

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

ORDERS RESERVED ON 12.03.2018
ORDERS DELIVERED ON 22.03.2018

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.1123 of 2018 and 29170 of 2017
and
WMP Nos.1392, 1393 of 2018 and 31438, 31439 of 2017

M/s.Hero Ecotech Ltd.
Rep. by its Authorized Signatory,
Phase VIII, Focal Point,
Mangil, Chandigarh Road,
Ludhiana, Punjab 141 010.

...Petitioner
in W.P.1123 of 2018

Mohammed Rabik

...Petitioner
in W.P.29170 of 2017

vs

1. The Commissioner of Backward Classes
Welfare,
Ezhilagam Annexe Building II Floor,
Chepauk, Chennai 600 005.
2. The Secretary to Government of Tamil Nadu,
Backward Classes, Most Backward Classes and
Minorities Welfare Department,
Secretariat, Fort St.George,
Chennai 600 009

...Respondents in W.P.1123/18

WEB COPY

1. The Commissioner,
Directorate of Backward Classes Welfare,
Chepauk, Chennai 600 005.
2. The Director,
Tube Investments of India Ltd.,
"Dare House", 2, (Old No.234),
NSC Bose Road, Chennai 600 001.

3. The Director,
Hero Cycles Ltd.,
2A/3, Kundan Mansion,
Asaf Ali Road, Delhi.

4. The Director,
Avon Cycles Ltd.,
G.T.Road,
Dhandari Kalyan,
Ludhiyana.

...Respondents in W.P.No.29170/17

Prayer in W.P.1123/18:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records of the respondents culminating the issue of the impugned order No.Lr.No.D1/8405/2017 dated 12.01.2018 issued by the first respondent communicated via email dated 12.01.2018 and consequently directing the respondents to open the price bid of the petitioner for consideration by proceeding from that stage afresh.

Prayer in W.P.29170/17:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records of the proceedings in Tender No.2/2017 dated 11.11.2017 on the file of the first respondent and to quash the same as illegal and without jurisdiction.

For petitioner : Ms.Pushpa for M/s.Rajnishpathiyil
in W.P.1123/18
Mr.V.Raghavachari in W.P.29170/17

For Respondents: Mr.Vijay Narayan
in both W.Ps. Advocate General
Assisted by Mr.R.Govindasamy
Special Government Pleader
and by C.Vigneswaran & Gowtham Venkatesh
Government Advocate for R1 & R2
in WP.1123 of 2018 & for R1 in
WP.29170 of 2017 Mr.K.Govindaraj for
R4 in WP.29170 OF 2017.

WEB COPY
COMMON ORDER

W.P.No.1123/2018:

The petitioner challenged the order of the first respondent dated 12.01.2018, informing that their tender was found non responsive under Rule 28 of the Tamilnadu Transparency in Tender Rules, 2000 and clause 12(d) of the tender document.

Consequently, the petitioner seeks for a direction to the respondents to open the price bid of the petitioner for consideration by proceeding from that stage afresh.

2. The Case of the petitioner in short is as follows:

a) The petitioner Company is a leading manufacturer of bicycles, etc., The petitioner successfully participated in tenders and supplied over 5 lakhs quality bicycles for school children of various state Governments. The first respondent called for tender dated 15.10.2017 to supply boys and girls bicycles. A pre bid meeting was held on 01.11.2017, where the petitioner requested to amend the eligibility conditions to enable the petitioner to bid for the tender. Thereafter, a corrigendum was issued on 10.11.2017, whereby the petitioner along with certain other companies were found eligible. The tender has to be submitted in two covers one containing the technical cum commercial bid and the second one containing the price bid. The petitioner confirmed to all the conditions set out in the tender conditions and handed over the bid documents in the manner prescribed. Similarly, the price bid was also submitted in the manner prescribed. The tender also required submission of samples which must confirm to the prescribed ISI specification. The submission of sample bicycles was also duly carried out by the petitioner. After opening of the technical bid, it was informed that evaluation of the technical bid documents and testing of samples by Chemical Testing and Analytical Laboratory, Guindy will be carried out. There were five other participants apart from the petitioner. When the petitioner was anxiously awaiting for a communication calling upon them to be present for the opening of the price bid, to their shock and dismay, the other four bidders were invited to be present on 11.12.2017 for opening the price bid, while the petitioner was not issued with any such communication either rejecting the technical bid or calling for any clarifications.

b) Under such circumstances, the petitioner filed W.P.No.32459 of 2017 for a mandamus forbearing the respondents from finalizing the tender. During the pendency of the above writ petition, a counter affidavit was filed stating that the technical bid of the petitioner was rejected for certain trivial reasons. Thus, the order dated 12.01.2018, rejecting the technical bid of the petitioner was received by them on 12.01.2018 by e-mail. The technical bid of the petitioner was very much in order and for trivial, flimsy and malafide reasons, it has been rejected, while similarly placed persons have been permitted to take part in price bid. The reason set out in the impugned order for rejection of the boys bicycles tender is that the bell which has been fixed is a normal ding dong one and not a geared bell, has no meaning at all because the said bell is not an essential part in functioning of the cycle and the whole

sale cost of the geared bell is only about Rs.21/- as against the cost of the ding dong bell which is priced at Rs.23/-. Further more, the bell has no role in movement of bicycles or its technical parameters. The impugned order has not taken note of the fact that the bell provided by them in boys and girls cycles were the geared one and in order to somehow reject the technical bid of the petitioner, the bell has been switched and a non-geared bell was fixed. The respondents ought to have verified the videograph which was taken at the submission of the cycles to come to a conclusion that the bell has been switched in order to reject the tender of the petitioner.

c) Likewise, the other reason is that the sticker has not been affixed on the back side of the seat tube and riveting of the Government emblem are not related to any of the conditions set out in clause 8(c)(i) to (xxi). The technical Evaluation Committee has permitted one of the bidders to substitute the balance sheet with certified copies whereas the petitioner has been singled out and treated differently. Thus, there is a clear violation of Article 14 of the Constitution of India. The respondents ought to have noted that clause 10 of the Tender condition which stipulates supply of government logo only to the successful tenderer after finalization and therefore at this stage directing the petitioner to affix the emblem is contrary to the condition set out in the tender document. The respondents ought to have seen that the sample bicycles were sent by the petitioner for testing to the Research and Development Institute situated at Ludhiana which report clearly shows that all the technical parameters/ISO conditions have been met in toto and even the bell is a geared bell.

