

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.100 OF 2024
WITH
INTERIM APPLICATION NO.13336 OF 2024**

Rajesh Sharma	}	
Age 60 years, of Mumbai, Indian inhabitant	}	
The General Secretary, of Maharashtra	}	
Pradesh Congress Committee,	}	
Residing at 101, C-Wing, Maruti Bhavan	}	
Opp. Sona Udyog, Parsi, Panchayat Road,	}	
Andheri (East), Mumbai – 400 069	}	 Petitioner
V/s		
1. State of Maharashtra	}	
Through the Secretary of the	}	
Ministry of Power, having Office at	}	
Mantralaya, Mumbai	}	
2. Union of India	}	
Through the Secretary of Power,	}	
having its address at Shram Shakti Bhawan,	}	
Raif Marg, New Delhi 110001 and also at	}	
Aaykar Bhavan, 2 nd Floor,	}	
Maharshi Karve Road, New Marine Lines,	}	
Mumbai – 400020	}	
3. Maharashtra State Electricity Distribution	}	
Company Limited, having its address at	}	
JSD, Dharamveer Nagar, Mumbai-400080	}	
4. Maharashtra Electricity Regulatory	}	
Commission, having its office at	}	
World Trade Centre, Centre No.1, 13 th Floor,	}	
Cuffe Parade, Colaba, Mumbai-400005	}	
		Respondents

Mr. Nishant Chothani a/w Ms.Sneha Patil & Mr. Hrishikesh Joshi i/b Maniar Srivastava Associates, Advocates for the petitioner.

Mr. P.P. Kakade, Addl. GP a/w Mrs. G.R. Raghuwanshi, AGP for the respondent no.1.

Mrs. Snehas V. Bharucha i/b Mr. A.A. Ansari Advocates for the respondent no.2.

Ms. Deepa Chawan, Senior Advocate a/w Ms. Saloni Kapadia, Mr. Karan Gandhi i/b Cyril Amarchand Mangaldas, Advocates for the respondent no.3 - MSEDCL

**CORAM : SHREE CHANDRASHEKHAR, CJ., &
MANJUSHA DESHPANDE, JJ.**

Reserved on : 6th AUGUST 2025.

Pronounced on : 26th SEPTEMBER 2025.

PER, SHREE CHANDRASHEKHAR, CJ :-

The petitioner seeks to challenge the entire tendering process pursuant to NIT dated 13th March 2024.

2. A Notice Inviting Tender (in short, "NIT") was issued on 13th March 2024 for power procurement for Maharashtra State Electricity Distribution Company Limited (in short, "MSEDCL"). Under the NIT, a composite bid for 1600 MW thermal power and 5000 MW solar power was to be evaluated through a competitive bidding process. Under the NIT dated 13th March 2024, the bid submission due date was 25th April 2024 and the technical bids were required to be evaluated on the same day one hour after the deadline for submitting the bid. On 30th June 2024, the bidders were intimated through Addendum No.15 that they had an option to opt for composite bid for half of the published capacity, that is, a composite bid of 800 MW thermal power and 2500 MW solar power was also acceptable. In line with this clarification, Corrigendum XI was issued on 8th July 2025 and the date and time for closure of the procurement of tender documents and the last date for submission of the bid were extended to 31st July 2024. In this writ petition, the petitioner has made the following prayers:

- “ (a) to allow this Public Interest litigation;
 (b) that this Hon’ble Court be pleased to pass an order quashing and setting aside the entire the tender process to the issuance of the Tender dated 13.03.2024;
 (c) that this Hon’ble Court be pleased to pass an order directing the Respondents to withdraw the Tender dated 13.03.2024;
 (d) that this Hon’ble Court be pleased to pass an order restraining the Respondents from acting upon and/or implementing the Tender dated 13.03.2024;
 (e) that pending the hearing and final disposal of this petition, this Hon’ble Court be pleased to pass an order restraining the Respondents from acting upon and/or implementing the Tender dated 13.03.2024 and/or any steps taken in furtherance thereof or pursuant thereto;
 (f) any further relief may be granted in favour of the Petitioner in the interest of justice.”

