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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 20.10.2023

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Judgment delivered on: 08.11.2023

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**W.P.(C) 11158/2023 & CM APPL. 43361/2023, CM APPL.
43362/2023 & CM APPL. 46629/2023**

AMAR HOLIDAYS PVT. LTD AND ANR. Petitioner

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Abhishek Singh, Ms. Sonal
Sarda, Ms. Ilma Khan, Mr. Elvin
Joshy, Mr. Vinamra Koparima and
Mr. Darpan Sachdeva, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Monika Arora, CGSC with Mr.
S. Soha, Advocate for UOI.
Mr. Kailash Vasdev, Sr. Advocate
with Mr. Sanjay K. Shandilya, Dr.
Rajeshwar Singh, Mr. Arjun
Raghavendra M, Mr. Apoorva
Agrawal, Mr. Abhishek Singh, Mr.
Hemant Sharma, Ms. Molly Agarwal
and Ms. Shambhavi Singh, Advocates
for respondent No.3.
Mr. Vaibhav Sethi, Ms. Priya Patharia
and Mr. Mohit Garg, Advocates
respondent No.5.
Mr. Rajshekhar Rao, Sr. Advocate
with Ms. Shivangi Nanda, Mr. Agnish



Aditya, Mr. Sughosh Subramanyam,
Mr. Harshil Wason and Mr. Dushyant
Kaul, Advocates for Intervenor/IVS
Global.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioners have approached this court being aggrieved by the tender conditions provided for in the Request for Proposal (“**RFP**”) dated 24.07.2023, floated by the Embassy of India, Abu Dhabi, United Arab Emirates (“**UAE**”) (“**Respondent No. 2**”) for the delivery of Consular-Passport-Visa-OCI-Attestation and related support services (“**CPVServices**”) for Respondent No. 2 and Consulate General of India, Dubai (“**CGID**”) (“**Subject Tender**”). The Petitioners state that certain clauses in the Subject Tender create an arbitrary distinction and do not maintain a level playing field among the players in the industry. The Petitioners have sought the following reliefs from this Court:

“A. *Quash and strike down clauses –*

i. *Clause 8 of Chapter I: Request for Proposal (RFP): It increases the number of applications to be processed to 4 lakh applications in a year.*

ii. *Clause B, sub – clause (i), of Chapter VII: Scope of Work and Deliverables Required: Increases scope of services covered in RFP.*

iii. *Clause 1 (i), (ii), (iii) of Chapter V of Mandatory Eligibility Criteria: Prescribes minimum experience and turnover criteria.*



- iv. *Clause 1A, sub – clause (xi) of Chapter VII : Scope of Work and Deliverable Required (including operational systems & infrastructures and Optional services): Increases the number of ICACs.*
- v. *Clause (xv) of Chapter III: Instructions to Bidders: One standard Service Fee for all services*
- vi. *Clauses (i), (ii), (iii) of Chapter X: Bank Guarantees: Bank Guarantees revised.*
- vii. *Chapter XI: Service Level Metrics/Penalties: Penalties increased manifold.*
- viii. *Clause (x) of Chapter V: Mandatory Eligibility Criteria: An EMD has been made mandatory.*
- ix. *Part II – B, Annex – C: Optional Services introduced.*
- x. *Annexure – E: Technical Bid: Number of ICACs increased.*
- xi. *Clauses P (v), P(vii), Q of Chapter VII : Scope of Work and Deliverable Required (including operational systems & infrastructures and Optional services): Reduction in working hours and turnaround time.*
- xii. *Clause (ix) of Chapter III: Instructions to Bidders: Foreign companies allowed to participate in the RFP.*
- xiii. *Part III, Annex C, Clause (f) and Clause (g): Anticipated Revenue from Optional Services excluded.*
- xiv. *Costing Sheet annexed at Annexure – C, Section – B*
- xv. *Annex – D: Mandatory Eligibility Criteria at Clause 1(iv), Chapter V: A disclosure of no civil/criminal liabilities of Bidder Company*
- xvi. *Clause 1 (viii), Chapter V, Mandatory Eligibility Criteria: Vague criteria for personnel qualifications.*
- xvii. *Annex C, Financial Bid of the RFP, vague unquantified terms such as “commercially unviable”, “unsustainable”, “unresponsive” to the extent stated in the Writ Petition, as bad in law.*
- B. Restrain the Respondents from going ahead with the tender process in respect of RFP dated 24.07.2023 floated by the Respondents for delivery of Consular-Passport-Visa-OCI Attestation and related support services (“CPV”) for the Embassy of India, Abu Dhabi and Consulate General of India, Dubai.*



