* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th NOVEMBER, 2022

IN THE MATTER OF:

\+ **W.P.(C) 10085/2022 & CM APPLs. 29332/2022, 36311/2022 & 38684/2022**

ROSENBAUER INTERNATIONAL AG ..... Petitioner

Through: Mr. Ajay Verma, Sr. Advocate with Mr. Ishaan Verma, Ms. Diviani K. Verma, Mr. Armaan Verma, Advocates

versus

AIRPORTS AUTHORITY OF INDIA & ANR. ..... Respondents

Through: Mr. Digvijay Rai, Mr. Aman Yadav, Mr. Archit Mishra, Advocates with Mr. Abhishek Rawat, Sr. Manager, Mr. Akash Sharma, Manager, Mr. Ankit Kabdwal, Jr. Executive for AAI Ms. Anjana Gosain, Ms. Shalini Nair, Ms. Ritika Khanegwal and Ms. Dipika Sharma, Advocates for R-1 & R-2.
Mr. Vinay Garg and Mr. Amit Kumar, Advocates for the Applicant in CM APPL. 36311/2022.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant Writ Petition has been filed challenging Condition No. 4.3.1.4 ("**Impugned Condition**") in NIT/Global E-Tender with Tender ID 2022_AAI_115244 ("**Impugned Tender**"), for supply of 42 Aircraft Rescue & Firefighting Vehicles ("**ARFVs**") / Airfield Crash Fire Tenders ("**ACFTs**") floated by the Airports Authority of India ("**Respondent No. 1**" or "**AAI**") and the decision dated 13.06.2022 of Respondent No. 1 in respect of the Impugned Condition, as being arbitrary, capricious and contrary to law including the judgments/directions of the Hon'ble Supreme Court of India. The Petitioner herein is a company incorporated under the laws of Austria and is a manufacturer and exporter of firefighting vehicles and equipment for fire and emergency services including ACFTs and ARFVs.

2. Shorn of details, the facts leading to the filing of the instant Writ Petition are as follows:

   a. The AAI on 10.01.2020 floated a tender for supply of 33 ACFTs of 10,000 litres capacity, however the same was cancelled on 19.07.2020 due to poor response as there was only one bidder.

   b. A subsequent tender dated 19.01.2021 was issued for the same quantity of ACFTs in which the engine emission norm specified was BS-VI or Euro-VI and in case of non-road engines it was equivalent to or below BS-VI or Euro-VI levels. This was amended on the basis of a representation made by the Petitioner herein to reflect that the engine emission norms be changed to BS-VI/Euro-VI.

c. Subsequently on 25.10.2021, it was proposed that this tender also be cancelled as the qualification criteria with regards to engine emission norms was too restrictive and only one technically qualified bidder remained in the race. The cancellation of this tender was approved on 29.11.2021 by the competent authority of Respondent No. 1.

d. The Petitioner herein challenged the cancellation of the Tender dated 19.01.2021 before this Court by way of W.P.(C) 14608/2021.

e. This Court dismissed the aforesaid challenge *vide* judgment dated 20.04.2022 holding that ACFTs belong to a category of special vehicles to be used in enclosed premises and the stipulation that ACFTs must comply with BS-VI engine emission norms is not a *sine qua non* condition. The Court held that the AAI was justified in the cancellation of the tender and its decision was not irrational, mala fide, biased, illegal, unreasonable or arbitrary but is based upon reasoning and application of mind. The Court also held that the final decision to accept or reject the bid of the sole bidder rests with the AAI.

f. The aforesaid judgment was challenged by the Petitioner herein by way of an SLP before the Hon'ble Supreme Court, wherein the Apex Court *vide* order dated 17.06.2022 refused to interfere with the judgment dated 20.04.2022 and disposed of the SLP.

g. The AAI on 09.05.2022 floated the Impugned Tender for a supply of 42 ARFVs/ACFTs of 6000 liters water tank capacity with 08 years of Comprehensive Annual Maintenance Contract after 02 years of Guarantee/Warranty for use at various airports in India. One of the tender conditions pertained to emission levels to be complied with by ARFFs/ACFTs.The Impugned Condition is reproduced herein for the sake of convenience:

1	2	3	4	5
Para No.	Technical Specification	Parameter	Statement of Compliance	Methodology for Inspection
4.3.1.4	**The emission level shall be minimum Bharat Stage IV or equivalent** Type approval certificate or equivalent certificate relevant to emission norms of engine offered, issued by any regulatory authority with up to date amendments shall be submitted by the bidder. OEM of		Yes	OEM Certification and Supporting Documents

	engine(s) shall submit a certificate conforming **emission level meets minimum Bharat Stage BS IV or equivalent.** **Note :** The Engine offered should comply the emission norms prescribed by Govt. of India with up to date amendments			

(emphasis supplied)

h. As per the terms of the Impugned Tender, the closing date and time for raising clarifications by vendors was 30.05.2022. The date and time for a pre-bid meeting with the vendors was 07.06.2022. Further, the closing date and time for a response to the clarifications given by AAI as per the terms of the Impugned Tender was 21.06.2022.

i. The start date of submissions of bids for the Impugned Tender was 22.06.2022 as per the terms of the tender.

j. On 30.05.2022, the Petitioners sought pre-bid clarifications/suggestions/objections from the AAI with respect to the Impugned Condition. It was stated that the tender condition fixing emission norms at BS-IV is contrary to the notification of the government which fixes the emission norms at BS-VI for a transport vehicle which was in consonance with the Judgement of the Apex Court in M.C. Mehta v. Union of India, **(2019) 17 SCC 490.**

k. By a Decision dated 13.06.2022 ("Impugned Decision") the Respondent No. 1 rejected the classifications/ suggestions/objections submitted by the Petitioners. The response of Respondent No. 1 reads as under:

S. No.	Tender Clause/Sub Clause with Pg. No.	Tender Provision	Points raised by Vendor	AAI's Response
34	Para 4.3.1.4 Section D	The emission level shall be minimum Bharat Stage IV or equivalent Type approval certificate or equivalent certificate relevant to emission norms of engine offered, issued by any regulatory authority with up to date	The Emission Norms applicable in India for a transport vehicle are BHARAT STAGE BS IV (EURO VI), EC type approved in the last tender floated by AAI, the Emission norms were BHARATSTAGE BS VII EURO VI- Corrigendum	It was informed that due to operation of the vehicle in enclosed premises, Nodal Ministry of Road Transport and Highways has granted exemption from registration and have also stated that the vehicle is not covered under the definition of motor vehicle as per section 2 (28) of the MVA, 1988. The off-road/off-highway performance

		amendments shall be submitted by the bidder. OEM of engine(s) shall submit a certificate conforming emission level meets minimum Bharat Stage BS IV or equivalent. **Note :** The Engine offered should comply the emission norms prescribed by Govt. of India with up to date amendments	No.2 dated 22.02.2021 refers. As per Notification under the Motor Vehicle Act dated 5.11.2004, Fire Fighting Vehicles are classified as **"TRANSPORT VEHICLES"**. As per Government of India Motor Vehicles Act w.e.f. 01.04.2020 Engine meeting emission norms - **BHARATSTAGE BS VII EURO VI** engine are allowed. It is not possible to apply the emission norms of Bharat Stage IV upon Aircraft Rescue and Fire Fighting Vehicles (ARFFV)/Airfield Crash Fire Tenders	requirement is necessitated as per ICA/FAA/NFPA/IS. As per Gazette Notification dated 30.09.2020 issued by Ministry of Road Transport and Highways, GoI, that minimum emission norms applicable has been adopted in this Tender.

			(ACFTs) as may be applicable in case Of agricultural tractor, power tiller and combine harvester as per notification dt. 30.09.2020 GSR 598(E). That providing the Bharat Stage IV or equivalent is also environmentally retrograde step. You may consider amending the emission norms to **Bharat Stage VI/Euro VI.** In view of the above, **only Bharat Stage VI/EURO VI** engine will comply the emission norms prescribed by the Govt. of India with up to date amendments.	

3. The Petitioner has filed the instant Writ Petition challenging the Tender dated 09.05.2022 and reply dated 13.06.2022 issued by the AAI.

4. The primary contention of the Petitioners herein is that the Impugned Condition as well as the Impugned Decision specifying that ARFVs/ACFTs satisfying only Bharat Stage IV ("**BS-IV**") fuel emission norms is contrary to the Supreme Court's decision in M.C. Mehta v. Union of India, **(2019) 17 SCC 490** wherein the Apex Court held that all vehicles manufactured and sold in India after 01st April, 2020 shall be only BS-VI compliant.

5. It is submitted by Mr. Ajay Verma, learned Senior Counsel for the Petitioners, that an earlier tender i.e., Global e-Tender dated 19.01.2021 ("**Earlier AAI Tender**") for the purchase of 33 ACFTs issued by Respondent No. 1 stipulated Bharat Stage VI ("**BS-VI**") emission norms. It is stated that the Petitioner was the sole successful technical bidder in the Earlier AAI Tender and the AAI cancelled the said tender on 29.11.2021 without explaining the reason for cancellation. This cancellation of the Earlier AAI Tender was challenged by the Petitioners herein before this Hon'ble Court in W.P.(C)14608/2021. The challenge in W.P.(C) 14608/2021 was dismissed *vide* judgment dated 20.04.2022 and was challenged before the Hon'ble Supreme Court by the Petitioners *vide* Special Leave Petition ("**SLP**") in SLP(C) 10453/2022. The Hon'ble Supreme Court *vide* its order dated 17.06.2022 disposed of the SLP. However, the Apex Court kept open the question whether the Respondent's actions with regards to the tender condition providing for emission norms are contrary to law and Supreme Court decisions. Mr. Verma submits that

the Hon'ble Supreme Court declined to interfere primarily because the Petitioner had participated in the tender process subsequent to cancellation and submitted its bid.

