IN THE HIGH COURT OF MANIPUR
AT IMPHAL
W.P. (C) No. 1035 of 2019

M/S Paman Enterprises, having its registered office at Palace Compound, Near Macha Leima School, Imphal East, Manipur State through its Proprietor, Keishing Paisho aged about 42 years S/O Keishing Pishang, a resident of Nambashi Khullen Village, Nambashi Khullen, Ukhrul District, Manipur – 795149.

… Petitioner

-Versus-

1. The Food Corporation of India through the Chairman and Managing Director, having its office at 16-20, Barakhamba Lane, New Delhi – 110001, India.
2. The Executive Director (Zone), Food Corporation of India, Zonal Office (NE), Ulubari, Guwahati – 7.
3. The General Manager (Region), Food Corporation of India, Regional Office Assam Region, Paltan Bazar, Guwahati – 781008.
4. The General Manager (Region) Food Corporation of India, Regional Office (Manipur) Old Assembly Complex Imphal – 795001, Manipur.

… Respondents

With

W.P. (C) No. 1071 of 2019

M/S Paman Enterprises, having its registered office at Palace Compound, Near Macha Leima School, Imphal East, Manipur State through its Proprietor, Keishing Paisho aged about 42 years S/O Keishing Pishang, a resident of Nambashi Khullen Village, Nambashi Khullen, Ukhrul District, Manipur – 795149.

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4. The General Manager (Region) Food Corporation of India, Regional Office (Manipur) Old Assembly Complex Imphal – 795001, Manipur.
5. M/S NIT Traders, G.C. Road, Wakat Building, P.O. Tezpur, Sonitpur District, Assam – 784001, email. nittraderstezpur@ gmail.com.

… Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner	::	Shri H.S. Paonam, Sr. Advocate
For the respondents	::	Shri D. Julius Riamei, Advocate; Shri A. Jagjit, Advocate; Shri M. Gunedhor, Advocate
Date of Hearing	::	**09-06-2020**
Date of Judgment & Order	::	**17-06-2020**

JUDGMENT AND ORDER

[1] Heard Shri H.S. Paonam, learned Senior Advocate appearing for the petitioner while Shri D. Julius Riamei, learned Advocate and Shri A. Jagjit, learned Advocate with Shri M. Gunedhor, learned Advocate appearing for the FCI and private respondent respectively.

[2] Since both the writ petitions have arisen out of the same set of facts, they are being disposed of by this judgment and order.

W.P. (C) No.1035 of 2019

[3] By the instant writ petition, the petitioner has prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the

NIT/e-tender dated 04/10/2019 for transportation of foodgrains via Ex-Rly Siding Furkating/ FSD Golaghat/ GRMC Golaghat to FSD Sangaiprou as illegal and arbitrary and also for issuing a writ of mandamus to direct the respondents to issue a fresh advertisement/NIT in terms of the report of the CAG.

[4.1] Facts and circumstances as narrated in the writ petition, are that the present petitioner which is a registered proprietorship firm, is a First Class Contractor recognized by the Public Works Department, Government of Manipur vide Memorandum dated 10/05/2017. Being eligible for appointment as transport contractor of the FCI, the petitioner was/is expecting for execution of transportation work from the nearest Railheads of the State of Manipur which are located at Dimapur and Jiribam.

[4.2] An NIT dated 03/08/2015 was issued by the FCI for appointment of Road Transport Contractor from Railhead Bihara, Assam to FCI FSD Sangaiprou, Manipur. A transport contractor, namely M/S Zimomi Traders participated in the said tender process but being aggrieved by awarding the transport contract work to M/S RK & CO who lacked eligibility and had submitted a forged experience certificate, M/S Zimomi Traders approached this Court by way of a writ petition being WP(C) No.850 of 2015 wherein this Court was pleased to issue an interim order directing the FCI not to issue work order in respect of the NIT dated 03/08/2015. During the pendency of the said writ petition, the

