



W.P. Nos.31434-32269/2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
12.11.2025	20.11.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 31434 & 32269 OF 2025

AND

W.M.P. NOS. 35179, 36189, 40055 & 40058 OF 2025

Sri Pathy Associates Pvt. Ltd.
Rep. By its Autorised Signatory
Subramaniam Sekar
No.62, Thangaperumal Street
Erode 638 001.

.. Petitioner in WP 31434/2025

M/s.Sea Rock Infrastructure
Rep. By its Managing Partner
Gokul Sekar
No.12, Sheik Dawood Street
Erode 638 001.

.. Petitioner in WP 32269/2025

- Vs -

1.The Chief Engineer
Fishing Harbour Project Circle
Fisheries & Fishermen Welfare Department
Integrated Animal Husbandry & Fisheries Building
Nandanam, Chennai 600 035.

2.SRM Construction
Rep. By its Partner Mr.B.Pravesh Krishna



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No.9/450, Kasapettai
M.S.Mangalam Village
Aval Poondurai, Erode 638 115.
R-2 impleaded vide order dated
10.09.2025 made in WMP Nos.
38074 & 37656/2025 in WP Nos.
31434 & 32269/2025)

.. Respondents in both petitions

W.P. No.31434 of 2025 filed under Article 226 of the Constitution of India
praying this Court to issue a writ of certiorarified mandamus calling for the
records relating to the order dated 14.08.2025 passed by the respondent in
Tender ID 2025_AHDF_560565_1, quash the same and consequently direct the
respondent to consider the technical bid of the petitioner.

W.P. No.32269 of 2025 filed under Article 226 of the Constitution of India
praying this Court to issue a writ of certiorari calling for the records relating to
the impugned notice dated 20.05.2025 in E-Tender Notice inviting No.3/DB/F.114
N/2025 issued by the respondent in Tender ID 2025-AHDF-560565_1 and quash
the same.

For Petitioners : Mr. AR.L.Sundaresan, SC, for
M/s. T.K.Bhaskar in
WP No.31434/2025
Mr. P.H.Arvind Pandian, SC, for
M/s. T.K.Bhaskar in
WP No.32269/2025



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For Respondent : Mr. P.S.Raman, AG, assisted
By Mr.A.Selvendran, Spl.GP
For R-1 in both petitions
Mr.Sathish Parasaran, SC, for
Mr.Pramod Kumar K.P. for R-2
in W.P. No.31434/2025
Mr.Sathish Parasaran, SC, for
Mr.Arvind Srivatsa for R-2 in
W.P. No.32269/2025

COMMON ORDER

Alleging infraction and infirmity in the tender process as being not in conformity with the Tamil Nadu Transparency in Tenders Act, 1998 (for short 'the Act') and the Tamil Nadu Transparency in Tenders Rules, 2000 (for short 'the Rules'), more particularly in the technical evaluation stage, the two writ petitions have been filed, one, viz., W.P. No.31434/2025 questioning the rejection and a further direction to consider the technical bid of the petitioner, while W.P. No.32269/2025 has been filed for non-compliance of the transparent tender process in conformity with the Rules, including the non-communication of the corrigendum issued by the respondent, which is against Rule 17 (2) of the Rules.



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2. The brief facts which are necessary for considering the issues raised by the petitioners, as could be culled out from the affidavit, are as under :-

E-Tender Notice was issued by the 1st respondent inviting tender for improvements to Fish Landing Centre at Kunthukal in Ramanathapuram District, which was published on 22.5.2025. The said tender consisted of a two-cover system, which provided for pre-qualification/technical bid and price/financial bid.

3. The last date for electronic submission of the bid was 5.00 p.m. on 24.6.2025 and the bid was to be opened on 25.6.2025. By the two cover system, the technical bid and the price bid were to be uploaded of which the first cover pertains to technical bid, which upon opening and scrutiny, if the pre-qualification requirements are fulfilled by the bidder, the second cover containing the price bid will be opened upon the bidder being approved in the technical bid.

4. The petitioners submitted its bid with the required documents necessary for fulfilling the pre-qualification requirements on 21.6.2025, which is well within the time prescribed in the tender notice along with the earnest money deposit, as mandated in the tender condition.



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5. Vide corrigendum dated 23.6.2025, the date for submission of the bids was extended till 5.00 p.m. on 9.7.2025 and the opening of bids for pre-qualification approval was fixed at 5.00 p.m. on 10.7.2025. Further corrigendum dated 25.6.2025 was issued calling for pre-bid meeting on 1.7.2025 at 3.30 p.m., which meeting was cancelled vide issuance of another corrigendum dated 26.6.2025. Thereafter, another corrigendum dated 30.6.2025 was issued calling for a pre-bid meeting on 3.7.2025 at 3.30 p.m.

6. In the pre-bid meeting, contrary to the normal procedure, the bidders were asked to present their respective queries in closed covers and none of the queries were openly addressed and there was no open dialogue with the bidders, which is contrary to Rule 33 (1)9B0 of the Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012 (for short 'Procurement Rules'). There was no transparency in the tender process, which was wholly non-transparent and not in consonance with the Act and no clarification was issued to the queries submitted by the bidders, including the petitioners and no minutes was recorded of the meeting.