6. Mr. Verma submits that insofar as the Impugned Tender, the Impugned Condition and the Impugned Decision are concerned, the proceedings in W.P.(C) 14608/2021 and SLP(C) 10453/2022 do not prohibit the Petitioner from challenging the same as the judgment of the High Court is *per incuriam*. He submits that in the present scenario, the Petitioner has not submitted its bid and objected to the Impugned Condition. Further, the Apex Court in its order dated 17.06.2022 has left the question of law vis-à-vis the tender condition regarding emission norms being contrary to law, open. He submits that the judgment of this Court in W.P.(C) 14608/2021 did not consider the judgment in M.C. Mehta (supra) and other judgments relied upon by the Petitioners in the present case. He, therefore, submits that the Judgment of the Division Bench in W.P.(C) 14608/2021 is *per incuriam* inasmuch as it runs contrary to the Judgment in M.C. Mehta (supra).

7. It is submitted by Mr. Verma that the Respondent's reference to and reliance upon the Notification dated 30.09.2020 of the Ministry of Road Transport and Highways ("**MoRTH**"), giving the response to the questions raised by the Petitioner, is baseless and misconceived as the same relates only to "agricultural tractor, power tiller and combine harvester" and does not apply to ARFVs/ACFTs.

8. It is pertinent to mention here that in the earlier round of litigation, the Respondent No.1 relied upon a letter dated 22.10.2021issued by MORTH. The same reads as under:

Dated the: 22nd Oct, 2021

To

The General Manager (Technical)
Airports Authority of India
Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110003

Sub.:- Clarification on specifying type of Motor Vehicle on the basis of its usage-reg

Ref:- AAI/CHQ/Tech./5-A/ACFT/2019 dated 06.09.2021

Sir,

I am directed to refer to letter dated 06.09.2021 regarding clarification on Aircraft Rescue Fire Fighting (ARFF)/Airfield Crash Fire Tenders.

2. In this regards, it is to inform that Aircraft Rescue Fire Fighting (ARFF) / Airfield Crash Fire Tenders (ACFT) vehicles are specialized vehicles and provided these vehicle are confined within the premises of the Airport the same shall be treated in accordance with the provision of Section 2 (28) of the Motor Vehicles Act.

3. This issues with the approval of competent authority.

Yours faithfully,

(S. K. Geeva)
Under Secretary to Govt. Of India
Tel No: 23739074
Email id : geeva.sk@nic.in

9. It is submitted by Mr. Verma that the Respondents have wrongly relied upon and misread MoRTH's letter dated 22.10.2021. He submits that MoRTH did not provide a specific response to the clarification sought by Respondent No. 1 *vide* letter dated 06.09.2021 wherein it sought clarifications whether ARFVs/ACFTs fall under "transport" or "non-transport" category. The response by MoRTH only stated that ARFVs/ACFTs are specialised vehicles and provided these vehicles are confined within premises of the Airport, the same are to be treated in accordance with the provisions of Section 2(28) of the Motor Vehicles Act, 1988 ("**MV Act**").

10. Mr. Verma has further submitted that the MoRTH letter dated 22.10.2021 does not suggest that ARFVs/ACFTs do not have to comply with BS-VI fuel emission norms as it merely states the appropriate emission norms are to be determined as per the MV Act. Further, the letter merely identifies ARFVs/ACFTs as a specialised vehicle and does not derogate from the Notification dated 05.11.2004 which identifies fire tenders as a transport vehicle.

11. It is submitted by Mr. Verma that the AAI has arbitrarily determined that ACFTs operate within enclosed premises whereas ACFTs are fire dousing equipment used when aircraft meets with an accident and/or catches fire. This includes the stage of take-off or landing as in such scenarios there are various instances where the aircraft overshoots the runway and ACFTs are required to be rushed and deployed to the crash location outside the airport premises as well. It is his contention that the peculiar nature of ACFTs cannot be considered as being confined to any enclosed premises as they are capable of being operated and are operated outside an airfield/airport.

12. It is further submitted by Mr. Verma that the fact that ACFTs have to operate outside the Airport is admitted by the AAI in its letter No. 19014/4/99/AR dated 16.11.1999 wherein it stipulated that it is mandatory for ARFVs to respond to all aircraft incident/accident up to 5 kilometres on the approach path and 2.5 kilometres across the runway. An ARFV/ACFT may be deployed beyond the aforementioned limits if decided so by the Airport Director and person in-charge of fire services considering the distance of the site of crash or accident reported. He further submits that the

aforestated stipulation is evident from Clause 4.4 of the Aerodrome Manual and various air-crash reports.

13. Mr. Verma submits that Condition 4.5.1.4 in the Impugned Tender specifies that the ARFVs/ACFTs should be capable of travelling not less than 40.23 kms at a speed of 96.5 km/h which indicates they should be capable of travelling outside the airport at high speed.

14. It is submitted by Mr. Verma that the Hon'ble Supreme Court has repeatedly interpreted Section 2(28) of the MV Act in the context of enclosed premises. He places reliance upon <u>Chairman, Rajasthan State Road Transport Corpn. &Ors. v. Santosh &Ors.,</u> **(2013) 7 SCC 94,** to submit that a vehicle which is adapted for use upon a road is included in the definition of "motor vehicle" u/s 2(28) of the MV Act. He places further reliance upon the decision in <u>Bose Abraham v. State of Kerala &Anr.,</u> **(2001) 3 SCC 157**, to submit that just because a vehicle being put to specific use such as being confined to enclosed premises will not render the same to be a different kind of vehicle. He further places reliance upon the decision in <u>Union of India &Ors. v. Chowgule & Co. Pvt. Ltd. &Ors.,</u> **1992 Supp (3) SCC 141**. It is, therefore, submitted by Mr. Verma that the Judgment passed by this Court in W.P.(C) 14608/2021 is *per in curium* inasmuch as it has been passed in violation of the judgment of the Apex Court in <u>M.C. Mehta (supra)</u> and the other judgments of the Apex Court which states that if a vehicle is capable of being used on road it is a "motor vehicle" under Section 2 (28) of the MV Act and just because it is being used in an enclosed premises will not take it outside the ambit of a motor vehicle as defined under the MV Act.

15. Mr. Verma submits that other vehicles procured by Respondent No. 1 such as Ambulifts, Runway Sweepers, Airport Surface Friction Testers,

Truck Mounted Rescue Stairs etc. which are meant to be used and operated within the airport compound compliance with BS-VI or Euro-VI emission norms in accordance with Rule 115(18) of the Central Motor Vehicle Rules, 1989 ("**CMV Rules**").

16. *Per contra*, Mr. Digvijay Rai, learned Counsel for Respondent No. 1, that the AAI had floated a similar tender on 10.01.2020 for supply of 33 ACFTs of 10,000 litres capacity, however the same was cancelled on 19.07.2020 due to poor response as there was only one bidder. The engine emission norm specified in this tender was BS-VI or Euro-VI. Pursuant to this, a subsequent tender dated 19.01.2021 was issued for the same quantity of ACFTs in which the engine emission norm specified was BS-VI or Euro-VI and in case of non-road engines it was equivalent to or below BS-VI or Euro-VI levels. This was amended to reflect that the engine emission norms be changed to BS-VI/Euro-VI based upon a representation made by the Petitioner herein. Subsequently on 25.10.2021, it was proposed that this tender also be cancelled as the qualification criteria with regards to engine emission norms was too restrictive and only one technically qualified bidder remained in the race. This single valid bid situation leads to no competition among bidders which is not line with observations made by Central Vigilance Officer ("**CVO**"), AAI and Government Audits during previous procurements. The cancellation of this tender was approved on 29.11.2021 by the competent authority of Respondent No. 1.

17. It is further submitted by Mr. Rai that the Petitioner herein challenged the cancellation of the Earlier AAI Tender before this Court by way of W.P.(C) 14608/2021. This Court dismissed the challenge *vide* judgment dated 20.04.2022. He further submits that the Court in its judgment dated

20.04.2022 in W.P.(C) 14608/2021 held that the Earlier AAI Tender prescribed unnecessarily high emission standards which would stifle competition and raise procurement costs for AAI on the basis of notifications and clarifications issued by MoRTH. He submits that the issues raised by the Petitioner herein are squarely covered by the judgment dated 20.04.2022.

18. Mr. Rai submits that the AAI issued a fresh tender on 02.02.2022 for 30 ACFTs wherein the emission norms prescribed in Clause 4.3.1.4 of the tender was minimum BS-IV. He submits that the Petitioner herein participated and placed its bid against the said tender offering ACFTs compliant with minimum BS-IV norms. He challenged the emission norms unsuccessfully and the Apex Court upheld the decision of the government whereby standard of emission was fixed as minimum BS-IV. Thereafter, the AAI floated a fresh tender dated 09.05.2022 which prescribes the engine emission norms applicable for ACFTs to be minimum BS-IV or equivalent. He submits that the argument of the Petitioner that the tender is contrary to the law holds no merit as there is no prohibition on the Petitioner to offer BS-VI grade ACFTs at a competitive price.

19. It is submitted by Mr. Rai that the AAI had issued a letter dated 06.09.2021 seeking confirmation from MoRTH whether on 06.09.2021, ARFVs/ACFTs fall under Transport or Non-Transport Category of vehicles. The aforesaid letter sought further clarification regarding whether only non-road engines or only on-road engines or both complying with applicable emission norms on 06.09.2021 are permitted to be used in ARFVs/ACFT applications. Subsequently, on 22.10.2021, MoRTH clarified that ARFVs/ACFT are specialised vehicles and provided these vehicles are

confined in the airport premises, the same are to be treated in accordance with Section 2(28) of MV Act. He highlights that that ARFVs/ACFTS do not require registration under the Motor Vehicle Rules. He further submits that as per Notification dated 05.11.2004 issued by the Central Government under the MV Act, ARFVs/ACFTs do not fall in any category unlike Fire Tenders and Firefighting Vehicles are categorised under the Transport Category.

