IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.09.2020

PRONOUNCED ON : 02.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition Nos.11950 & 11953 of 2020
& WMP Nos.14673, 14676 and 14677 of 2020

Subramaniam P. ...Petitioner in W.P.11950
K.Gunasekaran ...Petitioner in W.P.11953

-Vs-

1. The State of Tamil Nadu
   Rep. by its Principal Secretary Department
   of Animal Husbandry Fort. St.George
   Chennai - 600009.

2. The Managing Director
   The Tamil Nadu Co operative Milk Producers
   Federation Ltd. (Transport Unit) 3-A
   Pasumponmuthuramalinganar Road Chennai - 600035

3. The Joint Managing Director
   The Tamil Nadu Co operative Milk Producers
   Federation Ltd. 29&30, Industrial Estate
   Ambattur, Chennai 600 098.

4. The Deputy General Manager
   The TamilNadu Co-operarive Milk Producers
   Federation Ltd. Transport Unit Madhavaram
   Milk Colony Chennai - 600051. ...Respondents

Prayer in W.P.No.11950 of 2020 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records relating to the impugned Tender Notice No.748/T4/TPT/2020 dated 17.07.2020 floated by the respondent 4th respondent to quash the same and to consequently direct the respondents to forthwith consider the petitioners representation dated 06.08.2020 and issue tender in compliance with law and orders of this Hon`ble Court.

Prayer in W.P.No.11953 of 2020 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records relating to the impugned Tender Notice No.748/T4/TPT/2020 dated 17.07.2020 floated by the respondent 4th respondent to quash the same and to consequently direct the respondents to forthwith consider the petitioners representation dated 06.08.2020 and issue tender in compliance with law and orders of this Hon`ble Court.

For Petitioner : Mr.Om Prakash, Senior Counsel for Mr.S.Senthil

For Respondent : Mr.Vijay Narayan, Advocate General assisted by Mr.Bala Ramesh Special Government Pleader

C O M M O N O R D E R

The issue involved in both the writ petitions are common and therefore both the writ petitions are taken up together and this common order is passed.

2. The subject matter of challenge in these writ petitions is the impugned tender notice dated 17.07.2020 floated by the fourth respondent.

3. The brief facts of the case is that the petitioners are Milk Tanker Lorry Operators. The petitioners are involved in providing transport services to Aavin for quite some time. They have also participated in the earlier tenders that were floated and were also successful bidders. Thus, the petitioners have experience in Milk Tanker Operations.

4. The second respondent floated a centralised tender through the federation on 07.01.2019 and the petitioners participated in the said tender. This tender got cancelled. Thereafter, a fresh tender was floated by the third respondent with some modifications on 27.08.2019. This tender also got cancelled. Thereafter the fourth respondent invited a fresh tender through tender notice dated 17.07.2020. This tender document was uploaded in the official website from 20.07.2020.

5. The petitioners made a representation to the respondents to the effect that the present tender has given a complete go-by to the the experience clause which was insisted in the earlier two tenders. That apart, the age of the tanker lorry has also been reduced to six years and according to the petitioners, the tender itself has been floated to benefit a group of participants. Since this representation was not acted upon, the present writ petitions have been filed before this Court.

6. Mr.Om Prakash, learned Senior Counsel appearing on

behalf of the petitioners primarily focused his objections on the following three issues;

(a) Complete exclusion of the experience clause in the tender.
(b) Lack of clarity regarding the Tender Inviting Authority, and
(c) Drastic reduction in the age of the vehicles without even specifying that only milk tanker lorry can participate.

7. The learned Senior Counsel submitted that the earlier two tenders floated by the second and third respondents clearly stipulated 'experience' as one of the important criteria for participating in the tender process. The learned Senior Counsel submitted that only those persons who have experience in handling milk should be allowed to participate in the tender process since it involves public health and milk is a perishable commodity. The learned Senior Counsel further submitted that the respondent had insisted 'experience' to be one of the important criteria and when it was challenged before this Court in the earlier writ petition, it was insisted and this Court also accepted the stand of the respondents. All of a sudden, the 'experience clause' has been completely dropped in the impugned tender notice issued by the fourth respondent.