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7. Only on 4.7.2025, when the details of the pre-bid meeting was uploaded the petitioners came to understand that certain additional pre-qualification requirements were included and the bids were directed to be resubmitted complying those additional qualifications. In compliance thereof, updated pre-qualification tender document, which was modified was uploaded by the petitioners on 9.7.2025 along with necessary documentary evidence evidencing such work having been done and the bids stood closed on 9.7.2025.

8. The bids were opened on 10.07.2025 and though the petitioners were confident that they would be qualified, however to their shock and surprise, the bid of the petitioners were rejected on 14.08.2025 without providing any reasons whatsoever for such rejection. The petitioners, though complied with all the pre-qualification requirements, however their bids were rejected in the technical evaluation without assigning any reasons whatsoever in the evaluation summary report which was uploaded on 14.8.2025 at 5.25 p.m.



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9. It is the case of the petitioner in W.P. No.31434/2025, that two bids were approved by the respondents during technical evaluation, which was scheduled to be opened on 18.8.2025 at 10.10 a.m. The technical bid of the petitioner was rejected, the financial bid of the petitioner would not be considered and the said by arbitrarily rejecting the petitioner's bid so as to enable the petitioner becoming L-1 and, therefore, left with no other alternative, the present petition has been filed.

10. It is the case of the petitioner in W.P. No.32669/2025 that the additional work experience, that has been specified vide the corrigendum is not in any way an essential aspect of the present tender and it has been included at the very last moment to favour certain other persons though the petitioner is qualified in all other aspect except in relation to boring of pile with liner. It is the further case of the petitioner that a perusal of the comparative summary would clearly reveal that the estimated rate allotted to the said work only works out to 0.1% of the entire tender quote and, therefore, it would be evident that the prior experience in the said work is neither essential nor mandatory in order to qualify



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for the said tender and that the said additional requirement has been added at a belated stage only to favour the 2nd respondent herein.

11. Further, the petitioner's technical bid was also rejected on 10.07.2025 without assigning any reason vide order dated 14.8.2025 and only two other bids were approved by the 1st respondent of which the 2nd respondent became the L-1 bidder. Since the technical bid was rejected, the financial bid of the petitioner was not opened, which is on account of the arbitrary act of the 1st respondent and, therefore, left with no other efficacious remedy, the present petition has been filed.

Submissions advanced in W.P. No.32269/2025 :

12. Learned senior counsel appearing for the petitioner submitted that the modification issued vide corrigendum dated 3.7.2025 is a miniscule value of the tender value to the extent of 0.1% and it would in no way affect the work and, therefore, the rejection of the technical bid of the petitioner, more particularly without the queries being raised in the pre-bid meeting, but which were sought to be given by way of a sealed cover, strikes at the root of the transparency of the tender and is hit by the provisions of the Act.



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13. It is the further submission of the learned senior counsel that the Act prescribes a transparent tender process and, therefore, the prerequisite is that the tender process should be conducted in a transparent manner. However, in the pre-bid meeting, the queries were obtained in a sealed cover without providing any opportunity to the other bidders to know the nature of the queries and seek for clarifications, which clearly hits at the transparency in the tender process.

14. It is the further submission of the learned senior counsel that sub-rule (4) to Rule 17 of Procurement Rules clearly prescribes that the tender inviting authority is bound to maintain a minutes of the pre-bid meeting, however no such minutes relating to the pre-bid meeting held on 3.7.2025 was maintained and it is only the list of attendees were uploaded in the website on 4.7.2025.

15. It is the further submission of the learned senior counsel that non issuance of clarifications by the respondent to the queries submitted by the bidders is in violation of Rule 50 (1)(c) of Procurement Rules, which mandates



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providing clarifications to the queries within two weeks before the due date. It is the further submission of the learned senior counsel that there is no power under the Act and Procurement Rules to issue corrigendum for amending the requirements within a week of the due date and, therefore, the corrigendum is impermissible and the said action of the respondents is violative of principles of natural justice.

16. It is the further submission of the learned senior counsel that Section 10 (7) of the Act mandates the Tender Inviting Authority to intimate the information regarding reasons for rejection to all the tenderers, which is to be submitted to the Tender Bulletin Officers for being uploaded. However, neither any communication regarding the rejection has been given nor the reason for rejection has been uploaded in the website of the 1st respondent.

17. It is the further submission of the learned senior counsel that no valid reasons has been given by the 1st respondent for rejecting the tender, as no reason has been reflected in the website nor any communication has been given,



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which is in violation of para-5 of the standard form provided by the 1st respondent along with the E-Tender application to be submitted by the bidders.

18. It is the further submission of the learned senior counsel that the careless manner in which the 1st respondent has dealt with the tender process would be evident from the fact that though the amount quoted by the 2nd respondent/L-1 is Rs.148,67,49,901.92, however, it has been wrongly shown as Rs.274,67,07,445.92, notwithstanding the fact that L-1 is the lowest bidder. However, the careless nature in which the matter of deciding the tender would be writ large on the manner in which the chart has been prepared and shown.

19. Pointing out the above flaws and lacunae in the following of the procedural mandate contemplated under the Act and also the lethargic manner in which the 1st respondent has acted in issuing the corrigendum without following the procedure and rejecting the tender, learned senior counsel submitted that this is a fit case for this Court to invoke its extraordinary jurisdiction to set aside the tender itself, notwithstanding the fact that the



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petitioner is a bidder, who has participated in the tender, as the hands of justice should reach far and wide and should not be curtailed by technicalities.