20. Mr. Rai further submits that as per Notification dated 16.09.2016 issued by MoRTH *vide* GSR, 889(E), sub-Rule 18 of Rule 115 states that the emission standard for category "M" & "N" vehicles having gross vehicle weight not exceeding 3500 Kg, manufactured on or after 01.04.2020 for all models shall be BS-VI. He states that ARFVs/ACFTs do not fall within the specifications as laid down under the Motor Vehicle Rules. He submits that ARFVs/ACFTs do not fall into either category "M" or category "N" vehicles. He submits that the judgment in M.C. Mehta (supra) read down Rule 115(21) of the CMV Rules and dealt only with category "M" and "N" vehicles whereas the ARFVs/ACFTs do not fall into either category. He further submits that MoRTH has issued notification dated 30.09.2020 *vide* GSR No. 598(E) wherein applicable emission limit for Non-Road Steady Cycle and Non-Road Transient Test Cycle applicable with effect from 01.10.2021 is BS-IV.

21. It is submitted by Mr. Rai that *vide* notification dated 05.11.2004, Fire Tenders have been categorised as Transport Vehicles whereas other vehicles such as Agricultural Tractors, Construction Equipment have been categorised as Non-Transport Vehicles. He submits that till date ARFVs/ACFTs have not been categorised in the category of Transport

Vehicles or Non-Transport Vehicles and MoRTH has not stated under which category ARFVs/ACFTs would fall and in the absence of the same ARFVs/ACFTs cannot be registered at all.

22. It is further submitted by Mr. Rai that no manufacturer of ARFVs/ACFTs provides a road-worthiness certificate in accordance with the CMV Rules. He submits that in the absence of the same, ARFVs/ACFTs cannot be registered as motor vehicles under the MV Act, which implies they are not meant for plying on public roads and are not road-worthy. Further, in 2022, all bidders have ARFVs/ACFTs in which maximum safe load for single axle exceeds 10.2 tonnes which is above the specified axle weight under Rule 95(2A) of the CMV Rules, which shows that ARFVs/ACFTs are non-road vehicles.

23. Mr. Rai submits that even though as per DGFT circular dated 14.12.2007, vehicles which are designed for off-highway operations in mining, industrial undertaking, irrigation and general construction with "on or off" or "on and off" highway capabilities are equipped to be driven on road on their own power and come on public road, even incidentally, for a short duration are Motor Vehicles u/s 2(28) of the MV Act. Even if that ARFVs/ACFTs are motor vehicles, in the absence of any categorisation these vehicles cannot be registered and BS-VI norms cannot be applied to such specialised vehicles.

24. It is submitted by Mr. Rai that the word "only" used in Section 2(28) of the MV Act has to be given a wide interpretation. He places reliance upon the decision in National Insurance Company Ltd. v. Deepa Devi &Ors., **(2008) 1 SCC 414**, wherein it was held that if in a given situation, statutory

definitions under the MV Act cannot be given effect to in letter and spirit, the same should be understood from common point of view.

25. It is further submitted by Mr. Rai that as per Clause 3.3.1 of advisory circular No. AC 150/5220-10E issued by the Federal Aviation Administration, the vehicles are required to comply with relevant state laws for off-highway engine emission norms. Further, Clause 5.6.2 of the International Civil Aviation Organization ("**ICAO**") Document No. Doc-9137 AN/898 also states that the off-road performance of vehicles should be the primary consideration in selection of the vehicle.

26. It is submitted by Mr. Rai that Volvo is the sole manufacturer of ACFT engines complying with BS-VI/Euro-VI norms. He states that the Petitioner has entered into an MoU. He submits that if the AAI restricts the emission norm requirements of the tender to BS-VI/Euro-VI then the Petitioner shall be the sole bidder to participate in the tender process and this would create a monopoly in favour of the Petitioner.

27. Mr. Rai further submits that the requirement of Airport Fire Services to conduct firefighting and rescue operations in the vicinity of the airport is as per Operational Circular No. 3/1999 dated 25.05.1999. As per the said circular, the area up to 5 kms in the approach path and other areas, 2 kms around the airport boundary is defined as the vicinity of the Airport. The primary reason for the same is that Aircraft Crashes up to the said distance are said to be "survivable" whereas crashes beyond this are said to be "non-survivable crashes". He further submits that the AAI entered into a draft MoU with the city fire services on 22.02.2013 which was issued in compliance with ICAO recommendations regarding jurisdiction of Airport

Fire Services and City Fire Services to conduct fire fighting and rescue operations.

28. It is submitted by Mr. Rai that as per Clause 11.1.13, Part 1, Chapter 11 of ICAO Doc. 9137, provides that Airport Fire Equipment required to maintain RFF category should not be used for fires off the airport while flight operations are still in progress. In case an ARFV/ACFT is to be sent outside the premises and within the vicinity of the Airport, the Aircraft Operations would have to be stopped at the particular Airport and the probability of ARFVs/ACFTs going out of the airport is very remote. The decision of AAI that in extreme circumstances ARFVs/ACFTs have to be moved out to cater to aircraft accidents where there is a probability of saving lives of people is a humanitarian situation and the AAI, being an undertaking of the Government is bound to cater to such situations.

29. Mr. Vinay Garg, Learned Counsel for Naffco India Private Limited ("**Applicant**"), submits that an application for impleadment has been filed by them under Order I Rule 10 of the Code of Civil Procedure, 1908 ("**CPC**"). He submits that the Applicant is a manufacturer and supplier of firefighting equipment and custom-made vehicles including ARFVs/ACFTs and has submitted a bid in the Impugned Tender. He further submits that a change in conditions of the Tender document would affect the rights of the Applicant and thus it is a necessary party in the case.

30. It is submitted by Mr. Garg that the Petitioners had made a similar attempt in W.P.(C) 14608/2021 and this Court *vide* its judgment dated 20.04.2022 dismissed the said writ petition against which the Petitioners herein preferred SLP (C) No. 10453/2022 and the Hon'ble Supreme Court

declined to interfere in the same. He submits that the present writ petition is thus barred by the principal of res judicata.

31. Mr. Garg submits that the present petition has been filed by the Petitioner herein to ensure that the Petitioner becomes the only eligible bidder for the impugned tender in the country.

32. It is further submitted by Mr. Garg that it is only Volvo Penta which is capable of making engines for ACFTs which meet the technical specifications for BS-VI/Euro-VI engine emission norms. He submits that these engines are manufactured by Volvo Penta in joint development and investment of Rosenbauer International AG and is a proprietary item. The Petitioners herein have a business interest in Volvo Penta and have entered into an OEM Partnership with the same and they are trying to create a monopoly. He further submits that it is not the case of the Petitioners herein that they are incapable of making ACFTs complying with BS-IV emission norms and are ineligible from participating in the Impugned Tender process. He submits that the Petitioner is seeking to introduce emission norms applicable to on-road vehicles whereas law in India requires standards of non-road steady or transient cycle vehicles to be applied for non-road vehicles like ACFTs.

33. Mr. Garg further submits that under the scheme of the MV Act, CMV Rules and notifications issued thereunder, all essential requirements, mechanical, electrical, safety, dimensions of the vehicles and that of parts including emission standards of all vehicles covered under the definition of "motor vehicles" under Section 2(28) of the MV Act, have been prescribed. He submits that the provisions of the MV Act and CMV Rules are exhaustive and these essential requirements, including engine emission

norms have not been specified for vehicles which are excluded from the definition of Section 2(28) of the MV Act. The absence of ACFTs from CMV Rules and notifications issued by the Central Government indicates that they are excluded from the definition of "Motor Vehicles" under the MV Act.

34. It is submitted by Mr. Garg that Sections 2(15), 2(28), 2(34), 2(47), 3, 39, 41(4), 109, 110 of the MV Act read with Chapter V of the CMV Rules, particularly Rules 93, 95, 115, 115-A, 115-L & 116 of the CMV Rules and Central Government's notification dated 30.09.2020 highlights the scheme of the Act, which excludes ACFTs from the ambit of "motor vehicles" under Section 2(28) of the MV Act and therefore no emissions standards have been prescribed for it. He submits that ACFTs are specialised vehicles which fall under the exclusion part of the definition under Section 2(28) of the MV Act but also does not fall within any of the vehicles for which the MV Act or CMV Rules prescribe standards.

35. Mr. Garg submits that ACFTs are not required to be and are not registered under the MV Act and a driving license issued under the MV Act is not valid to drive ACFTs unless the driver has undergone a special training course. He submits that the standards laid down by Respondent No. 1 and ICAO which are binding on ACFT suppliers under Tender Documents would show that the requirements of an ACFT are limited to its operation within the Airfield.

36. Mr. Garg further submits that in the absence of emission standards fixed for ACFTs in the MV Act and CMV Rules, there is no obligation upon Respondent No. 1 to prescribe any norms as a condition under Tender Documents. He submits that even if, arguendo, ACFTs are considered not to

be a special type of vehicle adapted for use only in an enclosed premise, the Respondent No. 1 has correctly prescribed the norms as per notification dated 30.09.2020, which provides that the emission norms applicable to non-road vehicles are BS-IV or equivalent.

37. It is submitted by Mr. Garg, that the Applicant in order to meet emission requirements of BS-IV has been submitting test reports on the basis of Non-Road Steady Cycle ("**NRSC**") and Non-Road Transient Cycle ("**NRTC**") which has been accepted, whereas the Petitioner herein is submitting report of on-road test which is not applicable in the case of ACFTs. He submits that the method of NRSC and NRTC was adopted in Europe under "Regulation (EU) 2016/1628 of the European Parliament and Council for "non-road vehicles" and considering these vehicles/machineries operate in extreme conditions, exemptions have been made for their emission limits. He states that the same principle is being followed in the US.