FCI appraised this Court that consequent upon the newly commissioned Jiribam Railhead which is nearer than Bihara, the cost of transportation at contract rate/quoted rate for Jiribam to Sangaiprou will be considerably cheaper than that of transportation from Bihara. Accordingly, the contract work was cancelled by the FCI vide its letter dated 15/04/2016 wherein the reasons for cancellation were given by it. The said writ petition being WP(C) No.850 of 2015 was disposed of on 27/04/2016 as the NIT in question had been cancelled with a liberty being granted to the petitioner therein to question it. It may be noted that the road transport contract was awarded in the year, 2015 before the commission of Railhead, Jiribam for transportation of foodgrains from RH Salchapra to FSD Sangaiprou/RH Golaghat to FSD Sangaiprou for 2 (two) years and after the expiry of the said period, the loss incurred due to the said contract from a longer distance was enquired/audited by the FCI respondent/ by the CAG which have recommended for inviting tender from the Railhead at Jiribam or Dimapur.

[4.3] To the shock and surprise of the transport contractors including the petitioner, the FCI continued to issue NIT dated 28-06-2016 for appointment of Road Transport Contractors from Railhead Salchapra, Assam to FCI/FSD Sangaiprou and FSD, Koirengei (Hired), Imphal against its own decision. Before the financial bid was opened, M/S W.I. Enterprises filed a writ petition being WP(C) No. 511 of 2017 wherein this Court passed an interim order dated 21/07/2019 directing the FCI not to award the contract work to anyone without the leave of the Hon'ble Court.

While the said writ petition was pending, the FCI office at Imphal gave a reply dated 28-09-2017 to the application filed under the RTI enclosing therewith a copy of the report of the CAG showing the loss incurred to public exchequer. The writ petition being WP(C) No. 511 of 2017 and WP(C) No. 510 of 2017 were disposed of on 08/12/2017 with a direction to the FCI authority to take a decision in terms of the CAG report wherein it has been recommended that the FCI authority being a public authority involving scarce public financial resources, must re-look in the matter relating to floating of tender from a distant place. Despite the said observation being made by this Court, the FCI authority continued with the issuance of NIT dated 26-09-2017 for transportation of foodgrains which was challenged by M/S W.I. Enterprises by way of a writ petition being WP(C) No.797 of 2017 which was disposed of as infructuous with the flux of time.

[4.4] To the shock and surprise of the transport contractors including the petitioner, the FCI respondents issued NIT dated 04/10/2019 including the transportation of foodgrains from Ex-Rly Siding Furkating/FSD Golaghat/GRMC Golaghat to FSD Sangaiprou against the finding of the CAG to favour some vested interest choosing the FCI, Regional Office, Assam despite the existence of the FCI, Regional Office, Manipur, for looking after the requirement of foodgrains in Manipur. When M/S W.I. Enterprises filed a writ petition being WP(C) No. 886 of 2019 challenging the NIT date 04/10/2019, this Court passed an interim order dated 24/10/2019 directing the FCI not to finalize the NIT dated

4/10/2019. Interim order was extended until further order but the writ petition came to be withdrawn on 25/11/2019. When the petitioner learnt that the FCI respondents were yet to finalize the tender, the instant writ petition was filed questioning the NIT dated 04-10-2019.

[4.5] On 20-12-2019 when the writ petition was listed, it was submitted by Shri D. Julius Riamei, the learned Advocate appearing for the FCI that the tender process had completed and a letter of acceptance had already been issued by the FCI. Accordingly, the writ petition was adjourned to 15-01-2020 with a rider that it was open to the petitioner to challenge the letter dated 04-11-2019, if so advised. Accordingly, notices were issued in the writ petition only on 15-01-2019.