C. Direct the Respondents to modify the conditions of the current RFP in line with Article 14 of the Constitution of India;
D. In the alternative, direct the Respondents to consider the present writ petition as a representation and modify the terms of the current RFP to the extent sought by the Petitioners and until such aforesaid representation of Petitioners is adjudicated, restrain Respondents from going ahead with tender process in respect of RFP dated 24.07.2023 till 2 weeks from Respondents' decision on such representation;
E. Restrain the Respondents from selectively imposing tender conditions in a manner that excludes majority of the market players, as demonstrated by the Petitioners in the present Writ.
F. In the event by the time of listing or hearing and disposal of the present petition, a letter of award is issued or contract executed by the Respondent Nos. 1 and 2 in favour of any other person, quash and set aside such award / contract;
G. Pass any other order in the interests of justice, equity and good conscience;.”

2. The facts in brief leading to the filing of the present writ petition are that the Respondent No. 2 in December 2010 had floated an RFP for providing CPV Services for Respondent No. 2 and CGID (“**2010 Tender**”) and has now issued the Subject Tender. The Petitioners case is that the Subject Tender contains several modifications in comparison to the 2010 Tender and the said modifications are arbitrary in nature. The Petitioners are a Delhi based travel management company, and its Director, who wish to participate in the Subject Tender.

3. Mr. Amit Sibal, learned Senior Counsel appearing on behalf of the Petitioners submits that the tender conditions provided prohibit small players from participating in the Subject Tender and favours large players. He diverts the attention of this Court to the mandatory eligibility criteria prescribed in Chapter V of the RFP. He submits that as per the tender



conditions, a travel agency which wishes to participate in the Subject Tender must have at least ten (10) years' prior experience in tourism travel industry and arranged tours for at least 150,000 travellers during pre-COVID three years period (January – December 2017, January – December 2018 and January – December 2019). Further, he submits that a bidding company which is a travel agency must have a minimum net worth equivalent to USD 5 million. He contends that the requirement of having a minimum net worth is made applicable only to travel agencies and not other categories of eligible bidders. He therefore argues that the mandatory eligibility criteria clause in the RFP stifles competition and favours large players.

4. It is the submission of Mr. Sibal that while the travel agencies have been permitted to participate in the Subject Tender, the clause prescribing a minimum net worth effectively takes away the right of the smaller travel agencies like the Petitioners to participate in the Subject Tender. He argues that owing to the restrictive nature of the net worth requirement provided for in the RFP, travel agencies are discouraged from participating in the Subject Tender.

5. Mr. Sibal submits that the requirement of having a minimum net worth criterion does not have any nexus with the object of the Subject Tender, as the RFP also provides the service providers to submit a performance bank guarantee. He refers to Chapter X of the RFP which requires prospective bidders to submit an irrevocable Bank Guarantee to the concerned Mission which can be encashed if the penalties imposed by the Mission/Ministry for not adhering to the provisions of the Agreement are not paid in time by the service provider.



6. Mr. Sibal further submits that a prospective bidder is required to justify the service fee quoted by it in its bid, however the manner in which the service fee is to be calculated is arbitrary, stifles competition and adversely impacts smaller players like the Petitioner. He takes this Court through Part III, Annex C of the RFP which deals with the financial bid to be submitted by prospective bidders. Section-Part III of Annex C of the RFP deals with the manner in which prospective bidders must provide justification for the service fee quoted by them in their bids. For convenience, the relevant extract is reproduced as under:

“Justification for Service Fee quoted.