38. It is further submitted by Mr. Garg that the purpose of the provision allowing for ACFTs to operate within the approach path up to 5 kms and 2.5 kms across the runway is to secure the life of passengers in the aircraft. He submits that a single instance is not sufficient to establish the suitability of an ACFT for use upon road. He relies upon the decision of the Hon'ble Bombay High Court in V.M. Salgaocar & Brothers v. State of Goa, **2008 SCC OnLine Bom 506,** to submit that the term "adapted for use only in a factory or any other enclosed premises" would mean a vehicle primarily designed for such uses off the road and for use in a factory or any other enclosed premises. He further submits that even if, arguendo, it is held that the construction of ACFT, Rules and Regulations applicable and number of

times it goes out of enclosed premises makes it suitable to be used upon roads, it cannot be treated as an "on-road" vehicle but only as a "non-road" vehicle.

39. Mr. Garg submits that the decision in Chairman, Rajasthan State Road Transport Corporation (supra) supports the case of the Applicant as a vehicle which is not adapted for use upon the road is to be excluded from the definition of "motor vehicle" under Section 2(28) of the MV Act.

40. Mr. Garg further submits that the decision in M.C. Mehta (supra) is not applicable to the present case as the question in that case was with regards to the interpretation of Rule 115(21) of the CMV Rules and the use of the word "motor vehicle" was limited to vehicles covered by Rule 115. He submits that it was not the Court's intention to apply the provisions of Rule 115 to all "motor vehicles" even if they are not covered by Rule 115. He further submits that subsequent to the amendment on 30.09.2020 read with Press Note dated 05.10.2020 issued by MoRTH, the decision cannot be applied to non-road vehicles covered by Rule 115-A.

41. It is submitted by Mr. Garg that a bare reading of the Manual, circulars, guidelines etc. issued by different authorities show that provisions referring to Airport Fire Services are not limited to use of ACFTs. He submits that the aforesaid documents show ACFTs are vehicles of special type which are not suitable to be adapted for use upon roads. He submits that the Petitioner's reliance upon these documents to show that ACFTs can be used outside the airport premises is misplaced as these documents have no statutory force and cannot be contrary either to constitutional norms or statutory principles. He places reliance upon the decisions in Food Corporation of India v. Jagdish Balaram Bahira, **(2017) 8 SCC 670,** and LIC

v. Insure Policy Plus Services (P) Ltd., **(2016) 2 SCC 507,** to buttress this argument.

42. In rejoinder, it is submitted by Mr. Verma, Ld. Senior Counsel, that in previous tenders issued by AAI where the emission norms specified was BS-IV, the number of bidders who technically qualified was limited and the Petitioner has always given its lowest and best prices and has most of the times successfully competed with other bidders to become L-1 on merits. He further submits that as per procedure of AAI and General Instructions in Procurement & Management dated 29.10.2021 issued by Ministry of Finance, Department of Expenditure, Procurement Policy Division, lack of competition cannot be determined solely on the basis of number of bidders and the cancellation of tender on such ground is in violation of its own guidelines and instructions issued by the Ministry of Finance.

43. It is further submitted by Mr. Verma that the reliance of the AAI on FAA Circular dated 06.01.2011 is baseless as it gives primacy to US environmental laws and at the time of issuance of the said circular, Euro-VI/BS-VI norms did not exist. Further, the reliance on ICAO Doc. 9137 AN/898 is irrelevant as it deals with "off-road performance" and not engine type/emission norms.

44. Mr. Verma further submits that the AAI's and Applicant's contention that the Petitioner is attempting to create a monopoly along with Volvo Penta is incorrect. He submits that all other bidders in the previous tenders, including the Petitioner, offered a gearbox manufactured by Twin Disc, USA however the same is not considered as a monopoly. He submits that all other three earlier bidders offered a *Scania* engine with same emission norms and it was this manufacturer which made a representation to AAI to

lower emission norms. He further submits that the engine manufactured by Volvo Penta is available in the open market for all interested firms and manufacturers are disinterested as it is costlier. He submits that this argument regarding cost was rejected in M.C. Mehta (supra).

45. Heard the counsels appearing for the parties and perused the material on record.

46. The Learned Counsels for Respondent No. 1 and the Applicant at the outset have stated that the issues raised in the present petition are squarely covered by the judgment of this Court dated 20.04.2022 in W.P.(C) 14608/2021 and the present challenge is barred by the doctrine of *res judicata*. The aforesaid judgment was challenged by the Petitioner herein by way of an SLP before the Hon'ble Supreme Court, wherein the Apex Court *vide* order dated 17.06.2022 refused to interfere and dismissed the challenge giving finality to the issues raised by the Petitioners. At this juncture, it becomes imperative for this Court to first determine whether the decision of this Court in W.P.(C) 14608/2021 and the subsequent SLP squarely cover the issues raised by the Petitioners in the instant writ petition and whether the challenge raised is barred by the doctrine of *res judicata*.

47. It is a well settled principle that when an issue has been directly and substantially in issue in a writ proceeding under Article 226, it cannot be raised in subsequent judicial proceedings between the same parties. This is based on the principle that there should be a definite end to litigation and some finality should attach to the binding decisions pronounced by a court of competent jurisdiction (See: Ashok Kumar Srivastav v. National Insurance Co. Ltd., **(1998) 4 SCC 361**). Permitting litigation to continue

endlessly would amount to an abuse of process of law and is in contravention of public policy under Indian law.

48. Similarly, it is also well settled that an issue which ought to have been raised in earlier proceedings, and has not been raised, cannot be allowed to be raised in subsequent proceedings between the same parties. This principle is applicable to writ proceedings initiated under Article 226 of the Constitution. This is based on the principle that an adjudication by the Court is conclusive and final not only to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have it decided as incidental to or essentially connected with the subject matter of the litigation (See: Forward Construction Co. v. Prabhat Mandal (Regd.), **(1986) 1 SCC 100,** and Central Bank of India v. Dragendra Singh Jadon, **(2022) 8 SCC 378).** If a party fails to raise an argument or issue which ought to have been litigated in a proceeding, then he cannot be permitted to raise the same in subsequent litigation involving the same parties.

49. At this juncture, it is necessary to discuss the issues determined and adjudicated by this Court in its judgment dated 20.04.2022 in W.P.(C) 14608/2021. It is pertinent to highlight that the Petitioner in the previous proceedings is also the Petitioner herein and had challenged a tender issued by the Respondent No. 1 inviting bids for supply of ACFTs. Further, the Ministry of Civil Aviation ("**MoCA**") had been made Respondent No. 2 in the earlier proceedings and has also been made Respondent No. 2 in the present proceedings. The relevant paragraphs of the judgment discussing the issues raised in the earlier judgment are extracted as under:

"30. The corrigendum no. AAI/CHQ/Tech/5-A/ACFT/2019 dated-22.02.2021 reads as under:

"No. AAI / CHQ/ Tech / 5 - A/ ACFT / 2019 Dated: 22.02.2021

CORRIGENDUM No. 2

(Tender ID: 2021_AAI_67496_1)

Subject: SUPPLY OF 33 Nos. AIRFIELD CRASH FIRE TENDERS (ACFTS) OF 10,000 LITERS WATER TANK CAPACITY WITH 07 YEAR COMPREHENSIVE ANNUAL MAINTENANCE CONTRACT INCLUDING 02 YEAR GUARANTEE PERIOD FOR USE AT VARIOUS AIRPORTS IN INDIA

Please refer Tender ID: 2021_AAI_67496_1 for Supply of 33 Nos. Airfield Crash Fire Tenders (ACFTs) of 10,000 liters Water Tank Capacity With 07 Year Comprehensive Annual Maintenance Contract Including 02 Year Guarantee Period for use at various Airports in India, uploaded on NIC-CPP Portal https://etenders.gov.in/eprocure/app on 19.01.2021.

Following addendum / amendments in the Tender document are hereby notified:

SI No.	*Section No.*	*Clause No.*	*Page No. in Section*	*Existing Provision in Para/ Clause*	*Amended As*
1.	*.....*				
2.	*Section - D*	*Clause 4.1.3.1 (b)*	*Pg. 65*	*A midship mounted pump, either coupled with the auxiliary engine (emission levels shall be equal to or below than, the prescribed limits of Bharat Stage VI*	*A midship mounted pump, either coupled with the auxiliary engine (Engine(s) shall have Bharat Stage*

				/Euro VI levels}, or driven of the vehicle PTO mechanically, shall be fitted, having a minimum output of 6000 L/min at suitable delivery pressure and suction lift 3 metres.	*BS VI / Euro VI EC type approval or equivalent certificate Issued by any regulatory authority. OEM of engine(s} shall submit a certificate on forming emission level meets Bharat Stage BS VI / Euro VI or equivalent) or driven of the vehicle PTO mechanically, shall be fitted, having a minimum output of 6000 L/min at suitable delivery pressure and suction lift 3 metres.*
3.	*Section - D*	*Clause 4.3.1.4*	*Pg. 70*	*The engine emission levels shall be minimum Bharat Stage VI /*	*Engine(s) shall have Bharat Stage BS VI / Euro*

				Euro VI norms for emission. In case of non-road engines, the emission levels shall be equal to or below than the prescribed limits for Bharat VI / Euro VI levels. The test certificate (EC Type/equivalent approval Certificate) Indicating emission levels, from official certification authority shall be submitted in the technical bid.	*VI EC type approval or equivalent certificate Issued by any regulatory authority. OEM of engine(s) shall submit a certificate conforming emission level meets Bharat Stage BSVI /Euro VI or equivalent.*
4.	….				
5.	….				
6.	….				

