



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.03.2022

DELIVERED ON : 17.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P(MD).Nos.325 and 3273 of 2022

and

W.M.P(MD)Nos.248, 249, 784, 2872 and 2873 of 2022

WEB COPY

V.Balasubramanian ... Petitioner in both W.Ps.  
vs.

1.The Southern Railways,  
Represented by its,  
Senior Divisional Railway Manager. (Commercial),  
Madurai Division - Commercial,  
Madurai District.

2.The Divisional Commercial Manager,  
Madurai Division - Commercial,  
Southern Railways,  
Madurai.

3.M/s.Saidalavi and Co-Palakkad,  
Vattamkandathil House,  
Post Chundambatta,  
Palakkad - 679 337,  
Kerala, India.

...Respondents in both W.Ps.

**Prayer in W.P. (MD)No.325 of 2022:** Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order made by the second respondent in Letter No.Madurai Division - Commercial / UC37-PHC-Madurai-2021/01092830046534 dated 15.12.2021 and to quash the same as illegal and consequently, to direct the respondents to award the tender for the contract for parcel handling at Madurai Junction subject matter of tender No.UC37-PHC-Madurai-2021 in favour of the petitioner, within a time that may be stipulated by this Court.

**Prayer in W.P. (MD)No.3273 of 2022:** Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order made by the second respondent in his proceedings in No.U/C/37/PHC/WP dated 29.01.2022 and quash the same as illegal and consequently, to direct the respondents to award the tender for the contract of parcel handling at Madurai Junction subject matter of tender No.UC37-PHC-Madurai-2021 in favour of the petitioner within a time that may be stipulated by this Court.



For Petitioners in both W.Ps. : Mr.M.Ajmal Khan,  
Senior Counsel,  
for M/s.Ajmal Associates

For Respondents 1 & 2 in both W.Ps. : Mr.S.Manohar

For Respondent 3 in both W.Ps. : Mr.V.R.Shanmuganathan

**COMMON ORDER**

W.P(MD).No.325 of 2022 has been filed challenging the award of the tender in favour of the third respondent by the proceedings of the second respondent dated 15.12.2021, though the third respondent was ranked as L6 in the bid. According to the petitioner, the bid submitted by the third respondent is the most non-competitive and the acceptance of such a bid would result in disadvantage to the Railways who will have to pay higher handling charges. According to the petitioner, being the most competitive bid and the L1 tenderer, the petitioner's bid ought to have been accepted instead of the third respondent's bid.

2. W.P.(MD).No.3273 of 2022 has been filed by the very same petitioner challenging the order dated 29.01.2022 passed by the Railways indicating to the petitioner as to the reasons for rejection of his bid stating that the Parcel Handling Contract and the SLR leasing contract are different. Under the impugned order, the petitioner has been informed that the value submitted by him cannot be taken into account as the same pertains to SLR leasing contract and does not pertain to the Parcel Handling Contract which is totally different.

3. According to the Railways, the contract awarded to the third respondent is a Parcel Handling Contract and not an SLR leasing contract.

4. Heard Mr.Ajmal Khan, learned Senior Counsel representing M/s.Ajmal Associates for the petitioner, Mr.S.Manohar, learned Standing Counsel for the respondents 1 & 2/Railways and Mr.V.R.Shanmuganathan, learned counsel for the third respondent.

5. Mr.Ajmal Khan, learned Senior Counsel representing M/s.Ajmal Associates for the petitioner would reiterate the contention of the petitioner that the SLR leasing contract and the Parcel Handling Contract are similar in nature. He would submit that both relate to cargo handling and the petitioner having satisfied the work experience as per the tender document and being the L1 tenderer, the Railways ought to have accepted the petitioner's bid, but instead according to him, they have accepted the third respondent's bid who is ranked L6 in the bid arbitrarily and illegally, though the said bid ex-facie is a most non-competitive bid which is disadvantageous to the Railways who will have to pay higher handling charges to the



third respondent which is detrimental to the public interest.

6. Mr.Ajmal Khan, learned Senior Counsel would also point out that the previous tender containing similar terms as to the present one had been awarded to the petitioner by the Railways, after qualifying technically in all the criteria and conditions. According to him, the action of the Railways in granting the tender in favour of the third respondent is in violation of condition No.4 of the Standard General Conditions, Eligibility Criteria and special conditions forming part of the tender documents. In particular, he drew that attention of this Court to condition 4.1.2 of the Standard General Conditions, the Eligibility Criteria and special conditions forming part of the tender document which relates to work experience. According to him, as per clause 4.1.2 of the Standard General Conditions, it is clear that the said clause does not contemplate the actual payment made in such contracts. According to him, the petitioner's SLR contracts as well as the past ones were also in the field of parcel handling/cargo handling as the petitioner has undertaken lease of compartments of the train concerned, wherein the petitioner has been actually loading and unloading the parcels. Hence according to him, the SLR contracts are also in the field of parcel handling and therefore, the petitioner has satisfied the eligibility criteria.