Submissions advanced in W.P. No.31434/2025 :

20. While sailing with the aforesaid submissions advanced by the learned senior counsel appearing for the petitioner in W.P. No.32269/2025, learned senior counsel appearing for the petitioner in this writ petition, submitted that Rule 27(1)(g) of the Procurement Rules clearly prescribes that the statement of reasons for rejection of tender ought to be recorded and maintained by the tender procuring authority, however, the communication pertaining to rejection of the petitioner's technical bid does not disclose any reason, which has led to the rejection, which is a clear violation of Rule 27 (1)(g) and, therefore, the 1st respondent should be directed to approve the technical bid of the petitioner and allow the petitioner to participate in the price/financial bid.

21. It is the further submission of the learned senior counsel that it is the established principle in law that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons mentioned



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and any order passed without any reasons is arbitrary and deserves to be set aside.

22. It is the further submission of the learned counsel that the e-tender process should be transparent, however, the queries obtained in the pre-bid meeting in sealed covers were not disclosed to all the bidders and no reply was given to the said queries, which is a clear infraction of the rights of the bidders and is a violation of principles of natural justice.

23. It is the further submission of the learned senior counsel that the rejection order passed by the 1st respondent would clearly reveal that in the column "Reasons", the 1st respondent, without mentioning any rejection, has only indicated "*Rejected*", which is not only in violation of the provisions of the Act and the Rules, but also is in violation of principles of natural justice and shows the mala fide intent of the 1st respondent in rejecting the technical bid of the petitioner for reasons best known to the 1st respondent.



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24. In fine, it is the submission of the learned senior counsel that the infirmities pointed out in the tender process coupled with the violation of the statutory provisions under the Act and Rules not only vitiates the tender process, but also the rejection of the petitioner's bid and, therefore, the rejection order passed by the 1st respondent insofar as the petitioner's bid is concerned deserves to be set aside and direction to be issued to consider the petitioner's bid.

25. In support of the aforesaid contentions, learned senior counsel for the respective petitioners placed reliance on the following decisions :-

- 1) *Tata cellular - Vs - Union of India* (1994 6 SCC 651);
- 2) *The Managing Director - Vs - Union of India & Anr.* ([WP.No.886 of 2020](#));
- 3) *Mohinder Singh Gill & anr. - Vs - The Chief Election Commissioner, New Delhi* (AIR 1978 SCC 851);
- 4) *PKF Sridhar And Santhanam - Vs - Airport Economic Regulatory Authority of India* (W.P.(C) 12385/2021);
- 5) *Everest Instruments pvt ltd - Vs - Tamil Nadu Operative Milk Producers Federation Ltd* (2021 SCC Online Mad 5206);
- 6) *P.Ravishankar - Vs - State of Tamil Nadu & Ors.* ([W.P.No.13481 and 13488 Of 2021](#));



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- 7)V.N Bharath - Vs - D.D.A & Anr. (Civil Appeal No. 1373 Of 2006);
- 8)Jagadish Mandal - Vs - State of Orissa (2007 14 SCC 517);
- 9)Santiago Martin and Ors. - Vs - Union of India & Ors. ([W.A.No.1450/2023](#));
- 10)Hussein Gadially & Ors. - Vs - State of Gujarat (2014(8) SCC 425);
- 11)State of Rajasthan - Vs - Mohiniddin Jamal Alvi & Anr. (2016 (12) SCC 608);
- 12)Sumindra Bhattachariya - Vs - State of Bihar & Anr. (2010 (15) SCC 338);
- 13)Noor Mohammed - Vs - Khurram Pasha (2022 (9) SCC 23); and
- 14)National Highways Authority of India - Vs - Gwalior Jhansi Expressway Limited (2018 (8) SCC 243).

Common submissions advanced on behalf of R-1 in both the petitions :

26. Per contra, learned Advocate General appearing for the 1st respondent, at the outset, submitted that the scope of judicial review in matters relating to tender is very limited and the Court, exercising extraordinary jurisdiction, cannot sit in appeal over the commercial wisdom of the Tender Scrutiny committee or Tender Award Committee, which are expert bodies entrusted with the technical



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evaluation of bids and unless the petitioner is able to demonstrate arbitrariness, mala fides, discrimination or violation of principles of natural justice, no interference is required with the tender process.

27. It is the further submission of the learned Advocate General that once the petitioner fails to fulfil the mandatory pre-qualification requirement, the petitioner has no locus to question the financial bidding process, as only such of those bidders, who have cleared the technical stage and found to be qualified, their financial bids alone will be opened and considered for evaluation and the petitioner having lost his right even at the stage of technical evaluation having not been qualified, he cannot assail the outcome of the financial process.

28. It is the further submission of the learned Advocate General that the additional technical requirements including the criterion relating to boring of pile with liner, having been incorporated through the corrigendum, which was published in the e-procurement portal and which was also communicated to the petitioner and the said modification having been within the knowledge of the petitioner and he has participated in the tender process by filing a fresh bid,



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without challenging the corrigendum, cannot challenge the whole tender process.

