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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.02.2022

PRONOUNCED ON : 14.02.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOS.2240, 2246, 2250 & 2412 OF 2022

AND

WMP NOS.2412, 2414, 2417, 2419, 2420, 2421,
2423, 2424, 2425, 2580, 2582& 2586 OF 2022

M/s. Lehar Footwears Ltd.,
Rep. by its Authorised signatory
Mukesh Kumar Singh
A-243(A), Road No.6,
V.K.I. area, Jaipur,
Rajasthan, India

... Petitioner in W.P.No.2240 of 2022

M/s.Mahavir Polymers Private Ltd.,
Rep. by its Authorised signatory
Rajesh Kumar Mishra
FE-16-17, Malviya Industrial Area,
Jaipur 302 017.

...Petitioner in W.P.No.2246 of 2022

M/s.Mahavir Polymers Private Ltd.,
Represented by its Authorised signatory
Rajesh Kumar Mishra
FE-16-17, Malviya Industrial Area,
Jaipur 302 017.

...Petitioner in W.P.No.2250 of 2022

M/s.BNG Fashion Gears Pvt. Ltd.,
Regd. Off.: 313/76A, Tulsi Nagar,
Inderlok, Delhi - 110 035
Factory: 319-320, Sec17,
HSIIDC, Bahadurgarh - 124 507 (HR),
Through its Authorised Signatory
Kavita Kallakuri

...Petitioner in W.P.No.2412 of 2022

Vs



1. The Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai 600 009.

2. The Chairman,
Tamil Nadu Textbook & Educational
Services Corporation,
EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai 600 006.

3. The Managing Director,
Tamil Nadu Textbook & Educational
Services Corporation,
EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai 600 006.

...Respondents in WP.Nos.2240, 2246 & 2250 of 2022

Tamilnadu TextBook and Educational
Services Corporation,
EVK Sampath Maaligai, D.P.I. Campus,
68, College Road,
Chennai-600 006.
Tamil Nadu, India
Email:adur.tntbesc@tn.gov.in
Represented by Managing Director,
Tender Inviting Authority.

...Respondent in WP.No.2412 of 2022

COMMON PRAYER in W.P.Nos.2240 & 2246 of 2022: PETITIONS filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus challenging the Corrigendum dated 29.01.2022 in tender document for procurement of Velcro Sandals vide reference No.10449/PUR-1/2021 in so far as Clause 4.4.5 issued by the 3rd respondent herein and quash the same and consequently direct the 3rd respondent to accept the bids submitted by the Petitioner.

PRAYER in W.P.No.2250 of 2022: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus challenging the Corrigendum dated 29.01.2022 in tender document for procurement of Shoes vide reference No.10450/PUR-1/2021 in so far as Clause 4.4.5 issued by the 3rd respondent herein and quash the same and consequently direct the 3rd respondent to accept the bids submitted by the Petitioner.



PRAYER in W.P.No.2412 of 2022: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the record on the file of the Respondent pertaining to Tender REF.RC.NO.10449/PUR-1/2021 for supply and delivery of 25.89 lakhs pairs of Footwear (VELCRO SANDAL) and quash the corrigendum dated 29.01.2022, further direct the Respondent to withdraw the corrigendum dated 29.01.2022 as far as it amends the clause 4.4.5 of the Tender document and restore the original clause 4.4.5 of the tender document.

For Petitioners in W.P.Nos.2240, 2246 & 2250 of 2022

: Mr.AL.Somayaji, Senior Counsel
for Ms.Karthikei Balan

For Petitioner in W.P.No.2412 of 2022

: Mr.Neeraj Malhotra
for Mr.Jitender Mehta

For Respondents in all WPs

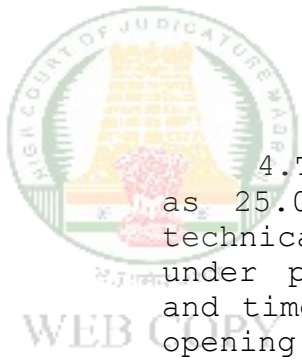
: Mr.J.Ravindran,
Additional Advocate General
Assisted by Ms.Mythree Chandru,
Special Government Pleader

C O M M O N O R D E R

This common order disposes four writ petitions filed by companies claiming to be engaged in the business of manufacturing footwear of various kinds including velcro sandals. They also claim to have supplied shoes to Government Departments as well as private entities pan India.

2.The challenge in common is to an amendment made on 20.01.2022 to a notice inviting tender (NIT) dated 20.12.2021 in relation to a tender floated by the Tamil Nadu Textbook and Educational Services Corporation (Corporation) for supply and delivery of velcro sandals for school children in the State of Tamil Nadu on annual rate contract basis for academic year 2022-23.

3.W.P.Nos.2246 & 2250 of 2022 have been filed by Mahavir Polymers Pvt. Limited in relation to the amendment in eligibility criteria in two NIT relating to shoes and velcro sandals and W.P.Nos.2412 & 2240 of 2022 by BNG Fashion Gears and Lehar Footwears in relation to NIT to velcro sandals alone.



4.The NIT stipulated the last date for submission of tender as 25.01.2022 up to 3.00 p.m. and the date for opening of technical bid was fixed on 25.01.2022. The schedule was revised under proceedings dated 19.01.2022, stipulating the last date and time as 04.02.2022 up to 2.30 p.m. and the date and time of opening of technical bid as 04.02.2022 at 3.00 p.m.

5.There was yet again, a revision on 20.01.2022, stipulating the last date and time as 02.02.2022 up to 2.30 p.m. and the date and time of opening of technical bid as 02.02.2022 at 3.00 p.m. For the fourth time the schedule was revised under proceedings dated 01.02.2022 extending the date till 09.02.2022 up to 2.30 p.m. and the date and time of opening of technical bid was fixed as 09.02.2022 at 3.00 p.m.

6.The specific grievance of the petitioners relates to the amendment made by way of corrigendum to the eligibility criteria in participating in the tender process. The original and amended criteria under impugned proceedings in R.C.No.10449/POR-I/2021 dated 29.01.2022, are set out below:

Tamil Nadu Textbook and Educational Services Corporation,
Chennai-6.