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[5.1] In the meantime and on 26-12-2019, the above writ petition came to be filed by the petitioner who is also the petitioner in WP(C) No.1035 of 2019 questioning the validity and correctness of the letter dated 04-11-2019. When this writ petition was listed on 27-12-2019, this Court while issuing notices to the respondents, passed an interim order directing that the letter dated 04-11-2019 should remain suspended till the next returnable date. This interim order was extended from time to time till when it was directed to be continued until further order.

[5.2] An affidavit-in-opposition has been filed on behalf of the respondent Nos.1 to 4 wherein preliminary objections have been raised stating that the writ petition is not maintainable as the letter dated

04-11-2019 was issued by the respondent No.3 who is not amenable to this Court and that the petitioner is not an aggrieved person, as it has never participated in the tender process or in other words, it has no locus standi to question the letter dated 04-11-2019 and moreover, it being not an aggrieved person, its fundamental right or statutory right cannot be said to have been violated by the respondents. It has also been stated that the writ petition has been apparently filed by the petitioner at the instance of some vested interest to disrupt the smooth functioning of public duty discharged by the respondents. The filing of writ petition is frivolous, vexatious and abuse of the process of Law. The FCI was established under the provisions of the Food Corporation of India Act, 1964, having five zones, with a view to implement the food policy of the Government of India. So far as the State of Manipur is concerned, it has a requirement of 13,381 MT of foodgrains and in order to maintain a buffer stock of some months, the Jiribam Railhead cannot handle it. On merit, it has been stated that if the petitioner is really interested in the transportation of foodgrains, it could have participated in the tender process. There is no record of the petitioner having participated in any of the FCI tenders in the past. The FCI, Assam Region has been floating e-tender and appointing transport contractor for transportation of foodgrians from Ex-Rly Siding Furkating/ FSD Golaghat/ GRMC Golaghat to FSD Sangaiprou. The need to transport stocks from Assam to FSD Sangaiprou can be understood from the workload of transportation. The petitioner was not a party in WP(C) No.886 of 2019 which was later

withdrawn by the petitioner therein. It is for the FCI to decide from where stocks are to be transported to Manipur to meet the requirement of the State in public interest. As per the guidelines of the FCI, it is the dispatching region/ centre which has to issue the NIT. The transportation rate is fixed on point to point basis. There are various factors like road condition, fuel costs, level of competition, labour costs etc. to be taken into consideration while fixing the rate. Transportation rate from nearest Railhead is not automatically the cheapest. The observations contained in CAG report have been taken note of and replies thereto have been furnished. While the contract from Railway Siding Furkating/ FSD Golaghat to FSD Sangaiprou was being continued for two years from 18-11-2017 to 17-11-2019, the petitioner was surprisingly not aggrieved at all. Moreover, the transportation rate from Furkating/ Golaghat was cheaper than from Jiribam.

[5.3] In its rejoinder, it has been stated by the petitioner that the respondent No.3 cannot escape from the jurisdiction of this Court while issuing arbitrary and unreasonable NIT and that the consequential letter was issued for the transportation of foodgrains meant for the State of Manipur in as much as the receiving go-down being at Sangaiprou. Since the cause of action arose at Imphal, this Court has ample jurisdiction to issue an appropriate writ. The petitioner is aggrieved by the arbitrary exercise of power by the respondent No.3 who issued the NIT against the decision of the FCI for fetching the foodgrains from the nearest Railhead. The contention that the petitioner having not participated, does not have

the locus standi is misconceived and lack of legal understanding for the reason that once the petitioner had participated, it would be bound by the terms and conditions of the NIT and it would be barred from challenging it. The State of Manipur has a separate regional office for looking after the need of foodgrains of Manipur and in spite of that, choosing the Guwahati Regional Office for supply of foddgrains to Imphal is a clear case of arbitrary exercise of power with an intention to favour contractor from the proximity of Guwahati even to the extent of escaping the jurisdiction of this Court. The respondent has purposely cited the case of Jiribam Railhead to mislead the Court concealing the fact that Dimapur is the nearer Railhead which is less costly and convenient. The letter dated 04-11-2019 was issued during the subsistence of interim order clearly indicating that the FCI had violated the order of this Court even at the cost of favouring the contractor from Assam. The contention of the respondent No.4 is against the record as found in CAG report and their justification pursuant to CAG has been purposely made not known to public to gainfully use in their favour.