(a) Total anticipated expenditure for all the Centres:

(b) Profit margin (percentage) & Profit amount:

(c) Sum of (a) + (b):

(d) Local taxes/levies payable:

(e) Sum of (c) + (d):

(f) Anticipated revenue: (No of anticipated CPV applications x proposed Service Fee)

(g) Viability -Difference between (f) and (e).

The Mission has the right to disqualify the bid as unresponsive in the financial bid stage if the difference between (f) and (e) is unreasonable/unsustainable. Accordingly, L1 will be decided on the basis of the remaining qualified bids in the financial bid stage.”

7. Referring to the aforesaid condition in the RFP, Mr. Sibal submits that the said condition provides the Mission with the right to disqualify a bid as unresponsive in the financial bid stage if the viability condition under clause (g), is unreasonable/unsustainable. He argues that there are no parameters or guidelines based on which the Mission has to determine whether a bid is unreasonable/unsustainable and therefore the said condition is arbitrary in nature. Mr. Sibal further argues that in justifying the bid, the prospective



bidder is required to include expenditure for all services, including optional services, however it has to exclude optional services when calculating anticipated revenue. He contends that this requires new and smaller players to quote high expenditure and therefore a high service fee for their bid to not be considered as unreasonable/unsustainable, however, if they quote a high service fee, it would mean that the bidder would not be L-1 bidder and their bid would therefore not be selected. He therefore contends that this requirement is meant to exclude smaller players from participating in the Subject Tender.

8. It is submitted by Mr. Sibal that not only is the mechanism meant to exclude smaller players, but even bigger players who participate would have to quote a higher service fee which would be burdensome upon the public at large and goes against the object of providing CPV Services.

9. Ms. Monika Arora, Central Government Standing Counsel appearing on behalf of Union of India at the outset submits that the Petitioners have not participated in the Subject Tender and are thus complete strangers to the proceedings. She refers to Chapter III of the RFP titled “Instructions to Bidders” wherein Clause (ii) provides that all prospective bidders must submit their organizational profile to the Mission/Respondent No. 2, for pre-bid verification by the Ministry of External Affairs, New Delhi (“MEA”), and bidding companies that fail to get security clearance by the MEA will not be eligible to participate in the Subject Tender. She submits that the Petitioners have not complied with this requirement of pre-bid verification. She places reliance upon the decisions of the Hon’ble Supreme Court in **NHAI v. Gwalior-Jhansi Expressway Ltd.**, (2018) 8 SCC 243 to submit that a person who has not participated in the tender process cannot be heard



to whittle down the rights of eligible bidders who had participated in the tender process.

10. Ms. Arora submits that the selected service provider would be required to provide CPV Services through 17 centres in the 7 kingdoms of UAE. She submits that the number of applications required to be processed by the service provider have multiplied significantly in comparison to 2010, therefore there is a need to exclude smaller players from participating in the Subject Tender. She submits that the RFP has been framed for selecting an efficient service provider who can provide CPV Services to approximately 35 lakh Indian Nationals who are living in the UAE and also to foreign nationals who seek Indian Visa in order to visit India.

11. Ms. Arora refutes the contention of the Petitioners that optional services is being excluded in revenue but is being excluded in expenditure. She submits that optional services are being included neither in the expenditure, nor in the revenue. She submits that it is the prospective bidder's prerogative to establish these optional services and it is not necessary for the selected service provider to establish the lounge immediately and the same can be done within 4-6 months with permission from the concerned Mission/Respondent No. 2. She states that the same is evident from Question No. 28 which forms part of the pre-bid queries and clarifications issued by the tender issuing authority.

12. Ms. Arora takes this Court through Chapter VII, Section 3 of the RFP titled "Optional Services" which includes a list of items that are to be considered as optional services. She submits that these are minor services which are meant to facilitate the applicants in obtaining CPV Services and the investment towards these would be minimal and thus these would play a



very small role in determining the L1 bidder for the purpose of the Subject Tender. Further, the optional services listed in the RFP are not binding upon prospective bidders and they are free to submit their bids without availing any of these services.

