of the respondent TTD to restrict the participation in the tenders only by the millers/manufacturers and excluding the dealers is ex-facie illegal and amounts to arbitrary exercise of power. It amounts to imposing unreasonable restriction. Since year 1990, if not earlier, dealers have been involved in supplying various food items. The contracts are awarded to the dealers based on the best offer given by the participant. If dealers are also allowed to participate in the tender process, it would enhance the competition and TTD would get best price. In substance, he would submit that ultimately the contract awarded is based on the best offer. It would hardly make any difference for the TTD whether the supplier is a miller/ manufacturer or a dealer. Thus, excluding the dealers is ex-facie illegal. It is against public interest. Restriction of participation would only narrow down competition and TTD may stand to loose if offers are few. He would further submit that the decision to restrict the competition only to millers/manufacturers and excluding the dealers is not supported by reasons.

4.1. Sri Sivaraj Srinivas, learned Special standing counsel for TTD submitted that though a provision is incorporated in Section 97-A to constitute a Management Committee to the TTD, so far, Management Committee is not constituted and only the Board is discharging all administrative functions of TTD. He would submit that as provided in Section 97-A, the discretion is vested in the Government to constitute Management Committee, but so far, Government has not exercised said discretion. In the absence of Management Committee constituted by the Government, the Board continues to discharge all the functions.

4.2. By referring to provision in Section 97, he would submit that Board is the supreme governing body of TTD. Management Committee is carved out of the composition of the Board and is intended to deal with day-today administrative functions. The Management Committee as envisaged by Section 97-A comprises of the Chairman of the Board, Commissioner, Executive Officer and 5 other members of the Board. All these officers/other members are part of the Board. Thus, composition of the Board is far superior as compared to the Management Committee. The Board is entrusted with the responsibility to formulate the policy and vested with power of General Superintendence and control in relation to all aspects of the administration of TTD. The Management Committee can function only under over all supervision of the Board.

4.3. By referring to Rules, 1990, he would submit that Board is competent to exercise the power as envisaged by Rules, 1990. The Rules, 1990 are not superseded. As long as Rules, 1990 are in force, Board is competent to exercise power under Rule 193 and to grant exemption of any work or works as may be required in the interest of proper functioning of the TTD. In exercise of such power, Board resolved vide Resolution No. B5/9099/2005 to relax the requirements of compliance of the provisions of the Rules, 1990 in awarding contracts and authorized the Executive Officer to choose any procedure at his discretion for awarding of the works or supplies or services like limited tenders, pre-qualifications, quotations, open tenders etc. He would therefore submit that powers are validly exercised by the Board.

4.4. By referring to averments in para 8 of the counter affidavit Sri Sivaraj Srinivas, submitted that for the reasons mentioned therein decision to restrict the participation only to millers/ manufacturers was taken. He submits that detailed exercise was undertaken by the Executive Officer; he had convened a meeting with all the reputed millers on the issue of procurement of Cashew, Dhall, Paper Cups, Paper Plates and analyzed the issues thread-bear. On due consideration of various aspects only decision was taken. He would submit that it is neither arbitrary nor discriminatory.

5. Smt Sundari R.Pisupati, learned standing counsel, further submitted that the scope of judicial review in matters concerning floating of tenders by public authorities is well settled. In **Tata Cellular Vs. Union of India[1],** Supreme Court has laid down detailed guidelines on scope of judicial review in these matters and same has been followed time and again. By placing reliance on the

[1] AIR 1996 SC 11

decision of the Supreme Court in **Directorate of Education and Ors Vs. Educomp Datamatics Ltd and Ors[2],** she would submit that in matters of prescribing tender conditions, Court should not interfere; public authority can choose its own method to arrive at a decision and it can fix its own terms to invitation of tender and such matters are not open to judicial scrutiny. She submitted that in valid exercise of power tender conditions are prescribed and that the writ petition is not maintainable.

