IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9714 OF 2021

M/s Kohli Advertising (OPC) Private
Limited through Director
Ekamsingh Kohli .. Petitioner

V/s

The Pimpri Chinchwad Municipal
Corporation .. Respondent

WITH

WRIT PETITION NO. 956 OF 2022

M/s Make Multi Services Group
Through Sole Proprietor Ekansingh Kohli .. Petitioner

V/s

The Pimpri Chinchwad Municipal
Corporation .. Respondent

CORAM : A. A. SAYED &
ABHAY AHUJA, JJ

DATED : 13TH APRIL, 2022

JUDGMENT :- (PER ABHAY AHUJA, J)

1. The petitioners in these two petitions are challenging the order dated 8th January 2022 by which the Commissioner, Pimpri-Chinchwad Municipal Corporation has cancelled two E Tender notices viz. E-Tender

notice no. 1/1 to 138/2019-20 and E-Tender notice no. 4/1 to 185/2018-19 allowing the bidders refund of EMD and FDR.

2. The Respondent Corporation had issued the two E-tender notices and invited bids with respect to publication of advertisement by way of sky signs at various sites within its limit. The two petitioners had put in 14 bids respectively and were also selected as the highest bidders in respect each of the 14 bids. Thereafter, they were required to submit security deposits in the form of FDRs as well as submit affidavits and agreements.

3. Mr Kothari, learned counsel for petitioners would submit that Petitioners had submitted the documents including the affidavits as well as the security deposits by way of FDRs in time and had also kept the agreements ready for sealing and that there has been no delay on their part, which is disputed by the Respondent Corporation. He further submits that it is in view of the Anti-Corruption Bureau action leading to the lodging of the FIR by the Petitioners with the National Crime Bureau under various provisions of the Prevention of Corruption Act, 1988 and the Indian Penal Code against the Chairperson of the Standing Committee of the Respondent Corporation also involving certain

employees of the Respondent Corporation in connection with the sealing of the agreements from the standing committee with respect to the subject tenders where Petitioners were held to be the highest bidders, that the Respondent Corporation had firstly delayed in the execution of the agreements and secondly failed to issue work orders and has now finally cancelled the tenders during the pendency of the petitions only to frustrate the case of Petitioners. Learned counsel would submit that in this view of the matter, Petitioners have been isolated and their tenders cancelled even without hearing them which is completely in breach of the principles of natural justice.

4. It is submitted that even otherwise the reasons given in the order cancelling the tenders are totally incorrect as there is been neither any delay in the process for more than 3 years nor Petitioners have delayed in submission of agreements or affidavits or in depositing FDRs.

5. It is further submitted that the new outdoor media policy is not even approved by the general body. It is further submitted that the reasons for cancellation of the tender that the same is due to the smart city notification of the Centre and the State is also fallacious as Pune was made a smart city much earlier.

6. Learned counsel for Petitioners would also submit that in both the tender cancellation orders shelter of the tender conditions no. 23/21 and 24 has been taken, which is not permissible in view of the Central vigilance commission guidelines which requires proper reasons to be given for cancelling a tender. He would submit that the said orders are passed only with an intention to frustrate these petitions.

7. Petitioners are therefore seeking a relief that the orders cancelling the tenders be withdrawn and the Respondent Corporation be directed to execute the agreements with respect to the tenders where the petitioners were selected as highest bidders and for issuance of work orders in respect thereof.

8. The Respondent-Corporation has filed its replies dated 13th January 2022 wherein it has opposed the Petitions on following grounds :

(i) Non Joinder of Chairperson of the Standing Committee of the Respondent-Corporation, though necessary party to the Petitions.
(ii)The Petitioners' delay in submitting requisite documents requisite documents such as agreement, security deposit (FDRs) along-with Affidavit to the Corporation.
(iii) Petitioners having erected illegal sky signs boards hoardings at 11 sites.