8. The learned Senior Counsel brought to the notice of this Court Rule 32 of the Tamil Nadu Transparency in Tender Rules, 2000. It was submitted that the present tender is a two cover system with both technical bid and commercial bid and this Rule specifically mandates the tender inviting authority to determine the pre-qualification on the basis of 'experience' and 'past performance' in the execution of similar contracts. Thus, dropping the 'experience' clause is arbitrary and it vitiates the tender process.

9. The learned Senior Counsel submitted that the impugned notice is not clear as to who is the tender inviting authority. In some places, the Deputy General Manager has been shown to be the tender inviting authority and in other places, the Joint Managing Director has been shown to be the tender inviting authority.

10. The learned Senior Counsel further submitted that in the first tender, the age of the tanker lorry was fixed as seven years and in the second tender notification it was fixed as twelve years and in the present tender notification it was initially fixed as five years and subsequently through a corrigendum it has been fixed as not less than six years. The learned Senior Counsel submitted that such wide variations were made in the present tender with a view to benefit a group of participants.

11. The respondents have circulated a short note and the same is extracted hereunder.

"The Tamilnadu Co-operative Milk Producers Federation Limited having three Metro Dairies for Milk and one Product dairy for supply of products for the entire needs for city consumers like children, patients, pregnancy women, hospitals, aged persons etc. For this, TCMPF needs 12 lakhs litres of milk on daily basis. This has to be transported from various district unions.

This milk is being collected from various societies situated in all districts. The milk so collected should be transported to Chennai for further processing within the stipulated time otherwise the milk will get spoiled.

For this milk transportation we have called for tender on 28.08.2019 for 303 Nos of Road Milk Tankers. The technical bid opened on 10.10.2019 and the commercial bid opened on 06.02.2020 and the first negotiation was conducted on the some day. The Committee had 2nd negotiation on 14.02.2020 and in that negotiation, the transporters who attended the negotiation were formed syndicate and walked out abruptly from the office and declared through media that they are going to enter on a flash strike and conducted a press meet stating that there is a delay in finalizing the tender from 2018 and they are not able to operate the in finalizing the tender from 2018 and they are not able to operate the tanker at the old rate of Rs.24/Km and stopped their vehicle transporting from Union to Metro. This flash strike by the tanker owners was done without giving any notice to the Federation.

The stoppage of milk transported to I henna' which has resulted hardship in collecting the milk from the society and distributing to the consumers. Hence we have forced to look for an alternative from various sources even from the other state tankers for transportation of milk. So we have engaged Private players who are plying their tankers on private industries. Till now, these tanker owners are operating their tankers without any dislocations and helping the industry in a smooth and fair manner (from 15.02.2020). In order to provide them a fair chance to participate in the tender. The experience clause was deleted.

As the previous tenderers has formed a carter and sabotage the entire system, to dilute the same and have more competitions in order to avoid formation of syndicate and their domination, the committee vide its minutes dated 09.04.2020 has recommended to remove the condition of experience in this tender."

12. Mr.Vijay Narayan, learned Advocate General appearing on behalf of the respondents submitted that the milk is transported from various districts collected from various Societies in all the districts. This milk is brought to Chennai and processed within a stipulated time. This is an essential commodity which cannot be dispensed with even for a single day. The learned Advocate General submitted that earlier the respondents thought it fit to insist for experience. However, some of the tanker owners formed into a cartel and started arm twisting the respondents and even went to the extent of calling for a flash strike. As a result of the same, there was a sudden stoppage of milk that was transported to Chennai. Thereafter, the respondents were forced to engage private operators from February, 2020 onwards and till date the respondents are availing their services and the supply is taking place in a smooth and fair manner. Learned Advocate General submitted that the respondents consciously wanted to break this cartel and bring in more participation. Therefore, in order to open up the participation, the respondents thought it fit to remove the 'experience' clause. Learned Advocate General submitted that this decision was taken after watching the performance of the private operators from February 2020 till date wherein the supply is going on in a smooth manner and it is done by the operators who do not have previous experience. Therefore, in order to ensure wider participation, the 'experience clause' was dropped in the impugned tender notification.