I. On the competence of Executive Officer to call for tenders:

6.1 To appreciate the contentions on this issue, it is necessary to consider the provisions in Sections 97, 97-A, 97-B and 110 of Endowments Act, 1987 and Rule 193 of Rules, 1990. They read as under:

> **"Section 97 - Powers and functions of the Board:-**
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> The Board shall in addition to the powers conferred and functions entrusted to it by this Act, exercise such other powers and perform such other functions as may be prescribed in regard to matters of policy and general superintendence and review in relation to the Administration of Tirumala Tirupathi Devasthanams having due regard to public interest and the services and amenities to be provided to and welfare safety measures to be undertaken for the pilgrims, devotees and worshippers resorting to Tirumala Tirupathi Devasthanams.
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> **Section 97A - Constitution of Committee:-**
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> (1) There shall be a Committee constituted by the Government for Tirumala Tirupathi Devasthanams called the 'Tirumala Tirupathi Devasthanams Management Committee' which shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and shall sue and be sued by the said corporate name.
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> (2) The Committee shall consists of the following members namely,-
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> (i) the Chairman of the Board, who shall be ex officio Chairman of the Committee;
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> (ii) the Commissioner, who shall be a member, ex officio;
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> (iii) the Executive Officer, who shall be the ex officio Member-Secretary of the Committee;

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[2] AIR 2004 SC 1962

(iv) five other members of the Board to be nominated by the Government one of whom shall be member of the State Legislature:

Provided that five of the ten non-official members of the Board shall be nominated under this item for the first year and the other five members shall be nominated for the second year.

Section 97B - Powers and functions of Committee:-

Subject to the provisions of this Act and the rules made thereunder,-

(i) the administration of the Tirumala Tirupathi Devasthanams shall vest in the Committee and the Committee shall, for this purpose, in addition to the powers conferred and functions entrusted to it by this Act exercise such powers and perform such functions as may be prescribed;

(ii) the Committee shall manage the proprieties and affairs of the Tirumala Tirupathi Devasthanams and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its customs and usage;

(iii) the Committee shall have power to fix fees for the performance of archana, or any service or rituals or Utsavam or ceremony connected with the Tirumala Tirupathi Devasthanams;

(iv) the Committee shall have power to call for such information and accounts as may in its opinion be necessary for reasonably satisfying itself, that the Tirumala Tirupathi Devasthanams are properly maintained, the endowments thereof are properly administered, and their funds are duly appropriated to the purposes for which they were founded or exist; and the Executive Officer or other officers in possession of such information or accounts shall, on such requisition furnish such information and accounts to the Committee;

(v) the Committee shall exercise the general superintendence and control over the administration of the Tirumala Tirupathi Devasthanams in conformity with the policy laid down by the Board;

(vi) the Committee shall fix the dittam in the temples specified in the first Schedule and the endowments attached thereto and the amounts to be spent therefor in such manner and after following such procedure as may be prescribed;

(vii) the Committee may, subject to such conditions and restrictions as it may lay down delegate to the Executive Officer such of the powers conferred on it by or under this Act, as it may consider necessary.

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Section 110 - Extraordinary powers of the Executive Officer:-

(1) The Executive Officer may, in case of emergency direct execution of any work or the doing of any act, which is not provided for in the budget for the Year and the immediate execution or the doing of which is in his opinion necessary for the preservation of the properties of the Tirumala Tirupathi Devasthanams or for the service or safety of the pilgrims resorting to the Tirumala Tirupathi Devasthanams and may also direct that the expenses of executing such work or doing the act shall be paid, from the funds of the Tirumala Tirupathi Devasthanams.

> The Executive Officer shall forthwith report to the 1[Committee] the action taken under this section and the reasons therefor."

Rule 193 of Rules, 1990 reads as under:

> "193. The Board of Trustees may exempt any work or works or any supply or class of supplies or any service or any class of service from the operation of all or any of the provisions of these rules."

6.2. A bare perusal of provision in Section 97 of the Act, 1987, makes it clear that Board is supreme body of TTD and on all affairs of the TTD, the Board is vested with power to lay down policy, prescribe guidelines and overall superintendence and control. Management Committee as and when constituted can discharge day to day administration. At this stage, it is also appropriate to note the opening sentence of Section 97-B. A reading of this provision also makes it clear that vesting of powers on the Management Committee is subject to other provisions of the Act. Cumulative reading of the Act,1987 as applicable to TTD and more particularly Sections 97, 97-A and 97-B would make clear the scheme of the Act, that the Board is the supreme authority on all affairs of TTD and under the over all control and superintendence of the Board, the Management Committee should function. It is only intended to perform a subsidiary role. Be that as it may, fact remains that there is no Management Committee constituted under Section 97-A. If the contention of the learned senior counsel that the Management Committee alone should discharge all administrative functions is accepted, it would cripple the functioning of TTD as there is no Management Committee constituted by the State Government. It cannot be assumed that the statute intended to create a vacuum in attending to various activities of TTD and it is also not in public interest to assume as such.