29. The fact that the petitioner accepted the corrigendum and resubmitted his bid, the petitioner is estopped from contending that the conditions enforced are arbitrary and unreasonable. Once the petitioner has voluntarily submitted to the rules of the tender cannot, upon being determined as unsuccessful, turn around and assail the process under Article 226 of the Constitution merely to safeguard his private commercial interest.

30. It is the further submission of the learned Advocate General that even otherwise the writ petition is devoid of maintainability, as the petitioner neither has locus to challenge the financial evaluation nor has demonstrated violation of any statutory provisions or fundamental rights.

31. It is the further submission of the learned Advocate General that the petitioners are related parties and, therefore, there is conflict of interest which would undermine the fairness in the tender process and the Tender Award



Committee comprising of authorities from various fields, who have no personal interest in the tender process, the impugned order of rejection was passed after considering all the factors and risks involved in entertaining the petitioner's proposal in public interest and also the public money involved.

32. It is the further submission of the learned Advocate General that the petitioners have not shown any violation of statutory provisions or breach of fundamental rights and the disqualification of the petitioners was based on objective and fair assessment of the pre-qualification requirements in line with the tender conditions .

33. It is the further submission of the learned Advocate General that commercial determination does not create any enforceable right under Article 226 and even without prejudice to the respondent's specific contention that the impugned communication does not amount to an order u/s 10 of the Act, even assuming without admitting that the petitioner has any grievance in respect of such an order, the statute provides for an efficacious and alternative remedy u/s 11 of the Act, which enables the aggrieved tendered to assail the decision of the



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Tender Accepting Authority by filing an appeal before the Appellate Authority.

However, without resorting to the said remedy, the petitioners have rushed before this Court invoking its extraordinary jurisdiction and, therefore, the present petitions deserves to be rejected.

34. It is the further submission of the learned Advocate General that the pre-bid meeting was not a mandatory requirement under the tender conditions, but only conducted on an optional and discretionary basis and during the pre-bid meeting, all the bidders submitted their queries on their letter head and it was not received in a closed cover as alleged and further the contention of the petitioners that the queries were not addressed in an open manner is not relevant as addressing the queries is within the administrative discretion of the department and there is no legal mandate, which prescribes the manner in which the queries have to be addressed. Further, Rule 33(1)(b) of Procurement Rules, relied on by the petitioners is not applicable to the present case, as it pertains only to Public Private Partnership Projects and not to conventional public works contract like the present one.



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35. It is the further submission of the learned Advocate General that the queries raised in the pre-bid meeting were responded on the very same day and as an abundant caution and to ensure complete transparency, a written communication containing the detailed clarifications was also sent to all the bidders by ordinary post.

36. It is the further submission of the learned Advocate General that the modification in the pre-qualification requirements referred to by the petitioner was not unilaterally incorporated, but was done only after due deliberation and to ensure that only technically competent contractors participate. The said conditions were formally introduced by way of corrigendum dated 4.7.2025, which was uploaded at 04.11 p.m. Further, the petitioners were fully aware of the corrigendum and also accepted the same without protest as would be revealed by the submissions of documents complying with the additional requirements as imposed vide the corrigendum and, therefore, the petitioners having submitted their modified documents based on the corrigendum are now estopped from challenging the same before this Court.

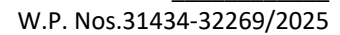


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37. It is the further submission of the learned Advocate General that the fixation of tender requirements and pre-qualification conditions falls squarely within the domain of the Tender Inviting Authority and the Tender Scrutiny Committee, which are manned by experts in the field and the formulation of eligibility criteria in respect of technical evaluation of bids are matters of commercial wisdom and the Courts ought not to interfere with the same, unless it is perverse, arbitrary or mala fide. When the petitioners have not raised any grievance about the tender conditions and no mala fides having been attributed to the qualifications of the Tender Scrutiny Committee, this Court cannot sit in appeal over the subjective satisfaction arrived at by the Tender Scrutiny Committee as also the terms and conditions in the tender and, therefore, the petitions at the behest of the petitioners deserve to be dismissed.

38. It is the further submission of the learned Advocate General that the mere usage of the term “Reason” in the form, which has been uploaded on the website, while rejecting the bid of the petitioner in W.P. No.31434/2025 cannot be taken to mean that the reason is not communicated or that the rejection is devoid of reason. In this regard, learned Advocate General pointed out that the



39. It is the further submission of the learned Advocate General that the petitioner in W.P. No.31434/2025 had rushed to this Court even before the bids could be communicated and had stalled the whole tender process, as compliance of Section 10 (7) would be only after compliance of Section 10 (6). However, even before the said stage, the petitioner has misrepresented before the Court and had obtained an order of stay, which has put shackles on the respondents from finalizing the financial bid and, therefore, Section 10 (6) having been complied, the stage of Section 10 (7) has not even arisen and the



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petitioner not having properly appraised this Court and come to court with unclean hands, the writ petition deserves to be rejected even on this simple point.

40. It is the further submission of the learned Advocate that the experience mandated in the tender conditions was not fulfilled by the petitioners relating to a particular works regarding execution of Boring of Pile with liner – 158.00 Rm in any one of the preceding five years, which is a non-negotiable condition, which resultantly prevailed upon the Tender Scrutiny committee to disqualify the petitioners technical bids at the evaluation.