3. The main ground of challenge laid to the NIT dated 13th March 2024 is that the tender process contravenes section 63 of the Electricity Act and violates mandatory guidelines for long-term procurement of the electricity from Thermal Power Stations under the Thermal Guidelines and the Guidelines for procurement of power from the grid connected through Solar-PV. According to the petitioner, the NIT has been issued without following the mandatory Guidelines under clause 4 of the Thermal Guidelines dated 6th March 2019 and without seeking approval from the appropriate Government under clause 3 of the Solar Guidelines dated 28th July 2023. The learned counsel for the petitioner relied on the decision in “*Energy Watchdog*”¹ and contended that the National Tariff Policy has a statutory force and the procurement of power must be strictly by following transparency and competition. The learned counsel for the petitioner further contended that the Resource Adequacy Study by the CEA was not in place when the NIT was issued on 13th March 2024 and the *post facto* approval taken by the MSEDCL for

1 2017 (14) SCC 80, *Energy Watchdog v. Central Electricity Regulatory Commission & Ors.*

deviating from the Thermal Guidelines and Solar Guidelines from the Maharashtra Electricity Regulatory Commission (for short, “MERC”) was not *bona fide*. Questioning the manner in which the NIT was published in hot haste without any Resource Adequacy Study Report which was expected by 31st October 2024, the learned counsel for the petitioner contended that in bye-passing the mandatory guidelines for seeking prior approval for the deviations the interest of the consumers and other stake-holders was compromised. The petitioner contends that the tender process is flawed in law, lacks transparency, suppresses the competition among the bidders and the NIT was issued contrary to the object behind the Electricity Act, National Tariff Policy and the Solar and Thermal Guidelines.

4. The National Tariff Policy formulated under section 3 of the Electricity Act provides under sub-clauses (c) and (d) of clause 4 to promote competition, transparency, consistency and predictability in regulatory measures. The Tariff Policy further provides under clause 6.1 that power procurement for future requirements should be through transparent competitive bidding mechanism following the guidelines issued by the Central Government. In tune with the National Tariff Policy, the Thermal Guidelines have been issued to promote competition in the procurement of electricity and provides under clause 3 that tariff has to be determined through the bidding process as per the Thermal Guidelines. Clause 4 of the Thermal Guidelines mandates that any deviation from the guidelines and the Model Documents shall be made only after prior approval of the appropriate Commission. Clauses 3 and 4 of the Thermal Guidelines provides as under:-

“3. The tariff determined through the bidding process based on these Guidelines comprising the Model Bidding Documents shall be

adopted by the Appropriate Commission in pursuance of the provisions of section 63 of the Act.”

“4. Any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.”

5. The Solar Guidelines are also aimed at promoting competition in the procurement of electricity and the bidding documents are to be prepared in tune with the guidelines. Clause 16 thereunder provides that any deviation in the bidding document has to be approved by the appropriate Government before the start of the bidding process. Clause 16 thereof provide as under:-

*“16. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES
The objective of these Guidelines is to bring standardization & uniformity in processes so that there is fairness & transparency in procurement. As such, these Guidelines need to be strictly followed in the bidding process and no bid, under section 63 of the Electricity Act, for procurement of Solar power from the Projects with or without Energy Storage System shall be issued in contravention to these Guidelines. However, in case it becomes imperative for the Procurer to deviate from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Government before the initiation of bidding process itself. The Appropriate Government shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days of filing such petition.”*

6. The MSEDCL is the largest electricity distribution company in India and it claims that it is the second largest electricity distribution company in the world. It devised a hybrid mode for the proposed power procurement and the tendering process has been designed in such a manner to procure both thermal and solar power from a single entity. The MSEDCL states that a composite bidding process was designed to reduce the tariff component to be discovered through competitive bidding to benefit the end consumers. The procedure adopted by the MSEDCL received the acknowledgment from the MERC and Case No.155 of 2024 filed by the MSEDCL seeking approval of the lowest price discovered