3.The respondents filed a counter affidavit, wherein it is stated as follows:

a) The Government of Tamilnadu is implementing bicycle scheme for Higher Secondary students from the year 2004-2005. Every year around 6 lakhs bicycles were distributed to all communities students studying in Government/Government aided/Partly Aided schools situated throughout Tamilnadu. Procurement of bicycles is done through open tender system and the entire tender process including fixing of eligibility criteria, price negotiation, tender finalization, etc., are being done by a Purchase Committee constituted by the Government. Accordingly, tender was published on 15.10.2017. A pre-bid meeting was conducted on 01.11.2017 to enable the interested bidders to seek clarification if any regarding the tender. Nine firms participated in the tender including the petitioner. Six Firms including the petitioner submitted their bids. The Tender Scrutiny Committee sent sample bicycles produced by the tenderers to the Chemical Testing and Analytical

Laboratory, Guindy for testing in order to ensure the standards of samples as per the technical specification that has been notified. The Tender Scrutiny Committee evaluated the technical bid documents together with the test report of the samples obtained from the said laboratory dated 16.11.2017, Auditor's report and the clarifications obtained from the tenderers. Thus, the Tenders Scrutiny Committee gave its recommendations to the Purchase Committee as follows:

"(1) M/S.KOHINOOR CYCLES PVT LTD, Focal Point, Ludhiana have not met clause 3(d) Eligibility criteria of tender document Hence decided not to seek any clarification from this firm, eventhough Auditor has pointed out that no full set of financial statements submitted by this firm.

(2) As per the test report of CTAL., Guindy the sample bicycles for both Boys and Girls submitted by M/s.T.I.Cycles of India, Chennai, M/s.Avon cycles ltds., Ludhiana and M/s.Atlas Cycles (Haryana) ltd., conform the technical specifications set out in the tender. As regards M/s.Hero Cycles Ltds., Ludhiana, the sample bicycle for Girls alone conform the technical specification. The sample bicycles submitted by M/s.Hero EcoTech Ltd., does not conform for both Boys and Girls bicycles."

Thus, the Tender Scrutiny Committee recommended four companies viz., TI cycles of India, Avon Cycles Ltd., Atlas Cycles (Haryana) Ltd., and Hero Cycles Ltd., for further evaluation by the Purchase Committee as follows:

SI.No.	Name of the tenderer	Bid for Boy's Bicycle	Bid for Girl's Bicycle
1	TI Cycles of India, Ambattur, Chennai-52	May be considered for further evaluation	May be considered for further evaluation
2	Avon Cycles Ltd., G.T.Road, Ludhiana	May be considered for further evaluation	May be considered for further evaluation
3	Atlas Cycles (Haryana) Ltd., Sahibabad	May be considered for further evaluation	May be considered for further evaluation

SI.No.	Name of the tenderer	Bid for Boy's Bicycle	Bid for Girl's Bicycle
4	Hero Cycles Ltd., Ludhiana	May Not be considered for further evaluation	May be considered for further evaluation

b) The Purchase Committee in its meeting held on 08.12.2017 considered the recommendations of the Tender Scrutiny Committee and decided to consider the following four firms for further evaluation:

"(i) TI Cycles of India, Ambattur, Chennai-52 - for both Boys and Girls bicycles.

(ii) Avon Cycles Ltd., G.T.Road, Ludhiana -- for both Boys and Girls bicycles.

(iii) Atlas Cycles (Haryana) Ltd., Sahibabad -- for both Boys and Girls bicycles.

(iv) Hero Cycles Ltd., G.T.Road, Ludhiana -- only for Girls cycles."

The petitioner signed the tender documents agreeing to the terms and conditions of the tender. Clause 12(d) of the tender document clearly stipulates that if the technical specification of the sample is not in conformity with the standard, it will be taken as non responsive sample with respect to the required item and the tender will be summarily rejected. Hence, the technical bid of the petitioner has been evaluated as per the parameters indicated in the tender document and the disqualifications made are strictly in terms of tender document taking into account of the test report of the Chemical Testing and Analytical Laboratory, Guindy. Hence, the decision of the Purchase Committee for non consideration of the price bid of the petitioner is within the ambit of the law.

c) As per Annexure C in the tender document (For Girls) in SI.No.21 (ii) and Annexure D (For Boys) SI.No.20 (ii) The top tube should be plain. But as per sample Bicycle Test report submitted by CTAL Guindy in respect of the petitioner for Girls Bicycle it was noted that Top Tube not plain and sticker "KAVERI" pasted and in respect of Boys Bicycle it was noted that Top Tube not Plain and sticker "DRONA" pasted. The same was also stated in the petitioner's own test report conducted in Research & Development Centre for Bicycles and Sewing Machine at Ludhiana that the sticker was pasted and top tube was not plain and sticker "KAVERI" and "DRONA" pasted for Girls and Boys

Bicycle respectively.

d) In the tender document as per Annexure C (For Girls) in SI.No.21 (iii) and Annexure D (For Boys) SI.No.20 (iii) The bottom tube of the frame should have Supplier's Make, Model Number and Manufacturing Serial No., Government SI.No. etc., should be engraved on the seat tube. The logo should be welded/riveted as specified in clause 10. As the sample bicycles are to be supplied as per Annexure C for Girls and Annexure D for Boys where it was stated that logo to be welded/riveted, the petitioner did not weld/rivet Government Logo. But this was riveted by all the other 5 tenderers both in Boys and Girls sample Bi-cycle.