13. The learned Advocate General submitted that Rule 32 that was referred by the learned Senior Counsel appearing on behalf of the petitioners will not apply to the facts of the present case, since the said Rule falls under the chapter "Evaluation and Award of Tenders in Special Cases". In the present case, the award of tenders will not fall under the category "Special Cases".

14. The learned Advocate General further submitted that the tender inviting authority is the Deputy General Manager and the same is very clear in the tender notification itself. Just because the demand draft is directed to be drawn in favour of

the Joint Managing Director, that does not change the tender inviting authority. The learned Advocate General further submitted that the ground raised by the petitioners in this regard is totally unsustainable.

15. The learned Advocate General further submitted that fixing the age of the road tanker as not less than six years was a decision taken after considering various factors and the tender notice cannot be challenged on this ground.

16. The learned Advocate General relied upon the judgment of the Honourable Supreme Court in "Shimnit Utsch India Pvt. Ltd. & Anr. -Vs- West Bengal Transport Infrastructure Development Corporation Ltd. & Ors." reported in 2010 (6) SCC 303. The learned Advocate General specifically relied upon the following portions of the judgment.

> "34.In R. v. Secretary of State for Transport, Ex parte Richmond upon Thames London Borough Council & Ors.4 while laying down that the Wednesbury reasonableness test alone was applicable for finding out if the change from one policy to another was justified, Laws, J. stated :
>
> > "The court is not the Judge of the merits of the decision-maker's policy. ... the public authority in question is the Judge of the issue whether `overriding public interest' justifies such a change in policy.... But this is no more than to assert that a change in policy, like any discretionary decision by a public authority, must not transgress Wednesbury principles...."
>
> 35. Now, we consider the decisions of this Court. In Mohd. Fida Karim and Anr. v. State of Bihar & Ors.5, while dealing with a case of change in Government policy for licence under Bihar Excise Act, this Court held thus :
>
> > "......The new policy of adopting the method of auction- cum-tender is certainly a change of policy. The reason for change of policy given by the Government is that it realised that making settlement for five years would give rise to monopolistic tendency, which will not be in public interest, at the same time the interest of revenue was not fully protected in the former policy. This clearly goes to show that the Government wanted to adopt a new policy in public interest to be

made applicable from the year 1991-92. Learned Counsel appearing on behalf of the State of Bihar submitted in clear terms that the earlier policy was wrong and the Government realised its mistake and thus adopted a new policy to augment its revenue and to avoid monopolistic tendency. We do not find anything wrong in taking such view by the State Government and to change its policy considering the same to be in public interest................."

36. This Court in Sterling Computers Limited v. M/s. M & N Publications Limited & Ors.6, while dealing with judicial review in a matter relating to publication of telephone directories of Mahanagar Telephone Nigam Limited Government of India Undertaking) made the following observations :

"12. At times it is said that public authorities must have the same liberty as they have in framing the policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. That is why the courts have impressed that even in contractual matters the public authority should not have unfettered discretion. In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive."

37. In the case of Tata Cellular v. Union of India7, a three-Judge Bench of this Court extensively considered the English decisions as well as the previous decisions of this Court in the matter of judicial review and scope relating to government contracts and tenders and deduced the legal principles in paragraph 94 of the report thus :

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

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

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

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

(5) The Government must have freedom of contract.

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

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

38. That the award of a contract, whether it is by private party or by a public body or the State is essentially a commercial transaction was highlighted by this Court in Raunaq International Ltd. v. I.V.R. Construction Ltd. & Ors.8 In that case, this Court spelt out the following considerations that weigh in making a commercial decision :

"(1) the price at which the other side is willing to do the work;

(2) whether the goods or services offered are of the requisite specifications;

(3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;

(4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;

(5) past experience of the tenderer and whether he has successfully completed similar work earlier;

(6) time which will be taken to deliver the goods or services; and often (7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services."