6.3. It cannot be assumed that the legislature was not conscious of notification of Rules, 1990 when Endowment Act was amended in the year 1991. TTD Board exists in the scheme of the Act as applicable to TTD even after the amendments were carried out to the Act. The amended provisions never intended to supersede the Board. It only intends to create Management Committee to supplement the functions of Board and to relieve the Board of day to day functions. Rules, 1990 regulate exercise of various powers by the Board. Thus, there is no merit in the contention of learned senior counsel that Rules, 1990 are no more valid, merely because amendments were made to the Act, 1987 in 1991.

6.4. Chapter-XXV of Rules, 1990 deals with execution of works, supplies and services etc., in the engineering and all other departments. This chapter prescribes various procedures for awarding of contracts/execution of works of the TTD. Rule 193 vests power in the Board to exempt any work or works from the operation of all or any of the provisions of these Rules. In exercise of this power, Board has passed resolution exempting prescribing tender conditions and other aspects connected there with from the purview of the Rules, 1990 and as a consequence, entrusted the said responsibility to the Executive Officer. He is now authorized to issue tender notifications, prescribe such conditions as may be required and evolve such procedure for processing the tenders and all aspects relating to awarding of contracts.

6.5. By referring to the word 'delegate' used in para-6 of the resolution of the Board, learned senior counsel contended that there is no power to delegate and, therefore, vesting of power in

Executive Officer is illegal. Use of word 'delegate' in the resolution has to be understood in the limited context in which it is used having regard to the text of the resolution. In other words, after excluding certain aspects of contracts from the purview of the Rules, 1990, the Board also authorizes the Executive Officer to take appropriate decisions with reference to prescription of various conditions for calling for tenders and to award works or supplies etc. The use of the 'delegation' is with reference to exercise powers on subjects referred to in the resolution, on behalf of the Board. There is no need to dwell further into this aspect as the resolution of the Board is not the subject matter of challenge. The resolution of the Board leaves no ambiguity in vesting power validly in the Executive Officer to prescribe tender conditions and to call for the impugned tender notification. At this stage, it is appropriate to note that Executive Officer is the chief administrative officer of TTD and all the administrative functions of the TTD are carried out in his name. Therefore, Board has rightly vested power in him to prescribe various conditions for calling tenders and modalities to award contracts.

II Exclusion of dealers is arbitrary and not supported by reasons:

7.1. Learned senior Counsel next contended that exclusion of dealers from participation in the tender process for supply of Bengal Gram Dhall amounts to arbitrary exercise of power and amounts to imposing unreasonable restriction. He has also contended that no reasons are spelt out in support of the decision to exclude the dealers from participation. In substance, his submission was, tender conditions are tailor made to suit particular class of people.

7.2. The tender notification is an invitation to participate in selection process to identify, in these cases, a supplier to supply Bengal Gram Dhall. The notification shall contain all the conditions that employer wants from the participants in the tenders. The tender notification need not contain the reasons why the tenders are called only from particular class of persons.

7.3. At this stage, it is appropriate to notice the scope of judicial review on assigning reasons in contract matters delineated by Supreme Court in **Life Insurance corporation of India v. Escorts Limited and others**[3]**.** Supreme Court held as under:

> "101. It was, however, urged by the learned counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, therefore, debarred by Article 14 from acting arbitrarily. It was, therefore, under an obligation to state to the court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the court, the court would presume that it had no valid reasons to give and its action was, therefore, arbitrary. ....
>
> While we do not for a moment doubt that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution, ***we do not construe Article 14 as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.***

7.4. However, to put the controversy at rest, in paragraph-8 of the counter affidavit filed in W.P.No.43889 of 2016, TTD justifies its decision to restrict the tender notification only to millers/ manufacturers. It appears, detailed exercise was undertaken

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[3] AIR 1986 SC 1370

before the decision was taken by the Executive Officer to restrict participation in these tenders only by millers/ manufacturers. Bengal Gram Dhall or any other dhall is an agricultural product. Millers procure raw dhall from the farmers and undertake processing to make it ready for human consumption. After Millers undertake the process and make it ready for human consumption, dealer enters into picture, purchases from Miller and sells it in the market. In other words, the agricultural product goes through three stages, 1) production by farmers, 2) processing by the Millers and 3) marketing by the Dealer. By the present decision, the TTD intend to exclude the dealer who is an intermediary and to procure the dhall directly from the miller. Exclusion of a dealer and to procure from Miller directly cannot be said as vitiated by extraneous consideration. It is the policy choice of the TTD. In exercise of power of judicial review court cannot hold such policy choice as not valid, unless the same is held as illegal.