through composite bidding was allowed. It is stated that to invite participation by more bidders and to encourage competition, the MSEDCL diluted many financial requirements and, more importantly, the financial capacity requirement was reduced from Rs.1.5 crores per MW to Rs. One crore per MW. The allegation, that the Thermal Guidelines were not followed as the NIT was published without taking approval of the MERC and the Solar Guidelines were flouted inasmuch as the approval of the appropriate Government was not taken by the MSEDCL, are denied putting forth a stand that the permission/approval of the MERC and the appropriate Government as provided under the guidelines were taken before the bidding process started. The MSEDCL states that the process of inviting the bids started on 5th August 2024 and, before that, the necessary permission for deviation from the Model Bidding Document was taken from the MERC for the thermal power. It is contended that there is no provision under the Electricity Act which restricts the power of the Distribution Company in any manner to float a composite tender for the thermal power and solar power procurement. Under the Tariff Policy 2016, the accelerated growth of the generation capacity sector is prioritized to meet the estimated growth in demands and to ensure that new capacity addition delivers electricity at a cost-effective rate. It is stated that under the MERC (First Amendment) Regulations, 2024 published vide notification dated 23rd February 2024, the renewable purchase obligation target for FY 2024-25 to FY 2029-30 has been fixed and the MSEDCL needs to manage nearly half of its power procurement through renewable sources. The MSEDCL has referred to 20th Electric Power Survey Report by the CEA, according to which its projected peak demand stands at

39,884 MW for FY 2031-32 and the same may rise to 41,956 MW for FY 2033-34. It was contended that based on the aforesaid requirements the MSEDCL needed to enlarge its energy procurement basket by adding 6,748 MW thermal power and 8,966 MW solar power.

7. To justify the composite competitive bidding, the MSEDCL took a stand that the demand of electricity has witnessed significant growth in the State of Maharashtra and the MSEDCL has to purchase power from exchange market at times but the required quantum is sometimes not available in the exchange market leading to curtailment in supply of electricity. The MSEDCL has, therefore, taken a decision for additional coal-based thermal capacity having regard to contracted thermal generations, requirement of Resource Adequacy for meeting peak demand and to maintain sufficient Spinning Reserve. It is stated that for enhancement of coal-based thermal capacity, the MSEDCL made an application on 9th February 2024 for approval of coal-linkage from the Ministry of Power and such approval has been granted under SHAKTI-B (iv) for 1600 MW coal-based capacity. In addition to this, the MSEDCL decided to procure electricity on long-term basis from power station (the "Thermal Project") on Design, Build, Finance, Own and Operate ("DBFOO") basis. The NIT refers to the Resource Adequacy framework issued by the Central Electricity Authority, (in short, "CEA"), MERC Regulations, 2019 and need to maintain an optimal mixture of generation sources. The NIT also takes note of agriculture-based category of consumers for whom tariffs should be relatively cheaper.

8. The learned counsel for the petitioner referred to the observation of the MERC that the MSEDCL did not approach the

Commission for approval of the deviations as per the guidelines and the MERC wrongly approved the deviations on the premise that any future changes would be dealt later on based on the Resource Adequacy Plan as per the MERC Regulations. The learned counsel for the petitioner submitted that the following issues were before the MERC for its consideration:

- “(a) MSEDCL was directed to clarify why it did not approach MERC before initiating the bidding process.*
- (b) MSEDCL was directed to clarify whether sufficient power is tied up to meet the projected demand before the financial year 2033-34 given that the projected procurement is for the demand in that year.*
- (c) MSEDCL was to clarify whether early contracting for power, which would start commissioning in 2 to 4 years, might create any stranded capacity.*
- (d) MSEDCL was required to provide a rationale for considering combined power procurement of solar and thermal through a single entity and clarify if all future thermal power procurement would follow the same principles.*
- (e) MSEDCL needed to highlight provisions in the bidding documents ensuring that the weighted average tariff for thermal and solar is available throughout the PPA tenure.*
- (f) MSEDCL was directed to highlight stipulations in the bidding documents regarding the operation of thermal units at technical minimum during solar hours and penalties for not achieving required solar generation levels.*
- (g) MSEDCL was directed to justify the requirement for bidders to submit bids for 100% capacity for thermal and solar, as opposed to allowing part capacity bids, which are allowed for pumped hydro projects (minimum 100 MW).*
- (h) MSEDCL was required to demonstrate, in quantifiable terms, how the proposed deviations would be in the interest of consumers.*
- (i) MSEDCL was directed to submit a plan for transmission capacity addition or strengthening, especially for non-location-specific projects that might face transmission constraints, and how it would ensure that MSEDCL is not penalized for non-evacuation of power due to these constraints.”*