Rc.No.10449/PUR-I/2021

Date: 29.01.2022

Procurement of Footwear (Velcro Sandal) for the year 2022-2023
Corrigendum and Clarification / Remarks on the queries raised in
the Pre-Bid Meeting held on 06.01.2022 at 11.30 A.M.

CORRIGENDUM

CLAUSE	EXISTING	AMENDED
4.4.5 Past Experience	4.4.5Past Experience: The tenderer should have supplied, at least 1,30,000 pairs of Footwear (Velcro Sandals) i.e.5% of the tendered quantity of 25.89 lakh of Footwear (Velcro Sandals) in any one of the last three financial years.	4.4.5 Past Experience: The tenderer should have supplied with any Government / Boards / Local Bodies / Universities, at least 1,30,000 pairs of Footwear (Velcro Sandals) @ 5% of the tendered quantity of 25.89 lakh of Footwear (Velcro Sandals) in any one of the last three financial years.



CLAUSE	EXISTING	AMENDED
	(Supporting documents including invoices shall be enclosed along with the tender as per Annexure.)	(Supporting documents including invoices shall be enclosed along with the tender as per Annexure.)

7.While the petitioners were eligible to participate in the tender as per the original condition, which is that tenderer should have supplied at least 1,30,000 pairs of Velcro Sandals i.e. 5% of the tendered quantity of 25.89 lakh in any one of the last three financial years, vide the amendment, an additional condition was imposed that the supply as per original condition ought to have been to any Government/Board/Local body/University.

8.Since the petitioners have not supplied to a Government/Board/Local Body/University, they lose their eligibility as per the amended eligibility criterion and are thus, aggrieved, alleging that the amendment is motivated, unworkable, designed to benefit a small group of interested persons, unreasonable and arbitrary.

9.The submissions of Mr.A.L.Somayaji, learned Senior Counsel for Ms.Karthikei Balan, learned counsel on record for the petitioners in W.P.Nos.2240, 2246 & 2250 of 2022, Mr.Neeraj Malhotra, learned Senior Counsel for Mr.Jitender Mehta, learned counsel on record for the petitioner in W.P.No.2412 of 2022 and Mr.J.Ravindran, learned Additional Advocate General assisted by Ms.Mythree Chandru, learned Special Government Pleader for the respondents, are set out below.

10.The petitioners allege that it is only the State of Tamil Nadu that engages in the supply of velcro sandals and nowhere in India has any State Government floated such a tender. Thus, the impugned condition will enable only those suppliers who have participated in the previous years eligible to participate in the tender process. To this the State would state that this, by itself, does not vitiate the tender or the amendment, as it is the prerogative of the State to decide on the product to be supplied to the school children.

11.The impugned condition results, according to them, in the formation of a cartel monopolizing the tender for velcro sandals. Prices quoted by the favoured participants may well could be onerously high, and in the absence of the competition that has been eliminated now, would result in a loss to the exchequer.



12.The petitioners in W.P.Nos.2240, 2246 & 2250 of 2022 have made representations on 30.01.2022, the day after the issuance of the corrigendum requesting withdrawal of the corrigendum to which till date, there is no response forthcoming. Legal notices dated 01.02.2022 have also been sent by the petitioner in W.P.Nos.2240, 2246 & 2250 of 2022 which also, till date have not been responded to.

13.Challenging the maintainability of the writ petitions, Learned AAG has circulated the tender document for the period 2020-2021 which contains an identical condition imposed for the year 2020-2021 though as part of the original NIT and not by way of corrigendum. He alleges that some of the petitioners had participated in the tender of velcro sandals even in 2020-2021, unsuccessfully, and thus cannot be permitted to raise the question now.

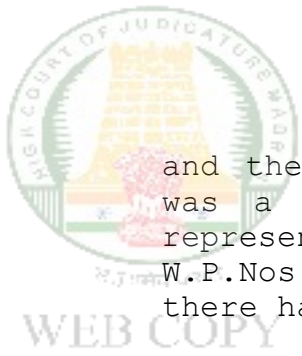
14.Upon being faced with this situation, the petitioners would modify their original argument, arguing that though it may not be the first time when the impugned debilitating condition has been imposed, this does not preclude a challenge to the same, if they are able to establish unreasonableness, arbitrariness and an intention to monopolize business. The restriction imposed impinges upon their Fundamental Right and could well be challenged at any point in time.

15.To ascertain the veracity or otherwise of the rival contentions in regard to participation in the past or otherwise, affidavits were called for, both from the petitioners as well as the respondents in this regard. Lehar confirms having participated only in the tender for supply and delivery of shoes for academic year 202-2021 and Mahavir confirms that it has not participated in either tender in 2020-2021.

16.BNG confirms having participated in the tender for velcro sandals in 2020-2021, but there is no disclosure in this regard in the affidavit filed in support of the writ petition. Affidavit dated 09.02.2022 filed by the Corporation corroborates the aforesaid positions.

17.The Corporation challenges the very maintainability of the writ petitions pointing out that none of the petitioners have submitted their bids at the time of filing of the writ petitions. They reiterate the settled position that it is only an interested party that could, if at all, challenge the veracity of tender conditions or procedures.

18.To this the petitioners would respond stating that the time for submission of bids was last extended till 09.02.2022



and the impugned amendments had been made on 29.01.2022, which was a Saturday. The very next day, that is on 30.01.2022, representations had been filed by the petitioners in W.P.Nos.2240, 2246 & 2250 of 2022 followed by legal notices as there had been no response to the representations filed.

19.The petitioners would argue that they had approached this Court at the very first instance which was on 04.02.2022. 05.02.2022 and 06.02.2022 were holidays, being the weekend, and it was only upon a mentions being made before this Court on 07.02.2022 that the writ petitions were listed for hearing.

20.Thus, there was no delay on their part and the non-submission of bids prior to filing of the writ petitions cannot be held against them. They would also point out that a meeting had been held on 06.01.2022 for verification of technical bid when the petitioners had participated and no lacunae/defect had been detected in their eligibility in the light of the original conditions imposed. There had also been an inspection of their manufacturing facilities by competent persons from the Corporation and the infrastructure had passed muster on all counts. There has been dispute raised by the Corporation on any aspect of the matter.