13. Ms. Arora refers to the Financial Bid Evaluation procedure prescribed under the RFP which relies on the Lowest Quotient Formula, to support her contention that Optional Services play a minimal and small role in determining the L1 bidder for the Subject Tender. She submits that as per the said formula, only a total of 10% weightage is given to the 14 optional service enumerated under the RFP and the remaining 90% weightage is given to the service fee for basic services.

14. Lastly, Ms. Arora places reliance upon a decision of the Apex Court in *Balaji Ventures (P) Ltd. v. Maharashtra State Power Generation Co. Ltd.*, 2022 SCC OnLine SC 1967 to submit that the tender author has freedom to provide the eligibility criteria and the terms & conditions of the bid unless the same is found to be arbitrary, *malafide* or tailor made. She submits that the bidder cannot be permitted to challenge the bid condition which is not suitable/convenient to him.

15. Mr. Kailash Vasdev, learned Senior Counsel appearing on behalf of Respondent No. 3 submits that it is a well settled position of law that the author of a tender has the power to decide the terms and conditions of the tender document provided the same are not arbitrary or unreasonable. He submits that in the present case, the Subject Tender has been made in accordance with the General Financial Rules, 2017 (“**GFR 2017**”).

16. Mr. Vasdev submits that the Subject Tender floated by Respondent No. 2 and the conditions therein, in essence constitute a policy decision



made in the larger interest of the public and Courts in exercise of their writ jurisdiction cannot sit in appeal over the same. He relies upon the Constitution Bench Judgment in *Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India*, (1970) 1 SCC 248 in support of this contention.

17. Mr. Vasdev places reliance upon a recent decision of the Apex Court in *Tata Motors Limited v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) & Ors.*, 2023 SCC OnLine SC 671 to submit that Courts in exercise of their writ jurisdiction must loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or *malafides* or bias or irrationality is made out.

18. Mr. Rajshekhar Rao, learned Senior Counsel appearing on behalf of Respondent No. 4 highlights Ground EE of the Writ Petition wherein the Petitioner challenges the Subject Tender on the ground that the RFP conditions place a financial burden on potential bidders in terms of requirement of Bank Guarantees, Earnest Money Deposit (“EMD”) and fixed Service Fee for all services. He submits that the requirement of Bank Guarantees and EMD is a standard clause in most tenders and is based on Rule 170 of the GFR 2017 and the same cannot be considered to be a burden on potential bidders.

19. Mr. Vaibhav Sethi, learned counsel appearing on behalf of Respondent No. 5 relies upon and reiterates the submissions made Ms. Arora, Mr. Vasdev and Mr. Rao to refute the contentions raised by the Petitioners.

20. Heard learned counsels for the parties and carefully perused the material and documents on record.



21. At the outset, this Court deems it appropriate to discuss the law regarding interference by a High Court with the decision of a tendering authority, in exercise of its powers under Article 226 of the Constitution of India. It has been observed consistently by the Apex Court in a number of judgments that the Court, in exercise of its extraordinary writ jurisdiction, 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.”

22. The principle laid down in ***Tata Cellular*** (supra) has been followed subsequently in ***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, has summed up the position of law stated in the aforesaid judgments as under:

“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)

23. In *Silppi Constructions Contractors* (supra), 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)

24. The aforesaid principle laid down in **Silppi**(supra) has been reiterated recently by the Apex Court in its judgment in **Brihan Mumbai Electric Supply & Transport** (supra) wherein the Court observed as under:

"48. 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 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. 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. (See :Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489)"

25. It is also a settled principle that the authority which floats the tender and has authored the tender documents is the best judge regarding the interpretation of the same. The Apex Court in ***Agmatel India (P) Ltd. v. Resoursys Telecom***, (2022) 5 SCC 362, has stated as under:

"26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given."

26. From the aforesaid 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 loathe to interfere with a tender process even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. It is also settled law that the best interpreter of a tender document is the author of the tender itself and Courts should exercise restraint in interfering with the interpretation of the tender document by the tendering authority.