9. The aforementioned issues are culled out from the order passed in Case No.96 of 2024 the relevant portions of which are extracted hereinbelow:-

“9. During the hearing dated 25 June 2024, the Commission learnt that although this Petition has been filed for seeking approval for deviations, MSEDCL has already floated the tender and issued corrigendum/clarifications based on pre-bid meetings.

Justifying its actions of floating tender before approval of the Commission, MSEDCL submitted that the same was done to avoid loss of time in view of the then forthcoming Model Code of Conduct for Lok Sabha Election. The release of document prior to the implementation of the Model Code helped MSEDCL in concurrently running the processes in the interim and complete other activities related to the process involving conduct of pre-bid meetings and response to queries of bidders and making consequent changes in the tender documents. MSEDCL further stated that bid submission date is proposed to be kept only after approval of tender documents by the Commission. In this regard, the Commission notes that prior approval of the tender documents is mandatory condition, if it contains the deviations from Guidelines/SBDs. MSEDCL floated the NIT on 13 March 2024 and filed the present Petition on 13 June 2024 i.e. after a lapse of 3 Months. Even if MSEDCL's justification of floating tender before Model Code of Conduct is accepted, then also there is no justification for filing this Petition after 3 months, Model Code of Conduct did not stop MSEDCL from filing the petitions before the Commission. The Commission expressed its displeasure on such administrative lapses. Henceforth, MSEDCL is directed to be vigilant on timelines and stipulations in Policy/Guidelines/Regulations made under the Electricity Act, 2003."

13.7. It is also important to note that Government of India has yet not issued any guidelines under Section 63 of the EA 2003 which allows such composite procurement of Thermal and Solar power. At the same time, it is well settled position that non-issuance of Guidelines under Section 63 of the EA, 2003 does not restrict Distribution Licensee to proceed with competitive bidding process for procurement of power. In present case, MSEDCL has option of running separate bidding process of Thermal and Solar power but MSEDCL has opted for composite bidding. MSEDCL has listed various benefits of such composite bidding which has been summarized under para 5 above. For consumers of distribution licensee, ultimate benefit is achieved if power is procured at cheapest possible tariff. MSEDCL has stated that its proposed approach will reduce the tariff to be discovered through competitive bidding. Such claim of MSEDCL can be verified only after completion of bidding process and scrutinizing discovered tariff vis-à-vis prevalent market rate."

10. The observations of the MERC in the order dated 12th July 2024 under paragraph nos. 9 and 13.6 do not cast any aspersion on the conduct of the MSEDCL. The expression of displeasure by the MERC was as regards delay in filing the petition for prior approval and such observations of the MERC cannot be construed

to mean any doubt raised in issuing the NIT and the subsequent bidding processes. In the order dated 12th July 2024, the MERC examined all possible aspects including the current power supply position of the MSEDCL, demand projections, generation availability assessment and then approved the proposal of the MSEDCL for the power procurement. The MERC also examined whether deviations from the competitive bidding guideline were justified. Notwithstanding the observations in paragraph nos. 9 and 13.7, the MERC granted approval for deviations in the Standard Bidding Document and deviations to the tariff-based competitive guidelines by its order dated 12th July 2024. It is well remembered that a judgment is to be read as a whole and not in piecemeal. Without laying challenge to the order dated 12th July 2024, the petitioner seeks to rely on the observations made by the MERC in paragraph nos. 9 and 13.7.