9. With respect to the anti corruption complaint to the Anti Corruption Bureau and subsequent FIR against the Chairperson of the Standing Committee of the Corporation, it is submitted that the investigation is going on and is not complete and the charge-sheet is yet to be filed. It is stated that the decision to cancel the tenders is due to policy decision of the year 2021 with respect to different outdoor media policy and to replace the existing policy.

10. It is submitted vide paragraph no. 8 of the reply that pursuant to the directions from Central and State Governments regarding the development of Pune as a smart city, the Respondent-Corporation, has come out with a proposed draft of outdoor media Policy, 2021 with respect to the media publicity of the hoarding in the municipal limits of the Corporation which will lead to beautification of the city and also add to the revenue growth of the Corporation. This policy decision has been taken to phase out all earlier existing hoardings. It is stated that in view of the policy and delay on the part of the highest bidder to submit their documents, FDRs etc., the Corporation has cancelled the tenders. It is stated that all the balance tenders have been cancelled pursuant to order dated 8th January 2022 which included 14 tenders of the Petitioners. Petitioners have not been singled out or isolated and similar action has been taken against all the tenders and none of the bidders

have got work order except 64 under the tender notice for 185 tenders, who had already been given work orders earlier. It is stated that Petitioners are the only tenderers who have approached this Court.

11. It is submitted that the cancellation of tenders are in accordance with clause 23/21 and 24 of the terms of tender notices. It is submitted that Petitioners have not incurred any cost towards the tender and hence no prejudice will be caused to him by said cancellation. It is submitted that the cancellation is done in the larger interest of the city, its citizens and keeping in mind of policy of Smart city and Outdoor media policy of 2021.

12. It is stated that the old policy of hoardings being erected on various sites, which remain for several years, deface and hamper the beautification of the city is done away with and under the new policy, the vision of smart city project is being implemented.

13. In this view of the matter, it is submitted that no relief be granted to Petitioners and Petitions be dismissed. It is also submitted that since Petitioners' activity is a commercial activity, Petitions ought not to be entertained inasmuch as Petitioners are free to pursue their legal rights before an appropriate Civil Court.

14. Mr. Kedar Dighe, learned Counsel for the Respondent-Corporation, vehemently opposes the Petitions. He relies upon the Affidavit-in-Reply to submit that Petitioners' have not only committed illegality by erecting skysigns on the various sites without permission but also caused inordinate delay in complying with the conditions of the tenders, in submission of the documents, etc. He would submit that Petitioners have made false and baseless allegations in respect of an ongoing investigation without even caring to make the Chairperson of the Standing Committee as a party to these Petitions.

15. Learned Counsel for the Corporation submits that in any event all the tenders have been cancelled across the board as policy of the Corporation which is line with the directions of the Central and State Governments with respect to Smart City. He submits that new Outdoor media policy of 2021, clearly stipulates that Corporation themselves will be putting up sky-signs/ hoarding keeping in mind the smart city project, beautification of city and revenue growth sought to be achieved and therefore there is no arbitrariness in cancelling of the tenders. He submits that Petitioners case áre not being considered in isolation and cancellation orders are in respect of the balance tenders which include 14 tenders awarded to Petitioners and there is no discrimination. He would submit that Petitioner had approached this Court with unclean

hands by suppressing vital facts of delay in submitting documents which eventually led to delay in issuing work orders and cancellation of the tenders on 08.01.2022. He submits, not only that, Petitioners have admitted by letter dated 16th September 2021, of having illegally erected Sky-signs on 11 sites and earned revenue at the cost of public exchequer/ general public at large. He submits that granting any relief to Petitioners would have adverse effect on the whole city and its citizens and vision of the smart city project and the hoardings will remain for several years and deface the city. He therefore submits that no relief be granted to Petitioners and Petitions be dismissed.

16. The Petitioners have also filed rejoinders seeking to include further documents in support of their contentions.

17. We have heard Mr. Sumit Kothari, learned Counsel for the Petitioner as well as Mr. Kedar Dighe, Learned Counsel for the Respondent-Corporation. We have with their assistance perused the papers, proceedings and the material placed before us.