e) As per tender document in Annexure C for Girls and Annexure D for Boys under SI.No.6 Chromium Plated Steel Gear Bell with a Diameter of 58 mm and Height 20 mm should be fixed. In petitioners girls sample bicycle it was fixed. But in Boys Bicycle it was not fixed instead an ordinary bell was fixed. The petitioner has stated that Chromium plated steel gear bell fixed by them in Boys Bicycle has been removed and ordinary bell has been fixed. The sample bicycles submitted by the tenderers on the day of opening of technical bids were sent to the CTAL., Lab Guindy in two trucks on the same day for testing along with the staff of the department accompanied by representatives of all the tenderers. Further the petitioner's representative was there at the Laboratory for making payment of testing fees. Hence, the contention of the petitioner that the bell has been clandestinely replaced in their sample is with malicious intention and deserves severe condemnation, since the department has been processing the tender in a very fair and transparent manner.

f) The petitioner has an effective and alternative remedy by way statutory appeal under Section 11 of the Tender Act. The respondent has acted in compliance of the Act and Rules and all the allegations made by the petitioner are emphatically denied. The cost of bell is immaterial and it should be confirmed in the specification made in the tender document. Details of standard and other accessories offered as specified in Annexure C and D should be provided.

4. Learned counsel appearing for the petitioner submitted as follows:

Riveting the logo would arise only after price bid is decided and tender is finalised and therefore, non riveting the logo cannot be cited as a reason to reject the technical bid. The objections raised with regard to the bell is not vital. The sample test done by the petitioner in the private laboratory

confirms to the standard. A Certificate is also produced to that effect. Not pasting the sticker in the right place or pasting the sticker in a wrong place in the bottom tube is only a trivial mistake, which is not fatal and thus, cannot be cited as a reason for rejection of the technical bid. Therefore, the reasons cited would show that it is a pre-determine rejection only to favour a single company, who is the successfully bidder for many years. Certain omissions were in fact found as not significant, while evaluating the bids. Therefore, the present omissions/lapses also can be considered as not significant so as to enable the petitioner to take part in the opening of the price bid.

5. The learned counsel invited this Court's attention to the relevant clauses in the tender document and also the test report given by the Chemical Test and Analytical Laboratory, Guindy as well as the test report obtained by the petitioner, to contend that the reasons for rejection are flimsy in nature. In support of her contention, the learned counsel relied on the following decisions:

a) In 2006(11) SCC 548, B.S.N.Joshi and Sons Limited vs. Nair Coal Services Limited, the Apex Court at paragraph No.66 held as follows:

"We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under :

i) If there are essential conditions, the same must be adhered to;

ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing

iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in

nature could not be relaxed and thus the same was wholly illegal and without jurisdiction.

v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with.

(vi) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.

(vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint."

b) In 2016(12) SCC 632, Om Prakash Sharma vs. Ramesh Chand Prashar, the Apex Court has held as follows:

"12. In the present case, the site in question was to be sold on outright sale basis. The advertisement or the stipulations therein did not contemplate creation and or continuation of any relationship between the parties calling for continued existence of any particular level of financial parameters on part of the bidder, except the ability to pay the price as per his bid. The condition was not an essential condition at all but was merely ancillary to achieve the main object that was to ensure that the bid amount was paid promptly. The advertisement contemplated payment of bid amount whereafter the Sale Deed would be executed and not a relationship which would have continued for considerable period warranting an assurance of continued ability on part of the bidder to fulfill his obligations under the arrangement. Nor was this condition aimed at ensuring a particular level of financial ability on part of the bidder, for example in cases where the benefit is designed to be given to a person coming from a particular financial segment, in which case the condition could well be termed essential. The idea was pure and clear sale simplicitor. As a matter of fact, the appellant did pay the entire bid amount within the prescribed period and the Sale Deed was also executed in his favor. In the circumstances the relevant condition in the advertisement would not fall in the first category of cases as dealt with by this Court in Poddar Steel

Corporation (supra). The authorities could therefore validly deviate from and not insist upon strict literal compliance. The discretion so exercised by the authorities could not have therefore been faulted. Thus, the assessment made by the High Court that the condition in question was an essential condition for non-compliance of which, the bid furnished by the appellant was required to be rejected, in our view was not correct."

c) In AIR 1991 SC 1579, Podar Steel Corporation vs Ganesh Engineering Works, it is held at paragraph No.6 as follows:

"6.....As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories-those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases."

6.Per contra, the learned Advocate General Mr.Vijay Narayan appearing for the respondents submitted as follows:

The samples submitted by the petitioner do not confirm to the specification. When the technical specification should be in conformity with the standard and the samples submitted by the petitioner do not confirm to the specification, the petitioner is not entitled to contend that such non compliance is trivial and not fatal. The sample becomes important, since the technical specifications requirement are to be ascertained from such samples. The compliance of specification is mandatory. In so far as the welding of logo is concerned, it is true that it is not required to be done at the stage of submitting the tender document and the samples, since the same has to be done only after analysis of the tender and awarding the contract. Therefore, such reason stated in the impugned order is by way of mistake. As per Rule 27 the process of tender, evaluation is to be kept confidentially until the award of contract is notified. Therefore, the respondents are not supposed to reveal the reasons initially. If the technical specifications are not followed strictly, it would go against the sanctity of the tender process. Any relaxation made once will open a flood gate

and therefore several bidders will seek for such relaxation in respect of their defects. All the qualified bidders passed the test. Whether it is a minor or major mistake it does not matter as it is for the tender inviting authority to decide the requirement. The sample test was done at the Government laboratory. Functionality is not affected, is not the answer in meeting the technical specification. Therefore, there is no question of malafide or bias as alleged by the petitioner. None of the technical specifications was condoned to any bidder.

