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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 28.01.2022

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Judgment delivered on: 20.04.2022

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W.P.(C) 14608/2021 & CM APPLs. 46021-46023/2021

ROSENBAUER INTERNATIONAL AG

..... Petitioner

Through: Mr. Raman Kapur, Sr. Adv. With Mr.
Praveen Mahajan & Ms. Ruchi
Mahajan, Advs.

versus

AIRPORT AUTHORITY OF INDIA & ANR.

..... Respondents

Through: Mr. Digvijay Rai, Mr. Archit Mishra
& Mr. Archit Jindal, Advs. for
R-1/AAI.
Ms. Anjana Gosain, Ms. Shalini Nair
& Ms. Ritika Khanagwal, Advs. for
R-2/MoCA.**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE JASMEET SINGH****J U D G M E N T****JASMEET SINGH, J.**

1. The present petition has been filed by the petitioner seeking following substantial prayers:

“(a) issue a writ in the nature of mandamus or certiorari or any other writ order or direction quashing/setting aside the "impugned order" being Corrigendum No. 5 bearing Ref No. AAI/CHQ/Tech/5-A/ACFT/2019 Dated 29.11.2021 ["Annexure P-I"] issued by the Respondent No 1 for cancelling the tender SECOND Global Tender ID: 2021_AAI_67496_2 and to



further direct the respondents to process the tender as per the stipulated guidelines.

2. The case of the petitioner in a nutshell is that the petitioner is an Austria based company, and it offers a large selection of firefighting vehicles, that are designed especially for airport operations to ensure the safety of equipment and human life in case of instance of fire in aircraft, and or at airports.

3. The petitioner claims that the Airport Crash Fire Tenders (*hereinafter referred to as "ACFT"*) designed by the petitioner meet the highest safety standards all over the globe, and the petitioner is the largest production company in the world of ACFTs. The petitioner also has its business interests in India, wherein it supplies, manages and operates various ACFTs by participating in tender floated by the Government authorities, such as Indian Air Force, Indian Navy, Indian Coast Guard, Aviation Research Centre (Cabinet Secretariat), and all the major private airports in India.

4. The petitioner has participated in all the global tenders floated by respondent No. 1 – Airport Authority of India, and has till date supplied 160 ACFTs in various tenders.

5. The respondent No. 1 is Airport Authority of India (*hereinafter referred to as "AAI"*), and is a unit/division of respondent No. 2 i.e. Ministry of Civil Aviation. The respondent No. 1 is under control and governance of respondent No. 2, and the Joint Secretary of respondent No. 2 is deputed as controlling authority of respondent No. 1.



6. The respondent No. 1 invited the First Global Tender (*hereinafter referred to as "FGT"*) on 10.01.2020 for supply of 33 Nos. of ACFTs of 10,000 ltrs water tank capacity. Since nothing much rests on the first tender, we are not going into this tender's conditions. The said tender was cancelled vide the letter bearing No. AAI/CHQ/Tech/5-A/AR-II(Tech)/2019/Vol 2 dated 19.07.2020, without assigning reasons. After cancellation of the First Global Tender, the respondent No. 1 floated another tender i.e. Second Global Tender (*hereinafter referred to as "SGT"*) on 19.01.2021 for supply of 33 Nos. of ACFTs of 10,000 ltrs water tank capacity. In the SGT, the experience clause was relaxed from the first tender, and the bidders, who had experience of supply of 4,500 ltrs ACFTs in the last 17 years (earlier prescription was 10,000-ltrs capacity in last 7 years), were eligible to participate.

7. On 22.02.2021, a corrigendum was issued, and as per Para 4.3.1.4, the Technical Directorate clarified that "*Engine(s) shall have Bharat Stage VI/Euro VI EC type approval or equivalent certificate issued by any regulatory authority. OEM shall submit a certificate confirming emission level meets BS VI/Euro VI or equivalent.*" Hence, as per the corrigendum only Bharat Stage VI/Euro VI Engine was acceptable.