21.The Court, seeing as the matters were being heard on 09.02.2022 which was the last date of submission of bids, permitted the petitioner to submit their bids that would be subject to the result of the writ petition fixing time frames for the purpose. The petitioners have also submitted their bids within the time frames stipulated.

22.On merits, the petitioner rely upon the judgments of the Hon'ble Supreme Court in *Rashbihari Panda Etc. Vs State of Orissa*¹ and Delhi High Court in *Raymond Ltd. Vs North Delhi Municipal Corporation*², *Psj Communications Ltd. Vs Bharat Sanchar Nigam Limited* and *Another*³, *Association of UPS and Power Conditioning Systems Manufacturer Vs Society of Applied Microwave Electronics Engineering and Research (Sameer) & Others*⁴.

23.The above decisions are relied upon in support of the argument of ex facie discrimination between manufactures of velcro sandals who have supplied to Government, Local bodies, Boards and Universities and those who have not, as well on the

¹ (1969) 1 SCC 414

² W.P.(C) No.3122 of 2018, dated 07.05.2018

³ CW No.4466 of 2003 & CM.Nos.7646 of 2003 & 650 of 2004 dated 06.08.2004

⁴ 2002(65) DRJ (DB)



anvil of unreasonableness, arbitrariness and a conscious view to monopolize the Government tender. Additional affidavit dated 09.02.2022 has been filed by the petitioners buttressing the aforesaid arguments by way of additional grounds as well.

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24. Per contra, the State would vehemently submit that there has been no arbitrariness, unreasonableness or intention to monopolize business or cartelize the same. The supervening thread of the argument of the State is that there is nothing arbitrary or unreasonable in their action in the absence of which the Court may not intervene. The corrigendum was necessitated on account of an inadvertent omission to include the additional eligibility criteria in the original tender document.

25. Though this submission is made in the course of oral arguments, it does not find place in the counter where the State merely justifies the addition stating that such a condition was necessitated to ensure that only serious bidders, who had experience in manufacturing velcro sandals and who possess the capacity and resources to supply such a huge quantity in the restricted time window of 120 days, would participate.

26. By way of response the petitioners are quick to point out that they have considerable experience in the manufacture of shoes and sandals and, in the case of one petitioner, has also successfully supplied footwear to this State. Hence, they would argue that the decision of the State to award a contract for footwear need not take into consideration whether they have supplied to other Governments/Universities/Local bodies or Boards and such a requirement is unnecessary and motivated, to say the least.

27. The petitioners draw a comparison with other tenders that have been floated contemporaneous with the present tender, for school bags, raincoats, geometry boxes, crayons, colour pencils and socks for school children, pointing out that the impugned condition of supply to Governments / Boards / Local bodies / Universities, does not figure in those tenders. According to them, the absence of such a condition in the other tenders would lend credence to their argument that the condition has been selectively added in the present tenders alone, with the clear intention to cartelize.

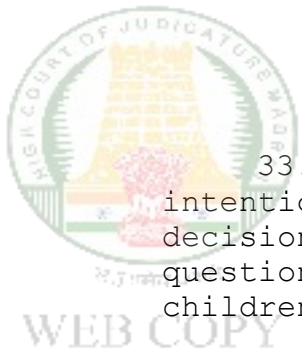
28. While not disputing the above fact, the Corporation brushes aside the argument as being irrelevant as the petitioners, admittedly, have no capacity to participate in the tenders for those products, and they manufacturer and supply only shoes. I do not agree with the Corporation on this score as



29. If at all such a condition were warranted for shoes and sandals, then it is warranted for all other supplies as well, is the petitioners argument and in my view, it deserves consideration to test whether has been any reasonable classification between those products/tenders for which the impugned condition has been imposed and otherwise.

31. The State was called upon to furnish the quantitative details of the other products supplied/proposed to be supplied to school children this year and have furnished a tabulation as follows:

32. The justification provided by the State for the insertion of the additional eligibility criterion in some cases alone, is that only high-value tenders contain the additional condition, and not all the tenders. Thus, and to reiterate, only the tenders for shoes, sandals and school bags that are qualified in excess of a sum of Rs.10 crores alone, contain the impugned condition and this, according to the respondents, constitutes a reasonable classification.



33. In addition, the respondents emphasize that the intention of the State is the welfare of the children and the decision of the State to provide velcro sandals cannot be questioned nor can its desire to supply quality product to children that are easy to fasten and convenient for their use.

34. The State relies upon the judgments of the Hon'ble Supreme Court in the case of Uflex Limited Vs Government of Tamil Nadu and Others⁵; Agmatel India Pvt. Ltd. Vs Resoursys Telecom and Others⁶; K.Jaganathan Vs The State of Tamil Nadu and 3 Others⁷; M/s.Brandmidas Hospitality & Aviation Services (P) Limited Vs Airports Authority of India & Another⁸; M/s.Divya Impex and 2 others Vs State of Tamil Nadu and Others⁹; JSW Infrastructure Limited and Another Vs Kakinada Seaports Limited and Others¹⁰; Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and Another Vs CSEPDITRISHE CONSORTIUM and Another¹¹.

35. They would also emphasize upon the narrow scope of judicial review, and that too only in cases where the petitioners are able to make out manifest perversity, arbitrariness and unreasonableness in the tender. In this case the process has been transparent and the corrigendum, though issued at the fag end of the period, sought to correct an inadvertent omission.

36. The condition was itself well founded and this was not the first instance when such a condition had been imposed. In all, the State would pray for a dismissal of the writ petitions and that they be permitted to proceed with the tenders at the earliest, bearing in mind the interests of the school going children, that are at stake.

37. I have heard the rival contentions and studied the files and cases relied upon. Before advertizing to the challenge on merits, the arguments touching upon the maintainability of the writ petitions would have to be addressed and decided.

38. One of the arguments advanced relates to whether there is any delay in the petitioners having approached this Court at the last moment and without having made a bid themselves. In this regard, it is relevant to note that the impugned corrigendum was

⁵ [(2022) 1 SCC 165]

⁶ (2022) SCC Online SC 113

⁷ W.P.No.705 of 2022 dated 20.01.2022

⁸ W.P.No.35845 of 2019 dated 07.12.2021

⁹ W.P.No.922 of 2016 and batch dated 10.03.2016

¹⁰ (2017) 4 SCC 170

¹¹ (2017) 4 SCC 318



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issued on 29.01.2022, at which point in time, the last date for submission of bids was 04.02.2022. Having issued the corrigendum so close to the final date of submission of tender, it does not lie in the mouths of respondents to allege delay on the part of the petitioner.

