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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2024

PRONOUNCED ON : 19.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.10934 & 10948 of 2024 and
W.M.P.Nos.12030, 12034, 12036, 12045, 12047 & 12048 of 2024

OTIS Elevator Company (India) Limited,
Having its registered office at
9th Floor, Magnus Towers,
Mindspace, Off Malad Link Road,
Malad (West), Mumbai – 400 064. ... Petitioner in both W.Ps.

-Vs-

1. Union of India,
   Ministry of Housing & Urban Affairs,
   Nirman Bhawan, C-Wing,
   Rajpath Area, Central Secretariat,
   New Delhi – 110 011.

2. The State of Tamil Nadu,
   Ministry of Housing & Urban Development,
   Secretariat, Fort St. George,
   Chennai – 600 009.

3. Chennai Metro Rail Limited,
   METROS,
   No.327, Anna Salai,
   Nandanam, Chennai – 600 035 ...Respondents in both W.Ps.

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Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records comprised in the notice inviting tender bearing tender No.CP13-C3-AES02-ESC (Lumpsum Tender) of March, 2024 ("Tender of March 2024") and No.CP15-c3&5-AES06-LFT (Lumpsum Tender) of February, 2024 ("Tender of February 2024") respectively, issued by the respondent No.3 and quash Part1, Section 5 ('Eligible Source Countries of Japanese ODA Loan") of the same as illegal, arbitrary and unconstitutional.

For Petitioner in W.P.No.10934 of 2024	: Mr.A.K.Sriram, Senior Counsel For Ms.Savitha Kesav Jagadeesan
W.P.No.10948 of 2024	: Mr.Aravind Pandian, Senior Counsel For Ms.Savitha Kesav Jagadeesan
For Respondents in both W.Ps.	
For R1	: Mr.K.Guna Sekar Central Government Standing Counsel
For R2	: Mr.E.Vijay Anand Additional Government Pleader
For R3	: Mr.P.S.Raman, Advocate General, Assisted by Mr.S.Arjun Suresh

COMMON ORDER

The writ petition in W.P.No.10934 of 2024 has been filed challenging the tender notification issued by the third respondent dated March, 2024, insofar as the part 1, Section 5 - Eligible Source Countries of Japanese ODA Loans, as illegal, arbitrary and unconstitutional. The writ petition in W.P.No.10948 of 2024 has been filed challenging the

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tender notification issued by the third respondent dated February 2024, insofar as Part 1, Section 5 - Eligible Source Countries of Japanese ODA Loans, as illegal, arbitrary and unconstitutional.

2. Though both the writ petitions have been filed challenging tender notifications of February 2024 and March 2024, insofar as Part 1 Section 5 - Eligible Source Countries of Japanese ODA Loans, both the issues are common in nature. Therefore, this Court is inclined to pass a common order in both the writ petitions.

3. The petitioner in both the writ petitions is one and the same. The petitioner is a company incorporated under the Companies Act. It is a tax resident in India. It involves in the manufacturing of original equipment manufacture in the elevators, lifts and escalators industry. The third respondent is incorporated under the Companies Act and it is a government company. It has joint venture between the first and second respondent for implementation of Chennai Metro Rail Project in Chennai. In view of the same, the third respondent floated two tenders during February 2024 and March 2024, thereby inviting application/

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bidding documents for procurement of design, manufacture, supply, installation, testing & commissioning of heavy duty machine room less lifts and heavy duty escalators and travelators, respectively, for the upcoming Chennai metro rail project phase-II corridor 3 & 5 and corridor 3 respectively. Insofar as its Part 1 Section 5 - Eligible source countries of Japanese ODA loans, in both tender notifications are under challenge in these writ petitions.

4. Mr.Aravind Pandian and Mr. A.K.Sriram, learned Senior Counsels appearing for the petitioner in both the writ petitions submitted that the conditions contained in the impugned eligibility criteria are arbitrary, illegal and it is clear violation of Article 14 and 19 of the Constitution of India. The said clause has been introduced in the malafide manner, to unduly favour certain vested interest in order to exclusion of eligible Indian entities and manufactures. In fact, the very same third respondent floated three tenders so far and it did not contain the eligibility criteria as notified in the present tenders.