8. The timelines in the SGT were as under:

<i>Corrigendum 1</i>	<i>Bid Submission Start Date extended to 23.02.2021</i>
<i>Corrigendum 3</i>	<i>Bid Submission End Date extended to 21.03.2021</i>



	<i>PQQ/Technical Bid Opening date extended to 24.03.2021.</i>
<i>Corrigendum 4</i>	<i>Bid Submission End Date extended to 22.03.2021</i> <i>PQQ/Technical Bid Opening date-24.03.2021.</i>
<i>1st Shortfall Documents</i>	<i>1st Shortfall Documents were submitted on 10.08.2021</i>
<i>2nd Shortfall Documents</i>	<i>2nd Shortfall Documents were submitted on 20.09.2021</i>
<i>Corrigendum 5</i>	<i>Corrigendum 5 dated 29.11.2021 issued for cancellation of Tender.</i>

9. Under the SGT, four vendors submitted their technical offer. However, only the petitioner offered Euro VI Compliant Engine with Euro VI Emission Norms Certificate for engine. The other three bidders submitted their offers for Scania DC16 318A Stage V compliant and Certified Engine, but not EURO VI certified engine as per the condition of the NIT. Hence, the other three bidders did not meet the qualifying criteria.

10. However, the respondent No. 1 vide the Corrigendum No. 5 bearing Ref No. AAI/CHQ/Tech/5-A/ACFT/2019 dated 29.11.2021 abruptly, and without opening the price bid of the petitioner, cancelled the SGT bearing No. 2021_AAI_67496_2, citing the reasons “*due to administrative reasons/issues*”. The petitioner vide the letter dated 07.12.2021 registered its protest against the cancellation of SGT without any detailed reasoning. On 09.12.2021, the respondent No. 1 replied to the aforesaid letter of the



petitioner and relied upon Clause No. 28 (g) of the SGT, which conferred the right on respondent No. 1 to cancel the tender without assigning any reasons.

11. Aggrieved by the above conduct of the respondent No.1, the petitioner has filed the present petition. When matter came up for hearing on 20.12.2021, we directed the respondents to file the counter-affidavit, explaining the reasons for cancellation of the tender in question. Pursuant to our directions, the respondent No. 1 filed its counter-affidavit and has given the reasons for cancellation.

12. The submission of the learned Senior Counsel appearing for the petitioner is that the cancellation of tender by the respondent No. 1 is *mala fide*, and has been done at the behest of respondent Nos. 2 to 4, who did not meet the technical specifications stipulated in the tender conditions. It is submitted that the reason for rejection of a single bid is against the guidelines issued by the Procurement Policy Division, Department of Expenditure, Ministry of Finance, Government of India bearing No. F.1/1/2021-PPD dated 29.10.2021, which discourages rejection of single bid in all cases. Clause 11.8 of the circular reads as under:

“11.8 Rejection of Single Bid: It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for re-tender as a ‘safe’ course of action. This is not correct. Re-bidding has costs: firstly the actual costs of re-tendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid.



Lack of competition shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process should be considered valid provided following conditions are satisfied:

- (i) The procurement was satisfactorily advertised and sufficient time was given for submission of bids;*
- (ii) The qualification criteria were not unduly restrictive; and*
- (iii) Prices are reasonable in comparison to market values. ”*

13. The petitioner submits that even in the past, the petitioner was granted a tender, even though he was the single bidder, after its rates were reduced by a method of reverse auctioning. The petitioner submits that on 07.12.2021, the petitioner had protested against arbitrary, illegal and *mala fide* cancellation of the tender, and the only response received from the respondent No. 1 on 09.12.2021 was that the respondent No. 1 reserves the right to cancel any tender, without giving any reasons in accordance with tender Clause No. 28(g). Learned Senior Counsel has argued that the tender was opened on 24.03.2021, and there was no reason for respondent No. 1 to delay awarding of the contract to the petitioner. The representations of all unsuccessful bidders were received in the months of July and September, 2021, and no satisfactory reasons were given by the respondent No. 1 for delaying the awarding of the tender. The petitioner further submits that as per the notification under the Motor Vehicles Act dated 05.11.2004, Fire Tenders and Fire Fighting Vehicles come within the purview of Transport Vehicles. All transport vehicles have to follow Bharat VI emission norms.