18. It is trite law that judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and favoritism. In matters of challenge to tenders, the scope of judicial

review is to only examine as to whether the decision has been made lawfully or not, and not whether the decision is sound. Evaluating tenders and awarding contracts are essentially commercial functions and if the decision with respect to a contract is *bonafide* and in public interest, courts are well advised not to exercise power of judicial review or interfere even if a procedural aberration or error in assessment or prejudice to tenderer is made out. Such a power is not to protect private interest at the cost of public interest or private contractual disputes. The tenderer or contractor or bidder with a grievance is always at liberty to seek such reliefs in a civil court.

19. The Hon'ble Supreme Court in the case of ***Tata Cellular V/s. Union of India [1994 SCC (6) 651]*** has lucidly enunciated the scope of judicial review of administrative action in tender matters. The following paragraphs 70, 74, 77 and 81 are apt and are quoted as under :-

> *"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. 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.

74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

77. The duty of the court is to confine itself to the question of legality. Its concern should be :

(1) Whether a decision-making authority exceeded its powers?

(2) committed an error of law,

(3) committed a breach of the rules of natural justice,

(4) reached a decision which no reasonable tribunal would have reached or,

(5) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesday unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for Home Departt., ex p Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether *something has gone wrong of a nature and degree which requires its intervention'.*

81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in Emma Hotels Ltd. v. Secy. of State for Environment, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in R. v. Bernet London Borough Council, ex p Johnson the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down."

20. Let us examine the impugned orders dated 8 January 2022 issued by the Respondent Corporation cancelling the tenders with respect to the subject tender notices. For the sake of convenience one such order with respect to 138 tenders is reproduced as under:

"Read 1)E-Tender Notice No.1/1 to 138/2019 -20

2)Term No. 23 and 24 in E-Tender Notice No. 1/1 to 138/2019-20

3)Maharashtra Municipal Corporation Act Section 244 and 245

4)Proposal dated 08/01/2022 before the Hon'ble Commissioner

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Pimpri Chinchwad Municipal Corporation
Pimpri 411 018
Sky-sign and License Department
No. AAP/7/KAVI/8/2022
Dated 08/01/2022

Subject - Cancellation of pending 66 Tenders from E-Tender Notice No. 1/1 to 138/2019-20

Order -

By E-Tender Notice No. 1/1 to 138/2019-20 the Skysign and License Department of Pimpri Chinchwad Municipal Corporation had called upon Bids for erecting Advertisement on the lands owned by the Corporation. Out of 138 tenders, 79 bids were received and out of those 79 bids 13 bids were already cancelled. The bidders of remaining 66 tenders have delayed the process. Therefore, the Municipal Corporation has incurred financial loss. Recently the PCMC has been declares as a Smart City. Municipal Corporation has come up with a new Advertisement Scheme for road safety of people and beautification of city. New Advertisement scheme is for beneficial of beautification of the city.

Accordingly, for the growth of income of the Municipal Corporation, the Municipal Corporation are calling for E Tenders by erecting the attractive and strong Advertisement board on its own on their property. This will help in beautification of the city. This will also help in growth in income of the Corporation and benefit of the Advertising agencies.

I have reached to the following conclusion in respect of the remaining 66 pending tenders,

1. The said tender process has taken more than 3 years.

2. The bidders have delayed in submitting Agreements, Affidavits and depositing FDR's.

3. It is possible that the Advertisement boards would be in against the new Advertisement Policy.

4. Municipal Corporation are calling for E Tenders by erecting the attractive and strong Advertisement board on its own on their property. The same will be available for the Bidders.

After considering the above, I am of the opinion that considering the public safety and the beautification of the City and for the growth of income of the Corporation, the process of the remaining Tenders is hereby stopped as per the term no. 23 and 24 of the Tender.