39. At the time of technical evaluation on 06.01.2022, simultaneous with which there was an inspection of their manufacturing facilities as well, the petitioners were admittedly, found eligible and not wanting in any respect. A valid bid could thus, have been submitted by them at any time prior to 02:30 p.m. of 04.02.2022. The question of delay on the part of the petitioners thus, does not arise. In fact, and on the contrary, it is a pointer to the inefficiency of the Corporation that, what they claim to be a vital condition, has been omitted to be included even at the first instance and it is first five days prior to the last date of submission, that the omission was detected and corrigendum, issued.

40. The Court had granted leave for the petitioners to submit their bids within a time that was fixed and all four petitioners have done so. Thus, subject to the decision on the merits of the challenge, the bids submitted by the petitioners are held to be in time and their challenge is neither vitiated by delay nor by reason of the petitioners having approached this Court without submission of bids.

41. Yet another issue in connection with which maintainability of the writ petitions is challenged is that some of the petitioners have participated in an earlier tender (for academic year 2020-2021) for shoes and velcro sandals wherein the same condition, as impugned in this writ petition, found place. Having participated unsuccessfully once, the petitioners must not be permitted to challenge the same condition in the succeeding periods.

42. For this purpose, the state has placed on record the tender document for the period 2020-2021 when, admittedly, the same condition, as impugned in this writ petition, that the bidder must have supplied 5% of the total quantity bid to any other Government/University/Board/Local bodies, finds place.

43. Affidavits were called for from the petitioners as well as the State to confirm this position as a matter of fact. The parties have concurred upon the position that the petitioners in W.P.Nos.2240 & 2412 of 2022 have participated in the tender for shoes for the period 2020-2021 and the petitioner in W.P.No.2412 of 2022 has participated in both tenders i.e., for shoes and velcro for the period 2021. BNG Fashion has, however, not made



a disclosure in this regard in the writ affidavit. Though it would have been appropriate had such disclosure been made, this, in my view, does not vitiate the challenge itself and is not fatal to the writ petition.

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44. I concur with the petitioners on the point that merely because a bidder may have participated in an auction with a certain set of conditions for one year, he is estopped from challenging the legality of those conditions in the immediately succeeding periods. The test would be to ascertain whether such a condition has withstood the test of time.

45. Had it been a case where a tender condition had been consistently imposed and had not been challenged by the participants for a reasonable length of time, then in such a case one might accept the argument that a bidder who has participated in the previous bids cannot challenge the condition.

46. However, in the present case, the condition has been part of a tender only once, for the period 2020-2021 and this, in my considered view, would not compromise the maintainability of the present writ petitions. It is also relevant to note that the tender for the subsequent period i.e. 2021-2022 was abandoned on account of pandemic and thus, there has been only one tender with the impugned condition figuring therein. The writ petitions are thus held to be maintainable on this score as well.

47. The Brahmastra of the petitioners relates to what, according to them, is manifest perversity in the impugned eligibility condition imposed by way of corrigendum, at the eleventh hour, restricting the competition with the ulterior motive of favouring a cartel of five persons only.

48. They would argue that Tamil Nadu is the only State wherein students are supplied velcro sandals. Admittedly, the condition had been imposed for the first time in 2020-2021 though the State has been supplying shoes and velcro sandals to students from as early as in 2012.

49. Such introduction, according to them, was specifically to advance the business interests of a few suppliers who were manufacturers of sandals with velcro and to eliminate other players who, though holding considerable experience in the supply of shoes, did not satisfy the condition of having supplied to the State / Universities / Local bodies / Boards.

50. The specific allegation made is that by reason of the restrictive clause introduced by the respondent, 'the rates of the Velcro sandals (which is meant for primary class students)



51. The mathematical anomaly pointed out that would lead to the conclusion of discrimination is best stated in their own language as set out in paragraph 8 of the affidavit filed in support of W.P.No.2412 of 2022, as follows - 'Normally rates of Velcro sandals (meant for students of primary classes) should be lower than shoes (meant for students of class 6th to 10th) but due to restrictive clause put by respondent No.1 in the tender documents, the rates of Velcro sandals always remain high thus causing wrongful loss to government/public money and wrongful gain to some big contractors. Here it is pertinent to mention that if the difference in rates of one pair Velcro Sandal as compare to shoes is about Rs.41/- per pair and total difference of amount in supply of 25,89,000 pairs of Velcro sandals would be $25,89,000 \times 41 = \text{Rs.}10,61,49,000/-$ (Rupees Ten Crore Sixty One Lakhs Forty Nine Thousand only). This about 10 Crore 60 Lakhs rupees is Tax Payer money and can be easily saved by removing the restrictive amended clause 4.4.5. Here it is pertinent to mention that technique, machines and process for manufacturing of Velcro Sandals and school shoes is almost same and logistic arrangement for the supply of Velcro sandals and school shoes are also same therefore amended clause 4.4.5 is totally unjust, unreasonable and totally illegal as such deserve to be set aside.

52. At first blush, their arguments do seem attractive, as the purpose of an auction is to reach as wide a cross-section of manufacturers and suppliers as possible and, to the contrary, the result of the additional condition imposed under the corrigendum, would be to effectively, eliminate new entrants from participation in the tender.

53. At this juncture, it will be of relevance to note a decision of this Court in the case of Shamsons Polymers Pvt. Ltd. Vs. Tamil Nadu Textbook and Educational Services and Others¹², which was filed by that petitioner in similar circumstances, as before me, though the additional, impugned eligibility criterion was not part of the NIT in that case.

54. Shamsons was also a supplier of shoes and sandals and had sought a mandamus directing the Corporation and other respondents to consider the technical bid of that petitioner for supply of Velcro sandals for the period 2018-19. Though the decision itself and the conclusion may not be strictly relevant

<https://hcservices.ecourts.gov.in/hcservices/>



for the present matter, some of the facts, as noted by the learned Judge in that decision, would be relevant.