”

31. The petitioner has relied upon the Notification bearing No. S.O.1248(E) dated 05.11.2004, which is reproduced as under:

"NOTIFICATIONS UNDER THE MOTOR VEHICLES ACT

(Issued by the Central Government)

Under Section 41(4)

Specification of Types of Motor Vehicles

S.O.1248(E),dated 5-11-2004. *– In exercise of the powers conferred by sub-section (4) of section 41 of the Motor Vehicles Act, 1988 (59 of 1988) and in supersession of the notification of the Government of India in the erstwhile Ministry of Surface Transport No. S.O. 451(E), dated the 19th June, 1992, the Central Government hereby specifies the types of motor vehicles as mentioned in column 1 and 2 of the Table below for the purposes of said sub-section (4); -*

Transport Vehicles	*Non-Transport Vehicles*
(1)	*(2)*
(i)Motor cycle with side car for carrying goods	*(i)Motor cycle with or without side car for personal use.*
(ii)Motor cycle with trailer to carry goods	*(ii)Mopeds and motorized cycle (Engine capacity exceeding 25cc)*
(iii)Motor cycle used for hire to carry one passenger on pillion and motorized cycle-rickshaw for goods or passengers on hire	*(iii)Invalid carriage.*
(iv)Luxury cabs.	*(iv)Three-wheeled vehicles for personal use*
(v) Three wheeled vehicles for transport of passenger/goods.	*(v)Motor car.*
(vi)Goods carrier trucks or tankers or mail carriers (N1-N3 category).	*(vi)Fork lift.*
(vii)Power tillers and Tractors using public roads.	*(vii)Vehicles or trailers fitted with equipment"s like rig, generator, and compressor*
(viii)Mobile clinic or X-ray van or Library vans	*(viii)Crane mounted vehicles.*
(ix)Mobile workshops.	*(ix)Agricultural Tractors and power Tillers.*
(x)Mobile canteens.	*(x)Private service vehicle, registered in the name of an*

	individual and if declared to be used by him solely for personal.
(xi)Private Service Vehicle.	*(xi)Camper van or trailer for private use.*
(xii)Public service Vehicle such as maxi cab, motor cab, stage carriage and contract carriages including tourist vehicles.	*(xii)Tow trucks, Breakdown Van and Recovery Vehicles.*
(xiii)Educational Institution buses.	*(xiii)Tower Wagons and tree trimming vehicles owned by Central, State and local authorities.*
(xiv)Ambulances.	*(xiv)Construction Equipment vehicles as defined in rule 2(ca)**
(xv)Animal ambulances	
(xvi)Camper vans or trailers	
(xvii)Cash vans.	
(xviii)Fire tenders, snorked ladders, auxiliary trailers and fire fighting vehicles.	

32. As per the above notification, the ACFTs would be covered in the category of Fire Tenders and fire fighting vehicles and, therefore, fall within the definition of motor vehicles.

33. On 4th June, 2021, the MoRTH came out with a notification informing that the above mentioned notification dated 05.11.2004 will be superseded, which is as follows:

"No. RT-11036/127/2020-MVL

Government of India

Ministry of Road Transport and Highways

(MVL Section)

Transport Bhawan, 1, Parliament Street, New Delhi - 110001

Dated the, 04 June, 2021

- *Transport Commissioner/ Secretaries of all the States/ UTs*
- *Test agencies referred in Rule 126 of the Central Motor Vehicle Rules, 1989*
- *Citizen of India*

Sub: Order specifying types of Motor Vehicle on the basis of its usage.

Ministry is going to supersede the existing "Types of Motor Vehicles at a glance" inserted in the Central Motor Vehicles Rules, 1989 vide S.O. 1248 (E) dated 05.11.2004 based on the current requirement.

2. The comments or suggestions if any, may be sent by 04 July 2021 to-

Director (MVL),
Ministry of Road Transport and Highways
Transport Bhawan, Parliament Street,
New Delhi-110001
email – comments-morth@gov.in

(Dr. Piyush Jain)

Director (MVL)

Tele: 23714974

email: director-morth@gov.in

Copy to:

1. Shri P.K. Jain, Technical Director, NIC – Please place this draft notification on MoRTH website for Consultation.

TO BE PUBLISHED IN THE GAZETTE OF INDIA – EXTRAORDINARY, PART II, SECTION 3, SUB-SECTIONB (ii)]

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

TYPES OF MOTOR VEHICLES AT A GLANCE

New Delhi, the __________June, 2021

S.O.________( ) . – In exercise of the powers conferred by sub-section (4) of section 41 of the Motor Vehicles Act, 1988 (59 of 1988) and in suppression of the notification of the Government of India number No.S.O.1248 (E), dated 5th November, 2004, the Central Government hereby specifies the types of motor vehicles as mentioned in the table below for the purpose of said sub-section(4).

TABLE B

Non-Transport Vehicles	***Transport Vehicles***
Motor cycle with or without side car for personal use	*Motor cycle with side car or trailer for carrying goods Used for Hire*
Mopeds and motorized cycles (Engine capacity exceeding 25 cc but not exceeding 50 cc or motor power exceeding 0.25 kW but not exceeding 4kW with speed not exceeding 70 KMPH)	*Motor Cycle used for Hire (used as Public service vehicles)*
Adapted Vehicle	*Three-Wheeler Public / Private Service Vehicle*
Three wheeled motor vehicle for personal use	*Three wheeler goods carriage*
Motor car	*Light Goods Vehicle*
Fork lift	*Medium Goods Vehicle*
Agricultural tractor and power tiller	*Heavy Goods Vehicle*
Two trucks, Breakdown Van and recovery Vehicles	*Mobile clinic/ Lab/ Library Vehicle*
Tower Wagon/ Snorked Ladders and Tree Trimming Vehicles owned by Central	*Tower Wagon/ Snorked Ladders and Tree Trimming Vehicles for hire and reward*

Government, State Governments and local authorities	
Constitution Equipment Vehicles as defined rule 2 (cab)	*Mobile Workshop Vehicle*
Quadricycle – for Personal use	*Mobile Canteen Vehicle*
Police Buses	*Private Service Vehicle*
Prison buses	*Public Service Vehicle such as maxi cab, motor cab, stage carriage and contract carriage including tourist vehicles*
Corpse buses owned by Central Government, State Government and local authorities	*Corpse buses for hire and reward*
Motor Caravan for personal use	*Education institution Buses*
Publicity/ Campaign Buses for promotion of activities related to health, education and environment protection etc. owned by Central Government, State Governments and local authorities	*Publicity / Campaign Buses for promotion of activities related to health, education and environment protection etc. for hire and reward*
Harvester	*Ambulance*
Excavator	*Animal ambulance*
Wheeled Loader	*Trailer*
Backhoe Loader	*Cash vans*
Skid Street Loader	*Articulated vehicles*
Compactor	*e-cart goods carriage*

Dumpers	*e-rickshaw passenger*
Motor grader	*Quadricycle – Public service vehicle*
Dozer	*Quadricycle goods carriage*
Wheel tractor scraper	*Mobile exhibition*
Concrete mixtures	*Mobile advertisement vehicle*
Pavers	*Mobile shop vehicle*
Pile boring machine	*Semitrailer*
Mobile crane	*Modular hydraulic trailer*
Teachers	*Puller tractor*
Earth Moving Equipment	*Vehicle of Category-N and T, mounted with machinery or equipment such as Rig machine, compressor, Generator, Concrete mixture, Crane etc.*
Vehicles integrated with machinery or equipment, for performing works in relation to Construction, Earth moving, Excavation, Loading, Drilling, Spreading, Cleaning, Maintenance, Safety etc.	*Motor caravan for hire*
Omni bus for personal use	*Omni bus for hire and reward*
Road cleaning/ sweeping vehicles	
Fire fighting vehicles	

Under rule2(cab) – a construction equipment vehicle or earth moving vehicle shall be a non-transport vehicle, the driving on the road of which is incidental to the main off-highway function and for a short duration at a speed not exceeding fifty kilometers per hour, but vehicles type approved as Category N *or Category T and used as construction equipment vehicle shall be transport vehicles*

[No. RT-11036/127/2020-MVL]

(Amit Varadan)

Joint Secretary to the Government of India"

34. *Subsequently, the respondent No. 1 wrote a letter bearing No. AAI/CHQ/Tech./5-A/ACFT/2019 dated 06.09.2021 to the MoRTH, GoI, seeking clarification on specifying type of Motor Vehicles on the basis of its usage, more specifically "whether ARFF/ACFT falls under Transport or Non-Transport category of vehicles?". This communication reads as under:*

भारतीय विमानपत्तन

प्राधिकरण

AIRPORTS AUTHORITY OF INDIA

Speed post/email

"AAI/CHQ/Tech./5-A/ACFT/2019 06th September, 2021

To,

The Director (MVL)

Ministry of Road Transport and Highways,

Transport Bhawan, Parliament Street,

New Delhi-110011

Sub**: - *Clarification on specifying type of Motor Vehicle on the basis of usage-Reg.***

Ref: - *(i) Specification of Types of Motor vehicles vide S.O. 1248I, dated 05-11-2004.*

(ii) Your letter No. RT-11036/127/2020-MVL dated 04th June with draft notification.

Sir,

Reference is made to the subject matter, it is to inform that Airports Authority of India (AAI) is purchasing Aircraft Rescue Fire Fighting (AARF) / Airfield Crash Fire Tenders (ACFT) for which we have invited global e-tender for ACFTs of 10,000 Water tank capacity of following specifications: -

1. Chassis Width = 03 meters

2. No. of Axles = 03 (Front, Rear & Intermediate), No. of Wheels = 06, All wheel drive.

3. Vehicle Engine: HSD (High Speed Diesel) driven with Engine Power Output of 485 KW (650 hp).

4. Maximum acceleration time from 0 to 80 kmph <= 35 seconds

5. Application: - Within the enclosed premises of the Airport(s).

6. Purpose of Use: - For Airfield Rescue & Firefighting operations.

The ACFTs vehicle has been included under specialized vehicle category and are exempted from the registration vide order RT-11036/26/2003 dated 18th September, 2003 & RT-11012/2/07-MVL dated 21st April, 2008 issued by the Ministry of Road Transport & Highways (Copy enclosed).