14. The respondent No.1 has defended its decision to cancel the SGT. According to the respondent No. 1, the petitioner had submitted a



representation on 10.02.2021 to respondent No. 1 seeking clarification that the engines should be Bharat Stage VI/Euro VI emission norms, and that representation was accepted by the respondent No. 1, resulting in Corrigendum No. 2 bearing Ref No. AAI/CHQ/Tech/5-A/ACFT/2019 dated 22.02.2021 being issued.

15. In the technical bid evaluation, since only the petitioner offered Euro VI compliant engine emission norms, the other bidders could not qualify, as they were offering Euro Stage V compliant engine emission norms.

16. It is submitted by the respondent No. 1 that till the bid opening date i.e., 24.03.2021, no representations were received from the participating bidders, but subsequent to opening of the technical bids, various representations were received from M/s. NAFFCO, Dubai, M/s. Marce Fire Fighting Technology Ltd, South Africa, M/s. WISS, Poland and M/s. Scania, Sweden. The gist of the representations received reads as follows:

“(i) M/s. Naffco, Dubai vide their letter dated 17.09.2021 stated that: “ACFT falls under Non-Road Mobility Machinery referring to ICAO Para 5.6.2 and stating that off-road compliance is the primary consideration as per ICAO. Further, referring to ARAI, India reply the firm stated that ACFT is considered as non-motor vehicle as per MVA, 1988 in India and doesn’t require EC Type approval for BS VI. EC type approval Stage V for non-road vehicles such as ACFT is the latest with emissions levels equal to EURO VI/BS VI”.

(ii) M/s. Marce Fire Fighting Technology Ltd., South Africa vide reply on 10.08.2021 against shortfall query through CPP Portal in respect to Para 4.3.1.4 stated that: “ACFT being a specialized vehicle used in confined area for special purpose only and globally defined as non-road/off-road application.



Different level of emission standards exists for On-Road & Off-Road Engines. Presently, EURO Stage Vis max. level of emission standard for off/non-road engines used for various special purposes.

(iii) M/s. WISS, Poland vide reply on 10.08.2021 against shortfall query through CPP portal & vide their letter dated 01.09.2021 in respect to Para 4.3.1.4 stated that: "ACFT are officially considered GSE (Ground Support Equipment) having dimension exceeding regular traffic vehicle and has been technically subject to non-road regulations. In case of emission standards-Stage V being currently in force in Europe".

(iv) M/s. Scania, Sweden (Engine Manufacturer) Vide letter dated 09.09.2021 & Vide email dated 16.09.2021 stated that: -

(a) They have offered to the participating bidders, Engine Complying Stage V EC Type approved stating that it is equivalent to EURO VI/BS VI.

(b) M & N Category of vehicles is considered as commercial vehicle transporting goods/people used on public roads and all other vehicles is considered as Non-Road Mobile Machinery."

17. After receiving the representations, the respondent No. 1 issued a letter bearing No. AAI/CHQ/Tech./5-A/ACFT/2019 dated 06.09.2021 to the Ministry of Road Transport and Highways (*hereinafter referred to as "MoRTH"*), Government of India (*hereinafter referred to as "GoI"*) seeking clarification as to whether ARFF (Air Rescue Fire Fighting)/ACFT falls under transport or non-transport category of vehicles, and whether only non-road engines or only on-road engines, or both, complying with emission norms applicable as on date, are permissible to be used in ARFF/ACFT application. Along with the said letter, the respondent No. 1 also enclosed a Notification bearing No. S.O.1248(E) dated 05.11.2004, issued by the



Central Government under the Motor Vehicles Act, 1988, wherein ARFF/ACFT has not been categorized under any category, whereas Fire Tenders and Fire Fighting Vehicles are categorized under the transport category.