7. In support of his contention, the learned Advocate General relied on the following decisions:

a) 2001(2) SCC 451, W.B.State Electricity Board vs. Patel Engineering Co. Ltd., wherein at paragraph Nos.23, 24 and 27, it has been observed as follows:

"23.The mistakes/errors in question, it is stated, are unintentional and occurred due to the fault of computer termed as "a repetitive systematic computer typographical transmission failure". It is difficult to accept this contention. A mistake may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake. Here the mistakes may be unintentional but it was not beyond the control of respondents 1 to 4 to correct the same before submission of the bid. Had they been vigilant in checking the bid documents before their submission, the mistakes would have been avoided. Further, correction of such mistakes after one-and-a-half months of opening of the bids will also be violative of Clauses 24.1, 24.3 and 29.1 of ITB.

24.The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 & 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfil pre-qualification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are

totally opposed to the Rule of law and our Constitutional values. The very purpose of issuing Rules/instructions is to ensure their enforcement lest the Rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the Rules. We have, therefore, no hesitation in concluding that adherence to ITB or Rules is the best principle to be followed, which is also in the best public interest.

..27.Exceptions to the above general principle of seeking relief in equity on the ground of mistake, as can be culled out from the same para, are :

(1) where the mistake might have been avoided by the exercise of ordinary care and diligence on the part of the bidder; but where the offeree of the bid has or is deemed to have knowledge of the mistake, he cannot be permitted to take advantage of such a mistake.

(2) where the bidder on discovery of the mistake fails to act promptly in informing to the authority concerned and request for rectification, withdrawal or cancellation of bid on the ground of clerical mistake is not made before opening of all the bids.

(3) where the bidder fails to follow the rules and regulations set forth in the advertisement for bids as to the time when bidders may withdraw their offer; however where the mistake is discovered after opening of bids, the bidder may be permitted to withdraw the bid."

b) In 2016(8) SCC 446, Bakshi Security and Personnel Services Private Limited vs. Devkishan Computed Private Limited, the Apex Court observed at paragraph Nos.11, 12, 14, 15, 16 and 19 as follows:

"..11. Having heard the learned counsel for the parties, we agree with Shri Raval's contention that Respondent 1's bid was contrary to the terms of the tender.

12. First and foremost, under tender condition 2.5.5, commercial bids have to strictly conform to the format provided in Annexure 2 of the tender document.

Annexure 2 which contains the format for the price bid makes it clear that the salary paid to deployed manpower should not be less than the minimum wage. It further goes on to state in paragraph 3 thereof that if the component of salary quoted is less than the minimum wage prescribed, the bid is liable to be rejected. On this ground alone, Respondent No.1's bid is liable to be rejected inasmuch as, vide its letter dated 3.9.2015, Respondent No.1 stuck to its original figure of Rs.2,77,68,000/- which is way below the minimum wage fixed by the Government. Secondly, Shri Raval is also right in stating that the without prejudice offer of Rs.3,00,92,346/- is an offer which is not fixed, but open ended. This is clear from the fact that it was up to the Government then to pick up either figure by way of acceptance. This is clearly interdicted by clause 2.5.6 of the tender which states that prices quoted by the bidder have to be fixed, and no open-ended bid can be entertained, the same being liable to be rejected straightaway. Such condition is obviously an essential condition of the tender which goes to the eligibility of persons who make offers under the tender.

..14. The law is settled that an essential condition of a tender has to be strictly complied with. In *Poddar Steel Corpn. v. Ganesh Engineering Works*, (1991) 3 SCC 273, this Court held as under:-

"6.... The requirements in a tender notice can be classified into two categories - those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate case."

15. Similarly in *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.*, (2006) 11 SCC 548, this Court held as under:-

"(i) if there are essential conditions, the same must be adhered to;

(ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

(iii) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;

(iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;

(v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with; ..."

16. We also agree with the contention of Shri Raval that the writ jurisdiction cannot be utilized to make a fresh bargain between parties.

..19. It is also well to remember the admonition given by this Court in *Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8 SCC 216 in cases like the present, as under:-

"21. In *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517, the following conclusion is relevant:

"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."

8. Heard both sides.

9. The point for consideration is as to whether the impugned order rejecting the technical bid of the petitioner, is liable to be interfered with by exercising the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

10. I have already narrated the pleadings of the respective parties as well as their submissions made before this Court elaborately supra. Therefore, I am not reiterating those facts and circumstances once again hereunder except to refer to certain relevant facts, which are necessary for deciding this writ petition.

11. The petitioner is a bicycle Manufacturing Company. The Government of Tamilnadu invited tenders through their tender notification No.2/2017 dated 15.10.2017 to supply boys and girls bicycles for providing the same free of cost for Higher Secondary students studying in Government, Government Aided, partly aided Schools situated throughout the State of Tamilnadu. After holding a pre bid meeting with the intended bidders and after considering their request to amend certain clause in the eligibility condition, a corrigendum was issued which facilitated the petitioner and other participants to take part in the tender process. Accordingly, the petitioner and others submitted their bid in two cover system one containing the technical cum commercial bid and the second cover containing the price bid. Clause 8(c) of the tender documents deals with technical cum commercial bid (in Envelope A), wherein it is stipulated that the technical cum commercial envelope should contain documents/requirements as specified in sub clause (i) to (xxi) therein. Annexure C and Annexure D of the tender document specifically deal with the technical specifications for girls and boys bicycle, respectively. Since in this writ petition, the disputed area lies on two technical specifications only, the same are reproduced as hereunder:

Annexure C
Technical Specifications for Girl's Bicycle

..			
..			
6	Gear Bell Minimum size of the Gear Bell cup	Chromium Plated Steel Gear Bell Diameter : 58mm Height : 20mm	
..			
..			