55. At paragraph-2 of that decision, the learned Judge notes that tenders were being floated from 2012 onwards in supply of shoes to the Tamil Nadu Government aided and nominated schools. In 2018, a tender was floated for supply of velcro sandals to children. Fourteen bidders, including Shamsons, participated in the tender. Out of the fourteen, ten had had the required experience as per the tender conditions.

56. As Shamsons had failed the test in 2017-18 it claimed in that writ petition that it had taken exact care to conform to all the technical specifications in the subsequent year. The same allegation, as made before me now in regard to cartelization, was made in that writ petition as well. It is thus undisputed that tenders are being floated from 2012 onwards, both in respect of shoes and Velcro sandals.

57. That writ petition was dismissed on the ground that the power of the Court did not extend to judicial review of the award of the contract to the private respondents. The settled legal position was reiterated in light of the several judgments of the Hon'ble Supreme Court such as *Municipal Corporation Ujjain Vs. BVG India Ltd.*¹³, *Tata Cellular V. Union of India*¹⁴, *Michigan Rubber v. State of Karnataka*¹⁵, *Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation and others*¹⁶ and *West Bengal State Electricity Board Vs. Patel Engineering Company Ltd. And Other*¹⁷, relied upon by the respondents in this case as well. The Court also noted that though allegations had been made of cartelization, there was nothing brought on record in support of the same.

58. It is a settled proposition that it is the tenderer, or the purchaser, that is the proper entity to fix the eligible criteria in an auction and such selection must be left to him, unless it is established that the conditions imposed are unreasonable and evidently to weed out participation in order to favour a few, select bidders.

59. I now proceed to discuss the cases relied upon by the petitioners. In the case of *Rashbihari Panda Etc. Vs State of Orissa (supra)*, a Constitution Bench of the Hon'ble Supreme

¹³ (2018) 5 SCC 462

¹⁴ (1994) 6 SCC 651

¹⁵ (2012) 8 SCC 216

¹⁶ (2000) 5 SCC 287

¹⁷ (2001) 2 SCC 451



Court considered whether the machinery devised by the Government for the sale of Kendu leaves, in which they had acquired a monopoly, violated their Fundamental Rights, particularly, Articles 14, 19(1)(g) of the Constitution of India.

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60. Kendu, a leaf used in the manufacture of Bidis, was regulated by the issuance of the licenses. Legislature had enacted the Orissa Kendu leaves (Control of Trade) Act, 1961 holding that no person other than the Government, an officer of the Government who was authorized, or an agent in respect of the unit in which the leaves were grown, shall purchase or transport Kendu leaves.

61. The price was to be fixed by the Government after consultation with an advisory committee. The Government was also authorized to appoint an agent for different units for the purchase of Kendu leaves. The validity of the Act was challenged and upheld by the Supreme Court.

62. Some changes were made in the machinery for the implementation of the monopoly while dealing with Kendu leaves, and the Government thereafter entered into an agreement for sale of Kendu leaves after inviting tenders from traders. This scheme was challenged by various persons who contended that the device of introducing purchasers was mere illusion as the so-called purchasers were mere associates or nominees of the agents. They argued that the prevailing position was no different from how it had been earlier.

63. During the years 1966-1967, the price of Kendu leaves was at an all-time high and ultimately when sales were effected on behalf of the Government, prices considerably in excess of those at which the tenders were accepted, had been realized. Prior to the floating of the tenders, letters had been addressed to select traders intimating them that it had been decided by the Government to renew the leases of the Kendu leaves units that were being held by them.

64. This invitation had been offered by the Government to those licencees, who in their view, had worked satisfactorily in the previous years and who had complied with all aspects of the licence. This was challenged by Rashbihari Panda. Pending writ petition, the Government withdrew the offers made to the previous licencees and the licencees were informed that the Government would invite tender for the persons who had purchased the Kendu leaves and not committed default in payments.

65. This modified scheme was also challenged, the petitioners arguing that it was nothing but a colourable device



that was intended to benefit a handful of supporters of the party prevailing in power, at that time. The High Court rejected the writ petition holding in favour of the State.

66. In appeal, the Hon'ble Supreme Court agreed with the petitioner. They held that they noted the classification on the basis of circumstance that existing contractors had carried out their obligations regularly and to the satisfaction of the Government, was not based upon any real or substantial distinction that would bear a just and reasonable relation to the object sought to be achieved, that is, effective execution of monopoly in public interest.

67. In summation, the Court held that the exclusion of all persons interested in the trade, who were not in the previous year licensees is ex facie arbitrary, it neither had any direct relation to the object of preventing exploitation of pluckers and growers of Kendu leaves, nor had it any just or reasonable relation to the securing of the full benefit from the trade, to the State. The relevant paragraph of the judgment reads as follows:

....
19.) So, the adoption by the State Government of a particular manner of sale of kendu leaves, as depending on factors which may vary from year to year, necessarily involves the exercise of discretion based on their own satisfaction as to the necessity of that particular manner of sale in the light of the varying factors existing in a particular year. The manner of the exercise of this discretion --even if it may be an error of judgment --is not justiciable so long as it is exercised bona fide in public interest. In the present case, there is nothing to show that the government's action was not bona fide. It is a duty of the State, in order to raise the maximum net profits derived by Government from the trade in Kendu leaves under the Act, to determine in what manner they shall direct sale or disposal otherwise of Kendu leaves from year to year; it is its duty to raise such net profits from the trade in Kendu leaves for public purpose. It was on these considerations that in 1968 the State Government decided to invite offers for advance purchase of Kendu leaves only from persons who purchased Kendu leaves from individual units during the previous year and who acted as purchasers without default and to the satisfaction of the Government; such prospective purchasers were requested to intimate by a certain fixed date, whether they were willing to



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offer to make advance purchases of Kendu leaves from a particulars unit under the terms and conditions specified in the attached contract form Government by directing such manner --inviting offers for advance purchases of Kendu leaves through private negotiations -- eliminated unscrupulous speculation and risk of trade combines to reduce the prices over which the State Government could not have any control as reasonably and understandably apprehended: such reduction of prices would have the effect of reducing the net profits to be derived by Government from the trade in Kendu leaves to the ultimate detriment to public interest which would frustrate the very object of the State monopoly in trade in Kendu leaves as envisaged by the Act of 1961.