18. The MoRTH, GoI vide the letter bearing No. RT-11036/185/2021-MVL dated 22.10.2021 gave its clarification to respondent No. 1, and the respondent No.1 received the letter on 29.10.2021 from MoRTH, GoI which stated that *“ARFF/ACFT vehicles are specialized vehicles and provided these vehicles are confined within the premises of the Airport, the same shall be treated in accordance with the provisions of Section 2 (28) of the MV Act”*. Based on the clarification, the respondent No. 1 initiated a note proposing to cancel the tender, and hence the tender was cancelled by the respondent No. 1 vide its Corrigendum No. 5 AAI/CHQ/Tech/5-A/ACFT/2019/ dated 29.11.2021.

19. Mr. Digvijay Rai, learned counsel for respondent No.1 made his submissions on the same lines as reproduced by us hereinabove. Mr. Rai submits that the Corrigendum No. AAI/CHQ/Tech/5-A/ACFT/2019 dated 22.02.2021 was issued at the instance of the petitioner, and as it turns out, petitioner was the only bidder that had Bharat/Euro VI compatible engines. Thus, the change brought about by the corrigendum, at the instance of the petitioner itself, shows *mala fides* of the petitioner.

20. It has further been submitted that on 06.09.2021, the respondent No. 1 sought clarification from the MoRTH, GoI with regard to ACFT. After the clarification received from MoRTH, GoI, and realizing that ACFTs were



vehicles which were to be used within the premises of the airport, the same were treated according to the provisions of Section 2(28) of the Motor Vehicles Act. It has further been submitted that the decision to cancel the tender in question was duly discussed within the Technical Department, and thereafter, the matter was considered up to the level of Chairman. Only after approval of all the concerned officers, the decision to cancel the tender was taken. Therefore, no fault could be found with the decision making process.

21. Respondent No.1 further submitted that in the past when the petitioner was the sole bidder, and was awarded the tender, the Central Vigilance Commission (*hereinafter referred to as "CVC"*) objected and categorically issued a note against the respondent No. 1 on 17.03.2020.

22. Learned counsel for the respondent No. 1 submits that the tender has correctly been cancelled, and no *mala fides* can be attributed to respondent No.1.

23. In Rejoinder, Mr Raman Kapoor, learned senior counsel has submitted that the Volvo Penta, Sweden is selling engines that are fully Euro VI emission norm compatible, and the engines are available for any and every company to purchase. There was no restriction on getting a Euro VI emission norm engine.

24. The Petitioner also submitted that AAI is also procuring, maintaining and using several vehicles such as Ambulifts, Runway Sweepers, Airports Surface Friction Testers, Airport Runway Sweepers, Truck Mounted Rescue Stairs which are specifically used in Airports premises only, and in all recent tenders for procurement of these equipment only Bharat VI/ EURO VI



engine has been stipulated by the Respondent. Therefore, it is the Petitioner's contention that the Respondent No. 1 are trying to push ACFT as off-roader, to favor the bidders who have inferior technology to the EURO VI engines. The Petitioner has also mentioned that Hindustan Aeronautics Ltd. (HAL), Bengaluru, a Ministry of Defense PSU placed order for 2 Nos. Rescue & Fire Fighting Vehicle (same as ACFT) fitted with Euro V engine emission norms with the petitioner. However, before delivery of the equipment, HAL issued Amendment Letter dated 12.06.2019 amending the emission standard from Euro V to Euro VI, complying with prevalent emission norms.