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4.1. Insofar as the materials to be procured from the Japanese manufacturers to the tune of 75% in the present tenders provide an eligibility and procurement criteria for the prospective bidder in part I - A(4.3). Accordingly, eligible bidders read with Section V - Eligible source countries of Japanese ODA loans. A juridical person incorporated in a country or area other than Japan that satisfies all of the conditions can be regarded as the Japanese Partner. The majority share holding held by Indian national and majority of the full time directors of the company are nationals of India. The procurement of goods from Japanese manufacture is mandatory in the tender. The minimum 75% of contract price excluding CAMC, taxes & duties shall be sourced from Japanese manufacturers/companies/ suppliers/sub-contractors. Further the main eligibility criteria to submit tender is that the bidder to be a Japanese or Indian. In case of joint venture, nationality of either partner being Japanese and/or Indian. If Japanese partner and Indian company have their majority share holding held by Indian nationals. Therefore, the eligibility criteria are arbitrary, illegal and also introduced in order to unduly favour certain vested interest.

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4.2. They further submitted that in fact the petitioner is a main contractor to install escalators and elevators and the petitioner was awarded contract by the Delhi metro RCL, Hyderabad metro RCL, Bangalore metro four extension for installation of escalators. Recently, the petitioner was awarded with the contract for supply and installation of escalators and elevators by Madhya Pradesh RCL. They further submitted that in those contracts there was no such eligibility criteria to comply. In fact, the tender notification issued by the third respondent during January, 2023 for procurement of escalators for corridor 1 & 2 phase I was funded from the loan proceeds of Japan International Cooperation Agency (hereinafter referred to as "JICA") vide loan agreement dated 31.03.2017, in which the eligibility criteria was not notified to bid. Therefore, the eligibility criteria notified in the present tenders are arbitrary, irrational, malafide and intended to favour certain very limited groups of entities. It is clear violation of Article 14 and 19(1)(g) of the Constitution of India.

4.3. They further submitted that the assistance granted by JICA is in the nature of a loan granted at a concessional rate and not a grant or

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aid and therefore it is required to be repaid along with interest to the foreign State from the public exchequer. Therefore, imposing restrictive condition by the third respondent in respect of eligibility criteria thereby limited the eligibility to some Japanese entities and manufacturers and to certain Indian player is unreasonable and reeks of malafide and favouritism and violative of fundamental rights of the petitioner. It would amount to benefiting the foreign country while wasting the tax payer's money in repaying the loan and also depriving the local players and manufacturers from benefiting such an important infrastructure project in the State of Tamil Nadu.

4.4. As per the tender notification, it mandates minimum procurement of 75% in value of the goods or service from Japanese manufacturers. It will increase the cost of the project and in turn will burden the exchequer. As the technical requirement for equipment remains significantly same as in previous tenders, there is no reason to mandate 75% procurement from Japanese entities or being Japanese origin when the manufacturers in India are equally capable to deliver the required goods or services. They further submitted that it is clear

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violation of Article 299 of the Constitution of India while public contract envisage Articles 298 & 299 of Constitution of India, all the contractors can bid for award of contract. Therefore, eligibility criteria as notified in the tender notification is clear violation of Articles 298 and 299 of the Constitution of India. He further submitted that as per Section 27 of the Indian Contract Act, if any agreement is restrained from exercising a lawful profession, trade or business, it is void. Therefore, the eligibility criteria fixed in the tender notification is void.

4.5. They further submitted that an Indian company has been in the eligibility criteria and accordingly it has to satisfy amongst other conditions that majority share holding of the company shall be held by Indian national. It is in variance with the definition of company under the Companies Act or under any previous Company Laws. The petitioner being a company incorporated under the erstwhile Companies Act, falls squarely within the definition. Therefore, the criteria of nationality of majority share holder is alien to Indian law. Therefore, the action of the third respondent is in violation of Article 14 and 19(1)(g) of the Constitution of India for being unreasonable, arbitrary and in

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contravention of principle of natural justice, amongst others. In support of their contention, they relied upon the judgment of the Hon'ble Supreme Court of India reported in ***(1991)1 SCC 212*** in the case of ***Kumari Shrilekha Vidyarthi and ors Vs. State of U.P and ors***.

5. The third respondent filed counter and Mr.P.S.Raman, learned Advocate General submitted that both the writ petitions are not maintainable since, the petitioner failed to demonstrate that the eligibility criteria fixed in the tender notifications are unreasonable, unconstitutional or it favours any specific tenderer or class of tenderers. The eligibility criteria in the tender notification has been incorporated on the basis of the loan agreement dated 12.12.2018 between India and Japan represented by the President of India and JICA for implementation of the Chennai metro rail project phase-II. Therefore it is not arbitrary or invalid. The eligibility criteria is nothing but terms of tied loan availed from JICA. The present tenders are founded by JICA and the third respondent is being executing agency is required to adhere to the conditions of the loan agreement to avail the funding provided by JICA at a concessional rate of interest. In fact, the loan availed for the entire

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project to the tune of 77.51 billion Japanese Yen with 0.01% interest. Therefore, the third respondent can carry out the project at a significant cost benefit to the public exchequer.