..		
21	The Supplier's Make, Model should be pasted in the frame only places as furnished below. Frame Tube: i.Seat Tube ii. The Top Tube iii.Bottom Tube	The sticker displaying the Company's Name/Make should be pasted on the back side of the Seat Tube. It should be plain. Supplier's Make Model Number and Manufacturing Serial No., Government's SI.No. etc. should be engraved on the seat tube. The Logo should be welded/riveted as specified in clause 10.MAKE. "தமிழக முதலமைச்சரின் விலையிலா மதிவண்டி வழங்கும் திட்டம்-2017-18"

Annexure D

Technical Specifications for Boy's Bicycle

..		
..		
6	Gear Bell Minimum size of the Gear Bell cup	Chromium Plated Steel Gear Bell Diameter : 58mm Height : 20mm
..		
..		

..		
21	The Supplier's Make, Model should be pasted in the frame only places as furnished below. Frame Tube: i.Seat Tube ii.The Top Tube iii.Bottom Tube	The sticker displaying the Company's Name/Make should be pasted on the back side of the Seat Tube. It should be plain. Supplier's Make Model Number and Manufacturing Serial No., Government's SI.No. etc. should be engraved on the seat tube. The Logo should be welded/riveted as specified in clause 10.MAKE. "தமிழக முதலமைச்சரின் விலையிலா மதிவண்டி வழங்கும் திட்டம்-2017-18"

12. Clause 12 of the tender document deals with delivery of sample by the bidder which is as follows:

"12.SAMPLE

a.The Tenderer shall deliver a fully assembled representative sample Bi-cycle separately for Girl's Bi-cycle and Boy's Bi-cycle to the Commissioner of Backward Classes Welfare before the closing date and Time for submission of Tender i.e 12.30PM on 15.11.2017.

b. The details of sample bicycles submitted along with the tender should be filled up in Annexure K and enclosed in Technical-cum-commercial Bid. A copy of the same should be submitted along with sample bicycles.

c. The sample offered by manufacturer in respect of Girl's Bi-cycle and Boy's Bi-cycle should be as per specifications fixed in Tender Document Annexure C and D conforming to ISI specifications for bi-cycles ie,10613-2004. The methods of Tests for Bi-cycle and

sub assemblies shall be as per IS 10616-1983 and the applicable standard on Bi-cycle safety as per ISO 4210.

d. The technical specifications of the sample will be taken in detail and verified with respective standard specification. If the technical specification of the above sample is not in conformity with the standard, it will be taken as non responsive sample with respect to the required item and the tender will be summarily rejected in that case and Price-Bid will not be opened.

e) The successful tenderer shall deliver sample Girl's and Boy's Bicycles as per the specification of the sample bi-cycle produced before the purchase committee for each District at the concerned Collectorate at his own cost which in turn will be checked/tested and sent to the districts after certification as samples at the cost of the successful tenderer.

f) The successful tenderer should also deliver sample Girl's Bi-Cycles and Boy's Bicycles as per the specification of the sample bi-cycle produced before the purchase committee to the concerned Head of the implementing Department at his own cost which in turn will be checked/tested.

g) These certified samples shall be used by the District authorities for checking the quality of fully assembled, functional Bi-Cycles supplied at the respective schools by the successful tenderer."

13. The petitioner and other bidders thus submitted their samples of both boys and girls bicycle for testing and report. Thus, samples were sent to the Chemical Testing and Analytical Laboratory, Department of Industries and Commerce, Government of Tamilnadu for test report. The said laboratory, after conducting such test, sent a test report, wherein, we are concerned only with the following findings in respect of girl's bicycle and boy's bicycle as hereunder:

Girl's Bicycle

SI.No	Name of the Test	Test Results	Requirements
5	Gear Bell Size of the Gear Bell Cup a) Diameter b) Height	Chromium Plated Steel Gear Bell provided. a)Diameter: 58.2 mm b)Height : 21.7 mm	Chromium Plated Steel Gear Bell a)Diameter: 58 mm b) Height : 20 mm
20	The Supplier's Make, Model should be pasted in the frame only places as furnish below: i) Seat Tube ii) The Top Tube iii)Bottom Tube	i) Sticker with Co. Name & Make pasted. Manufacturing Serial No. engraved. ii)Top Tube not Plain (Sticker "KAVERI" pasted) iii) Sticker with Supplier's Make, Model etc., Displayed Government Logo தமிழக முதலமைச்சரின் விலையிலல்லா மிதிவண்டி வழங்கும் திட்டம்-2017-18 not riveted.	The sticker displaying Company's Name/ Make should be pasted on the back side of the Seat Tube. It should be plain Supplier's Make, Model Number and Manufacturing Serial No. Government's SI.No. etc., should be engraved on the seat tube. The Logo should be welded riveted as specified in clause 10 MAKE. "தமிழக முதலமைச்சரின் விலையிலல்லா மிதிவண்டி வழங்கும் திட்டம்-2017-18"

Thus, the conclusive remarks offered by the laboratory as follows:

"REMARKS:

1) The above given sample Girl's Bicycle Frame No.KS00012 and Brand Name KROSS KAVERI conforms to Tender Technical Specifications (Annexure-I) laid down in the IS:10613-2004 for Girl's Bicycle with respect to above tests except S.No.20-Top tube and Government Logo.

2) The above sample Girl's Bicycle and Brand Name KROSS KAVERI conforms to (Annexure-I) Safety Parameters as per ISO:4210-1996(E) with respect to above tests."