I, undersigned the Commissioner of the Pimpri Chinchwad Municipal Corporation, Pimpri 411 018 by this order, hereby cancel remaining 66 bids/tenders bearing No.s 1/1,2,3,4,6,14,15,16,19, 23,26,28,29,32,33,35,38,40,42,43,44,45,46,47,48,50, 51,52,53,54,55,57,59,63,67,68,87,88,90,92,93,94,94, 95,101,107,111,112,113,114,115,116,117,118,119,1 21,122,123,124,125,127,128,130,134,136,137/2019-20 out of E-Tender Notice No. 1/1 to 138/2019-20 the Skysign and License Department of Pimpri Chinchwad Municipal Corporation as per terms no. 23 and 24 of the E tender and the bidders are entitled for the refund of EMD and FDR.

Rajesh Patil
Commissioner
Pimpri Chinchwad Municipal Corporation
Pimpri 411 018

Cc – Concerned Bidders"

21. With respect to the tender notice relating to 138 tenders, 79 bids were received and out of the 79 bids, 13 bids were already cancelled. The balance 66 bids have been cancelled citing reasons of the Respondent Corporation being a smart city, is coming up with new advertisement schemes for road safety of people and for beautification of city in addition to revenue growth for the Corporation; it has also been stated that the tender process has taken more than 3 years; that the bidders have delayed in submitting agreements, affidavits and in depositing the FDR's; and that after considering all these reasons and public safety and beautification of the city in addition to income growth, the tenders have been cancelled under clauses 23 and 24 of the tender conditions but entitling the tenderers to refund of the EMD and FDRs. With respect to the tender notice relating to the 185 tenders, 82 tenders were not responded and therefore cancelled. Out of the remaining 103, 64 bidders had submitted the documents in time and therefore work orders were issued in respect thereof. With respect to the remaining 39 tenders since the process was ongoing for the past 3 years and due to similar reasons as mentioned in the case of 138 tenders, in view of clause 21, the tenders in respect of the remaining 36 tenders, were cancelled.

22. The said conditions 23/21 and 24 are quoted as under :

> *“२३)कोणत्याही एक किंवा सर्व निविदा स्विकारण्याचा अथवा कोणतेही कारण न देता नाकारण्याचा अधिकार मा.आयुक्त यांनी राखून ठेवला आहे.*
>
> *२४) निविदा कालावधीत महानगरपालिकेस सदर जागेची आवश्यकता असलेस किंवा इतर काही कारणास्तव फलक रद्द करणेचा अधिकार मा.आयुक्त यांना राहील.”*

As can be seen from term 23/21, all the rights to accept or reject a tender have been reserved with the Commissioner of the Respondent Corporation. As per term 24, during the pendency of the tender, in the event the Respondent Corporation would need the space or for any other reason, the right to cancel the tender would be with the Commissioner.

23. In our view, it is not on the basis of the conditions above that the tenders have been cancelled. We are not concerned with the soundness of the decision but the decision-making process i.e whether while deciding to cancel the pending tenders, the Respondent Corporation had acted arbitrarily or unreasonably or with a malafide intent. In writ jurisdiction, we are not required to go into the sufficiency or the adequacy of those reasons but whether any reason has been furnished or not. The fact that reasons such as

new advertisement schemes for the road safety of people or for the beautification of the city in addition to revenue growth coupled with the delay in finalising the pending tenders have been cited to cancel all the pending tenders, would be sufficient to deter us from interfering with the decision to cancel the tenders. Further Petitioners have not been singled out nor have petitioners case been treated in isolation to the others. The Respondent Corporation, in our view, has taken a decision to cancel all the tenders for reasons it considered in its wisdom appropriate to do. The reasons, in our view fall in the realm of public interest/public law. The decision of the Respondent Corporation therefore cannot be said to be arbitrary or unreasonable or malafide. Petitioners have not been able to place before us any material which demonstrates fraud or malafides or perversity. On the basis of mere allegations, decisions in respect of tenders of this nature cannot be interfered with. Also the investigation with respect to the FIR pursuant to the anti-corruption action is pending completion and the chargesheet is yet to be filed, which facts are not disputed by petitioners. In any event, in the facts of the present case, we find that there are serious corruption charges made in the tender process and we would refrain from interfering in the decision of cancellation of tenders rather than issue of mandamus for awarding the tenders. If corruption charges are proved in the process of tenders, it would anyways vitiate the entire tender process. We say this and no more as firstly the investigation is still going on and secondly as observed earlier, we have a limited jurisdiction only with respect to the decision-making process in the cancellation of the tenders.