25. Additionally, he has argued that the existence of a single eligible bidder was not a ground to cancel the tender, as there have been multiple occasions where a sole bidder has been awarded the tender. It is also stated that the notification dated SO 1248(E) dated 05.11.2004 issued by MoRTH is still valid, which categorically identifies the fire tender as transport vehicle and the public consultation notice dated 04.06.2021 (which categorizes fire fighting vehicles from transport vehicles to non-transport vehicles) for inviting comments/suggestions to proposed notification for "TYPE OF MOTOR VEHICLES AT A GLANCE" is not notified till date, as it is merely a draft notification which is yet to be published in the Gazette of India, as a notification, to the best knowledge of the petitioner.

26. It is further stated that, in view of the existing validity of the notification dated SO 1248(E) dated 05.11.2004, the letter dated 22.10.2021 of MoRTH – relied upon by the respondent No. 1, and the notification dated 16.09.2016 issued by the Ministry of Road Transport and Highways vide



GSR, 889(E), read with definition of Category M vehicles and N vehicles and notification dated 30.09.2020 vide GSR No. 598(E), cannot be relied upon to identify the fire tenders as non-transport vehicle.

27. We have heard learned counsels for the parties and have gone through the records and circulars relied upon.

ANALYSIS

28. In our analysis, we are concerned with the following questions:

- a) Whether the cancellation of tender was arbitrary, malafide or biased, or hit by Wednesbury's principle of unreasonableness?
- b) Whether the respondent No.1 was bound to accept the sole bid of the Petitioner?

29. At the outset, we may observe that the scope of judicial scrutiny in these matters is extremely limited. This position has been made clear in ***National High Speed Rail Corporation Limited v. Montecarlo Limited and Anr.***¹ wherein the Supreme Court relied upon the judgment of ***Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited***² wherein it was observed:

“11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622, it was held by this Court, relying on a host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with.

¹ 2022 SCC OnLine SC 111.

² (2016) 16 SCC 818.



Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.

12. *In Dwarkadas Marfatia and Sons v. Port of Bombay, (1989) 3 SCC 293, it was held that the constitutional courts are concerned with the decision-making process. Tata Cellular v. Union of India, (1994) 6 SCC 651 went a step further and held that a decision if challenged (the decision having been arrived at through a valid process), the constitutional courts can interfere if the decision is perverse. However, the constitutional courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was confirmed in Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517, as mentioned in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622.*

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.*

15. *We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or*



appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

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:

<i>SI No.</i>	<i>Section No.</i>	<i>Clause No.</i>	<i>Page No. in Section</i>	<i>Existing Provision in Para/ Clause</i>	<i>Amended As</i>
1.					
2.	Section	Clause 4.1.3.1	Pg. 65	A midship mounted pump, either	A midship



	- D	(b)		<i>coupled with the auxiliary engine (emission levels shall be equal to or below than, the prescribed limits of Bharat Stage VI /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.</i>	<i>mounted pump, either coupled with the auxiliary engine (Engine(s) shall have Bharat Stage 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</i>
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					suction lift 3 metres.
3.	Section - D	Clause 4.3.1.4	Pg. 70	The engine emission levels shall be minimum Bharat Stage VI / 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.	Engine(s) shall have Bharat Stage BS VI / Euro 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); -

<i>Transport Vehicles</i>	<i>Non-Transport Vehicles</i>
<i>(1)</i>	<i>(2)</i>
<i>(i)Motor cycle with side car for carrying goods</i>	<i>(i)Motor cycle with or without side car for personal use.</i>
<i>(ii)Motor cycle with trailer to carry goods</i>	<i>(ii)Mopeds and motorized cycle (Engine capacity exceeding 25cc)</i>
<i>(iii)Motor cycle used for hire to carry one passenger on pillion and motorized cycle-rickshaw for goods or passengers on hire</i>	<i>(iii)Invalid carriage.</i>
<i>(iv)Luxury cabs.</i>	<i>(iv)Three-wheeled vehicles for personal use</i>
<i>(v) Three wheeled vehicles for transport of passenger/goods.</i>	<i>(v)Motor car.</i>
<i>(vi)Goods carrier trucks or tankers or mail carriers (N1-N3 category).</i>	<i>(vi)Fork lift.</i>
<i>(vii)Power tillers and Tractors using public roads.</i>	<i>(vii)Vehicles or trailers fitted with equipment's like rig,</i>