5.1. He further submitted that the contract entered between India and Japan signed by the President of India. Therefore, by way of these writ petitions, the contract entered between India and Japan cannot be nullified. As per the terms and conditions of the said contract, the eligibility criteria has been fixed in the tender floated by the third respondent. Therefore the entire allegations alleged by the petitioner cannot be sustainable and the eligibility criteria of the tenders are not arbitrary and unreasonable one.

5.2. He also submitted that the comparision between the tenders in the year 2022 and the present tenders cannot be considered since, the earlier tenders were floated based on the loan agreements of 2017 and 2018. In those agreements, the eligibility criteria are completely different and those tenders cannot be compared with the present tenders. The present tenders were floated on the conditions prescribed by JICA.

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Whereas the earlier tenders were floated on the conditions prescribed by the New Development Bank. In fact, the eligibility criteria notified in the present tenders do not restrict participation of Indian companies and it prescribes the qualifications of an Indian company.

5.3. He further submitted that in these type of matters, normally the Court cannot interfere unless and otherwise any illegality or irrationality and procedural impropriety arises. The Court can interfere when committed a breach of the rules of natural justice and abused its power. In order to substantiate his contention, the learned Advocate General relied upon the following judgments :-

(i) (1994) 6 SCC 651 - Tata Cellular Vs. Union of India

(ii) Civil Appeal Nos.4862 & 4863 of 2021 dated 17.09.2021 in the case of Uflex Ltd., Vs. Government of Tamil Nadu & ors

(iii) (2007) 14 SCC 517 - Jagdish Mandal Vs. State of Orissa & ors.

6. Mr.K.Gunasekar, learned Central Government Standing Counsel appearing for the first respondent submitted that the first respondent is nothing to do with the tenders floated by the third respondent. In both the tenders, eligibility criteria has been fixed as per

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the conditions of loan agreements between the government of India and JICA dated 21.12.2018.

7. Heard the learned counsel appearing on either side and perused the material placed before this Court.

8. The third respondent is a special purpose vehicle with equal share holding of the Central government and the State of Tamil Nadu i.e., 50% each. The JICA is a government agency of Japan, providing financial assistance to infrastructure development project in India including Chennai metro rail project. For execution of phase-I of Chennai metro rail project, financial assistance was partly provided by JICA vide loan agreement dated 31.03.2017 which was executed by the President of India and JICA to the tune of 33,321 Billion Japanese Yen. It was an untied loan and the government of India is a borrower and the third respondent is an executing agency.

9. Subsequently, for the purpose of execution of Chennai metro rail project phase-II, another agreement was executed between

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India and JICA dated 12.12.2018, thereby assisted loan to the tune of 75,519 Billion Japanese Yen. It is a tied loan under concessional rate of interest subject to the condition that the money loaned is partly spent on buying goods and obtaining services from the lending nation viz., Japan. Therefore, the third respondent is being an agency, is not responsible for the negotiated terms of the agreements dated 12.12.2018. It is relevant to extract some essential conditions in the loan agreement dated 12.12.2018 as follows:-

"Schedule 4 - Procurement Procedure

Section 2- Eligible Nationality

(1) The Eligible Nationality of the Supplier(s) for procurement of all goods and services (including consulting services) to be financed out of the proceeds of the Loan shall be the following:

(a) Japan and India in the case of the prime contractor; and

(b) All countries and areas in the case of the sub-contractor(s).

(2) With regard to Section 2. (1) above, in case where the prime contractor is a joint venture, such joint venture will be eligible provided that the nationality of a partner is Japan and/or India.

(3) With regard to Section 2. (1) and (2) above,

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(a) For goods and services, except consulting services:

(i) The Prime contractor or, in the case of a joint venture, the Japanese partners shall be nationals of Japan or juridical persons incorporated and registered in Japan, and have their appropriate facilities for producing or providing the goods and services in Japan, and actually conduct their business there (hereinafter referred to as the "Japanese Partner").

(ii) Notwithstanding Section 2.(3)(a)(i) above, a juridical person incorporated in a country or area other than Japan that satisfies all of the following conditions can be regarded as the Japanese Partner:

It is a subsidiary included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of the Japanese Company made in accordance with the Financial Instruments and Exchange Act of Japan and the related ministerial ordinances; and

It is registered in the counter or area where it was incorporated, has its appropriate facilities for producing or providing goods and services there, and actually conducts its business therein.