41. In fine, it is the submission of the learned Advocate General, that there is neither any mala fide attributed to the Tender Scrutiny Committee nor is there any statutory violation of the procedures prescribed under the Act and the Rules by the petitioners, the 1st respondent has conducted the tender in a transparent process and, therefore, no interference is warranted with the order of rejection and, accordingly, prayed for rejection of the writ petitions.



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42. In support of the aforesaid submissions, learned Advocate General placed reliance on the following decisions :-

- 1) *Afcons Infrastructure Limited vs Nagur Metrorail Corporation Limited* (2016 (16) SCC 818);
- 2) *Travancore Devaswom Board vs Ayyappa Spices & Ors.* (2024 (7) SCC 543);
- 3) *Avani Paridhi Energy and Communications Pvt. Ltd – Vs - State of U.P.* (2025 SCC OnLine All 6518);
- 4) *City Infrastructure (India) Ltd. – Vs - New Okhla Industrial Development Authority* (Neutral Citation : 2007:AHC:14279-DB);
- 5) *Kumbhat Holographics – Vs - Government of Tamil Nadu* (2021 SCC OnLine Mad 1724- Reversed in *Uflex Ltd. v. State of T.N.* (2022) 1 SCC 165); and
- 6) *P. Ravishankar – Vs - State of Tamil Nadu Highways Department* (2021 SCC OnLine Mad 5965)

43. This Court gave its careful consideration to the submissions advanced by the learned senior counsel appearing on either side and perused the materials available on record as also the decisions relied on, on behalf of the parties.



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44. Though very many decisions have been relied on by the learned counsel appearing on either side to canvass their plea and countenance the case of the other side, however, the relevant decisions, which are relevant for the purpose of consideration of the issue at hand alone is adverted to.

45. In ***Uflex Ltd. - Vs – Government of T.N. &Ors. (2021 SCC OnLine SC 738)*** the Apex Court has broadly visualised about the process of tender and the limitations in judicial review in the said process and the same is quoted hereunder by this Court before embarking upon analysing the merits and demerits of the contentions put forth by the parties :-

“The enlarged role of the Government in economic activity and its corresponding ability to give economic ‘largesse’ was the bedrock of creating what is commonly called the ‘tender jurisdiction’. The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India (hereinafter referred to as the ‘Constitution’), beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even



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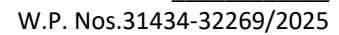
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4. In a sense the Wednesbury principle is imported to the concept, i.e., the decision is so arbitrary and irrational that it can never be that any responsible authority acting reasonably and in accordance with law would have reached such a decision. One other aspect which would always be kept in mind is that the public interest is not affected. In the conspectus of the aforesaid principles, it was observed in *Michigan Rubber v. State of Karnataka* as under:

“23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;



(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.”

(Emphasis Supplied)

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the State in the discharge of its constitutional obligations by resorting to fair play and showing bona fide intent. Therefore, this court has to analyse the facts and provisions of law in the present case on the touchstone of the ratio laid down in the aforestated decision.

47. In the case of ***Tata Cellular – Vs – Union of India (1994 (6) SCC 651)***, the Supreme Court has elucidated the following principles :-

“94. The principles deducible from the above are:

(1) The modern 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.



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

(Emphasis Supplied)

48. Yet again, the Supreme Court in **Silppi Constructions Contractors – Vs – Union of India &Anr. (2020 (16) SCC 489)** has succinctly pointed out that *the Court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. Authority which floats the contract or tender, and has authored the tender documents is the best Judge as to how the documents have to be interpreted. If two interpretations are possible, then the interpretation of the author must be*



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accepted and the Courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity.

49. A careful perusal of the ratio laid down on the question of appreciation and interference by the Courts in matters relating to contracts/tenders, it is clear that the Courts should be very much circumspect, while interfering in the tender process, as it is a qualitative analysis to be made by experts in the particular field. Suffice for the Court to see that no unreasonableness, arbitrariness, bias or mala fides has crept in, in the tender process. The Supreme Court has also cautioned that the awarding of contracts by the Government and the Public Sector should not be made a cumbersome exercise in a long drawn out litigative battle.

50. In this backdrop, this Court has to analyse the materials, more particularly referencing the non-compliance with the provisions of law and not giving the reasons while passing the order of rejection, which has been uploaded in the website, which have led to the rejection of the pre-qualification bids of the petitioners, is the issue, which requires consideration.



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51. The non-communication of the corrigendum in and by which modification to the pre-bid qualifications have been made is put in issue, as it is the stand of the petitioner in W.P. No.32269/2025 that the knowledge about the corrigendum came to the knowledge of the petitioner only when it was uploaded in the website on 4.7.2025, at 4.11 p.m., though it is mandatory on the part of the Tender Inviting Authority to send intimation of the change to all those persons, who have purchased the original tender documents as per Rule 17 (1) of the Rules.

52. To address the aforesaid contention, Rule 17 requires to be looked into, which provides as under :-

“17. Clarification to Tender Documents.-

(1) At any time after the issue of the tender documents and before the opening of the tender, the Tender Inviting Authority may make any changes, modifications or amendments to the tender documents and shall send intimation of such change to all those who have purchased the original tender documents and upload corrigendum for the information of those who have downloaded the tender documents from the website.