24. In ***Rishi Kiran Logistics Private Limited V/s. Board of Trustees of Kandla Port Trust and Others [(2015) 13 Supreme Court Cases 233],*** the Hon'ble Supreme Court while dealing with the subject of Government contracts / tenders had the occasion to consider not only competing claims of private interest versus public interest, but also how under Article 226 of the Constitution only public law remedy could be invoked and contractual dispute would be outside such purview. The Hon'ble Supreme Court cited its own decision in the case of ***M.P. Mathur V/s. DTC, (2006) 13 SCC 706]*** where it was held that "once public interest is accepted as the superior equity which can override individual equity, the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced

persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal." It was held in that case that merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances and if a party acted on the basis of the principle of "promissory estoppel" on the basis of the notification, it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest.

25. In our view, this decision of the Hon'ble Supreme Court would support the case of the Respondent Corporation which has cancelled the pending tenders which include Petitioners' 14 tenders in respect of each of the tender notices. Also from the facts, it does not appear that there was any concluded contract as the agreements were not signed. In our view, considering the decision of the Hon'ble Supreme Court in the case of ***Rishi Kiran Logistics Private Limited (supra)*** as well as the decision of the Hon'ble Supreme Court in the case of ***M.P. Mathur V/s. DTC (supra)*** the Respondent Corporation was well within its rights to cancel the tenders. Even otherwise, under this jurisdiction, in the facts of the

present case, we would not be able to adjudicate on reliefs for breach of contract as that would purely be in the realm of contract to be dealt with by a Civil Court. The public law remedy by way of a Writ Petition under Article 226 of the Constitution, is not available to seek specific performance or damages. It is also trite law that petitioners cannot claim a fundamental right to do business with the Respondent Corporation.

26. As observed by us, the decision of the Respondent Corporation to cancel the tenders was neither arbitrary nor unreasonable nor malafide. The Respondent Corporation has come up with a new Outdoor Media Policy whereby it seeks to implement the Smart City Project, beautify the city by using its own space and for revenue growth for which, it proposes to float fresh e-tenders, in which view of the matter, it cancelled the said tenders. There can hardly be any argument, therefore, that the decision of the Respondent Corporation is arbitrary. In our view, it is based on valid considerations. It is also trite law that while dealing with the administrative law aspects, the contractual elements are not necessary to be dealt with as those are matters to be examined separately by a Civil Court. Therefore, the same cannot be said to be unreasonable. This Court in judicial review cannot sit in

judgment over the decision of a public body which is of the view that it need not go further ahead with the tender process. In the present case as we have observed, there are reasons for cancellation of the tenders. In this context, Paragraphs 22, 27, 31, 37, 38, 45 of the decision in the case of ***Rishi Kiran Logistics Private Limited (supra)*** are usefully quoted as under :