7. Mr.Ajmal Khan, learned Senior Counsel would further contend that the tender inviting authority and the authority who opened the tender is the first respondent, however, the order of awarding the tender has been made by the second respondent. Therefore, according to him, the tender inviting authority, the evaluating authority and the awarding authority have taken different sands which is illegal.

8. Mr.Ajmal Khan, learned Senior Counsel also referred to clause No.2305 in Chapter XXIII forming part of the Commercial Manual of Railway (Chapter on Handling of Goods and Parcel). According to him, the said clause clearly establishes that the subject matter of work in SLR contract falls within the meaning of Parcel Handling Contract. Further he would contend that in other Railway Divisions, SLR Cargo Contracts are also considered as a Parcel Handling Contract. Therefore, he would contend that the impugned order dated 29.01.2022 issued by the second respondent differentiating the SLR contract and the Parcel Handling Contract is erroneous, arbitrary, irrational and illegal.

9. Mr.Ajmal Khan, learned Senior Counsel drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of **Ramana Dayaram Shetty vs. International Airport Authority of India and others** reported in (1979) 3 SCC 489 and would submit that as per the aforesaid decision, instrumentality of the State cannot even in the sphere of tenders, act like individuals and are bound to act fairly in the best interest of such instrumentality. Therefore



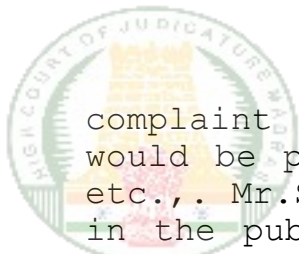
according to him, the action on the part of the Railways in rejecting the petitioner's bid and accepting the bid of the third respondent has to be reasonable and free from arbitrariness.

10. However, Mr.S.Manohar, learned Standing Counsel for the Railways would submit that the tender notification clearly indicated that the selection would be based on ranking of bids from the lowest to the highest. He drew the attention of this Court to the tender condition No.4(b) and would submit that as per the said condition, the tenderer shall quote the least amount including all types of taxes. However, as per the tender condition, the amount quoted should be financially viable for the tenderer. Therefore, quoting nominal amount which is likely to affect the performance of the contract will not be considered by the Railways.

11. Mr.S.Manohar, learned Standing Counsel also drew the attention of this Court to condition No.16 and would submit that as per the said condition, it is mandatory for the tenderer to pay not less than the fair wage to the labourers engaged by him for the work. According to him, the fair wage includes the allowance, ESI, EPF, etc., notified from time to time. According to him, one of the reasons for rejecting the petitioner's bid was that his bid was not financially viable as the said bid will not enable the petitioner to pay the statutory minimum wages to the labourers engaged by him.

12. Insofar as the petitioner's contention with regard to the previous similar tenders awarded to him are concerned, Mr.S.Manohar, learned Standing Counsel would submit that the tender conditions have been fixed based on the GCC for Service (General Conditions of Contract for Service) in force from 2018. Mr.S.Manohar, learned Standing Counsel would submit that the petitioner has not fulfilled the technical criteria of satisfactorily completing a contract of 35% of advertised value and receipt of payment thereof. Mr.S.Manohar learned Standing Counsel would further submit that as per the tender eligibility condition, the tenderer should have satisfactorily completed the last three previous financial years and the current financial year up-to the date of opening of the tender, one single service contract in the field of Handling of parcels/cargo for the Central /State Government Departments including Railways/PSUs/other Government agencies or reputed companies for a minimum of 35% of advertised value of the bid. He would further submit that the completed service contract includes on-going service contract subject to payment of bills amount to at least 35% of the advertised value of the bid.