39. Again in the case of Punjab Communications Ltd. v. Union of India & Ors.9, a two-Judge Bench of this Court elaborately examined the principles of legitimate expectation and a change in policy by the Government. While dealing with second question formulated by the

Court viz., whether if essentially the Government decided to fund the proposed contract for Eastern U.P. from its own resources, it was permissible for the Government to change its policy into one for providing telephones for rural areas in the entire country and whether `legitimate expectation' of the appellant in regard to the earlier notification required the Court to direct that a notification for Eastern U.P. should be continued, this Court held in paragraph 45 of the report thus :

> "45. It will be noticed that at one stage when the ADB loan lapsed, the Government took a decision to go ahead with the project on its own funds. But later it thought that the scheme regarding telephones in rural areas must cover not only the villages in Eastern U.P. but also in other backward rural areas in other States.The statistics given in the counter-affidavits of the Union of India to which we have already referred, show that there are other States in the country where the percentage of telephones is far less than what it is in Eastern U.P. The said facts are the reason for the change in the policy of the Government and for giving up the notification calling for bids for Eastern U.P. Such a change in policy cannot, in our opinion, be said to be irrational or perverse according to Wednesbury principles. In the circumstances, on the basis of the clear principles laid down in ex p Hargreaves and ex p Unilever, the Wednesbury principle of irrationality or perversity is not attracted and the revised policy cannot be said to be in such gross violation of any substantive legitimate expectation of the appellant which warrants interference in judicial review proceedings."

40. In the case of Monarch Infrastructure (P) Ltd. v. Commissioner., Ulhasnagar Municipal Corporation & Ors.10, this Court was concerned with the question relating to NIT issued by Ulhasnagar Municipal Corporation for appointment of agents for collection of octroi and revision of terms and conditions thereof. This Court held :

> ".....The High Court had directed the commencement of a new tender process subject to such terms and conditions, which will be

prescribed by the Municipal Corporation. New terms and conditions have been prescribed apparently bearing in mind the nature of contract, which is only collection of octroi as an agent and depositing the same with the Corporation. In addition, earnest money and the performance of bank guarantee are insisted upon; collection of octroi has to be made on day-to-day basis and payment must be made on a weekly basis entailing, in case of default.cancellation of the contract. We cannot say whether these conditions are better than what were prescribed earlier for in such matters the authority calling for tenders is the best judge. We do not think that we should intercede to restore status quo ante the conditions arising in clauses 6 (a) and 6(b) of the Tender Booklet and the bid offered much earlier by Konark Infrastructure (P) Ltd. should be accepted, for it filed a writ petition, which was allowed with a direction for calling for fresh tenders..........."

41. In Union of India and Anr. v. International Trading Co. and Anr.11, this Court held that non-renewal of permit by the Government to a private party on ground of change in its policy cannot be faulted if such change is founded on Wednesbury reasonableness and is otherwise not arbitrary, irrational and perverse. It was held :

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

23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness

involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country."

42. In the case of Directorate of Education and Ors. v. Educomp Datamatics Ltd. and Ors.12, this Court, inter alia, applied the principles enunciated in Tata Cellular7 and Monarch Infrastructure (P) Ltd.10 and held as follows :

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

43. In Bannari Amman Sugars Ltd. v. Commercial Tax Officer & Ors.13, this Court was concerned with the question relating to withdrawal of benefits extended to appellant therein as subsidy and it was held :

"........We find no substance in the plea that before a policy decision is taken to amend or alter the promise indicated in any particular notification, the beneficiary was to be granted an opportunity of hearing. Such a plea is clearly unsustainable. While taking policy decision, the Government is not required to hear the persons who have been granted the benefit which is sought to be withdrawn."

44. In Global Energy Limited & Anr. v. Adani Exports Ltd. and Ors this Court reiterated the principles that the terms of the invitation to tender are not open to judicial scrutiny and the courts cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice.

45. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. & Anr.15, the legal position highlighted in Tata Cellular7 was reiterated in the following words :

"12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that 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, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi- administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

Our View

46. In the light of the afore-noticed legal position, we shall now examine whether judicial intervention is called for in NIT issued by the State of West Bengal and State of Orissa for manufacture and supply of HSRP. Insofar as State of West Bengal is concerned, the first NIT was issued in the month of July, 2003 fixing August 6, 2003 as the last date for submission of tender papers. Pursuant thereto, four bidders participated. The finalization of the tender process could not take place because of interim order passed by this Court in Association of Registration Plates1 and other connected cases. These cases were decided by this Court on November 30, 2004. Of the four bidders, who initially participated in the tender process, one withdrew and as regards Promuk, an objection was raised by Shimnit about their eligibility. Shimnit approached Calcutta High Court and obtained an interim order from the Single Judge that tender process shall not be finalized. As a matter of fact, due to litigation no substantial progress took place for two years in finalization of process for which NIT was issued in July, 2003 and practically two bidders in the entire tender process remained in fray. In interregnum, considerable number of indigenous manufacturers obtained the requisite TAC from the approved institutions as per the provisions of 1988 Act and thereby acquired capacity and ability to manufacture HSRP. In the backdrop of these reasons, the State Government seemed to have formed an opinion that by increasing competition, greater public interest could be achieved and, accordingly, decided to cancel first NIT and issued second NIT doing away with conditions like experience in foreign countries and prescribed minimum turnover from that business. Whether State Government could have changed terms of NIT despite the judgment of this Court in Association of Registration Plates1? Once a particular matter relating to conditions in NIT has been finally decided by the highest Court, the State Government, which was party to the litigation, ought to have proceeded accordingly but, in a case such as the present one, where the circumstances changed in some material respects as aforenoticed, departure from the earlier policy cannot be held to be legally flawed, particularly when there is no challenge to the changed policy reflected in second NIT on the ground of Wednesbury reasonableness or principle of legitimate expectation or arbitrariness or irrationality. In considering whether there has been a change of circumstances sufficient to justify departure from the previous stance, the Division Bench

of Calcutta High Court recorded a finding that reasons stated by the State Government for departure from the conditions in the first NIT did exist and accepted the contention of the State Government that by increasing the area of competition, greater public interest would be sub-served because of financial implications. We have no justifiable reason to take a view different from the High Court insofar as correctness of these reasons is concerned. The courts have repeatedly held that government policy can be changed with changing circumstances and only on the ground of change, such policy will not be vitiated. The government has a discretion to adopt a different policy or alter or change its policy calculated to serve public interest and make it more effective. Choice in the balancing of the pros and cons relevant to the change in policy lies with the authority. But like any discretion exercisable by the government or public authority, change in policy must be in conformity with Wednesbury reasonableness and free from arbitrariness, irrationality, bias and malice.

47. In Association of Registration Plates1, this Court while dealing with the challenge to the conditions with regard to experience in foreign countries and prescribed minimum turnover from that business observed that these conditions have been framed in the NIT to ensure that the manufacturer selected would be technically and financially competent to fulfill the contractual obligations and to eliminate fly-by-night operators and that the insistence of the State to search for an experienced manufacturer with sound financial and technical capacity cannot be misunderstood. While maintaining the State Government's right to get the right and most competent person, it was held that in the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring supply of HSRP, greater latitude is required to be conceded to the State authorities and unless the action of tendering authority is found to be malicious and a misuse of statutory powers, tender conditions are unassailable. On the contentions advanced, this Court examined the impugned conditions and did not find any fault and overruled all objections raised by the petitioners therein in challenge to these conditions. This Court has neither laid down as an absolute proposition that manufacturer of HSRP must have the foreign experience and a particular financial capacity to fulfill the contractual obligations nor it has been held that

these conditions must necessarily be insisted upon in the NIT. The judgment of this Court in Association of Registration Plates1 cannot be read as prescribing the conditions in NIT for manufacture and supply of HSRP. Rather this Court examined legality and justification of the impugned conditions within the permissible parameters of judicial review and recognized the right of the States in formulating tender conditions. In our opinion, there is no justification in denying the State authorities latitude for departure from the conditions of the NIT that came up for consideration before this Court in larger public interest to broaden the base of competitive bidding due to lapse of time and substantial increase in the number of persons having TAC from the approved institutes without compromising on the quality and specifications of HSRP as set out in Rule 50, Order 2001 and Amendment Order, 2001.