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(2) In case any tenderer asks for a clarification on the tender documents before 48 hours of the opening of the tender, the Tender Inviting Authority shall ensure that a reply is sent and copies of the reply to the clarification sought shall be communicated to all those who have purchased the tender documents without identifying the source of the query and upload such clarification to the designated website for the information of those who have downloaded the tender documents from the website, without identifying the source of the query.”

(Emphasis Supplied)

53. Even a bare perusal of sub-rules (1) and (2) of Rule 17 clearly shows that in case any changes, modifications or amendments is made to the tender document or if any clarification is sought for, which is issued to any person by the Tender Inviting Authority, the Tender Inviting Authority is duty bound to send the intimation of such change or the clarification sought without identifying the source of such query, to all those who have purchased the original tender documents and upload the changes or clarification for the information of those who have downloaded the tender documents from the website.



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54. Twin conditions have been prescribed in the aforesaid provision, where it takes within its fold two different types of persons; firstly, persons, who have purchased the tender documents and secondly, persons, who have downloaded the tender documents. Both the class of persons, without any qualified prescription, could be stated to be intending bidders, who may have or may not have submitted their bid, prior to such change or clarification. In respect of persons, who have purchased the tender documents, as a matter of precaution and in the interest of the said purchase of tender document for monetary consideration, the Tender Inviting Authority has been mandated to intimate the said persons about the modification/change made to the tender conditions and also the clarification issued to the query, which have been notified vide the corrigendum and at the same time, the persons, who have not submitted their bid, but who have downloaded the tender documents, intimation regarding the change/clarification was to be uploaded in the website, thereby intimating the date of submission of the bid on the modified/changed parameters stood extended.



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55. So to ease the persons, who have purchased the tender forms by paying costs and submitted their bids, while intimation was sent so as to enable them to submit the additional documents, however, insofar as persons, who have downloaded the tender documents, but may not have submitted their bids, the modification was uploaded in the website so as to enable them to submit the bid within the time extended, if they so choose.

56. It is the case of the petitioner in W.P. No.32269/2025 that the intimation, as mandated u/s 17 has not been sent to them, but nevertheless, the respondents have, in their typed set of documents, submitted the copy of the register maintained at the office of the Chief Engineer, with regard to the outward communications that are sent from the office, in which there is a specific reference that intimation has been sent through courier to the petitioner in W.P. No.32269/2025 and all the other bidders who have submitted their bids with a specific reference number attached to the said letter. Though materials evidencing the said dispatch have not been annexed in the typed set by the respondent, nevertheless, the said non-filing would not be fatal to the case of the respondents for the reasons that are enumerated in the succeeding paragraph.



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57. As already stated, intimation is to be given only in respect of such persons, who have purchased the tender documents and it is not in respect of those, who have downloaded the tender documents.

58. The reason for prescribing twin conditions u/s 17 requires to be looked at. The Tamil Nadu Transparency in Tenders Rules was enacted and it came into force on 1st October, 2000. It is to be noted that on the date when the Rules were framed, digital explosion was at a nascent stage and internet facilities were not at the disposal of one and all. It was available only to the elite few and that too at a very minimal download speed, whereby downloading and uploading the documents could even take considerable time, thereby, the tenderers, who intend to bid may face calamitous situations, where there are not able to download and upload the documents properly. Therefore, physical documents were made available, which could be procured at a cost and the tenderers could make use of the same for submitting their bids. Most often than not, the tenderers, during the period when the Rules were enacted, the attraction was only towards physical tenders and the concept of E-Tender was unknown.



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59. Only in that backdrop, the twin conditions was prescribed, which took care of persons, who had purchased the tenders in physical form and had submitted the same who were not conversant with digital filing, intimation was mandated to be given in physical form and for those who had access to digital media and had downloaded the tenders, the changes/clarifications were uploaded in the website. However, with the advent of high speed internet connection, both wired and wireless, the system of physical tenders was losing its sheen and the system of digital tender or E-Tender had come into prevalence and, therefore, on and from the advent of E-Tender system, the application of intimation to persons, who purchased the tender stood obliterated.

60. In the present case, the form of tender itself is “E-Tender” and the notice inviting tenders carries a clear prescription that *“the tender document will be available in the website <https://tntenders.gov.in> to enable the tenders to view and download the e-tender document through online at free of cost. Payment of EMD and submission of tenders shall be done only through online”*. From the above, it is clearly evident that the form of submission of tenders is only E-



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Tenders and no physical tenders are permissible and in such a scenario, the first limb of Section 17 (1) and (2) relating to sending of intimation in physical form cannot be attributable to the case on hand, as there is no question of purchase of tenders by persons, who have submitted their bids, inclusive of the petitioners as submission of tenders is only in digital form and, therefore, intimating the changes with regard to modification of pre-qualification conditions and issuance of clarifications sought for by the bidders with reference to the tender conditions by uploading the same to the website would suffice. However, as a matter of caution, it is the stand of the respondents that they have sent intimation by courier to the persons, who have submitted their bids and even if the same is not received by them, it cannot be put against the respondents to claim statutory infraction of the provisions of the Act.