13. Mr.S.Manohar, learned Standing Counsel would further submit that the tender committee had considered the offer of L6 i.e., the third respondent for award of contract, since it fulfilled the eligibility criteria and the rate of offer was at par with the advertised value of the tender. Though the third respondent's offer was not accepted, the tender committee decided that their offer would be



complaint free service, non-fleeing passenger public; and labourer would be properly paid wages which includes ESI, EPF subscriptions etc.,. Mr.S.Manohar, learned Standing Counsel would submit that only in the public interest, the contract was awarded to L6, the third respondent herein. He would submit that the allegation made by the petitioner that being the highest quote, it is not beneficial to the Railways is false. He would submit that offer quoted by the third respondent will not be disadvantageous or cause loss to Railways. Further it is contended by him, that the allegation of the petitioner that it is illegal to award contract to the third respondent is incorrect. He would further submit that the tender is a single packet system and the petitioner did not satisfy the technical bid.

14. Mr.S.Manohar, learned Standing Counsel would further submit that in an on-line IREPS tendering system, any tenderer could get access to information on acceptance or rejection of bid, if logged in the IREPS portal. He would submit that in Indian Railways, only the successful tenderer is issued on-line letter of acceptance by e-mail.

15. Mr.S.Manohar, learned Standing Counsel would further submit that the Parcel Handling Contract is an expenditure contract whereas the leasing of SLR contracts are earning contracts to the Railways. According to him, Parcel Handling Contract is for loading/unloading of parcels from and to trains by engaging contract labourers. According to him, SLR leasing contract is for transportation of parcels in the lease SLRs of four-ton capacity by trains from Madurai to Chennai Egmore and Madurai to Hazrat Nizamuddin with leased lump sum freight paid in advance eg., Rs.3,030/- per trip for Train No.12636 and Rs.29,450/- per trip for Train No.12651 exclusive of GST etc. Mr.S.Manohar, learned Standing Counsel would submit that in SLR leasing contract, the petitioner will charge from the public directly with profit added for booking and moving the parcels by the above trains. Hence according to him, it is very clear that SLR leasing contracts and Parcel Handling Contracts are different from each other.

16. Mr.S.Manohar, learned Standing Counsel would further submit that as per condition No.4.1.2, the bidders should have satisfactorily completed in the last three previous financial years and the current financial year up to the date of opening of the tender, one single service contract in the field of handling of parcels/cargo for the Central/State Government Departments including Railways/PSUs/other Government agencies or reputed companies for a minimum of 35% of advertised value of the bid. Since the petitioner has not satisfied the aforementioned criteria for handling of parcels/cargo for the Central/State Government Departments including Railways/PSUs/other Government agencies or reputed companies for a minimum of 35% of advertised value of the bid, the petitioner's bid

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17. Mr.S.Manohar, learned Standing Counsel drew the attention of this Court to the following authorities:

(a) **GlodyneTechnoserve Ltd., vs. State of MP and others** reported in **AIR 2011 SC 2574**;

(b) **Michigan Rubber (India) Limited vs. The State of Karnataka** reported in **AIR 2012 SC 2915**; and

(c) **K.MMustafa vs. Indian Railway Catering and Tourism Corporation and others** reported in **2019 (2) CTC 413**.

18.Mr.S.Manohar, learned Standing Counsel finally concluded his submission by stating that the decision to reject the bid of the petitioner is not arbitrary, irrational or illegal as alleged by the petitioner and the rejection is only in accordance with the tender conditions.

19. Mr.V.R.Shanmuganathan, learned counsel for the third respondent reiterated the submissions made by Mr.S.Manohar, learned Standing Counsel for the Railways. In addition to the authorities relied upon by Mr.S.Manohar, learned Standing Counsel, Mr.V.R.Shanmuganathan, learned counsel relied upon the following authorities with regard to the scope of judicial review in tender matters:

(a) **Tata Cellular vs. Union of India** reported in **(1994) 6 SCC 651**;

(b) **Jagdish Mandal vs. State of Orrisa and others** reported in **(2007) 14 SCC 517**; and

(c) The latest decision of the Hon'ble Supreme Court dated 02.03.2022 in the case of State of Punjab and others vs. Mehar Din passed in Civil Appeal No.5861 of 2009.

#### **Discussion:**

20. The point for consideration is whether the SLR leasing contract and the Parcel Handling Contract are similar. The contention of the petitioner is that both are similar, but the contention of the respondents is that both are totally different. Based on the work experience, in the SLR leasing contracts, the petitioner claims that he has satisfied the tender conditions and being the L1 tenderer, his bid ought to have been accepted. But the contention of Railways is that Parcel Handling Contract is different from SLR leasing contract and therefore, the work experience given by the petitioner through his SLR leasing contracts cannot be made applicable to Parcel Handling Contracts.