11. The petitioner claims that he is the General Secretary of Maharashtra Pradesh Congress Committee and a former Deputy Mayor of the city of Mumbai. He was also the Chairman of the Bombay Electric Supply and-Transport and claims that he has no personal interest in the subject matter. This writ petition starts by narrating the enactment of the Electricity Act 2003, National Tariff Policy and guidelines for long term procurement of electricity from thermal power stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B(I), B(III) and B(IV) of SHAKTI policy (Thermal Guidelines and Solar Guidelines). It gives the details of the NIT, Corrigendum XI issued by the MSEDCL on 8th July 2024, Case No.96 of 2024, Interim Application No.28 of 2024 and some other details. The petitioner

states that the Maharashtra Pradesh Congress Committee made a representation on 18th July 2024 to the Government of Maharashtra highlighting several discrepancies in the NIT and raised an apprehension that the NIT has been issued to favor a single industrial player. However, the MSEDCL has taken serious objections to the filing of this writ petition labeled as public interest litigation, terming it as gross abuse of process of law. The MSEDCL has criticized the petitioner for not coming to the Court with clean hands and for making bald and reckless allegations without any basis. It has challenged the *bona fides* of the petitioner and characterized this Public Interest Litigation as a motivated and publicity-seeking proceeding for some personal or political motive. The MSEDCL has specifically challenged the *bona fides* and *locus standi* of the petitioner who failed to establish any element of public interest involved in this Public Interest Litigation.

12. This writ petition is misconceived and misdirected and is not entertainable for various reasons including locus of the petitioner to challenge a commercial contract between the two parties. A person who is not a party to the transaction need not be heard in ordinary circumstances unless he establishes substantial and demonstrable public interest on the basis of a concrete factual position. As a general rule, there is no locus for a non-party to question a free contractual relationship. The person approaching the Court must establish his *bona fides* and *locus standi* and the Court may permit a stranger to the transaction to carry the proceedings only when it is satisfied that the person has genuine concern in public interest litigation and is not moved by any extraneous consideration. In a commercial transaction which is essentially a contract between two parties, a third party shall have no locus to question the award of a

tender. Merely because the State or its instrumentality is a party to the contract, the basic character of the transaction does not change. The law relating to contract and specific relief recognizes the desire of the parties, element of consensus *ad idem*, and free consent. A person aggrieved by any decision can challenge the same in a Court of law but a public interest litigation in such matters at the behest of a stranger ought not to be entertained. In “*Villianur Iyarkka*”², the contract was purely commercial in nature and the parties who participated in the process of selection of the consultant/ developer, or anyone who had expressed desire to develop Pondicherry Port did not come forward and laid a challenge to the selection process adopted by the Government of Pondicherry. In “*Villianur Iyarkkai*”, the Hon’ble Supreme Court held that a public interest litigation can be maintained by a person only on the ground that there has been an element of violation of Article 21 or human rights or where the litigation has been initiated for the benefit of the poor and unprivileged. In “*Balco Employees*”³, the Hon’ble Supreme Court observed that the public interest litigation is not meant to be a weapon to challenge the financial or economic decisions of the Government by a stranger. In “*Jagbhai Motibhai Desai*”⁴, the Hon’ble Supreme Court characterized a person as a mere busybody or meddlesome interloper who fails to establish his standing to sue. The Hon’ble Supreme Court further observed that though such persons masquerade as seekers of justice and pretend to act in the name of *Pro Bono Publico*, but in reality, they have no interest of the public in mind. The Hon’ble Supreme Court held as under:

2 (2009) 7 SCC 561, *Villianur Iyarkka v. Union of India & Ors.*

3 (2002) 2 SCC 333, *Balco Employees v. Union of India*

4 (1976) 1 SCC 671, *Jagbhai Motibhai Desai v. Roshan Kumar, Hazi Bashir Ahmed & Ors.*

"37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: i "person aggrieved"; (ii) "stranger"; (il) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than speaking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

13. The laws regulating the award of tender developed with avowed object to bring greater transparency in administrative decisions but, over a period of time, a larger number of decisions came to be challenged by way of proxy litigation. The stark reality today is that the unsuccessful party or even the one who did not participate in the bid approaches the Court and almost all tenders are challenged. The purpose behind the judicial review in contractual matters has been to see whether choice of decision is lawful and not to check whether the choice of decision is sound. The limitations on the power of judicial review go to the extent that the High Court shall not interfere in the matter even where the government has rejected the highest bid; for good and valid reasons. It further goes to the extent of upholding the administrative decision not to float tender or award contract through public auction or even where the tender is awarded through invitation. If the administrative decision is taken after due deliberations and taking into account the prevailing circumstances and with due application of mind then the High Court shall not be justified in exercising its

jurisdiction under Article 226 of the Constitution of India. In “*Cartel Infotech Ltd*”⁵, the Hon’ble Supreme Court held as under:-

37. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India, It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by government and public sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the public sector.