7.5. The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, Courts should keep off the same [paragraph 18, **Federation of Rly. Officers Assn. v. Union of India[4]].** Legality of policy and not the wisdom or soundness of the policy is the subject of judicial review [paragraph 16, **Directorate of Film Festivals v. Gauraw Ashwin Jain[5]].** There is no illegality in the tender notification. Apparently, detailed exercise was undertaken before a decision was

[4] (2003) 4 SCC 289
[5] (2007) 4 SCC 737

taken. When a policy choice is available, it is for the TTD to choose appropriate course and Court cannot assess what is good or what is bad and suggest a course different from the one chosen by TTD, more particularly in matters fixing parameters for identifying a supplier of a product required by the TTD. Court is ill-equipped to dwell into such matters. On the scope of judicial review against the decisions of executive, more particularly decisions involving technical matters, in **Union of India v. J.O., Suryavamshi**[6], Supreme Court warned the Courts to resist the temptation to usurp the power of executive.

7.6. The principle of law by long line of precedents on the scope of judicial review in prescription of tender conditions and awarding of contracts is well settled.

7.7. In **Asia Foundation & Construction Ltd. Vs. Trafalgar House Construction (I) Ltd**.[7], while referring to guidelines laid down in **Tata Cellular v. Union of India** [(1994) 6 SCC 651], Supreme Court held as under:

> "9. .... The High Court in construing certain clauses of the bid documents has come to the conclusion that such a correction was permissible and, therefore, the Bank could not have insisted upon granting the contract in favour of the appellant. We are of the considered opinion that it was not within the permissible limits of interference for a court of law, particularly when there has been no allegation of malice or ulterior motive and particularly when the court has not found any mala fides or favouritism in the grant of contract in favour of the appellant. In *Tata Cellular* v. *Union of India* [(1994) 6 SCC 651] this Court has held that:
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> "The duty of the court is to confine itself to the question of legality. Its concern should be:
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> 1. Whether a decision-making authority exceeded its powers,
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> 2. committed an error of law,
>
> 3. committed a breach of the rules of natural justice,

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[6] (2011) 13 SCC 167
[7] (1997) 1 SCC 738

> 4. reached a decision which no reasonable tribunal would have reached or,
>
> 5. abused its powers.
>
> Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. ***Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:***
>
> (*i*) ***Illegality***: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it;
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> (*ii*) ***Irrationality***, namely, Wednesbury unreasonableness.
>
> (*iii*) Procedural ***impropriety.***
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> The above are only the broad grounds but it does not rule out addition of further grounds in course of time." (emphasis supplied)

7.8. In **Reliance Airport Developers (P) Ltd. v. Airports Authority of India**[8], Supreme Court elaborated on these three parameters. Supreme Court observed:

> "65. In other words, to characterise a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.
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> ***66. In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself.*** (See *Indian Rly. Construction Co. Ltd.* v. *Ajay Kumar* [(2003) 4 SCC 579: 2003 SCC (L&S) 528]. (emphasis supplied)

7.9. Particularly in matter of formulating tender conditions, employer has wider latitude and scope of judicial review is minimal. At the threshold, Court cannot interject the tender process on the ground that some of the terms of invitation to tender are not palatable to a person who is now excluded from such consideration.

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[8] (2006) 10 SCC 1

7.10. In **Directorate of Education,** Supreme Court 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)
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> > **"*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.
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> > (*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."
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> (emphasis supplied)

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)

7.11 The parameters set out in **Directorate of Education** aptly apply to the cases on hand.

8. In the cases on hand, the action impugned is ***not illegal*** or ***irrational*** and there is ***no procedural impropriety*** (**Asia Foundation**) and there is ***no infirmity*** in the decision-

making process (**Reliance Airport Developers (P) Ltd**.) warranting interference by this Court. The decision of the Executive Officer of TTD to exclude the dealers from participation in the tender process and enable only the millers/manufacturers for such participation cannot be said as amounting to arbitrary exercise of power or whimsical or intended to favour a class of people. In the facts of this Case, it cannot be said that the conditions of tender are tailor made only to favour a class of persons.

9. I, therefore, see no merit in the contentions urged. I do not see any illegally committed by the TTD in issuing the impugned tender notification. Writ petitions are liable to be dismissed and are accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 29.12.2016
Tvk/kkm

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