27. The Respondent No. 2 has floated the Subject Tender to provide CPV Services in UAE. The UAE consists of seven emirates with approximately 35 lakh Indian nationals residing there. In order to meet the requirements of providing CPV Services to a number of people, the RFP envisages the selected service provider to set up 17 centres in order to process the large number of applications that may be received by it. Considering the nature of the work involved, the Subject Tender mandates a pre-bid verification process wherein each prospective bidder must obtain security clearance from the MEA. The Subject Tender also requires that the prospective bidder must have a net worth of USD 5 million.

28. The Petitioner's contend that the aforesaid conditions curb competition and prevent smaller players from participating in the Subject Tender. It is their contention that the requirement of having a minimum net worth of USD 5 million bears no nexus with the objective of the Subject Tender. This Court finds it difficult to accept this contention of the Petitioners. The eligibility criteria provided in the RFP and the net worth requirement have been intentionally incorporated by Respondent No. 2 to



filter out smaller players from participating in the tender process. The eligibility criteria prescribed in the Subject Tender have been incorporated keeping in view that there are a large number of applications to be processed by the selected service provider. In order to find a suitable service provider, the Respondent No. 2 was of the considered view that bigger players should be considered so that the CPV services can be provided in UAE in an efficient manner. Keeping in view the nature of work involved and the services to be provided by the selected service provider, the Subject Tender also mandates prospective bidders to obtain security clearance from MEA. Keeping these considerations in mind, it is difficult to accept the contention of the Petitioners that the said conditions bear no nexus with the object of the Subject Tender.

29. Another contention of the Petitioners is pertaining to “optional services” to be provided by the selected service provider. They contend that in justifying the financial bid, the prospective bidder must include the expenses in relation to optional services, but cannot consider the same for calculating anticipated revenue. It is their submission that this would result in a higher service fee being quoted by prospective bidders which would be detrimental to public interest. A reading of Chapter VII, Section 3 of the RFP establish that the optional service enumerated therein are minor services which are meant to facilitate the applicants in obtaining CPV Services and the investment towards these would be minimal and thus these would play a very small role in determining the L1 bidder for the purpose of the Subject Tender. These optional services, as the name suggests are not mandatory in nature and it is the prospective bidder’s prerogative to provide



these optional services and prospective bidders are free to submit their bids without opting for any of the optional services. It is also apparent from the Lowest Quotient Formula provided in the Financial Bid Evaluation procedure under the RFP that there is only 10% weightage given to optional services and 90% weightage is given to service fee for basic services. Keeping the aforesaid in view, this Court finds no merit in the contention of the Petitioners that the inclusion of optional services in the RFP would result in a higher service fee being quoted by prospective bidders which would be detrimental to public interest.

30. Lastly, the Petitioners are aggrieved with the condition wherein the Mission has a right to disqualify a bid as unresponsive in the financial bid stage if the viability condition under clause (g) of the Section-Part III of Annex C of the RFP is found to be unreasonable/unsustainable. The Petitioners contend that the said condition is arbitrary as there are no guidelines in place based on which the Mission has to determine whether a bid is unreasonable/unsustainable. An *ex-facie* reading of Section-Part III of Annex C of the RFP shows that there is a well defined formula based on which a prospective bidder must provide a justification for the service fee quoted by it. The viability of a service fee is defined as the difference between “Anticipated Revenue” and the Sum of “Total anticipated expenditure for all the Centres” + “Profit margin (percentage) & Profit amount” + “Local Taxes/Levis Payable”. Taking into account that there is a well-defined formula in place to calculate the viability of the service fee quoted by the prospective bidder, this Court fails to see how there is a lack of guidelines in place to determine whether the bid is



unreasonable/unsustainable.

31. As stated above, it is well settled that Courts in exercise of their writ jurisdiction under Article 226 of the Constitution should loathe to interfere in matters regarding tenders and should only do so when the same is arbitrary, unreasonable or perverse. Moreover, Courts lack the requisite expertise to adjudicate upon technical issues which are often involved in commercial matters. It is trite to say that the tender issuing authority would be the best judge to understand the needs of the tender and thus would be in the best position to formulate the eligibility criteria for participating in the Subject Tender. In view of the aforesaid, the Petitioners have failed to establish a case that the tender conditions provided under the Subject Tender are arbitrary, unreasonable or perverse.

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

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

NOVEMBER 08 , 2023