48. Mr. F.S. Nariman, learned senior counsel heavily relied upon a decision of this Court in S. Nagaraj & Ors. v. State of Karnataka & Anr.16 and submitted that the decision of this Court in Association of Registration Plates1 was binding on all States and the said judgment has to be enforced and obeyed strictly and any deviation from those conditions by the States on their own is impermissible.

49. In S. Nagaraj & Ors.16, this Court observed as follows :

> "Was it so? Could the Government take up this stand?
>
> Law on the binding effect of an order passed by a court of law is well settled. Nor there can be any conflict of opinion that if an order had been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. In Halsbury's Laws of England (Fourth Edn., Vol. 9, p. 35, para 55) the law on orders improperly obtained is stated thus: "The opinion has been expressed that the fact

> that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order." Any order passed by a court of law, more so by the higher courts and especially this Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by an authority according to its own understanding."

50. The statement of law exposited in S. Nagaraj16 is beyond question. As noticed above, in the case of Association of Registration Plates1, this Court did not find any fault with the controversial conditions in the NIT and overruled all objections raised by the petitioners therein in challenge to those conditions. The impugned conditions of NIT in that group of cases were not held to be arbitrary, discriminatory or irrational nor amounted to creation of any monopoly as alleged. The declaration of law by this Court in Association of Registration Plates1 is that in the matter of formulating conditions for a contract of the nature of ensuring supply of HSRP, greater latitude needs to be accorded to the State authorities. We find it difficult to hold that by virtue of that judgment the impugned conditions were frozen for all times to come and the States were obliged to persist with these conditions and could not alter them in larger interest of the public. In our view, the decision of this Court in Association of Registration Plates1 did not create any impediment for the States to alter or modify the conditions in the NIT if the circumstances changed in material respects by lapse of time.

51. In the PIL filed by Maninderjit Singh Bitta, it was prayed that the States and UTs be directed to implement the judgment of this Court in Association of Registration Plates1 . This Court disposed of the writ petition on May 8, 2008 by observing, `we feel it would be in the interest of all concerned if the States and Union Territories take definite decision as to whether there is need for giving effect to the amended Rule 50 and the scheme of HSRP and the modalities to be followed'. It was further observed

that while taking the decision, the aspects highlighted by this Court in Association of Registration Plates1 shall be kept in view. After disposal of the PIL, the petitioner therein filed I.A. No. 5 for clarification of the order dated May 8, 2008 and this Court while disposing of the said I.A. on May 5, 2009 clarified that there was no discretion given to the States/UTs not to give effect to the amended Rule 50 and the claim of HSRP and the modalities to be followed. Thereafter, I.A. was filed by the Central Government on September 17, 2009 before this Court for extension of time wherein the following statement was made:

> "The primary reason for non implementation of the scheme has been the challenges to certain conditions of the tender floated by various States. The issues such as experience in foreign countries, minimum net worth and turnover with a certain prescribed percentage of turn over from number plate business in the immediately preceding last three years and long term contract to a single vendor for the entire State had been the subject matter of WP(C) No. 41 of 2003--Association of Registration Plates Vs. UOI & Ors. That this Hon'ble Court in the judgment dated 30th November, 2004, laid to rest all such issues by holding that all such conditions were essential and mandatory conditions of the HSRP tender to ensure that the vendors selected by the States would be technically and financially competent to fulfill the contractual obligations which looking to the magnitude of the job requires huge investment qualitatively and quantitatively."

By order dated December 15, 2009, this Court extended the time for implementation of HSRP upto May 31, 2010. None of these orders holds that while implementing the new system of HSRP, States and UTs are bound to incorporate the conditions of foreign experience and minimum turnover from that business. The statement made by the Central Government in its application as aforenoticed only reflected the reason for non-implementation of HSRP scheme. As a matter of fact, the Central Government has clarified the position in its communication with the States/UTs that draft tender conditions circulated by them are only suggestive. Be that as it may. The decision of this Court in Maninderjit Singh Bitta and the subsequently clarificatory order therein are hardly relevant and do not help the case of the appellants.