[6.1] Since preliminary objections have been raised by the counsel appearing for the respondents, this Court deems it appropriate to consider them before going into the merits of the case. The preliminary objections can be broadly categorized into two-one, the writ petition is not maintainable as the letter dated 04-11-2019 was issued by the respondent No.3 who is not amenable to this Court and that the petitioner is not an aggrieved person, as it has never participated in the tender

process or in other words, it has no locus standi to question the letter dated 04-11-2019. As regards the first preliminary objection and in order to consider it, this Court needs to examine the provisions of Article 226 of the Constitution of India which provides that the power as conferred under clause (1) may be exercised by the High Court within the territorial limits within which the cause of action, wholly or in part, arises. In other words, to exercise the power under Article 226 (2) by the High Court, the cause of action ought to have arisen, at least, in part within its territorial limits. Article 226 (2) reads as under:

> ***"226(2)-*** *The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories**."***

In ***Oil and Natural Gas Commission Vs. Utpal Kumar Basu & ors., (1994) 4 SCC 711***, the Hon'ble Supreme Court, after examining the cause of action as envisaged in Article 226 of the Constitution of India, held:

> *"**6.** It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour v. Partab Singh Lord Watson said:*
>
> > ***"…** the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by*

the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.

In ***Alchemist Ltd. & anr. Vs. State Bank of Sikkim & ors., (2007) 11 335,*** *the* Hon'ble Supreme Court examined the legislative history of the constitutional provisions and in particular, Article 226 (2) of the Constitution of India with reference to 'cause of action' and held:

*"**20.** It may be stated that the expression "cause of action" has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he*

can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.

21. *The classic definition of the expression "cause of action" is found in Cooke v. Gill wherein Lord Brett observed:*

> ***"**'Cause of action' means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court**."***

25. *The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.*

37. *From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.*

Relying upon the decision rendered in ONGC (supra), the Hon'ble Supreme Court in ***Nawal Kishore Sharma Vs. Union of India & ors., (2014) 9 SCC 329***, held:

> ***"16.*** *Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction**."***

[6.2] In Alchemist Ltd. (supra), the Hon'ble Supreme Court examined the legal position as regards the Article 226(2) of the Constitution and observed that Article 226 as is originally enacted had twofold limitations on the jurisdiction of the High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised by the High Court throughout the territories in relation to which it exercises jurisdiction and secondly, the person or authority to whom the High Court is empowered to issue such writs, must be within those territories. The issue relating to the interpretation of these provisions came up before the Hon'ble Supreme Court in ***Election Commission Vs. Saka Venkata Rao, AIR 1953 SC 210*** wherein the Hon'ble Supreme Court insisted on the presence of the person or authority within the territories in relation to which the High Court exercises jurisdiction. This view was upheld by a Constitution Bench of seven judges of the Hon'ble Supreme Court in

Lt. Col. Khajoor Singh Vs. Union of India, AIR 1961 SC 532 which probably prompted the amendment of the Constitution by which new clause (I-A) was inserted after clause (I). By the Constitution (Forty-second Amendment) Act, 1976, clause (I-A) was renumbered as clause (2) with the result that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under Article 226 of the Constitution of India.