43. We have considered it appropriate to, once again, emphasise the aforesaid aspects, especially in the context of endeavours of courts to give their own interpretation to contracts, more specifically tender terms, at the behest of a third party competing for the tender, rather than what is propounded by the party framing the tender. The object cannot be that in every contract, where some parties would lose out, they should get the opportunity to somehow pick holes, to disqualify the successful parties, on grounds on which even the party floating the tender finds no merit."

14. Under Article 226 of the Constitution of India, the High Court is not vested with a jurisdiction to make a choice of the suitable bidder. The scope of judicial review under Article 226 of the Constitution of India is very limited and it must remain confined to the Wednesbury principles of illegality and irrationality in making the administrative decisions. So long as a reasonable and fair procedure is adopted and followed and applied uniformly by the employer, the writ Court cannot interfere with the decision of the Executive even where some procedural compliance is not ensured.

5 2019 (14) SCC 81, *Cartel Infotech Ltd v. Hindustan Petroleum Corporation of India*”

This cannot be a legal ground to entertain a writ petition labeled as a public interest litigation that the necessary approvals were not obtained before proceeding to issue and publish the NIT. The judicial review can enter into the realm of contractual matters only where it is demonstrated that the equality clause under Article 14 of the Constitution of India was violated and the consequence thereof was that the Public Interest was compromised. Mere injury to a bidder who lost the race is not a ground to interfere with the decision of the tendering committee and the aggrieved bidder may have a remedy in the Civil Court. The learned counsel submitted that the excuse of upcoming Model Code of Conduct in the wake of elections in the State of Maharashtra was a pretext to award the tender in favor of a particular business entity. Taking exception to the letter of intent dated 13th September 2024 and the letter of award dated 3rd October 2024, it was submitted that the respondent-MSEDCL acted in hurry and issued the work order while the present Public Interest Litigation was sub-judice. However, except pleading that the Solar Guidelines and Power Guidelines were violated and a reference to some observations by the MERC, it is not demonstrated before the Court that the administrative decision was flawed in law or that the MSEDCL proceeded in hot haste to award the tender to some favorite one. After all, this circumstance cannot be overlooked that this writ petition was filed at a stage when the bids were not even opened and it was not known who would be the bidders. This is admitted at the Bar that the work order under the NIT dated 13th March 2024 was issued long back and the letter of award was issued way back on 3rd October 2024. However, the successful bidder was not added as a party-respondent, though the petitioner has arrayed (a) the State of

Maharashtra through Secretary, Ministry of Power (b) Union of India through Secretary, Ministry of Power (c) Maharashtra State Electricity Distribution Company Limited and (d) Maharashtra Electricity Regulatory Commission as party-respondents in the present proceeding.

15. The public interest is served when the contract is executed in timely manner and the services become available to the public. A poor quality of work or goods may lead to substantial waste expenditure. The element of public interest involves (i) expenditure of the public money and (ii) commissioning of power projects, roads, public buildings or other public utilities. This is not the law in India that in every case there shall be an element of public law or public interest merely because the State or its instrumentality entered into a commercial transaction. A mere difference in price or some procedural lapse does not make out a case for intervention in a tender. There is no challenge to any condition in the NIT being arbitrary and or tailor-made to suit a particular person or entity. Though an endeavor was made to project a case and paint a picture of a business entity behind floating of the NIT dated 13th March 2024 but this is nothing more than rheotic and no case on merits has been made out. In our opinion, the present case is not one where the terms and conditions of the tender are tailor-made to suit a particular person/bidder. This writ petition bearing the mask of public interest litigation is clearly an abuse of the process of the Court. It is intended at cheap publicity and to stall the project which involves substantial public interest.