21. The work experience required for participation in the tender for the Parcel Handling Contract is found in clause 4.1.2 of the tender conditions which is extracted hereunder:

"4.1.2 Work Experience : The bidder should have satisfactorily completed in the last three previous financial years and the current financial year up to the



date of opening of the tender, one single service contract in the field of "Handling of Parcels/Cargo for the Central/State Government Departments including Railways/PSUs/other Government agencies or Reputed companies" for a minimum of 35% of advertised value of the bid.

For Central/State Government Departments including Railways/PSUs/other Government agencies attested copy of Agreement or authentic certificate from the Department/Office concerned should be submitted as the proof. Work experience from private individual will not be accepted. Certificate from Public Limited Companies/Private Companies/Trusts having annual turnover of Rs.500 Crores and above shall be considered subject to the same being issued from their Head Office by a person of the company duly enclosing his authorization by the management for issuing such credentials.

(Completed service contract includes on-going service contract subject to payment of bills amounting to at least 35% of the advertised value of the bid.)"

As seen from the aforementioned clause, it is clear that the bidder should have satisfactorily completed in the last three previous financial years and the current financial year up to the date of opening of the tender, one single service contract in the field of "Handling of Parcels/Cargo for the Central/State Government Departments including Railways/PSUs/other Government agencies or Reputed companies" for a minimum of 35% of advertised value of the bid. Whereas in an SLR leasing contract, there is no such requirement.

22. In an SLR leasing contract, a specified compartment in a running train is taken on lease by the contractor and the said contractor need not carry parcels/cargo exclusively for the Central/State Government Departments including Railways/PSUs/other Government agencies or Reputed companies. It can also carry parcels/cargo belonging to private individuals and private entities. In case of Parcel Handling Contract, it is an expenditure contract for the Railways, whereas in an SLR leasing contract, it generates income for the Railways. In Parcel Handling Contract of the nature which is challenged in these writ petitions, the Railways will have to pay the contractor for handling parcels/cargo meant exclusively for Central / State Government Departments including Railways/PSUs/other Government agencies or reputed companies, whereas in an SLR leasing contract, the contractor has taken a compartment on lease for the purpose of carrying parcels /cargo booked by him. The cargo booked under the SLR leasing contract need not necessarily belong to the Central / State Government Departments including Railways/PSUs/other Government agencies or reputed agencies, but also to private individuals and private entities.



23. As rightly contended by the learned Standing Counsel for the Railways as well as the learned counsel for the third respondent, the work experience prescribed in clause 4.1.2 of the tender condition is an expenditure contract for the Railways and is different from an SLR leasing contract which is an income generating contract for the Railways. Therefore, both the contracts are totally different. The work experience given by the petitioner through the SLR leasing contracts cannot be applied to Parcel Handling Contract of the nature for which auction was conducted. Even though clause 4 of the tender condition stipulates that the tenderer shall quote the least amount including all types of taxes at which they can operate, there is a rider to the said clause which makes it clear that the amount collected by the tenderer should be financially viable for the tenderer and quoting nominal amount which is likely to affect the performance will not be considered.

24. Tender condition No. 4(a) and 4(b) reads as follows:

*4. Tendering process:*

*(a) The tender is floated to give opportunity to all those who are capable of doing work required under this contract and those who are at present engaged in work of similar nature.*

*(b) Tenderer shall quote the lease amount including all types of taxes at which they can operate. However, the amount quoted should be financially viable for the tenderer, quoting nominal amount which is likely to affect performance will not be considered."*

25. Apart from contending that the Parcel Handling Contract and the SLR leasing contract are different, the contention of the Railways is that the quotation submitted by the petitioner is not financially viable as according to them, the amount quoted by him will affect his performance. There is also a tender condition which stipulates that a successful tenderer will have to pay the fair wages to its labourers as fixed by statute/statutory notification. The said tender condition is reproduced hereunder:

*"The Successful tenderer shall pay not less than the fair wage to the labourers engaged by him on the work, the fair wage being the wage including the allowance, notified at the time of inviting tenders or from time to time by the competent authority for the work and where not notified the wage paid for similar work in the neighbourhood. The labour wages and allowances shall not be less than those prescribed by any provincial law etc., if applicable to contract labour engaged on Railways in the locality in which the labourer works. The Successful tenderer shall keep a proper record of such payments etc., and submit a certificate every month to the Railway Administration*



of this having done so. If Railway Administration at any time consider the mode adopted by the Successful tenderer of paying his workmen objectionable they shall have the power of requiring a change of system within one week from the date of a notice in writing to that effect and in case of non-compliance with such notice, all payments to the Successful tenderer shall be withheld during such non-compliance. A notice showing the rules of wages to be paid to workers shall be published by the successful tenderer and exhibited prominently near the place of work and should be made easily accessible to all workers."