[6.3] On perusal of the above decisions, it is seen that the question whether or not the cause of action wholly or in part has arisen within the territorial limits of any High Court, has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. Cause of action means every fact which is required to be proved by the plaintiff in order to support his right to the judgment. Whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In order to constitute a part of cause of action, such fact ought to constitute a material, essential or integral part of cause of action. It is not in dispute that NIT dated 04-10-2019 was issued by FCI, Regional Office, Assam Region, Guwahati for appointment of contractors for purpose of transportation of foodgrains via Ex-Rly Siding Furkating/ FSD Golaghat/ GRMC Golaghat to FSD Sangaiprou, Manipur. These Foodgrains are meant for the State of Manipur. Although the NIT dated 04-10-2019 was issued at Guwahati, its purpose is to appoint a contractor for transportation of foodgrains from Golaghat, Assam to Sangaiprou,

Manipur which are meant for the State of Manipur and moreover, the FCI operates its transactions all over the country having its various offices including its regional office at Imphal. In other words, the FCI being a statutory authority and an institution having its operations throughout the country, any High Court in the Country, within its jurisdiction a cause of action has arisen in part, can exercise its power conferred under Article 226(1) of the Constitution. Therefore, the contention that this Court has no jurisdiction to entertain the writ petition, has no merit and is accordingly rejected by this Court.

[6.4] So far as the second preliminary objection is concerned, it has been vehemently submitted by Shri D. Julius Riamei that since the petitioner has not submitted its bid or in other words, it has not participated in the tender process, the petitioner is not an aggrieved person and accordingly, has no locus to question the validity and correctness of the letter dated 04-11-2019. In support of his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court in **Jasbhai Motibhai Desai Vs. Roshan Kumar, (1976) 1 SCC 671; D. Nagaraj & ors. Vs. State of Karnataka & ors., (1977) 2 SCC 148; Ayaaubkhan Noorkhan Pathan Vs. State of Maharastra & ors., (2013) 4 SCC 465** and **the judgment and order dated 29-03-2019 rendered by this Court in WP(C) No.1219 of 2018, M/S Niraj Cement Structural Ltd Vs. Union of India & ors.** On the other hand, Shri H.S Paonam, Senior Advocate appearing for the petitioner has submitted that the exercise of power by the respondent No.3 is arbitrary as it is against the decision of

the FCI for fetching the food grains from the nearest Railhead and that the contention that the petitioner having not participated and does not have the locus standi, is misconceived and lack of legal understanding for the reason that once the petitioner had participated, it would be bound by the terms and conditions of the NIT and it would be barred from challenging it. The short question that calls for consideration by this Court, is as to whether the petitioner is an aggrieved person. What does the expression "**aggrieved person**" mean? In **Jasbhai Motibhai Desai** (supra), the Hon'ble Supreme Court considered a question: who is an aggrieved person and what are the qualifications requisite for such a status? The Hon'ble Supreme Court held that the expression "aggrieved person" denotes an elastic and to an extent, an elusive concept. It cannot be defined within the bounds of rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstance of the case, the nature and extent of the petitioner's interest and the nature and extent of the prejudice or injury suffered by him. After referring to various decisions rendered by English Courts, the Hon'ble Supreme Court held:

> ***"34.*** *This Court has laid down in a number of decisions that in order to have the locus siandi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or*

prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter, (see State of Orissa v. Madan Gopal Rungta; Calcutta Gas Co. v. State of W.B.; Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa; Gadde Venkateswara Rao v. Government of A.P.; State of Orissa v. Rajasaheb Chandanmall; Satyanarayana Sinha Dr v. S. Lal & Co.).

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (*i*) "person aggrieved"; (*ii*) "stranger"; (*iii*) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved". In

the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved**".**

In **D. Nagaraj (supra)**, the Hon'ble Supreme Court held that it is well settled that though Article 226 of the Constitution in terms does not describe the classes of persons entitled to apply thereunder, the existence of the right is implicit for the exercise of the extra-ordinary jurisdiction by the High Court under the said article. In **Ayaaubkhan Noorkhan Pathan** (supra), the Hon'ble Supreme Court held:

> ***"9.*** *It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/ court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the*

existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta, Saghir Ahmad v. State of U.P., Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., Rajendra Singh v. State of M.P. and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar.]