As per the notifications vide S.O 1248(E), dated 05-11-2004 under the section 41 (4) for specification of the motor vehicle act, the Fire Tenders and Fire Fighting

vehicles are categorized under transport vehicles (Copy enclosed).

However, a draft notification available in the internet [To be published in the Gazette of India-Extraordinary, Part II, Section 3, Sub-section (II)] of types of motor vehicles at a glance reads the Fire Fighting vehicles are proposed to be included in the Non-Transport vehicle category (Copy enclosed).

In view of the above, you are requested to kindly confirm the following: -

(a) As on date, whether ARFF/ACFT falls under Transport or Non-Transport category of vehicles?

Whether only Non-road engines or only On-road engines or both, complying the emission norms applicable as on date, are permissible to be used in ARFF/ACFT application
An early reply in this matter is solicited please.

Thanking You,

Yours faithfully,

(R. Ashok Kumar)

General Manager (Technical)"

35. The MoRTH, GoI vide the letter bearing No. RT-11036/185/2021-MVL dated 22.10.2021 replied as under:

"No. RT-11036/185/2021-MVL

Government of India

Ministry of Road Transport and Highways

(MVL Section)

Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated the: 22nd Oct, 2021

To

The General Manager (Technical)

Airports Authority of India

Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110003

Sub:- Clarification on specifying type of Motor Vehicle on the basis of its usage-reg.

Ref:- AAI/CHQ/Tech./5-A/ACFT/2019 dated 06.09.2021

Sir,

S. I am directed to refer to letter dated 06.09.2021 regarding clarification on Aircraft Rescue Fire Fighting (ARFF)/Airfield Crash Fire Tenders2. In this regards, it is to inform that ***Aircraft Rescue Fire Fighting (ARFF) / Airfield Crash Fire Tenders (ACFT) vehicles are specialized vehicles and provided these vehicle are confined within the premises of the Airport the same shall be treated in accordance with the provision of Section 2 (28) of the Motor Vehicles Act.3.*** *This issues with the approval of competent authority.*

Yours faithfully,

(S.K. Geeva)

Under Secretary to Govt. Of India

Tel No: 23739074

Email id : geeva.sk@nic.in"

(emphasis supplied)

36. In accordance with the above reply, the ACFTs being confined within the premises of the Airport are to be treated in accordance with provisions of Section 2(28) of the Motor Vehicle Act, 1988 which defines motor vehicle as under:

> *"**2 Definitions–**In this Act, unless the context otherwise requires,–*
>
> *(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer**; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimetres]**" (emphasis supplied)*

37. As per the reply tendered by the Government, ACFTs fall within the purview of Fire Tenders in an enclosed premise i.e., the airport, and as such, the stipulation that they comply with Bharat Stage VI emission norms was not called for. Thus, ACFTs used within the enclosed premises i.e. the airports do not fall within the definition of "motor vehicles", and no fault can be found with the cancelling of the tender in question. The decision of respondent No. 1 in cancelling the tender is not arbitrary, mala fide or whimsical, but is based upon reasoning, application of mind, and was done with the approval of the competent authority. The

*Supreme Court in its judgment tiled as **Silppi Constructions Contractors v. Union of India**[1], observed as under:*

> ***"25.** That brings us to the most contentious issue as to whether the learned Single Judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a State within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. Respondents 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done."*

38. As per respondent No. 1 Bharat VI compliance is only required for category M and N vehicles and the ACFT does not fall within either of the two categories, which are defined as under:

> *"Category M vehicles has been defined in the Central Motor Vehicle Rules, 1989 as:*
>
> *2 (k) "Category M" means a motor vehicle with at least four wheels used for the carriage of passengers and their luggage;*
>
> *Category N vehicles has been defined in the Central Motor Vehicle Rules, 1989 as:*
>
> *2 (o) "Category N" means a motor vehicle with at least four wheels used for the carriage of goods;"*

"Limit Values for M and N Category vehicles fitted with PI & CI Engines: BS VI

[1] (2020) 16 SCC 489.

		Reference Mass (RM) (kg)	Mass of Carbon Monoxide (CO) L1 (mg/km)		Mass of Total Hydrocarbons (THC) L2 (mg/km)		Mass of Non-Methane Hydrocarbons (NMHC) L3 (mg/km)		Mass of Oxides of Nitrogen (NOx) L4 (mg/km)		Combined Mass of Hydrocarbons and Oxides of Nitrogen (THC + NOx) L2 + L3 (mg/km)		Mass of Particulate Matter (PM) L5 (mg/km)		Number of Particles (PN) L6 (numbers/km)	
Category	Class		PI	CI	PI	CI	PI	CI	PI	CI	PI	CI	PI (3)	CI	PI (3)(4)	CI
M(M1 & M2)	-	All	1000	500	100	-	68	-	60	80	-	170	4.5	4.5	6.0 X 10^{11}	6.0 X 10^{11}
N1	I	RM ≤ 1305	1000	500	100		68	-	60	80	-	170	4.5	4.5	6.0 X 10^{11}	6.0 X 10^{11}
	II	1305<RM≤1760	1810	630	130	-	90	-	75	105	-	195	4.5	4.5	6.0 X 10^{11}	6.0 X 10^{11}
	III	1760≤RM	2270	740	160	-	108	-	82	125	-	215	4.5	4.5	6.0 X 10^{11}	6.0 X 10^{11}
N2	-	All	2270	740	160	-	108	-	82	125	-	215	4.5	4.5	6.0 X 10^{11}	6.0 X 10^{11}

PI = Positive Ignition, CI = Compression Ignition

(3) For positive ignition, particulate mass and number of particles limit shall apply only to vehicles with direct injection engine.

(4) Until three years after date of implementation for new type approvals and new vehicles, particle number emission limit of 6.0 X 10^{12} #/km shall apply to BS VI gasoline direct injection vehicles upon choice of the manufacturer.

Note: This Regulation shall apply to vehicles of categories M1, M2, N1 and N2 with a reference mass not exceeding 2,610 kg.

At the manufacturer's request, type approval granted under this Regulation may be extended from vehicles mentioned above to M1, M2, N1 and N2 vehicles with a reference mass not exceeding 2,840 kg and which meet the conditions laid down in this notification.

The ACFT does not come within, either of the categories M and N, and, thus, Bharat VI compliance is not a sine qua non for ACFT in as much as it is a vehicle to be used in an enclosed premise, and hence, within the exception carved out under Section 2 (28) of the Motor Vehicles Act, 1988.

39. The reasoning of Respondent no. 1 for cancellation of tender seems to be:

a) ACFT does not come within the purview of transport vehicle.

b) It is within the exception carved out in section 2(28) of Motor Vehicles Act

c) MoRTH clarification is to the same effect

> *d) Based on the opinion of MoRTH and understanding of Respondent no.1, deliberate and well-thought out discussions have taken place amongst the senior officers of respondent no.1, and only thereafter, the decision dated 29.11.2021 has been taken to cancel the tender.*

40. The Respondents have shown that their decision to cancel the tender was not based on their whims and fancies, or to oust the Petitioner in particular and favour any other bidders. In view of notifications and clarification from MoRTH, it is evident that ACFT would belong to the category of special vehicle to be used in enclosed premises and, therefore, the BS VI complaint engine may not be required. Even though the notification dated 05.11.2004 was not superseded, through the letters and notifications issued by MoRTH make it probable that it would be superseded in the near future. Hence, in light of this, the rationale behind cancellation of tender cannot be doubted or interfered with, when it is not illegal, biased, arbitrary or hit by Wednesbury's principle of unreasonableness. The prescription of the unnecessarily higher emission standards for ACFT to be used in the enclosed area of an airport, had the effect of stifling competition and possibly raising the procurement costs for the respondent AAI.

41. Additionally, the Clause 7.15.1 of the Manual for Procurement of Goods and Services, 2018 prescribes the tender authority to consider the lack of competition in a Tender. Following is the relevant clause:

> *"7.15 **Consideration of lack of competition in Open Tender/ Global tender and Limited Tender Enquiry.***
>
> *7.15.1 Sometimes, against advertised/ limited tender cases, AAI may not receive a sufficient number of bids and / or after analyzing the bid, ends up with only one responsive bid – (a situation referred to as "Single offer". "Single response" or "Single Quote". Such situation of "Single Offer" is to be treated as Single Tender. Even when only one Bid is submitted the process may be considered valid provided following conditions are satisfied:*

7.15.1.1 The Procurement was satisfactorily advertised and sufficient time was given for submission of bids.

7.15.1.2 The qualification criteria were not unduly restrictive.

7.15.1.3 Prices are reasonable in comparison to market rates."

42. Therefore, the Respondent cancelled the tender on the basis of the emission norms being unduly restrictive in the circumstance where EURO VI engine was not a legal requirement for non-transport vehicle.

43. If the view of the tendering authority is plausible and reasonable, the Courts in their limited judicial scrutiny cannot take a contrary view. For the reasons stated above, the view of respondent no. 1 that ACFT is not a transport vehicle and hence, EURO VI emission norms may not be strictly applicable, is plausible, and is based on the documents placed before us. Unless the decision is arbitrary, illegal, biased or unreasonable, the Court would not interfere with a plausible view. The same has been stated in ***Agmatel India Pvt. Ltd. v. Resoursys Telecom and othrs***.[2] *wherein the Supreme Court observed:*

> ***"51.*** *Viewed from any angle, interference by the High Court in this matter does not appear justified, particularly when no case of mala fide or bias is alleged. Every decision of the administrative authority which may not appear plausible to the Court cannot, for that reason alone, be called arbitrary or whimsical. The High Court, in the present matter has obviously proceeded with an assumption that the view as being taken by it, in acceptance of the case of the writ petitioner, was required to be substituted in place of the views of the tender inviting authority. That has been an error of law and cannot sustain itself in view of the consistent binding decisions of this Court, including the 3-Judge Bench decision in Galaxy Transport (supra)."*

---

[2] 2022 SCC OnLine SC 113.

