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W.P.A. 13364 of 2021
Falak Industries Fuels Private Limited
-Versus-
Union of India & Ors.
(Via Video Conference)

Mr. Sanjay Mukherjee,
Mr. Dhananjay Nayak
…for the petitioner

Ms. Ashima Ray Choudhury
…for the Union of India

Mr. Tilak Kumar Bose, ld. Sr. Adv.,
Mr. Somenath Bose
…for the respondent nos. 2, 3 and 4

The writ petitioner is aggrieved by the Notice Inviting Tender in August 2021 for Collection and Disposal of the Waste Oil from Merchant vessel Haldia Dock Complex for a period of three years.

Mr. Mukherjee, learned counsel for the writ petitioner places Clause 3:2 of the NIT which specified that the intending tender successfully completed during the last seven years upto July 31, 2021 of various values.

It is argued that the said Clause has been introduced for the first time by the Port Trust and did not feature in the earlier NITs issued. It is also submitted that the real object and purpose behind the clause is to prevent and exclude, inter alia, the persons like the petitioner to compete in the contract.

It is now well-settled by the Hon'ble Supreme Court inter alia in the case of **Michigan Rubber**

(India) Ltd. v. State of Karnataka reported in **(2012) 8 SCC 216** that the State in the process of distribution largess has the right specify the terms and conditions thereof. No presumption can be drawn that such conditions cannot be included to benefit any party or prejudice the other. Paragraph 35 of the said decision is set out hereinbelow:

> "**35.** As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with 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. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

Mr. Tilak Kumar Bose, learned Senior Counsel appearing for the Port Trust also submits that the writ petition may have become infructuous for the fact that the last date of submission of tender expired on September 2, 2021 and the writ petitioner did not even bother to participate therein.

In that view of the matter, the writ petition shall stand dismissed.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)