61. Further, it is to be pointed out that the petitioner in W.P. No.32269/2025 has seen the website and had resubmitted the relevant documents online, as per its choice, within the time prescribed and, therefore, they cannot now come and claim that they have not received the intimation and, thereby, there is infraction of the provisions of Section 17 so as to prevail upon



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this Court to set aside the whole tender process. When the tender process itself is in electronic mode and from downloading the tender forms to uploading the same along with documents inclusive of payment of the earnest money deposit through digital means everything being in digital mode, there being no iota of purchase of tender document at any point of time, the claim of the petitioner that intimation was not given to him, which renders the whole tender process flawed is grossly misconceived and the same cannot be accepted and the said contention deserves to be rejected.

62. Turning back to the tender condition, which has been modified, as alleged, at the instance of the 2nd respondent herein, which, according to the petitioner, is not a material change as its impact is only on 0.1% of the tender value and the said change is only to benefit the 2nd respondent herein, it is to be pointed out, as held in *Uflex case (supra)*, in the matter of formulating conditions of a tender document and awarding a contract, 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, Courts should refrain from interfering with such tender process.



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63. In the present case, the main allegation rests on the intimation of modification of tender condition, which has already answered in the earlier part of this order. The infraction, that is alleged presently, is on the qualification, which has been prescribed, which is only to the extent of 0.1% of the whole tender value, which would in no way hamper the work for which the tender has been floated.

64. It should not be lost sight of that certain preconditions/qualifications are laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. It is wholly within the realm of the Tender Inviting Authority to prescribe the conditions/qualifications, which need to be fulfilled by the prospective tenderers, who wish to partake in the tender process. It is not the case of the petitioner that the conditions imposed in the tender are onerous or not required, but the only contention of the petitioner is that the value is only to the extent of 0.1%, which is negligible and, therefore, enforcement of the same is only for the purpose of giving undue benefit to the 2nd respondent.



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65. It would be useful to extract the ratio laid down by the Apex Court in *Afcon's case (supra)* with reference to the interference into the appreciation and interpretation of the tender documents by the constitutional courts, wherein it has been held thus :-

"15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given."

66. From the above ratio, it is implicitly clear that unless there is perversity or mala fide intent in the award of the tender, even if there is a particular clause, which will favour a particular tenderer, which is not acceptable to the constitutional courts, that would not be the reason for the constitutional court to interfere with the same to give a different interpretation.



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67. In the present case, on the basis of the query by three bidders at the pre-bid meeting, of which, two are alleged to have withdrawn or have not submitted their bid, the 1st respondent has made modification/change to the proposed work by including certain works, which even if not convenient and beneficial to the petitioner, yet, the said inclusion cannot be said to be perverse or mala fide, so long as the same is a requisite for the completion of the tendered work.

68. It is not the case of the petitioner that the modification, which has been made vide the corrigendum, is not a necessary modification or a modification, which is unconnected with the work for which the tender has been floated. The grievance of the petitioner that the work prescribed through modification is a miniscule portion of the work which is governed by the tender cannot be the basis for this Court to infer perversity or mala fide so long as the said condition is implemented across the Board for all the tenderers and it is not related to the petitioner alone. The modification is a technical specification, which is within the knowledge and expertise of the experts, who alone are the



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best persons to fix the conditions and this Court cannot step into the shoes of the expert to decide whether such modification is a prerequisite or an illusory one to benefit a particular tenderer.

69. The ratio laid down by the Supreme Court, which has been succinctly captured in *Tata Cellular case (supra)* by relying on various decisions and the tests for determination as to the reasonableness of a particular decision has been articulated, the relevant portion of which is quoted hereunder :-

“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.

71. Judicial quest in administrative matters has been to find that right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

** * * * **

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*
- 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 :



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(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, Wednesbury unreasonableness, (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out additional of further grounds in courts of time. As a matter of fact, in R v. Secretary of State for the Home Department ex parte Blind [1991] 1 AC 696 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 nature and degree which requires its intervention".

70. Applying the principles enunciated above, it could safely be concluded that the fixation of qualification, by way of modification/change in pre-qualification requirements is very much within the realm of the experts, viz., the Tender Inviting Authority and is also in consonance with the provisions of the Act and, therefore, there being no perversity or mala fide exhibited through the said acts, the contention advanced in this regard also deserves to be rejected.



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71. The next issue that requires the consideration of this Court is the contention advanced by the learned senior counsel for the petitioner in W.P. No.31434/2025 regarding the non-furnishing of reason in the portal with regard to the rejection of the technical bid of the petitioner, which according to the petitioner is nothing but violation of principles of natural justice.

72. It is pointed out on behalf of the petitioner that in the e-Procurement Portal with reference to the Tender Summary Reports, which has been uploaded on 18.08.2025 at 08.23 PM, the Tender Scrutiny Committee had admitted the pre-qualification bid of two tenderers while rejected the technical bids of the petitioners herein. The relevant entries in the portal is captured hereunder for ready reference :-

Bids List						
S.No	Bid Number	Bidder Name	Submitted Date	Status	Reason	Status Updated On
1	1353052	EMTAY CONSTRUCTIONS	08-Jul-2025 12:22 PM	Admitted-Finance		18-Aug-2025 12:20 PM
2	1354350	SFA ROCK INFRASTRUCTURE	09-Jul-2025 01:22 AM	Rejected-Technical	Rejected	14-Aug-2025 05:25 PM
3	1373410	SRI PATHY ASSOCIATES PRIVATE LIMITED	09-Jul-2025 02:45 PM	Rejected-Technical	Rejected	14-Aug-2025 05:25 PM
4	1394184	SRM CONSTRUCTION	08-Jul-2025 10:13 PM	Admitted-Finance		18-Aug-2025 12:20 PM



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73. From the above details uploaded in the e-Procurement portal, it is clear that while the case of the petitioner in W.P. No.31434/2025 has been rejected, in the column 'Status' it is shown as 'Rejected-Technical', while in the column relating to 'Reason', once again it has been shown as 'Rejected'. This, according to the learned senior counsel is a clear violation of principles of natural justice as the reason for such rejection has not been recorded and it is a violation of Section 10 (7) of the Act.