44. In the above-mentioned case, the Supreme Court has observed that even if the view is not plausible, unless malafide is shown, the Court should not interfere in the decision of the tendering authority.

45. Most importantly, the Supreme Court in ***State of Jharkhand v. CWE-SOMA Consortium***[3]*, has observed the following:*

> *"13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender.* ***After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour*** *(vide Laxmikant v. Satyawan [Laxmikant v. Satyawan, (1996) 4 SCC 208] , Rajasthan Housing Board v. G.S. Investments [Rajasthan Housing Board v. G.S. Investments, (2007) 1 SCC 477] and U.P. Avas Evam Vikash Parishad v. Om Prakash Sharma [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737]).*
>
> *15. The State derives its power to enter into a contract under Article 298 of the Constitution of India and has the right to decide whether to enter into a contract with a person or not subject only to the requirement of reasonableness under Article 14 of the Constitution of India. In the case in hand, in view of lack of real competition, the State found it advisable not to proceed with the tender with only one responsive bid available before it. When there was only one tenderer, in order to make the tender more competitive, the Tender Committee decided to cancel the tender and invited a fresh tender and the decision of the appellant did not suffer from any arbitrariness or unreasonableness.*

---

[3] (2016) 14 SCC 172

> *23. **The right to refuse the lowest or any other tender is always available to the Government. In the case in hand, the respondent has neither pleaded nor established mala fide exercise of power by the appellant.** While so, the decision of the Tender Committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender." (emphasis supplied)*

> *46. Therefore, the decision whether to accept the bid of the sole bidder, or not, rests with the Respondent. Having found the tender condition to be restrictive, and the lack of fair competition, the Respondent was well within its powers to cancel the tender. Hence, there being no irrationality, mala fide, bias, illegality, or unreasonableness, we are not inclined to interfere with the decision of the tendering authority/respondent No.1."*

50. From the above, it is discernible that the decision of this Court dated 20.04.2022 in W.P.(C) 14608/2021 is based primarily upon MoRTH's notification dated 04.06.2021 and MoRTH's reply dated 22.10.2021 to the clarification sought by the AAI *vide* letter dated 06.09.2021.On the basis of the aforesaid material the Court concluded that ACFTs belong to a category of special vehicles to be used in enclosed premises i.e., the Airport. The Court also took note of the fact that ACFTs do not come within either category "M" or "N" vehicles and therefore the stipulation that ACFTs must comply with BS-VI engine emission norms is not a *sine qua non* condition. The Court noted that the AAI cancelled the tender on the basis of the clause pertaining to emission norms being unduly restrictive and Euro-VI norms were not a legal requirement for non-transport vehicles. The Court, taking note of the decisions in National High Speed Rail Corporation Limited v.

Montecarlo Limited and Anr. **(2022) SCC OnLine SC 111** and Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited,**(2016) 16 SCC 818**, Silppi Constructions Contractors v. Union of India, **(2020) 3 SCC 489**and Agmatel India Pvt. Ltd. v. Resoursys Telecom and Ors., **2022 SCC OnLine SC 113** which state that the scope of interference by a High Court in matters pertaining to tenders is very limited, held that the AAI was justified in the cancellation of the Earlier AAI Tender and its decision was not irrational, mala fide, biased, illegal, unreasonable or arbitrary but is based upon reasoning and application of mind. The Court also held that the final decision to accept or reject the bid of the sole bidder rests with the AAI. It was on this basis that the Court dismissed the writ petition challenging the Earlier AAI Tender.

51. The Petitioners subsequently preferred an SLP before the Apex Court against this judgment in SLP(C) No. 10453/2022. It is pertinent to note that the counsels representing the Petitioners before the Supreme Court are the same counsel representing the Petitioners before this Court in the instant writ proceedings. The Hon'ble Supreme Court *vide* order dated 17.06.2022 declined to interfere with the judgment of the High Court and disposed of the same in the following words:

> *"1. Having heard learned Senior counsel appearing for the petitioner and on perusing the material available on record, we see no reason to interfere with the impugned order passed by the High Court.*
>
> *2. Learned Senior counsel though inter alia contended that the very tender conditions permitting the Bharat Stage-4 vehicle is contrary to the position of law enunciated by this Court as it is not possible to ply such vehicles, we do not deem it necessary to go into*

> *that aspect in the present situation where the issue relates to the tender process.*
>
> *3. If such question arises in future in appropriate proceedings, the same is kept open.*
>
> *4. The Special Leave Petition is, accordingly, disposed of on the above-stated terms."*

52. From a reading of the aforesaid order, it becomes clear that the Supreme Court, by disposing of the SLP has given finality to all the issues covered by the judgment of this Court in W.P.(C) 14608/2021. However, it has left open the issue of whether a tender condition can permit the use of vehicles following BS-IV emission norms and whether the same would be contrary to law. The Apex Court did not deem it necessary to enter into that question as the issue before the Court was regarding the tender process and left it open to be adjudicated upon in the future in appropriate proceedings.

53. From the aforesaid discussion, it emerges that this Court in its decision dated 20.04.2022 primarily dealt with the question of whether the decision of the AAI to cancel the Earlier AAI Tender was arbitrary, malafide or biased. In determining this issue however, this Court also dealt with and adjudicated the question of whether ACFTs are a motor vehicle as defined under Section 2(28) of the MV Act and whether they are required to comply with BS-VI emission norms. It can thus be said that these questions were directly and substantially in issue in the earlier writ proceedings between the parties and the same cannot be allowed to be raised in the present proceedings. Similarly, the question of whether the judgment in M.C. Mehta (supra) prohibits the stipulation of a tender condition providing for BS-IV emission norms for ACFTs is an issue which ought to have been raised but

was not raised in the earlier writ proceedings. Consequently, the Petitioner cannot be permitted to raise this issue in the present proceedings.

54. However, keeping in view the fact the Hon'ble Supreme Court *vide* its order dated 17.06.2022 has left open the larger question pertaining to whether a tender condition can permit the use of vehicles following BS-IV emission norms and whether the same would be contrary to law, in the interest of justice, we deem it appropriate to determine the same in light of facts and circumstances of the present proceedings.

55. At this juncture, this Court deems it appropriate to delineate the scope of interference by Court exercising its powers of judicial review in respect of a challenge pertaining to a tender issued by the State. It has been observed consistently by the Supreme Court in a number of judgments that the Court may interfere in an administrative decision, if and only if the same is arbitrary, irrational, unreasonable, *mala fide* or biased. The Hon'ble Supreme Court in Tata Cellular v. Union of India, **(1994) 6 SCC 651,** has stated as follows:

> **"*70.*** *It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary*

> *power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."*

56. Summing up the principles laid down in Tata Cellular (supra), Jagdish Mandal v. State of Orissa, **(2007) 14 SCC 517**, Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, **(1989) 3 SCC 293,** and Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), **(2016) 8 SCC 622**, the Hon'ble Supreme Court in Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., **(2016) 16 SCC 818,** stated:

> ***"13.** In other words, **a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.**"*
>
> (emphasis supplied)

57. In Silppi Constructions Contractors v. Union of India **(2020)16 SCC 489**, the Hon'ble Supreme Court has followed the aforesaid judgments and reiterated the principle that Courts should exercise a lot of restraint while exercising powers of judicial review in respect of tender matters pertaining to technical issues as the Courts lack the expertise to adjudicate upon technical issues. The relevant portion of the Judgment is reproduced as under:

> *"**19.** This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a*

lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. ***The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer***.*"* (emphasis supplied)

58. From the aforestated judgments, it is clear that the scope of interference by way of judicial review in commercial matters is extremely limited and can only be justified when a case of arbitrariness, unreasonableness, *mala fide*, bias or irrationality is clearly made out. Further, the Courts lack the requisite expertise to adjudicate upon technical issues which are often involved in commercial matters. In the absence of the

same, the Courts should exercise restraint and not interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out.

59. Having delineated the limited scope of the issue before us in the instant writ petition, this Court shall now address the question whether the Impugned Condition and the Impugned Decision specifying that ARFVs/ACFTs satisfying only Bharat Stage IV ("**BS-IV**") fuel emission norms are contrary to the Supreme Court's decision M.C. Mehta (supra).

60. The issue before the Apex Court in M.C. Mehta (supra) was whether manufacturers can be permitted to sell non-BS-VI compliant vehicles, manufactured up to 31.03.2020 after the said date. This issue arose in the backdrop that the Central Government mandated that vehicles are required to comply with BS-VI emission norms after 31.03.2020, however Rule 115(21) of the CMV Rules permitted vehicles complying with BS-IV norms, manufactured before 01.04.2020 to be registered till 30.06.2020 and in some cases 30.09.2020. The decision of the Court in that case was based upon its earlier decision in M.C. Mehta v. Union of India,**(2017) 7 SCC 243** wherein it held that manufacturers cannot be permitted to register vehicles not complying with BS-IV norms after 2017. The Court in its decision concluded that Rule 115(21) is vague and violative of Article 21 by extending time for registration of vehicles that do not comply with BS-VI emission norms, beyond 31.03.2020 and must be read down accordingly.