68.The flaw found in the decision of the High Court was that the High Court had observed that the exercise of discretion was not shown to be arbitrary nor was it shown to be lacking in bonafides. However, that was criticized on the ground that the Government had not considered the prevailing prices of the Kendu leaves at the time when the offers were made, the estimated crop market conditions, and whether it was in the interests of the State to invite tenders from open market from all persons, whether or not they had been awarded the contract in the previous years.

69. Thus, the fact that the action of the Government was bona fide, cannot be an effective answer to a claim made by a citizen that his Fundamental Rights were infringed by such action and nor their claim be defeated if the Government, in adopting the impugned scheme, committed an error of judgment.

70. Since the contract year to which that tender had related had expired by the time the litigation came to a conclusion, the Supreme Court held that in subsequent auctions, the tenders would be offered such that the States obtained the entire benefit of monopoly and there was no disproportionate share that was diverted to any private agency.

71.Substantial reliance is placed by the petitioners upon this judgment. Though I have devoted anxious study to the same, in my view, this decision is distinguishable for the reason that the Courts had gone minutely into the various aspects of the tender finding the same to be arbitrary. There was sufficient material placed before the Courts to establish the fallacy in pricing and this clinched the issue in favour of those petitioners.



72. In the present case, however, no material has been placed in support of the allegations made, and only an illustration has been supplied by one petitioner to indicate of possible inflation and loss to the exchequer. As such, no material is available before me in substantiation of the submissions of the petitioners that (i) the pre-condition imposed is unworkable as there are no real and tangible opportunities for supply to other Governments / Universities / Boards / local bodies and (ii) the alleged cartelization and resultant inflation in prices leading to loss of public money.

73. However as the allegations are serious and to protect the interests of the State exchequer as well as public money, I have issued a series of directions towards the conclusion of this order. These directions will, I believe, balance the interests of the parties appropriately.

74. In the case of Association of UPS and Power Conditioning Systems Manufacturer Vs. Society of Applied Microwave Electronics Engineering and Research (Sameer) & Others (supra), the judgment in Rashbihari Panda (supra) has been relied on to conclude that the imposition of a condition, regarding annual turnover, curtailed the participation of the persons in a tender and this would be contrary to public interest.

75. The Bench notes that 'It is true that the Court in exercise of its power under Article 226 of the Constitution of India cannot normally interfere with tender conditions, but in the instant case, an unreasonable condition appears to have been imposed and as such this Court may examine the core issue involved in the present controversy.'

76. Then again, in the case of Raymond Ltd. Vs North Delhi Municipal Corporation (supra), the notice inviting tenders were for the supply of School uniforms for the students of North Delhi Municipal Corporation. The Court followed the ratio of the judgment in the case of Association of Registration Plates vs. Union of India¹⁸ wherein the Supreme Court has found that the tender contained a particular condition designed in such a manner so as to exclude a particular category of bidders. Such a condition was arbitrary and discriminatory and hence, liable to be struck down.

77. At paragraph No.18, extracted below, the Delhi High Court says that where the condition that prior experience was common and acceptable, such prior experience must relate to similar works. If a tender condition required past experience in

¹⁸ (2004) 5 SCC 364



that exact work, for which the present tender had been issued, that would exclude a new entrant.

78. That is to say if a tender condition stated that a bidder must have experience in manufacture of 'uniforms' in general, that would be acceptable. However, to say that a bidder must have experience in manufacture of school 'uniforms', would result in stifling competition as it would eliminate first time bidders. Such a situation they say, would create a breeding ground for corruption.

..

18. In fact, if such conditions are also imposed in all subsequent tenders, it would essentially mean that new entrants would be barred from bidding in any future tender as well, and for all future tenders, it is only the same set of bidders who would be eligible to bid, which in turn, would create a fertile breeding ground for corruption and favouritism."

79. In the case of Uflex Limited (supra) before the Hon'ble Supreme Court, where the matter had travelled from the Madras High Court, the invitation to tender related to production and supply of polyester based hologram exercise labels on turnkey basis. The stickers were to be pasted on the caps of liquor bottles sold by the State through its instrumentality, the Tamil Nadu State Marketing Corporation (TASMAC).

80. Though it was initially decided that the technical specifications must be generic in nature so as to ensure wider participation, in the subsequent meeting held, three technical specifications for non-holographic features were formulated. The eligibility criteria, according to the Technical Specification Committee (TSC) thereafter, recommended that the supplier must have continuously been doing business in the same field for the past 8 to 10 years.

81. This was the challenge before the High Court. Two of the prospective tenderers approached the Court challenging the restrictive nature of the tender specifications. The writ petitions were dismissed and the contention that the tender was skewed in favour of a few of the parties was rejected. The unsuccessful petitioners approached the Division Bench in Intra Court Appeal.

82. In Writ Appeal, the financial structure of the two parties who were alleged to be the beneficiaries of the impugned and offending tender conditions was examined and the Court found that the Efflux Limited had invested substantially in the



affairs of one of the bidding entities. The Writ Appeal was allowed and the State was given four months' time to a fresh tender while permitting the existing successful tenderers to continue to provide the supplies under the same terms and conditions.

83. The Appellants before the Supreme Court argued that the prospective tenderers have failed to demonstrate any public interest or flaw in the tender process nor any malafides or arbitrariness. They relied on the judgment in *Tata Cellular (supra)*, emphasizing the limited power of judicial review in such matters.

84. They complained that the Division Bench ought not to have scrutinized the business relations of the parties or the power of intervention of Courts in such matters and that they are limited and should not extend to roving enquiry in regard to the facts at play. Perversity or malafides in that matter should be writ large on the face of the transaction and if it were not so, it is not for the Court to dissect the transaction beyond perceptible limits.

85. They propagated the issue of public interest and said that the tender condition only sought to prevent spurious liquor being supplied. Since 1999, it was only one supplier who was successful in all trades except the tender that was at issue in the matter. The very conditions which had been questioned by the parties had found part of the 2015 tender as well which had been challenged by the private respondent therein, albeit unsuccessfully.

86. As far as the allegation that the tender conditions were made to benefit only certain tenderers, they said that latitude in such cases must be greater where high security features were involved. They also pointed out that the procedures followed had been transparent and was being consistently followed by other States as well.