26.A categorical stand has been taken by the Railways that the quote given by the petitioner will not enable him to pay the minimum wages as prescribed under any statute/ notification. The petitioner has quoted Rs.3,90,583/-, whereas the third respondent has quoted Rs.30,00,972.88. The petitioner is the L1 tenderer and the third respondent is the L6 tenderer. The contract for parcel handling at Madurai Junction Railway Station is for a period of two years. The Tender Committee by its proceeding dated 20.10.2021 while coming to the conclusion that the petitioner has not fulfilled the tender criteria has observed as follows:

"This tenderer had operated Parcel Handling Contract at Madurai from 03.04.2014 to 02.10.2017 and is presently operating Parcel Handling Contract awarded for three years from 12.01.2018 to 11.01.2021 with extension of contract to till date. Tenderer had not claimed bills in the earlier term of contract. For the current contract, bills were claimed for only 14 months amounting to Rs.118489 (with GST) (Rs.20915 & Rs.79499 excl GST). But the contract value received is less than the requisite value Rs.10,50,341 (35%) F/824-836. Tenderer enclosed LOA copies of SLR lease contracts awarded to them by Tr.No.12636 & 12651, which are not relevant for this tender. Though it is deemed that the contractor has received the bill amount for the contracts operated during last three years, still the tenderer would not fulfill the technical eligibility criteria of receipt of payment of 35% of the contract value. Hence, the tenderer has not fulfilled the criteria."

As seen from the Tender Committee proceedings, sufficient reasons have been given by the Tender Committee for coming to the conclusion that the petitioner has not fulfilled the eligibility criteria.

27. The full form of SLR contract is "Seating-cum-Luggage-cum-Rack contract". The petitioner who is a SLR contractor with the Railways has taken on lease a specified compartment in two trains for carrying passengers/cargo belonging to his customers who have booked



the consignment through him for delivery at the respective destinations. The eligibility criteria for becoming an SLR leasing contractor are different from Parcel Handling Contractor of the nature which is the subject matter of these writ petitions.

28. This Court after making a google search finds that the eligibility criteria for an SLR contract for the Railways generally is that the tenderer can be any person or Cargo Operator or Transporters, having Indian citizenship or any agency or Company registered in India or Manufacturer company of joint venture company registered under Company's Act is eligible to participate in lease contracts. The tenderer however must be a Registered lease holder of that particular Railway Division.

29. An example of the clause in an SLR leasing contract auction is reproduced hereunder:

*"Eligibility -Any person or cargo operator or transporter having Indian citizenship, or any Agency or Company registered in India or manufacturer company of joint venture company registered under Company's Act is eligible to participate in leasing tenders. But the tenderer must be a registered leaseholder of Kharagpur Division in category 'A' or 'B' and also the tenderer who is registered in Kharagpur division is required to furnish audited balance sheet and Profit & Loss Account of his annual turnover of his business of the last financial year i.e. 2017-18 and Auditor's certificate along with the tender. Minimum turnover for leasing SLR/SLRD should not be less than rupees fifty lakh. Each participant while submitting his tender is required to attach photocopy of his registration certificate and audited balance sheet and P & L Account of the last financial year in support of the above as a proof. The tender application without appropriate registration certificate, audited balance sheet and Profit & Loss Account and receipt of Goods and Services Tax will be rejected."*

30. As seen from the eligibility criteria for becoming an SLR contractor, it is clear that it is different from the eligibility criteria for Parcel Handling Contract in the nature which is the subject matter of these writ petitions. In a Parcel Handling Contract, it is an expenditure contract for the Railways and Cargo must be exclusively meant for the concerns mentioned in clause 4.1.2 of the tender conditions; Whereas in an SLR leasing contract, the contract is an income generating contract for the Railways and the parcels/cargo booked by the contractor can be for anyone, without any restrictions, whoever.



31. As seen from the decisions relied upon by the learned Standing Counsel for the Railways as well as the learned counsel for the third respondent with regard to the scope of judicial review in tender matters, the following settled principles emerge:

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

(b) The Court does not sit as a Court of appeal but merely reviews the matter in which the decision was made.

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

(d) 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.

(e) 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 malafides.