74. To address this issue, reference can be had to sub-sections (6) and (7) of Section 10, which are quoted hereunder :-

"10. Evaluation and Acceptance of Tender.-

* * * * *

(6) If the Tender Accepting Authority proposes to accept the tender as per the provisions of this section, the said authority shall pass orders accepting the tender together with reasons for such acceptance:

Provided that if the tenderer is unable to supply the entire quantity required, the Tender Accepting Authority may follow the fixed rate contract procedure as may be prescribed.

(7) The Tender Accepting Authority shall intimate the information regarding the name and address of the tenderer



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whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate Tender Bulletin Officers.”

75. On a perusal of sub-section (6) it transpires that where the Tender Accepting Authority proposes to accept the tender, the said authority shall pass orders accepting the tender together with reasons for such acceptance and sub-section (7), thereof would kick into play, whereby, upon such acceptance, the Tender Accepting Authority has to intimate the information regarding the name and address of the tenderer whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate Tender Bulletin Officers.

76. From the above, it is implicitly clear that the reasons are to follow only when a tenderer is declared as successful, which scenario would arise only when finally the Financial Bid is opened and the said position would not come into play at the stage of the Technical Bid. The successfulness of a tenderer would only come when the tenderer cross both the stages, viz., the technical stage and financial stage. Therefore, of necessity, the intimation to the Tender Bulletin Officer by the Tender Accepting Authority with reference to a tenderer being



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declared as successful along with reasons could only be inferred to be the stage when the price bid is opened and not at the stage of technical bid.

77. In this regard, a careful perusal of sub-sections (6) and (7) to Section 10 would manifestly make it clear that the mandate under sub-section (7) would come into play only upon declaration of the successful tenderer at the financial stage, as prescribed in sub-section (6) and without passing orders on accepting the tender together with reasons for such acceptance, thereby declaring a person as the successful tenderer, the stage of sub-section (7) would not arise and, upon fulfillment of sub-section (7), the Tender Accepting Authority is bound to spell out the reasons for rejection of the tenders of the other tenderers.

78. In this backdrop, if the rejection order uploaded by the 1st respondent in the e-Procurement portal is looked at, it would show that in the column 'Status' it is shown as 'Rejected – Technical' and in the 'Reason' column, it has been shown as 'Rejected' and no specific reason has been shown, which is claimed to be violation of principles of natural justice.



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79. However, it is to be pointed out that the rejection of the petitioner is only at the first stage, viz., pre-qualification/technical stage and compliance of the stage of sub-section (6) to Section 10 has not come into play, whereinafter alone, sub-section (7) to Section 10 would come into play. Therefore, the noting '*Rejected*' in the '*Reason*' column in the e-Procurement Portal could at best be inferred as a stage-wise intimation, which has nothing to do with sub-section (7) of Section 10, which could be complied only when the price bid is opened and the tender is accepted and the tenderer declared successful. Therefore, not furnishing the reason for rejection in the column '*Reason*' in the e-Procurement Portal, as extracted above, that too with regard to technical evaluation, will not be fatal and the act of the 1st respondent in not divulging the reason while crossing the first stage cannot be held to be non-compliance with sub-section (7) of Section 10 and, therefore, the said contention deserves to be negative.

80. Further, it is to be pointed out that the word '*Reason*' used in the column could at best be inferred only as '*Remarks*' and cannot be termed to be '*Reason*' within the meaning of Section 10 (7) of the Act, while alone would have a harmonious reading between sub-sections (6) and (7) of Section 10.



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81. One ancillary contention that was advanced by the learned senior counsel for the petitioners was with regard to non-compliance of the provisions of Procurement Rules, which infraction, according to the petitioners, strikes at the substratum of the tender process.

82. Though such a contention is advanced, it is to be pointed out that the present tender is a conventional tender and it is not a tender which involves Public-Private Participation, where there is involvement of a public agency and private agency all through the tender stages. In the case on hand, there is no element of Public-Private Participation, but it is a conventional tender and in fact, it is not the case of the petitioners that it is a tender involving Public-Private Participation and such being the case, the provisions of the Procurement Rules would not be applicable to the case on hand.

83. For all the reasons aforesaid, there are no merits in the present petitions and, accordingly, both the writ petitions are dismissed. Consequently,



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connected miscellaneous petitions are closed. There shall be no order as to costs.

20.11.2025

Index : Yes / No

GLN

To

The Chief Engineer
Fishing Harbour Project Circle
Fisheries & Fishermen Welfare Department
Integrated Animal Husbandry & Fisheries Building
Nandanam, Chennai 600 035.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.31434 & 32269 OF 2025**

Pronounced on



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20.11.2025