87. According to them, this would belie the condition that the hologram technology had been patented and only a few selected companies were eligible as the appellants contended. The Supreme Court accepted the case of the Appellants in full, awarding costs to both the appellants and the State to be paid by the private respondents.

88. In allowing the appeal, they observed that in commercial tender matters, there would, naturally, be an aspect of commercial competitiveness. However, as long as the tender was transparent, that would suffice. They disagreed with the



approach adopted by the Division Bench and said that the proper way of approaching the issue would have been to see whether under the terms of the notice of the invitation to tender, any of the aspects that were examined by the Courts could be said to be a disqualification.

89. Since a detailed examination had been embarked upon in regard to the investigation by one company into another, they felt that such examination could not have been the base of judicial scrutiny in a tender matter. The Bench states,

".....

4. In a sense the Wednesbury principle is imported to the concept, i.e., the decision is so arbitrary and irrational that it can never be that any responsible authority acting reasonably and in accordance with law would have reached such a decision. One other aspect which would always be kept in mind is that the public interest is not affected. In the conspectus of the aforesaid principles, it was observed in *Michigan Rubber v. State of Karnataka*³ as under:

.....

23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;



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(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government."

90. Then again, it was observed in Michigan Rubber v. State of Karnataka as under:

"23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

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(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government."



91. In the case of M/s.Divya Impex (supra), quoted by the Supreme Court in Uflex Limited (supra) as follows:

".....

23. One can understand that if the respondents have included the said condition by stating that the prospective bidders should have supplied only to Tamil Nadu State Excise Department, then, in that case, it can be said as malafide or unreasonable. When the respondents had imposed the said condition stating that the prospective bidders should have supplied holograms to any State Excise Department all over India or to Union Territories, it cannot be said as malafide or unreasonable."

92. The judgment in Tata Cellular (supra) also sets out the following principles that have been emphasized by the State before me:

"94. The principles deducible from the above are:

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

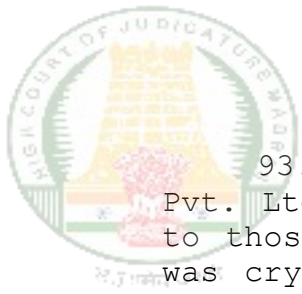
(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(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 quasi-administrative 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."



93. The facts and circumstances in the case of Agmatel India Pvt. Ltd. Vs Resoursys Telecom and Others (supra) are more akin to those in the present case. The issue arising for resolution was crystallized by the Bench was as to whether the High Court had been justified in interfering with the view taken by the tender inviting authority in rejecting the technical bid of the petitioner for want of fulfillment of past performance criteria about supply of the same or similar category products of 60% of the bid quantity in at least one of the last three financial years.

94. The relevant paragraphs, especially the experience criteria in that case are extracted below:

\.....

4. The crux of the matter involved in these two appeals is as to whether the High Court has been justified in interfering with the view taken by the tender inviting authority, i.e., NVS, in rejection of the technical bid of writ petitioner for want of fulfilment of 'Past Performance' criterion about supply of 'same or similar Category Products' of 60% of bid quantity in at least one of the last three financial years?

.....

8. The dispute in the present appeals has its genesis in a Notice Inviting Tenders ('NIT') bearing No. GEM/2021/b/1032762, as issued by the appellant-NVS on 12.02.2021 on the Government online portal i.e., Government e-market Place ('GeM') for supply of 68,940 Tablets for school children. The NIT carried with it several of the terms and conditions but, we are concerned in the present appeals with the terms and conditions pertaining to 'Experience' and 'Past Performance' of the bidders. The relevant terms and conditions may be extracted as under: -

1. Experience Criteria: In respect of the filter applied for experience criteria, the Bidder or its OEM {themselves or through reseller(s)} should have regularly, manufactured and supplied same or similar Category Products to any Central / State Govt Organization / PSU / Public Listed Company for number of Financial years as indicated above in the bid document before the bid opening date. Copies of relevant contracts to be submitted along with bid in support of having supplied some quantity during each of the Financial year. In case of bunch bids, the category of primary product having highest value should meet this criterion.



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4. Past Performance: The Bidder or its OEM {themselves or through re-seller(s)} should have supplied same or similar Category Products for 80% of bid quantity¹, in at least one of the last three Financial years before the bid opening date to any Central/State Govt Organization / PSU / Public Listed Company. Copies of relevant contracts (proving supply of cumulative order quantity in anyone financial year) to be submitted along with bid in support of quantity supplied in the relevant Financial year. In case of bunch bids, the category related to primary product having highest bid value should meet this criterion."

14. Experience Criteria: The Bidder or its OEM {themselves or through reseller(s)} should have regularly, manufactured and supplied same or similar Category Products to any Central/ State Govt Organization / PSU / Public Listed Company for 3 years before the bid opening date. Copies of relevant contracts to be submitted along with bid in support of having supplied some quantity during each of the year. In case of bunch bids, the primary product having highest value should meet this criterion."

Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818, Bharat Coking Coal Ltd. v. AMR Dev Prabha 2020 SCC Online SC 335, Silppi Constructions Contractors v. Union of India, (2019 SCC OnLine SC 1133), Jagdish Mandal v. State of Orissa, ((2007) 14 SCC 517, Montecarlo Ltd. v. NTPC Ltd., (2016) 15 SCC 272, K.Jaganathan Vs The State of Tamil Nadu and 3 Others [W.P.No.705 of 2022] dated 20.01.2022, M/s.Brandmidas Hospitality & Aviation Services (P) Limited Vs Airports Authority of India & Another [W.P.No.35845 of 2019] dated 07.12.2021.

95. This case would be closest, factually, to the matter before me as this is the specific question that has been raised by the petitioners as well as to whether it was appropriate for the State to have inserted a question relating to mandatory supply to a certain branch of institutions such as Governments / Universities / Boards / Local Bodies. This is their first argument, the second argument, being that such a condition rendered the tender in itself, illusory, as according to them, it is only Tamil Nadu which is engaged in the purchase of Velcro and no other State in the country does so.