Boy's Bicycle

SI.No.	Name of the Test	Test Results	Requirements
5	Gear Bell Size of the Gear Bell Cup a) Diameter b) Height	Chromium Plated Steel Gear Bell not provided (ordinary bell only provided). a)Diameter: 74.1 mm b)Height : 29.9 mm	Chromium Plated Steel Gear Bell a)Diameter: 58 mm b)Height : 20 mm

SI.No.	Name of the Test	Test Results	Requirements
19	The Supplier's Make, Model should be pasted in the frame only places as furnish below: i) Seat Tube ii) The Top Tube iii) Bottom Tube	i) Sticker with Co.Name & Make pasted. Manufacturing Serial No.engraved. ii) Top Tube not Plain (Sticker "DRONA" pasted). iii) Sticker with Supplier's Make, Model Number and etc., Manufacturing Displayed Government Logo தமிழக முதலமைச்சரின் விலையிலா மதிவண்டி வழங்கும் திட்டம்-2017-18 not riveted.	The sticker displaying Company's Name Make should be pasted on the back side of the Seat Tube. It should be plain Supplier's Make, Model Number and Manufacturing Serial No. Government's SI.No. etc., should be engraved on the seat tube. The Logo should be welded riveted as specified in clause 10 MAKE. தமிழக முதலமைச்சரின் விலையிலா மதிவண்டி வழங்கும் திட்டம்-2017-18

Thus, the conclusive remarks offered by the laboratory as follows:

"REMARKS:

1) The above given sample Boy's Bicycle Frame No.KS00011 and Brand Name KROSS DRONA conforms to Tender Technical Specifications (Annexure-II) laid down in the IS:10613-2004 for Boy's Bicycle with respect to above tests except S.No.5-Gear bell and S.No.19-Top tube and Government Logo.

2) The above sample Boy's Bicycle and Brand Name KROSS DRONA conforms to (Annexure-II) Safety Parameters as per ISO:4210-1996 (E) with respect to above tests."

14. A careful perusal of the above test reports submitted by the Government laboratory would show that the girl's bicycle sample submitted by the petitioner, though confirms to tender technical specifications laid down in IS:10613-2004 in all other respects, however fails to confirm to such technical specification in so far as the requirement under Serial No.20, which deals with the test on the seat tube and the top tube as follows:

a) While the technical specification requirement in respect of seat tube contemplates that the sticker displaying company's name and make should be pasted on the back side of the seat tube, the sample submitted by the petitioner contained the sticker with company name and make pasted with manufacturing serial Number engraved.

b) Likewise in respect of the top tube is concerned, when the technical specification requirement contemplates that it should be plain, the sample submitted by the petitioner is not a plain top tube and on the other hand, it was with the sticker "KAVERI" pasted in it.

15. The above test report reveals that though the petitioner sample confirms to tender technical specification laid down in IS:10613-2004 with respect to all other test, it fails to confirm to the test in respect of the Serial No.5, which deals with gear bell and Serial No.19, which deals with seat tube, top tube and the bottom tube.

16. The lapses found by the laboratory in respect of the boy's bicycle is as follows:

a) While the technical specification requirement contemplates that a chromium plated steel gear bell with diameter 58 mm and height 20 mm is to be provided, the sample submitted by the petitioner contained only an ordinary bell with diameter 74.1 mm and height 29.9 mm. It is specifically found by such Testing Authority that chromium plated steel gear bell was not provided.

b) Likewise, in respect of the seat tube and the top tube of the sample, which the technical specification requirement contemplates that the seat tube must be provided with the sticker company's name make pasted on the back side of the seat tube, the sample submitted by the petitioner contained the seat tube sticker with company name and make pasted with

manufacturing serial number engraved.

c) Likewise, when the technical specification of the top tube contemplates that it should be plain, the sample submitted by the petitioner did not have the top tube plain and on the other hand, it was pasted with a sticker "DRONA".

17. It is no doubt that these defects, as pointed out by the Government Laboratory, appear to be not so vital or fatal. But the fact remains that the samples submitted by the petitioner did not confirm 100% requirement of the tender technical specifications without giving any room for pointing out any defect in respect of any item of test. When such being the factual position and when the laboratory has pointed out those defects and given their remarks as pointed out supra, the question that would arise now for this Court's consideration is as to whether this Court has to step into the shoes of the technical experts and say as to whether those defects, assuming to be a minimal, can either be condoned, ignored or need not be taken as defect at all.

18. At this stage, it is to be noted that the tender document has, in clear and categorical terms informed the bidder at clause 12 dealing with supply of sample, that technical specification of the sample will be taken in detail and verified with respective standard technical specification and when the same is not in conformity with the standard, it will be taken as a non responsive sample with respect to the required item and the tender will be summarily rejected. Further, sub clause (c) of Clause 12 also specifically indicates that the sample offered by the tenderer should be as per specifications fixed in the tender document Annexure C and D conforming to ISI specifications for bicycles and that the methods of tests for bicycle and sub assemblies shall be as per IS 10616-1983 and the applicable standard on bicycle safety as per ISO 4210. Therefore, from the perusal of the above clause of the tender document, it could be seen that the tenderer who submit the samples, should see that it conforms to the specifications fixed in the tender document 100% without there being any lapses notwithstanding the fact that such lapse is minor or major.

19. Needless to say that stipulating all these conditions and making certain specifications as the mandatory requirements, are for shortlisting the persons, who are fully qualified equally in their technical qualification, so that their price bid can be considered to find out who among them is L1. Therefore, it is for the tender inviting authority to stipulate the technical specification requirement as per their will, with which this Court cannot interfere to say as to whether a particular requirement is immaterial or does not matter while considering

the technical qualifications of the bidder. Why such requirement is made and what is the significant of such requirement are matter which are within the domain of the tender inviting authority with which this Court shall not normally interfere, unless it is specifically pleaded and established that such authority, acted arbitrarily and discriminately while making selection, by relaxing a condition /requirement in respect of a particular person and insisting the same condition/requirement in respect of the petitioner. In otherwords, in the absence of any complaint against the technical specification of other bidders, who are found qualified technically, pursuant to the test report given by the laboratory, in my considered view, this Court need not go into the contentions raised by the petitioner as to whether these defects are minimal and do not go to the root of the matter.