16. In a matter where the administrative decision largely involves expediency in execution, cost factor, preponderance of probability of escalation in price due to delayed decision etc. the powers of judicial

review would be extremely restricted. The complexity of economic regulation, uncertainty, possibility of error, bewildering conflict of experts etc. are the factors which draw the Court to self-limitation and that can be seen as judicial wisdom and a matter of institutional stability. This is not the domain of the Courts to embark upon an inquiry to find whether a particular administrative decision was wise. This is for the executive to adopt a procedure for arriving at a decision and the writ Court shall not interfere in the matter even if the administrative decision invites criticism or becomes a debatable point. The administrative decisions are based on weighing the advantages or disadvantages in making a choice and the Courts do not interfere in the matters pertaining to subjective satisfaction of the authority and its role is confined to looking at the relevancy of the material on the basis of which a particular decision was taken. In contract matters, the sole concern of the Court is to see whether the selection was made in a fair manner or by an arbitrary pick and choose method. In “*Association of Registration Plates*”⁶, the Hon’ble Supreme Court held that it is necessary to give greater latitude to the State Authorities in the matters of formulating conditions of a tender document and awarding a contract unless the action of the State Authority is found malicious and misuse of its statutory powers. The Hon’ble Supreme Court held that:

"38. In the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring supply of high security registration plates, greater latitude is required to be conceded to the State authorities. Unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, tender conditions are unassailable. On intensive examination of tender conditions, we do not find that they violate the equality clause under Article 14 or encroach on fundamental rights of the class of intending tenderers under Article 19 of the

6 (2005) 1 SCC 679, *Association of Registration Plates v. Union of India & Ors.*

Constitution. On the basis of the submissions made on behalf of the Union and State authorities and the justification shown for the terms of the impugned tender conditions, we do not find that the clauses requiring experience in the field of supplying registration plates in foreign countries and the quantum of business turnover are intended only to keep indigenous manufacturers out of the field. It is explained that on the date of formulation of scheme in Rule 50 and issuance of guidelines thereunder by the Central Government, there were not many indigenous manufacturers in India with technical and financial capability to undertake the job of supply of such high dimension, on a long-term basis and in a manner to ensure safety and security which is the prime object to be achieved by the introduction of new sophisticated registration plates."

17. In "*Tata Cellular*"⁷, the Hon'ble Supreme Court observed that modern trend in the Court seems to be judicial restraint in administrative action. The petitioner does not seek judicial scrutiny of terms of the tender and he questions the very floating of the NIT on the basis of some observations made by the MERC. There are inherent limits in the exercise of power of judicial review in contractual matters and the duty to act fairly shall vary in extent depending on the nature of cases. In "*Raunaq International Ltd*"⁸, the Hon'ble Supreme Court observed that commercial considerations and expediencies are of paramount interest in the realm of commerce and the Courts are not equipped to weigh commercial decisions and considerations. The learned counsel for the petitioner endeavored to project a case on the basis of media release by the successful bidder and a newspaper report in *Economic Times* that the shares of the successful bidder surged upto 5%. Quite clearly, the petitioner seems to venture into uncharitable publicity. There is no real and genuine public interest involved in this litigation and speedy access to justice seems to have been misused by filing this writ petition which is

⁷ (1994) 6 SCC 651, *Tata Cellular v. Union of India*

⁸ (1999) 1 SCC 492, *Raunaq International Ltd v. I.V.R. Construction Ltd. & Ors*

misconceived. In “*State of Uttranchal*”⁹, the Hon’ble Supreme Court observed that it is necessary to protect and preserve the sanctity of the writ jurisdiction in the larger interest of the people and the Court should take effective steps to prevent its abuse.

18. In summation, this Public Interest Litigation lacks merit and is accordingly dismissed. The Interim Application No.13336 of 2024 is also dismissed.

[MANJUSHA DESHPANDE, J.]

[CHIEF JUSTICE]

9 (2010) 3 SCC 402, *State of Uttranchal v. Balwant Singh Chauhal & Ors*