96. Adverting to the first aspect, the Hon'ble Supreme Court, in the cases of Agmatel India Pvt. Ltd. Vs Resoursys Telecom and Others (supra), Afcons Infrastructure Ltd. v. Nagpur



Metro Rail Corporation Ltd.¹⁹, Bharat Coking Coal Ltd. v. AMR Dev Prabha²⁰, Silpi Contractors Vs Union of India²¹ and Montecarlo Limited Vs NTPC Limited²² has reiterated the well settled proposition that judicial review in tender matters is limited and that the tenderer, is, at the end of the day, best suited to appreciate the matter for which bids were invited and formulate tender conditions. Such experience, as the owner of the contract, must not generally be interfered with, except if perversity and arbitrariness were apparent.

97. In Agmatel, the Bench notes that there was no allegation malafides and as distinguished therefrom, there is, in this case, specific allegations of malafides and cartelism. The argument is that, in the absence of effective competition, the prices at which the tenders may possibly be finalized would be far higher than the prices that the petitioner would quote, thus, leading to a loss for the exchequer as well. Though it is a very well settled position that in contractual matters, the Writ Courts should not interfere unless the decision taken is totally arbitrary, perverse or mala fide, such arbitrariness and malafides must be established by the aggrieved party, with facts and figures.

98. The ratio of the above decisions is that, in the matter of formulating conditions for tender documents and awarding a contract, greater latitude is required to be conceded to the State Authorities unless the action of the tendering authority is found to be misuse of statutory powers. It has to be seen as to whether pre-conditions and the qualifications imposed would be so as to be necessary for execution of the work.

99. In the present case a decision as to whether the tender is perverse, unreasonably stifling of competition can be taken only if the petitioners are in a position to substantiate their allegations which as on date constitute mere allegations without any basis provided, as on date.

100. The stand of the Corporation that the condition has been imposed only in the cases of high value contracts, being shoes and velcro sandals, is well received. The tabulation furnished and extracted at paragraph 31supra reveals that the value of the tender for school bags, footwear and shoes are the highest, at figures of Rs.113.72 crores for 70.23 lakh pieces (tentative), Rs.50.36 crores for 25.89 lakh pieces (tentative)

¹⁹ (2016) 16 SCC 818

²⁰ (2020) SCC Online SC 335

²¹ (2019) SCC Online SC 1133

²² (2010) 15 SCC 272)



and Rs.62 crores for 34.59 lakh pieces (tentative), respectively. In my considered view, the imposition of the additional condition stands justified by the aforesaid intelligible differentia.

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101. The offending condition is not seen to have been imposed selectively in the present tenders alone without any rhyme or reason. Had this been the case, one might have concluded that the reason for such inclusion was perverse and intended to cartelize. However, the State has placed on record material to establish application of mind to the instances where the condition has been imposed.

102. The dual object behind the insertion is also acceptable as being that there must, under no circumstances, be any interruption in supply of the school bags and shoes to the children and particularly, in matters of the high value tenders.

103. The Delhi High Court, in Raymond, had accepted the argument that imposing a wide condition that the participant must have previous experience in manufacture of the exact, specific product, school uniforms in that case, was unacceptable, although, a pre-condition that the bidder must have previous experience in supplying uniforms, in general was acceptable.

104. This distinction has been pressed into service in this matter by one petitioner who has not just participated, but also been successful in the auction for shoes in a few years in the past. This argument does not come to their aid, as even though the petitioners are, admittedly, manufacturers of shoes, the State does have the prerogative to include the offending condition in view of the intelligible differentia established by them, unless the petitioners are in a position to establish their allegations of manipulated pricing, leading to loss to the State exchequer and cartelization.

105. The petitioners' argument that (i) there are sufficient safeguards in the NIT such as liquidated damages and penalties for delay in supply (ii) such stringent conditions will ensure that a greater responsibility is cast upon the interested supplier (iii) will serve as a deterrent to frivolous applicants and (iv) must assuage the apprehensions of the Corporation in this regard, also fails in the face of the above position.

106. The above detailed discussion leads to me to the following conclusions:



(i) The petitioners are, admittedly, manufacturers and suppliers of shoes and velcro sandals, though also admittedly, they do not satisfy the eligibility condition that has been imposed under the impugned corrigendum.

(ii) Mere allegations of cartelization and possible loss to exchequer would not be sufficient to clinch the petitioners case as they are to be borne out from the facts and actual data to be placed before the authorities.

(iii) The doctrine of 'level playing field' though normally available to all participants is not absolute. It is, in itself, subject to public interest and particularly, in a matter involving the interests of over 30 lakh school children, must yield to the latter.

(iv) The case of the petitioners is, at best, premature, and has to be established by reference to specific material seeking to establish the allegations made by them.

(v) Since the representations made by the petitioners are still pending before the Authorities, the question of filing appeals does not arise. However, since this stand of the State has now been revealed clearly, I permit the petitioners to make further representations before the Appellate Authority constituted in terms of Section 10 of the Tamil Nadu Transparency in Tenders Act, 1998, agitating the points raised now and any materials in support thereof.

(vi) The decision of the authority shall only relate to NIT for subsequent periods and not the present tender, as the present writ petitions, are liable to be dismissed.

(vii) If a representation is made before the appellate authority, as aforesaid, within a period of four weeks from today, the authorities shall hear the petitioners, take note of the rival contentions of both sides and arrive at a considered decision in this regard expeditiously thereafter.

107. The State will proceed with the tenders and conclude the same in accordance with law and all applicable tender conditions. These writ petitions are dismissed though granting liberty to the petitioners as above. Connected miscellaneous petitions stand disposed with no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Ska/kbs/vs



To

1. The Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai 600 009.

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2. The Chairman,
Tamil Nadu Textbook & Educational Services Corporation,
EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai 600 006.
3. The Managing Director,
Tamil Nadu Textbook & Educational Services Corporation,
EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai 600 006.
4. The Managing Director,
Tender Inviting Authority.
Tamilnadu TextBook and Educational
Services Corporation,
EVK Sampath Maaligai, D.P.I. Campus,
68, College Road, Chennai-600 006.

+1cc to the Government Pleader, S.R.No.9567

W.P.Nos.2240, 2246, 2250 & 2412 of 2022
and WMP Nos.2412, 2414, 2417, 2419,
2420, 2421, 2423, 2424, 2425,
2580, 2582 & 2586 of 2022

GJ(CO)
RLP(16/03/2022)