20. It is well settled that the scope for interference in the contractual matters by exercising the jurisdiction under Article 226 of the Constitution of India is very limited. At this juncture, it is useful to refer to the decision of the Apex Court reported in 2008(10) SCC 404, United India Insurance Co. Ltd. v. Manubhai Dharmasinhbhai Gajera, at paragraph No.39, which reads as follows:

"39. Another distinction in the approach of the Court in this behalf must also be borne in mind, namely, that a court may exercise its power of judicial review at the threshold of formation of a contract as was the case in Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489 :AIR 1979 SC 1628 and the cases where the terms and conditions of the contract are to be enforced. Whereas in the former case, the court's jurisdiction is wider, in the latter, it is not. We may, however, hasten to add that it does not mean that the court shall not interfere even in a case where the term of the contract is against the public policy or where in enforcing the same the State acts arbitrarily, unfairly or unreasonably or makes discrimination amongst the persons similarly situated."

21. What to be seen while dealing with such commercial contractual matters under writ jurisdiction, is as to whether the process of decision making was in order, without any discrimination, illegality and arbitrariness. In other words, interference is called for only when there is an error in the decision making process and not in the decision itself. Why I am emphasising this is because the parties to the commercial contract will certainly have other avenues to agitate their respective rights and liability by placing material pleadings

and evidence, by filing a suit for damages or invoking arbitral proceedings, etc,. In this case, the learned counsel for the petitioner specifically contended that the event of submitting the samples was video recorded and therefore, such recording would show that the petitioner has complied with the conditions. I do not think that this Court, while exercising the jurisdiction under Article 226 of the Constitution of India, will convert itself as a Civil Court and decide with regard to such disputed questions of fact.

22.Further, it is an admitted fact that under the terms and conditions of the contract, there is no power to relax any of the technical specifications, whether it is minor or major. Therefore, in the absence of such power conferred even on the tender inviting authority themselves, it is not proper for this Court to step into shoes of such tender inviting authority, assume such power and consequently relax any condition as sought for by the petitioner in this case. If it is done, it would only amount to usurping the exclusive domain of the tender inviting authority, who is the owner of the subject matter tender. Needless to state that substantive compliance is not strict compliance. When the tender inviting authority seeks 100% compliance of technical specifications, the bidder must satisfy such compliance in full. If the 100% is not achieved, such bidder cannot be heard to say that 99% achieved by them is enough for considering their claim by leaving or ignoring the remaining 1% of non achievement, simply because such non compliance either meagre or minor.

23.It is not that the petitioner is participating in this tender process as a first time. Therefore, they must be fully aware of the tender conditions and the specific requirements of the samples to be supplied for testing. If they fail to supply such samples conforming to 100% satisfaction of the technical specifications, they cannot find fault with the respondents, if their technical bid is rejected on the reasons that the same does not conform to the technical specification.

24.At this juncture, the decision of the Apex Court made in 2016(8) SCC 446, Bakshi Security and Personnel Services Private Limited vs. Devkishan Computed Private Limited, is relevant to be noted wherein the Apex Court has referred to the decision made in (2007) 14 SCC 517, Jagdish Mandal v State of Orissa, to state that evaluating tenders and awarding contracts are essentially commercial functions and that principles of equity and natural justice stay at a distance. It is further stated therein that if the decision relating to award of contract is bonafide 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. In the very same decision, the Apex Court has also referred to another decision made in 2006(11) SCC 548, B.S.N.Joshi and Sons Limited vs. Nair Coal Services Limited, wherein it was held that if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully.

25.Further, this Court, while considering another commercial contract matter in a case reported in 2017(6) CTC 785, CSEPDITRISHE CONSORTIUM vs. Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO), has observed at paragraph No.38 as follows:

"38.....In effect, what is sought for in the present writ petition, is nothing but a positive direction to the TANGEDCO to accept the offer made by the petitioner and conclude the contract. I do not think that such relief, as sought for in this writ petition, is maintainable, as it opposes to the very basic element of principles of contract, as no one can compel the owner/invitee to accept a particular offer, as it is always open for such person, who invited such offers, either to accept or to reject, based on the reasons, which according to such owner, cannot make the contract viable or successful, in view of deficiencies or defects in the offer."

26.The Apex Court in its decision reported in 2001(2) SCC 451, W.B.State Electricity Board vs. Patel Engineering Co. Ltd., has clearly pointed out that the mistakes may be unintentional but it was not beyond the control of the parties to correct the same before the submission of the bid. It is also pointed out that had they been vigilant in checking the bid documents before their submission, the mistakes would have been avoided and that the bidders should have assistance of technical experts. By observing so, the Hon'ble Supreme Court has specifically observed at paragraph No.24 that it is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract and that the are all bound by the instructions to the bidders which should be complied with scrupulously. At the risk of repetition, the above observation made at paragraph No.24 is extracted hereunder:

"24.The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree

of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 & 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfil pre-qualification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the Rule of law and our Constitutional values. The very purpose of issuing Rules/instructions is to ensure their enforcement lest the Rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the Rules. We have, therefore, no hesitation in concluding that adherence to ITB or Rules is the best principle to be followed, which is also in the best public interest."

27. The decision of the Supreme Court relied on by the petitioner reported in 2016 (12) SCC 632, Om Prakash Sharma vs. Ramesh Chand Prashar, is factually distinguishable. In the said case, the question that arose for consideration was whether requirements to furnish annual turnover and net worth for last three years was a mandatory condition for infraction of which the bid made by the appellant therein had to be rejected. Based on such question, the Apex Court found that the condition was not an essential condition at all but was merely ancillary to achieve the main object. But in this case, the lapse committed by the petitioner is with regard to the technical specification and therefore, the same cannot be equated with a non essential condition, as found in the above case. In fact, in this case, the tender scrutiny committee condoned non furnishing of credential by the petitioner in supplying 4000 bicycles to Jharkhand by specifically finding that the petitioner surpassed the eligibility of 4,50,000 bicycles. Therefore, in so far as the non essential conditions are concerned, the tender

scrutiny committee has chosen to condone some of the aspects in respect of the each bidders including the petitioner as stated supra.