[7] Although the petitioner has claimed that it is a First Class Contractor, its claim has been denied by the FCI which has submitted that there is no record to show that the petitioner has ever participated in any of the tenders floated in the past. Be that as it may, the undisputed fact is that the petitioner did not participate in the tender process or in other words, it did not submit its bid pursuant to the NIT dated 04-10-2019. The reason assigned by the petitioner for having not participated in the tender process, is that if it had participated, the petitioner would be debarred from questioning the impugned letter. Its reason appears to be correct to some extent but it is a matter of policy decision of the FCI from where NIT will be issued and moreover, there is no material on record to show that the petitioner has ever submitted any representation to the FCI seeking for a change in the policy decision of being unfair and unreasonable and that the Circular dated 17-06-2015 issued by the FCI is not under challenge. In view of the law laid down by the Hon'ble Supreme Court referred to hereinabove, the petitioner is not an aggrieved person and has no locus standi to question the validity and

correctness of the letter dated 04-11-2019. Therefore, the writ petition fails and is liable to be dismissed as not maintainable.

[8] Since this Court having held that the writ petition is not maintainable for the reason that the petitioner is not an aggrieved person and that it has no locus standi to question the validity and correctness of the letter dated 04-11-2019, the writ petition can be dismissed accordingly without going into its merit. But since the learned counsels appearing for the parties have made submissions on merits as well, this Court deems it appropriate to consider them. Moreover, it has been submitted by the counsel appearing for the petitioner that the exercise of power by the respondent No.3 is arbitrary and unreasonable because it is against the decision of the FCI of fetching the foodgrains from the nearest Railhead and that the report of the CAG has not been taken into account while taking a policy decision with the result that it has incurred heavy loss to public exchequer. The stand of the FCI is that as per the guidelines, the NIT is to be issued from the dispatching centre. It is a policy decision and moreover, replies have been given to the report of the CAG. It is no doubt true that FCI was established under the provisions of the Food Corporation of India Act, 1964 and its purpose and object is to implement the food policy of the Government of India. It may be noted that FCI is a statutory body and being an institution, it ought to act fairly and reasonably and in public interest. The money being held by it is public money and any action taken by it incurring heavy loss to public money, cannot be said to be in public interest. In this regard, the Hon'ble

Supreme Court has rendered various decisions laying down the law, some of which are given as under:

> *In* ***Asia Foundation & Construction Ltd. Vs. Trafalgar House Construction (I) Ltd. & ors., (1997) 1 SCC 738****, the Hon'ble Supreme Court held that though the principle of judicial review cannot be denied so far as exercise of contractual powers of government bodies are concerned, it is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the court that in the matter of award of a contract, power has been exercised for any collateral purpose.*
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> *In* ***Noble Resources Ltd. Vs. State of Orissa & ors., (2006) 10 SCC 236****, the Hon'ble Supreme Court held:*
>
> "***15.*** *It is trite that if an action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on their part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter.*

18. *It may, however, be true that where serious disputed questions of fact are raised requiring appreciation of evidence, and, thus, for determination thereof, examination of witnesses would be necessary; it may not be convenient to decide the dispute in a proceeding under Article 226 of the Constitution of India.*

27. *Contractual matters are, thus, not beyond the realm of judicial review. Its application may, however, be limited**."***

In ***ABL International Ltd & anr. Vs. Export Credit Guarantee Corporation of India Ltd & ors., (2004) 3 SCC 553****, the Hon'ble Supreme Court held:*

*"**23.*** *It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects*

enumerated in the memorandum of association of the first respondent at para 10 read:

"*To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."*

Para 11 of the said object reads thus:

"*To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest**."***

In ***Municipal Corporation, Ujjain & anr. Vs. BVG India Limited & ors., (2018) 5 SCC 462***, the Hon'ble Supreme Court held:

"9. *The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by this Court in Tata Cellular v. Union of India, wherein this Court observed that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have*

to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down.