	<i>generator, and compressor</i>
<i>(viii) Mobile clinic or X-ray van or Library vans</i>	<i>(viii) Crane mounted vehicles.</i>
<i>(ix) Mobile workshops.</i>	<i>(ix) Agricultural Tractors and power Tillers.</i>
<i>(x) Mobile canteens.</i>	<i>(x) Private service vehicle, registered in the name of an individual and if declared to be used by him solely for personal.</i>
<i>(xi) Private Service Vehicle.</i>	<i>(xi) Camper van or trailer for private use.</i>
<i>(xii) Public service Vehicle such as maxi cab, motor cab, stage carriage and contract carriages including tourist vehicles.</i>	<i>(xii) Tow trucks, Breakdown Van and Recovery Vehicles.</i>
<i>(xiii) Educational Institution buses.</i>	<i>(xiii) Tower Wagons and tree trimming vehicles owned by Central, State and local authorities.</i>
<i>(xiv) Ambulances.</i>	<i>(xiv) Construction Equipment vehicles as defined in rule 2(ca)*</i>
<i>(xv) Animal ambulances</i>	
<i>(xvi) Camper vans or trailers</i>	
<i>(xvii) Cash vans.</i>	
<i>(xviii) Fire tenders, snorked ladders, auxiliary trailers and fire fighting vehicles.</i>	

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-
SECTION B (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

<i>Non-Transport Vehicles</i>	<i>Transport Vehicles</i>
<i>Motor cycle with or without side car for personal use</i>	<i>Motor cycle with side car or trailer for carrying goods Used for Hire</i>
<i>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)</i>	<i>Motor Cycle used for Hire (used as Public service vehicles)</i>
<i>Adapted Vehicle</i>	<i>Three-Wheeler Public / Private Service Vehicle</i>



<i>Three wheeled motor vehicle for personal use</i>	<i>Three wheeler goods carriage</i>
<i>Motor car</i>	<i>Light Goods Vehicle</i>
<i>Fork lift</i>	<i>Medium Goods Vehicle</i>
<i>Agricultural tractor and power tiller</i>	<i>Heavy Goods Vehicle</i>
<i>Two trucks, Breakdown Van and recovery Vehicles</i>	<i>Mobile clinic/ Lab/ Library Vehicle</i>
<i>Tower Wagon/ Snorked Ladders and Tree Trimming Vehicles owned by Central Government, State Governments and local authorities</i>	<i>Tower Wagon/ Snorked Ladders and Tree Trimming Vehicles for hire and reward</i>
<i>Constitution Equipment Vehicles as defined rule 2 (cab)</i>	<i>Mobile Workshop Vehicle</i>
<i>Quadricycle – for Personal use</i>	<i>Mobile Canteen Vehicle</i>
<i>Police Buses</i>	<i>Private Service Vehicle</i>
<i>Prison buses</i>	<i>Public Service Vehicle such as maxi cab, motor cab, stage carriage and contract carriage including tourist vehicles</i>
<i>Corpse buses owned by Central Government, State Government and local authorities</i>	<i>Corpse buses for hire and reward</i>
<i>Motor Caravan for personal use</i>	<i>Education institution Buses</i>
<i>Publicity/ Campaign Buses for promotion of activities related to health, education and</i>	<i>Publicity / Campaign Buses for promotion of activities related to health, education and</i>