(iii) The prime contractor or, in the case of a joint venture, the Indian partners shall be national of India or juridical persons incorporated and registered in India,

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and have their appropriate facilities for producing or providing the goods and services in India, and actually conduct their business there; in the case of a juridical person, a majority of the subscribed shares shall be held by nationals of India; and the majority of the full-time directors of the company are nationals of India (hereinafter referred to as the "Indian Company").

(b) For consulting services, the prime contractor shall be a joint venture composed of a Japanese company(ies) which satisfies the following condition of (i) Thereinafter (hereinafter referred refe to as the "Japanese Company") and an Indian company(ies) which satisfies the following condition of (ii):

(i) A juridical person incorporated and registered in Japan; the majority of the subscribed shares of the company are held by nationals of Japan and/or juridical persons incorporated and registered in Japan; and the majority of the full-time directors of the company are nationals of Japan.

(ii) A juridical person incorporated and registered in India; the majority of the subscribed shares of the company are held by nationals of India and/or juridical persons incorporated and registered in India; the majority of the full-time directors of the company are nationals of India; and the company actually conducts its business in India.

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(4) The total costs of goods and services procured from Japan shall not be less than thirty percent (30%) of the total amount of contracts for all goods and services to be financed under Category (A) as stipulated in Section 1 of Schedule 2.

(5) With regard to Section 2 (4) above, if the major goods is (are) substantially manufactured by an component(s) of Eligible Local Manufacturing Company, such components can be regarded and counted as Japanese origin even if the goods are not procured from Japan, Eligible Local Manufacturing Company(ies), nor Eligible Developed Countries' Manufacturing Company(ies).

(6) With regard to Section 2. (4) above and in, the goods procured from Indian Company(ies) be regarded and counted as can Japanese origin if such goods satisfy all of the following conditions:

(a) The major component(s) is (are) substantially manufactured by a Japanese Company(ies); and

(b) Japanese Company(ies) substantially manufactures major components and substantially engage with final assembly or the final refinement/ processing by the Indian Company(ies) in the manners including, but not limited to technical cooperation, commissioning of manufacturing or provision of design. ....”

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10. As per the above terms and conditions of the loan agreement, 75% of the goods and service must be of Japanese origin. Accordingly, the third respondent floated tender notification of February, 2024 for design, manufacture, supply, installation, testing & commissioning of heavy duty machine room less lifts from Koyambedu to Madhavaram depot metro and Madhavaram Milk Colony to Sholinganallur including Madhavaram Depot, which included eligibility criteria ie., impugned in these writ petitions. Likewise, the third respondent floated another tender notification during March 2024, for design, manufacture, supply, installation, testing and commission of heavy duty escalators & travelators from Madhavaram Milk Colony to Sholinganallur for upcoming Chennai metro rail phase-II corridor 3. Therefore, the eligibility criteria was notified by the third respondent as per the conditions imposed in the loan agreement dated 12.12.2018, between India and JICA. Therefore, it cannot be said that the eligibility criteria is unreasonable, unconstitutional and against public interest. Even as per the eligibility criteria Indian national and Japanese National can very well participate in the tender.

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11. Further on perusal of the earlier two tender notifications, it did not contain the eligibility criteria. Whereas the present notifications were issued with eligibility criteria. As per the loan agreement dated 21.12.2018, the entire amount is owned by JICA. As per the loan agreement conditions, the third respondent floated tenders along with eligibility criteria. Therefore, the third respondent is being an executing agency is required to adhere the conditions of the loan agreement to avail the fund provided by the JICA at concessional rate of interest.

12. Further concessional rate of interest also enables the third respondent to carry out the project at a significant cost benefit to the public exchequer. Therefore, it cannot be said that eligibility criteria in the tender notifications are arbitrary or unreasonable. Further the eligibility criteria does not create any inequality among the bidders but it provides certain qualifications that bidders must possess, which is in accordance with the terms of the loan agreement for execution of phase-II Chennai metro rail project.

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13. The learned Senior Counsels appearing for the petitioner relied upon the judgment reported in ***(1991)1 SCC 212*** in the case of ***Kumari Shrilekha Vidyarthi and ors Vs. State of U.P and ors.,*** in which the Hon'ble Supreme Court of India held that there is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest, whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The State cannot be attributed the split personality in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. Further held that the requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters.