> *"22. When competing claims are private interest v. public interest, then in the case of disposal of public property the question would be whether the right of the person, who has earned the right to the public property in a public auction, is to be preferred over the right of the public in ensuring that valuable public assets were not disposed of except for a fair price and in a fair and transparent manner. Whether this Court should, in judicial review, sit in judgment over the decision of a public body which is of the view that it need not go further ahead with the tender process. It is true if such a decision is taken without any reasons to support it or mere ipse dixit it would be arbitrary. In this case there are reasons. The High Court analysed the reasons and has taken the view that those reasons are valid. In our view in matters particularly to the disposal of valuable assets by the State when the State seeks to explore the possibility of getting higher price (sic).*
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> *27. In so far as argument of malafides is concerned, apart from bald averment, there are no pleadings and there is not even a suggestion as to how the aforesaid decision was actuated with malafides and on whose part. Even at the time of arguments Mr. Vikas Singh did not even advert to this aspect. In fact, the entire emphasis of Mr. Vikas Singh was that since there was a concluded contract between the parties, cancellation of such a contract amounted to arbitrariness. As already pointed out above that can hardly be a ground to test the validity of a decision in administrative law. For the sake of argument, even if you presume that there was a concluded contract, mere termination thereof cannot be dubbed as*

arbitrary. A concluded contract if terminated in a bonafide manner, that may amount to breach of contract and certain consequences may follow thereupon under the law of contract. However, on the touch stone of parameters laid down in the administrative law to adjudge a decision as are arbitrary or not, when such a decision is found to be bonafide and not actuated with arbitrariness, such a contention in administrative law is not admissible, namely, how and why a concluded contract is terminated.

31. In M.P.Mathur v. DTC it was held that :(SCC p.708)

"Once the public interest is accepted as the superior equity which can override individual equity, the principle would be applicable. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification, it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest."

37. The questions before the Supreme Court in Kisan Sahakari Chini Mills Ltd. case were: (i) Whether the High Court was right in concluding/assuming that there was a valid contract? and (ii) Whether the High Court was justified in quashing the order of the Secretary (Sugar)? This Court answered the aforesaid questions in the negative and set aside the judgment of the High Court holding that : (SCC pp. 501-02)

"Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He would be entitled to the relief of specific performance, if the contract was capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm of contract are dealt with by civil courts. The public law remedy, by

> *way of a writ petition under Article 226 of the Constitution, is not available to seek damages for breach of contract or specific performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 may be invoked."*

It is clear that the aforesaid case is closest to the facts of the present case.

38. It thus stands crystalised that by way of writ petition under Article 226 of the Constitution, only public law remedy can be invoked. As far as contractual dispute is concerned that is outside the power of judicial review under Article 226 with the sole exception in those cases where such a contractual dispute has a public law element.

45. We again emphasise that the issue of the argument of there being a concluded contract is raised in a petition filed under Article 226 of the Constitution and not by way of suit. The issue whether there was a concluded contract and breach thereof become secondary and is examined by us with that limited scope in mind. In such proceedings main aspect which has to be is as to whether impugned decision of the Port Trust was arbitrary or unreasonable. It is also important to remark that in a given case even if it is held that there was a concluded contract, whether specific performance can be ordered or not would be a moot question in writ proceedings. The appellant took the calculated risk in not going to the civil court and choosing to invoke extraordinary jurisdiction of the High Court, which is also discretionary in nature."

27. In our view, the Respondent Corporation cannot be said to have acted unreasonably and the act of cancelling all the tenders cannot be said to be discriminatory nor arbitrary nor unreasonable.

28. In view of the above discussion, the above Writ Petitions are dismissed with no order as to cost. We make it clear that the dismissal of these Writ Petition shall in no manner influence the investigation of corruption charges or outcome of criminal proceedings, if any. The contention of the Petitioners that the motive for cancellation of the tenders is to shield the guilty person cannot be determined by us in our limited writ jurisdiction and this issue is kept open.

29. We also make it clear that Petitioners are at liberty to agitate their claim for damages before an appropriate civil court. All contentions are left open. We also leave it open for the petitioners to seek refund of EMD/FDR in accordance with the orders dated 8th January, 2022 of the Respondent-Corporation.

(ABHAY AHUJA, J.) **(A. A. SAYED, J.)**

NIKITA YOGESH GADGIL Digitally signed by NIKITA YOGESH GADGIL Date: 2022.04.13 14:41:25 +0530