10. *The modern trend points to judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. 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. 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 a quasi-administrative sphere. However, the decision must not only be tested by the application of the Wednesbury principle of reasonableness, but must also be free from arbitrariness and not affected by bias or actuated by mala fides. [See the judgment in Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.]*

15. *It is well settled that the award of contract, whether it is by a private party or by a public body or by the State, is essentially a commercial transaction. In arriving at a commercial decision, the considerations which are of paramount importance are commercial considerations. These would include, inter alia, the price at which the party is willing to work; whether the goods or services*

offered are of the requisite specifications; and whether the person tendering the bid has the ability to deliver the goods or services as per the specifications. It is also by now well settled that the authorities/State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation.

16. *The State, its corporations, instrumentalities and agencies have a public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary power under Article 226 with great caution and should exercise them only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere. (See the judgment in Air India Ltd. v. Cochin International Airport Ltd**.)."***

[9] In the present case, the contention of the counsel appearing for the FCI that the FCI is a statutory body established under the provisions of the Food Corporation of India Act, 1964, has merit and even the petitioner cannot deny it. From the Circular dated 17-06-2015 relied upon by the FCI, it is seen that as a matter of principles, the GM(R) of dispatching centre should float tenders for all historical road movement routes and also for upcoming new locations. As has been observed hereinabove, the said circular appears to have not been challenged by anyone. But one point which the counsel appearing for the petitioner has

emphasized, is that the exercise of power by the respondent No.3 is unreasonable for the reason that while floating the NIT dated 04-10-2019, he has failed to consider the inspection report of the Audit Officer of the CAG as contained in Part-II(A). It may be noted that this point was considered by this Court in M/S Zimomi Traders Vs. FCI & ors, WP(C) No.510 of 2017, when the validity and correctness of the NIT dated 28-06-2017 was under challenge. The stand taken by the FCI, at that point of time, was that the report was yet to be approved by the competent authority and moreover, it was yet to be placed before the Parliament. But this Court, while taking note of the fact that the report was relied upon by the FCI at the time when the first tender dated 03-08-2015 was cancelled, directed the FCI to re-examine the matter by taking into account the relevant factors. It is not clear to this Court as to whether the said direction of this Court was taken into account in the subsequent floating of tenders but in the affidavit filed by the FCI in the present case after about two years, there is no averment as to whether the said report has been either approved or rejected by the Parliament and the only averment which has been made by the FCI, is that the contents of the report have been taken note of and replies thereto have been made by it. If the report of the CAG has been rejected by the Parliament, it is well and good and in the event of the same having been approved by the Parliament, the present action of the FCI will be rendered unreasonable, malafide and arbitrary, for which the FCI will be solely responsible. In any case, the report of the CAG is an important/ official document on the

basis of which the policy is to be changed by the FCI because it has found that the FCI has incurred heavy loss to public exchequer which cannot be said to be in public interest. The FCI needs to apply its mind to ensure that the public money or for that matter, the tax payer's money is not wasted by it. It may further be noted that even if the validity and correctness of the policy decision cannot be examined and considered at the hands of the petitioner herein, it is always to be kept in mind by the FCI that it ought to act fairly and reasonably and in public interest, failing which its action will attract the provisions of Article 14 of the Constitution of India.

[10] In view of the above and for the reasons stated hereinabove, both the writ petitions stand dismissed as not maintainable but the FCI is directed to ensure in future that it will not incur any loss to public exchequer while floating its tenders and that it will not take any decision which is against public interest. The interim order granted by this Court in the above matters stands vacated and it is open to the FCI to proceed with its NIT dated 04-11-2019 in accordance with law.

JUDGE

FR / NFR

Victoria

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.06.17 11:36:51 +05'30'