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14. On perusal of tender eligibility criteria revealed that (a) appropriate facilities for producing or providing the goods and service in India (b) not less than 10% of its shares held by a Japanese company or juridical person. Therefore, the tender does not exclude Indian manufacturers in their entirety and does not mandate procurement directly from Japan alone. This requirement does not disqualify any bidder but merely obligates the successful bidder to procure products or services of Japanese origin as per the terms of the tender. Therefore, the eligibility criteria is not discriminatory, exclusionary, arbitrary, malafide or irrational. Hence, the judgment relied upon by the learned Senior Counsel appearing for the petitioner is not helpful to the case of the petitioner.

15. The learned Senior Counsels appearing for the petitioner further submitted that it is clear violation of Article 299 of the Constitution of India while public contract envisage Articles 298 & 299 of Constitution of India, all the contractors can bid for award of contract. Therefore, eligibility criteria as notified in the tender notification is clear violation of Articles 298 and 299 of the Constitution of India. He further

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submitted that as per Section 27 of the Indian Contract Act, if any agreement is restrained from exercising a lawful profession, trade or business, it is void. Therefore, the eligibility criteria fixed in the tender notification is void. However, when the eligibility criteria has been notified in tender notifications issued by the third respondent on the basis of the agreement between the India and JICA, it cannot be said that violation of Article 289 and 299 of the Constitution of India and Section 27 of the Contract Act.

16. The learned Advocate General appearing for the third respondent relied upon the judgment reported in ***(1994) 6 SCC 651*** in the case of ***Tata Cellular Vs. Union of India***, in which the Hon'ble Supreme Court of India held as follows :-

> *"77. The duty of the court is to confine itself to the question of legality. Its concern should be :*
>
> *1. Whether a decision-making authority exceeded its powers?*
>
> *2. Committed an error of law,*
>
> *3. committed a breach of the rules of natural justice,*
>
> *4. reached a decision which no reasonable tribunal would have reached or,*

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5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under: 24 (1987) 1 All ER 564 25 (1989) 2 All ER 609 26 Amin v. Entry Clearance Officer, (1983) 2 All ER 864 27 (1990) 1 QB 146: (1989) 1 All ER 509 (i) Illegality: This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it. (ii) Irrationality, namely, Wednesday unreasonableness. (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind28, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

....

94. The principles deducible from the above are :

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

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

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

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy

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administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.

2. Whether the selection is vitiated by arbitrariness?"

17. He also relied upon the judgment passed by the Hon'ble Supreme Court of India in ***Civil Appeal Nos.4862 & 4863 of 2021*** dated ***17.09.2021*** in the case of ***Uflex Ltd., Vs. Government of Tamil Nadu & ors***, which held that the objective is not to make the Court an appellate authority for scrutinizing as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them. Further held that insofar as the participating entities are concerned, it cannot be contended that all and sundry should be permitted to participate in matters of this nature. In fact, in every tender there are certain qualifying parameters whether it be technology or turnover. The Court cannot sit over in judgment on what should be the turnover required for an entity to participate.

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18. The learned Advocate General further submitted that principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, Courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. In this regard, he relied upon the judgment reported in ***(2007) 14 SCC 517*** in the case of ***Jagdish Mandal Vs. State of Orissa & ors.***, which reads as follows :-

> *"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at*

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a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone or whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority

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acting reasonably and in accordance with relevant law could have reached.'

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

Thus it is clear that the judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides.

19. The above judgments are squarely applicable to the case of hand. Hence, this Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible. Hence the eligibility criteria in the tender notification cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

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20. As stated supra this Court does not find arbitrariness or bias in the eligibility criteria as mentioned in the tender notifications. Further, the power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. When this Court finds no arbitrariness, irrationality or bias in the eligibility criteria fixed in the tender notification, there should be no interference by this Court under Article 226 of the Constitution of India in the tender notifications.

21. In view of the above discussions, this Court finds no infirmity or illegality in the tender notifications issued by the third respondent and both the writ petitions are failed and liable to be dismissed. Accordingly, both the Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.06.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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To

1. Union of India,
   Ministry of Housing & Urban Affairs,
   Nirman Bhawan, C-Wing,
   Rajpath Area, Central Secretariat,
   New Delhi – 110 011.

2. The State of Tamil Nadu,
   Ministry of Housing & Urban Development,
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3. Chennai Metro Rail Limited,
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G.K.ILANTHIRAIYAN. J,

rts

COMMON ORDER IN
W.P.Nos.10934 & 10948 of 2024 and
W.M.P.Nos.12030, 12034, 12036,
12045, 12047 & 12048 of 2024

19.06.2024