61. At this juncture it becomes expedient to determine whether the decision in M.C. Mehta (supra)covers ACFTs within its ambit. It is the Petitioner's contention that an ACFT is a "motor vehicle" under Section 2(28) of the MV Act and therefore must comply with BS-VI norms in view

of the aforestated decision. Section 2(28) of the MV Act is reproduced as under:

> *"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 4[twenty-five cubic centimetres]; 1[twenty-five cubic centimetres];"*

62. The Applicant's have brought to the notice of this Court, Rules 92, 93 and 95 of the CMV Rules which form part of Chapter V of the CMV Rules which is titled "Construction, Equipment and Maintenance of Motor Vehicles". Rule 92 of the CMV Rules provides that a motor vehicle may not be used in any public place if it does not comply with the provision of Chapter V of the CMV Rules. Rule 93 of the CMV Rules prescribes the overall dimensions i.e., the width, length and height which a motor vehicle must comply with in order for it to be suitable to plied upon public roads. Similarly, Rule 95 prescribes the size and ply rating of tyres as well as the axle weight for a motor vehicle in order for it to be suitable to be used upon public roads. The specifications of an ACFT regarding its overall dimensions and axle weight are not in compliance with those specified in Rule 95 of the CMV Rules. It can thus not be considered to be suitable to be plied on roads, and, therefore, cannot be considered to be a motor vehicle as defined under Section 2 (28) of the MV Act. The fact that these vehicles have the potential/ability to run on roads alone cannot be determinative that

they will be covered under the definition of motor vehicle. The Judgments relied on by the Petitioner in Chairman, Rajasthan State Road Transport Corpn. &Ors. v. Santosh &Ors., **(2013) 7 SCC 94,** Bose Abraham v. State of Kerala &Anr., **(2001) 3 SCC 157**, Union of India &Ors. v. Chowgule & Co. Pvt. Ltd. &Ors., **1992 Supp (3) SCC 141,** will not be applicable to the facts of the present case as all the vehicles which were involved in those cases fell within the specifications given under the CMV Rules.

63. The decision in Chairman, Rajasthan State Road Transport Corpn. (supra) does not aid the case of the Petitioner as it explicitly states that a vehicle which is not adapted for use upon the road is to be excluded from the definition under Section 2(28) of the MV Act.

64. The decision in Bose Abraham (supra) is also not applicable to the facts of the present case. In that case, the Court noted that excavators and road rollers are motor vehicles under the MV Act as they are registered under the Act and the appellants therein had admitted before the High Court that the vehicles are suitable for use on roads. It was held that such a vehicle, if it is being employed in an enclosed premise does not exclude it from the definition of "motor vehicle". In the present case however, the ACFTs are specialised vehicles which are not registered under the MV Act and neither are ACFTs suitable for use on roads as discussed hereinabove. Further, ACFTs are used solely and exclusively in an enclosed premise which is not the case with excavators and road rollers which are capable of being utilised both inside and outside an enclosed premise.

65. Similarly, the reliance of the Petitioner upon the decision in Chowgule and Co. (P) Ltd. (supra) is also misplaced as the Court based its decision upon the facts that dumpers are not adapted for use solely in a

factory or enclosed premises and are capable of being used for general purposes as well. With regards to shovels, the Court was unable to come to a conclusive finding due to lack of sufficient pleadings and remanded the matter back to the High Court. In the present case, as has been established above, ACFTs are manufactured for being used solely within an enclosed premise i.e., Airports and are not used for general purposes.

66. A close reading of the aforestated provision reveals that the striking ingredient in the definition of "motor vehicle" is the phrase "adapted for use upon roads". Further, the definition provides that a vehicle of a special type adapted for use only in a factory or other enclosed premises is excluded from the definition of a "motor vehicle". It has been argued by the learned counsel for AAI and the Applicant that ACFTs are "non-road" vehicles and are operated within enclosed premises i.e., the Airport and thus BS-VI norms are not applicable to ACFTs. *Per contra* it is the case of the Petitioners that the ACFTs are required to operate outside the Airport premises whenever there is an aircraft crash outside the airport premises, which means that the ACFTs are adapted for use upon roads and do not operate only within enclosed premises and therefore they must comply with BS-VI norms.

67. The Petitioner have contended that ACFTs are not used only within enclosed premises but are required to be rushed and deployed to crash location outside the airport premises and this position has been admitted by the AAI in its letter No. 19014/4/99/AR dated 16.11.1999 wherein it stipulated that it is mandatory for ARFFs to respond to all aircraft incident/accident up to 5 kilometres on the approach path and 2.5 kilometres across the runway. *Per contra*, it is stated by the Learned Counsel for the

AAI that the requirement of Airport Fire Services to conduct firefighting and rescue operations in the vicinity of the airport is as per Operational Circular No. 3/1999 dated 25.05.1999. As per the said circular, the area up to 5 kms in the approach path and other areas, 2 kms around the airport boundary is defined as the vicinity of the Airport. It cannot be denied that if the ACFT leaves the airport, then the operations of the airport comes to a standstill and no flight can take off in the airport if the ACFT is not there. It has been contended by Mr. Rai that even if a fire breaks out in the parking lot of an airport, then the fire engines of the Fire Department are pressed into service to put the fire and the ACFTs are not used for the said purpose.

68. The Hon'ble Supreme Court in Bolani Ores Ltd. v. State of Orissa, **(1974) 2 SCC 777** has held that even if the area does not have a fence or barbed wire around the premises, the same can be considered to be an enclosed premise. In our view, the phrase "enclosed premises" cannot be construed in such a narrow manner that the premises are confined only to the area demarcated by a boundary wall or a fence or a barbed wire. In order for an area to be considered an enclosed area for the purpose of Section 2(28) of the MV Act, it is important that the limits of such area are defined and the vehicle operates within this defined area. The area within which an ACFT must operate is a clearly defined area which includes the entirety of the Airport area as defined by its boundary wall as well as the area in the vicinity of the airport which has been defined as the area up to 5 kms in the approach path and other areas and the area within 2 kms around the airport boundary.

69. The Hon'ble Supreme Court in the case of Goodyear India Ltd. v. Union of India, **(1997) 5 SCC 752** has interpreted the phrase "adapted for use on roads" in the following terms:

> ***"10.*** *A close reading of the definition of "motor vehicle" in Item 34 reveals that the striking ingredient thereof is that it should have been "adapted for use upon roads".* ***Merely because the areas on which such heavy-movers traverse might sometimes include roads also is not enough to hold that they were "adapted for use upon roads". Such use of the heavy-mover on the road may only be ancillary or incidental to the main use of it. Emphasis in the definition must be on the words "use upon road" as those words would denote the principal or dominant use and not where it may move incidentally****."*
>
> (emphasis supplied)

70. From the aforesaid discussion it is evident that the specifications of ACFTs are not in consonance with the CMV Rules and as such they are not vehicles which are suitable to be used upon public roads. It is also clear that the ACFTs are vehicles which are to be operated in an enclosed area which includes the area in the vicinity of the airport. The primary use of an ACFT is within the airport premises and that is its dominant function and if it operates on the road, it is only an incidental function. Therefore, even if ACFTs may at certain times be required to be used upon roads, it is not sufficient to hold that ACFTs have been adapted for use upon roads or that they are operated outside enclosed premises. The fact that in case of dire emergency, if an accident involving an aircraft occurs within close proximity of the Airport and these vehicles are pressed into service to tackle such emergencies and if during such operations these vehicles are made to

run on road, it will not attract the Judgment of M.C. Mehta (supra) which was passed by the Apex Court while dealing with the issue of pollution caused by vehicles in the country.

71. Even if it were assumed, arguendo, that ACFTs are motor vehicles u/s 2(28) of the MV Act, the decision in M.C. Mehta (supra) would still be inapplicable to the present case as the decision therein was based upon Rule 115 of the CMV Rules which provides that BS-VI emission norms are applicable to category "M" and "N" vehicles as well as two-wheelers, three-wheelers and quadricycle (category L7) vehicles. Further, Rule 115-A to 115-L provides specific emission norms applicable to various types of motor vehicles. A bare perusal of the aforesaid provisions highlights that BS-VI norms are not applicable to all vehicles which are covered under the definition of "motor vehicles" under Section 2(28) of the MV Act.

72. There is no specific provision under the MV Act or CMV Rules which prescribes the emission norms applicable to an ARFV/ACFT. It is not the domain of this Court to determine which emission norms are to be applicable to ARFVs/ACFTs as the same is based upon technical considerations and this Court does not have the requisite expertise to decide the same. Further, the decision to prescribe emission norms applicable to ARFVs/ACFTs is a legislative decision which is outside the domain of the judiciary and an attempt to do so would be in violation of the principle of separation of powers.

73. In view of the aforesaid, it becomes clear that ACFTs are specialised vehicles which are not adopted for use on roads and operate only within enclosed premises. Thus, they cannot be considered to be "motor vehicles" under Section 2(28) of the MV Act. Further, there is no provision under the

MV Act or the CMV Rules which prescribes BS-VI emission norms to be applicable to ARFVs/ACFTs. This view is in consonance with the findings of this Court given in the judgment dated 20.04.2022 passed in the earlier writ proceedings i.e., W.P.(C) 14608/2021. Accordingly, the Impugned Condition prescribing minimum BS-IV emission norms for ACFTs cannot be said to be contrary to the law laid down by the Hon'ble Supreme Court in M.C. Mehta (supra). As such, the decision to prescribe the applicable emission norms for ACFTs for the purposes of issuing the Impugned Tender rests with the Respondent.

74. This Court cannot also ignore the fact that if BS-VI emission norms are made mandatory for ACFTs then it will create monopoly in favour of the Petitioner herein as only the Petitioner herein have a tie-up with Volvo Penta and this would cause substantial loss to the State exchequer. Respondent No.1, which is an instrumentality of the State has taken a view that since the ACFTs will not ply on the roads and only in dire emergency, when there is any accident or air crash very near to the airport, only then these vehicles will ply on the road and there have been only one or maximum two such incidents in the country in the past 20 years, these ACFTs will not cause much air pollution.

75. This Court is not inclined to exercise its jurisdiction under Section 226 of the Constitution of India to set aside the tender condition. This Court is of the opinion that the tender condition is not contrary to the law laid down by the Apex Court in M. C. Mehta (supra). The contention of the Petitioner that nothing prohibits the other tenderers to import the machinery from Volvo Penta is not acceptable in view of the statement that Volvo

Penta is issuing road worthy certificates only to the vehicles supplied by the Petitioner herein.

76. With these observations, the petition is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 16, 2022
S.Zakir/A