<i>environment protection etc. owned by Central Government, State Governments and local authorities</i>	<i>environment protection etc. for hire and reward</i>
<i>Harvester</i>	<i>Ambulance</i>
<i>Excavator</i>	<i>Animal ambulance</i>
<i>Wheeled Loader</i>	<i>Trailer</i>
<i>Backhoe Loader</i>	<i>Cash vans</i>
<i>Skid Street Loader</i>	<i>Articulated vehicles</i>
<i>Compactor</i>	<i>e-cart goods carriage</i>
<i>Dumpers</i>	<i>e-rickshaw passenger</i>
<i>Motor grader</i>	<i>Quadricycle – Public service vehicle</i>
<i>Dozer</i>	<i>Quadricycle goods carriage</i>
<i>Wheel tractor scraper</i>	<i>Mobile exhibition</i>
<i>Concrete mixtures</i>	<i>Mobile advertisement vehicle</i>
<i>Pavers</i>	<i>Mobile shop vehicle</i>
<i>Pile boring machine</i>	<i>Semitrailer</i>
<i>Mobile crane</i>	<i>Modular hydraulic trailer</i>
<i>Teachers</i>	<i>Puller tractor</i>
<i>Earth Moving Equipment</i>	<i>Vehicle of Category-N and T, mounted with machinery or equipment such as Rig machine, compressor, Generator, Concrete mixture, Crane etc.</i>
<i>Vehicles integrated with machinery or equipment, for performing works in relation to Construction, Earth moving, Excavation, Loading,</i>	<i>Motor caravan for hire</i>



<i>Drilling, Spreading, Cleaning, Maintenance, Safety etc.</i>	
<i>Omni bus for personal use</i>	<i>Omni bus for hire and reward</i>
<i>Road cleaning/ sweeping vehicles</i>	
<i>Fire fighting vehicles</i>	

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:



विमानपत्तन

प्राधिकरण

भारतीय

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 $\leq$ 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 Tenders. 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*³, 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:

³ (2020) 16 SCC 489.



“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

Category	Class	Reference Mass (RM) (kg)	Mass of Carbon Monoxide (CO)		Mass of Total Hydrocarbons (THC)		Mass of Non-Methane Hydrocarbons (NMHC)		Mass of Oxides of Nitrogen (NOx)		Combined Mass of Hydrocarbons and Oxides of Nitrogen (THC + NOx)		Mass of Particulate Matter (PM)		Number of Particles (PN)	
			L1 (mg/km)	L2 (mg/km)	L3 (mg/km)	L4 (mg/km)	L5 (mg/km)	L6 (mg/km)	L7 (mg/km)	L8 (mg/km)	L9 (mg/km)	L10 (mg/km)	L11 (mg/km)	L12 (mg/km)	L13 (mg/km)	L14 (mg/km)
Category	Class		PI	CI	PI	CI	PI	CI	PI	CI	PI	CI	PI	CI	PI	CI
M1 & M2		All	1000	500	100	-	60	-	60	80	-	170	4.5	4.5	6.0 X 10 ¹¹	6.0 X 10 ¹¹
N1	I	RM ≤ 1305	1000	500	100	-	60	-	60	80	-	170	4.5	4.5	6.0 X 10 ¹¹	6.0 X 10 ¹¹
	II	1305 < RM ≤ 1665	1810	620	130	-	90	-	75	105	-	195	4.5	4.5	6.0 X 10 ¹¹	6.0 X 10 ¹¹
	III	1665 < RM	2270	740	160	-	108	-	92	128	-	215	4.5	4.5	6.0 X 10 ¹¹	6.0 X 10 ¹¹
N2		All	2270	740	160	-	108	-	92	128	-	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 engines.

(4) Until three years after date of implementation for new type approvals and new vehicles, particulate number emission limit of 6.0 X 10¹²/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 2,500 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 others.***⁴ 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).”

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***⁵, 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

⁴ 2022 SCC OnLine SC 113.

⁵ (2016) 14 SCC 172



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. Satyawar* [*Laxmikant v. Satyawar*, (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 Vikash 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.

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.

47. In light of the above, this petition is dismissed. Parties are left to bear their respective costs.

**(JASMEET SINGH)
JUDGE**

**(VIPIN SANGHI)
ACTING CHIEF JUSTICE**

APRIL 20, 2022

Sahil Sharma

न्यायमेव जयते