28.The other decision relied on by the petitioner reported in AIR 1991 SC 1579, Podar Steel Corporation vs Ganesh Engineering Works and also the decision of the learned Single Judge of this Court in MANU/TN/3500/2016, Renaatus Projects Private Limited vs The Tamilnadu Police Housing Corporation Ltd., will not help the petitioner in any manner, since the facts and circumstances of the present case would show that technical specific requirements contemplated in the tender document are certainly showing conditions of eligibility and they are neither ancillary or subsidiary with the main object to be achieved by the condition.

29.As rightly pointed out by the learned Advocate General, the question of relaxation does not arise, while considering the technical qualifications notwithstanding the fact that the lapse is minor or major. If a pre condition is relaxed by considering the fact that the same is only minimal, the question next would arise is as to why not to relax the other condition for other person as well, which according to another bidder may be minimal and does not go to the root of the matter. If 40% is the pass mark, certainly the person, who got 39%, is not entitled to be declared as passed. Therefore, there cannot be any relaxation to make a person to pass the test. Once such relaxation is made to one person, that will not end with such person and on the other hand, it would only open a floodgate. In fact, a relaxation if given, without there being any specific clause for doing so in the tender document, it would be construed only as favouritism or discrimination, as similarly situated person would have not participated in the tender in view of such inability or inefficiency. What is to be seen, at this juncture, is whether the respondents have condoned such lapses, as pointed out in the case of the petitioner, in respect of any other bidder and allowed them to participate in the price bid. It is not the case of the petitioner as though any other similarly situated person with similar lapses was allowed to participate in the price bid. Therefore, I do not find any discrimination in this case in the action of the respondent in rejecting the petitioner's technical bid on the reasons set out in the impugned order.

30.Considering all these aspects, I find no ground to interfere with the impugned order passed by the first respondent. The writ petition is dismissed. No costs. The connected miscellaneous petitions are closed.

W.P.29170/17:

31.Heard both sides.

32.The prayer in this writ petition is for issuance of a certiorari to call for the records of the proceedings in Tender No./2017 dated 11.11.2017 on the file of the first respondent and to quash the same as illegal and without jurisdiction. The petitioner has challenged the tender document No.2 of 2017, by raising an objection that the same was made to fit in large manufacturers such as respondents 2, 3 and 4. Admittedly, the petitioner is not a participant in the tender process nor he is a manufacturer of the bicycles. He claims to be a tender consultant. Certainly, the petitioner with the above stated status, is not entitled to maintain this writ petition by questioning the present impugned proceedings, as I find that this individual does not have any locus standi to question the same. Thus, I find that this writ petition is not maintainable at the instance of the writ petitioner and accordingly, the same is dismissed. No costs. The connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vri

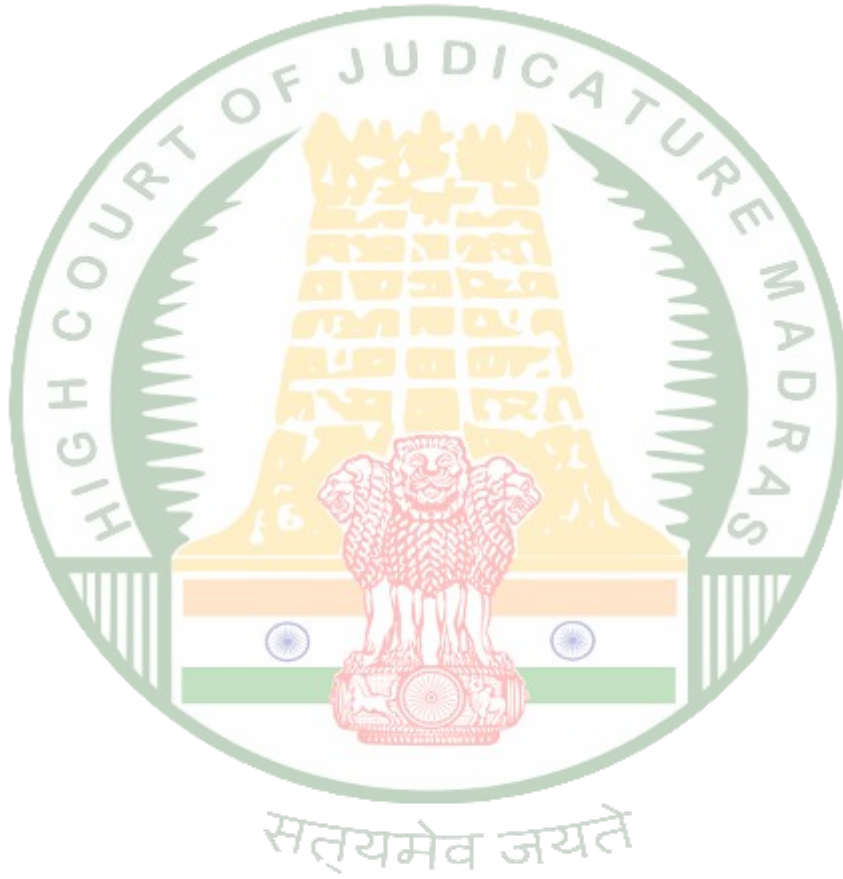
To

1. The Commissioner of Backward Classes Welfare,
Ezhilagam Annexe Building II Floor,
Chepauk, Chennai 600 005.
2. The Secretary to Government of Tamil Nadu,
Backward Classes, Most Backward Classes and
Minorities Welfare Department,
Secretariat, Fort St.George,
Chennai 600 009.
3. The Commissioner,
Directorate of Backward Classes Welfare,
Chepauk, Chennai- 600 005.

+2ccS to Mr.K.Govindaraj, Advocate, S.R.No.22422 & 21618
+1cc to Mr.V.Raghavachari, Advocate, S.R.No.21661
+1cc to M/s.Rajnishpathiyil, Advocate, S.R.No.21720
+1cc to the Government Pleader, S.R.No.22300

W.P.Nos.1123 of 2018 and 29170 of 2017

MP (CO)
CS/28/03/18



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