52. It is important to notice that the bids pursuant to the second NIT have been evaluated by WBTIDCL and we have been informed that the lowest bid per HSRP unit for a vehicle is Rs. 469/- while the offer made by Shimnit (appellant) is of about Rs. 1200/-. Such a huge difference in the rate per HSRP unit shows that the action of the State Government in doing away with the conditions of experience in foreign countries and prescribed turnover from such business has been in larger public interest without compromising on safety, security and quality or sustainable capacity."

17. The learned Advocate General, by relying upon the above judgment submitted that the change in policy by dropping the 'experience clause' cannot be questioned by the petitioners unless such change in policy is arbitrary, irrational or is actuated by bias and malice. The learned Advocate General submitted that the respondents are always entitled to challenge the policy with the change in circumstances and it was done in order to break the cartel and in order to make the participation more open and wider.

18. This Court has carefully considered the submissions made on either side and perused the materials placed on record.

19. The scope of interference in tender conditions is very limited and it cannot be brought under judicial scrutiny unless it is arbitrary, irrational or it is actuated by bias or malice. The Honourable Supreme Court through a catena of decisions has made it clear that the method tried in selection is within the realm of the Executive and it is normally not open to judicial scrutiny. Useful reference can be made to the judgment of the Honourable Supreme Court in "Tata Cellular vs Union Of India" reported in 1994 (6) SCC 651 and "M/s. Michigan Rubber(I) Ltd vs State Of Karnataka & Ors" reported in 2012 (8) SCC 216 (Para 23).

20. In the present case, the main ground of challenge to the tender notice issued by the fourth respondent is dropping the 'experience clause'. In the considered view of this Court, certain incidents which took place where a cartel was attempted to be formed and they also went on a flash strike and thereby the entire milk supply came to a stand still, made the respondents to have a rethink to break this cartel. Therefore under the changed circumstances, it was thought fit to drop the

'experience clause' in the present tender. This Court does not find any arbitrariness in the decision taken by the respondents. As rightly contended by the learned Advocate General, the respondents have only attempted to widen the scope of participation by opening up the tender and the judgment in "Shimnit Utsch India Pvt. Ltd. & Anr. -Vs- West Bengal Transport Infrastructure Development Corporation Ltd. & Ors." referred supra clearly supports the stand taken by the respondents.

21. The rest of the two grounds raised by the learned Senior Counsel appearing on behalf of the petitioners has been sufficiently met by the learned Advocate General. In any case, these two grounds cannot in any way entitle this Court to interfere with the tender notice issued by the fourth respondent.

22. A careful look at the tender notice issued by the fourth respondent shows that the tender has been floated on the basis of routes. It has been divided as Group-A (more than 500 Kms), Group- B (more than 200 Kms) and Group-C (less than 200 Kms). The tenderer is permitted to offer even one route in each group for every one road milk tanker offered in the tender. This would mean that there will be very wide participation since the routes are scattered throughout the length and breadth of the State of Tamil Nadu covering various districts. The tender notice issued by the fourth respondent in fact gives a lot of scope for a very wide participation and this Court is not in agreement with the allegation made by the petitioners that the tender notice will benefit only a group of participants. On the contrary, the removal of 'experience clause' has actually widened the scope of participation in the tender process.

23. In view of the above discussion, this Court does not find any ground to interfere with the impugned tender notice issued by the fourth respondent dated 17.07.2020. Accordingly, both the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Principal Secretary to the Government
   Department of Animal Husbandry Fort. St.George
   Chennai - 600009

2. The Managing Director
   The Tamil Nadu Co operative Milk Producers
   Federation Ltd. (Transport Unit) 3-A
   Pasumponmuthuramalinganar Road
   Chennai - 600035

3. The Deputy General Manager
   The TamilNadu Co-operarive Milk Producers
   Federation Ltd. Transport Unit Madhavaram
   Milk Colony Chennai - 600051.

4. The Joint Managing Director
   The Tamil Nadu Co operative Milk Producers
   Federation Ltd. 29&30, Industrial Estate
   Ambattur, Chennai 600 098.

+1cc to Mr.S.Senthil, Advocate, Sr.No.28619
+1cc to Mr.R.Balaramesh, Advocate, Sr.No.28704

Pre-Delivery Order in
W.P.Nos.11950 & 11953 of 2020

pp (co)
rr ii (07/10/2020)