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

(g) The degree of care required to be taken by the decision making authority for large projects is greater than for small works. It is essential to maintain the sanctity and integrity of tender process. Adherence to the instructions cannot be ignored by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favoritism which are totally opposed to the rule of law and constitutional values. Relaxation or waiver of a rule or condition, unless so provided under the terms and conditions of tender, the State or its Agencies showing concession in favour of one bidder alone would create justifiable doubts in the minds of other bidders which would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State Agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. The power to relax or waive a rule or

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strictly in compliance with the said rules.

(h) If in effect and substance, it is found that the offer made by one of the bidders substantially satisfies the requirements of the conditions of notice inviting tender, the employer may be said to have a general power of relaxation in that behalf. Once such a power is exercised, one of the questions which would arise for consideration by the Superior Courts would be as to whether exercise of such power was fair, reasonable and bonafide. If the answer thereto is not in the negative, save and except for sufficient and cogent reasons, the Writ Courts would be well advised to refrain themselves in exercise of their discretionary jurisdiction.

(i) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest will be given priority.

(j) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint.

(k) If a party has been consistently and bonafidely interpreting the standards prescribed by it in a particular manner, the Court should not interfere though it may be inclined to read or construe the conditions differently.

(l) The conditions and stipulations in a tender notice have two types of consequences. The first is that the party issuing the tender has the right to punctiliously and rigidly enforce them. Mere disagreement with the decision making process or the decision of the Administrative Authority is no reason for a constitutional Court to interfere.

(m) The fact that a document was belatedly entertained by one of the applicants will cause substantial prejudice to another party who wanted, likewise, an extension of time for filing a similar certificate or document but was declined the benefit. It may perhaps be said to cause prejudice also to a party which can show that it had refrained from applying the tender documents only because it thought it would not be able to produce the document by the time stipulated but would have applied had it known that the rule was likely to be relaxed.

(n) The requirements in a tender notice can be classified into two categories-those which lay down the essential conditions of eligibility and others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case, the authority issuing the tender may be required to enforce them rigidly. In the other cases, it must be open to the authority to deviate from and not to insist upon the



strict literal compliance of the conditions in appropriate cases.

(o) "Legal certainty" is an important aspect of the rule of law which is the heart of Parliamentary democracy. If there is vagueness or subjectivity in the norms specified in the tender, it may result in unequal and discriminatory treatment and violate the doctrine of "level playing field".

(p) Relaxation of a non-essential condition in the tender will not cause injustice to other bidders since every bidder will get due and full consideration during tender evaluation. Essential conditions ought to be enforced rigidly, the ancillary clauses can be deviated in public interest.

32. In the case on hand, the eligibility criteria as mentioned in clause 4.1.2 of the tender condition relating to work experience has not been satisfied by the petitioner. Tender condition No.4(b) also makes it clear that the amount quoted should be financially viable for the tenderer to perform the contract. It also makes it clear that quoting nominal amount which is likely to affect the performance will not be considered. The eligibility criteria for an SLR leasing contract is totally different from the eligibility criteria for a Parcel Handling Contract and the nature and objects of both the contracts are different all together. One is an income generating contract and the other is an expenditure contract for the Railways. Therefore, this Court is of the considered view that the rejection of the petitioner's bid does not call for any interference by this Court as it has been rejected only in accordance with the terms and conditions of the tender. The contention of the petitioner that the rejection of the bid is arbitrary, irrational and illegal is rejected by this Court, as there is no scope for judicial review, as the contention of the petitioner does not fall within any of the parameters, under which, judicial review in respect of tender matters can be entertained.

33. For the foregoing reasons, there is no merit in these writ petitions and therefore, these writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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To

1.The Southern Railways,  
Represented by its,  
Senior Divisional Railway Manager. (Commercial),  
Madurai Division - Commercial,  
Madurai District.

2.The Divisional Commercial Manager,  
Madurai Division - Commercial,  
Southern Railways,  
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate ( SR-12854[F] dated  
18/03/2022 )

+2 CC to M/s.VR.SHANMUGANATHAN, Advocate ( SR-13230 & 13231[F] dated  
21/03/2022 )

+1 CC to M/s.S.MANO HAR, Advocate ( SR-13237[F] dated 21/03/2022 )

Order in  
W.P. (MD) Nos.325 & 3273 of 2022 &  
W.M.P (MD) Nos.248, 249, 784, 2872 & 2873 of 2022  
**17.03.2022**

sus (CO)  
TR(31.03.2022) 14P 6C