IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2025

PRONOUNCED ON : 31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

**W.P.Nos.31577, 27980, 27982, 31912, 31919, 27975,
27977, 31922 and 38980 of 2024 and W.P.No.431 of 2025
and
W.M.P.Nos.34318, 30533, 30530, 30531, 30532, 30534, 30513, 30516,
30519, 30520, 30521, 30523, 30535, 34659, 34664,
34665 and 34671 of 2024**

W.P.No.31577 of 2024:

ADK Impex
rep by its Partner N.Kamalakannan,
office of Wavoo Mansion, 5th floor,
No.58/39, Rajaji Salai,
Chennai-600 001 ... Petitioner

vs.

1.Chennai Port Authority,
Represented by its Chairman,
Traffic Department,
No. 1, Rajaji Salai,
Chennai – 600 001

2.The Traffic Manager,
Traffic Department,
Chennai Port Authority,
No. 1, Rajaji Salai,
Chennai – 600 001

3.Gokul Agro Resources Limited,
Rep by its Manager, Crown 3,
Inspire Business Part, Shantigram,
NR.Vaishnodevi Circle, S.G.Highway,
Ahmedabad 382421, Gujarat India. ... Respondents

(R3-Impleaded as per order dated 06.01.2025 in WMP.No.40746/2024 in WP.No.31577/2024)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent relating to its communication bearing No.C6/363/2024/T dated 19.09.2024 and quash the same and consequently direct the Respondents to include the Petitioner in the tender process starting from the stage of financial bid or in the alternative, issue a re-tender for the allotment of areas situated at Chennai port, inside the custom bound area, for the purpose of handling liquid bulk cargo and its allied activities, by erecting temporary tank farm structures for the operational needs, for a period of 5 years on annual licence basis in as is where is condition without renewal option, under two cover system as originally notified in the Notice Inviting Open E-Tender Cum E-Auction Vide TENDER No: C6/363/2024/T dated 12.06.2024.

For Petitioner (in WP.Nos.31912, 31922 and 31919/2024)	: G.Rajagopalan Senior Advocate for K.Mukund Rao for M/s.Eswar, Kumar and Rao - Law Firm
For Petitioner (in WP.Nos.31577 and 27977/2024)	: Mr.T.Gowthaman Senior Advocate for Mr.B.Pachaiyappan
For Petitioner (in WP.Nos.27980, 27982 and 27975/2024)	: M/s.Eswar, Kumar and Rao
For Petitioner (in WP.No.38980/2024)	: M/s.Ramya Subramaniam Datar
For Petitioner (in WP.No.431/2025)	: M/s.Vijayan Subramanian
For R1 and R2 (in WP.Nos.31577,38980/2024 and 431 of 2025) and For Respondent (in WP.Nos.27977, 31922, 27982, 31919, 27980, 27975 and 31912/2024)	: Mr.AR.L.Sundaresan Additional Solicitor General of India assisted by M/s.Harshini Jhothiraman
For R3 (in WP.No.31577/2024)	: M/s.Ramya Subramaniam Datar

COMMON ORDER

The Writ Petitions in W.P.Nos.27977, 27980, 27975 and 27982 of 2024 are filed by the bidders, who participated in the tender, challenging the notice issued by the 1st respondent rejecting their bid on the ground that they were techno commercially not qualified.

2. The Writ Petitions in W.P.Nos.31577, 31919, 31912 and 31922 of 2024 are respectively filed by very same petitioners, challenging the subsequent communication of the 1st respondent, bearing No.C6/363/2024/T, dated 19.09.2024 (communication of 2nd respondent in W.P.No.31577/2024) giving reasons for rejection of their bids in response to the representations made by the petitioners seeking clarification.

3. The Writ Petitions in W.P.No.38980 of 2024 and W.P.No.431 of 2025 are filed by bidders, who were declared as highest bidders seeking direction to the respondents to issue work/allotment order to them.

4. The common issue to be decided in the batch of writ petitions

referred in Paragraph 1 and 2 of this order is the sustainability of the reasons for rejection of bids submitted by the petitioners therein. The entitlement of the petitioners mentioned in the third paragraph of this order to get work order depends on the disposal of the batch of writ petitions filed by the unsuccessful bidders in Paragraph Nos.1 and 2. Therefore, the writ petitions mentioned in Paragraph Nos.1 and 2 are taken up for consideration earlier.

5. The word 'petitioners' in this order refers to the petitioners referred to in Paragraph Nos.1 and 2.

6. The petitioners referred to in Paragraph No.3 will be referred to as petitioner with their respective writ petition numbers in the later portion of this order.

7. The petitioners herein are involved in oil trade. The 1st respondent/Chennai Port Trust Authority issued tender notice inviting open E-Tender Cum E-Auction Vide TENDER Notice No: C6/007/2024/T, dated 10.01.2024 for allotment of areas situated at Chennai Port inside the custom bound area, for the purpose of handling liquid bulk cargo and its allied

activities, by erecting temporary tank farm structures for the operational needs for a period of 5 years on annual licence basis.

8. The petitioners submitted their bids and they were declared qualified in both the technical evaluation and financial bid. However, subsequently the tender was cancelled due to technical issues. Thereafter, on 12.06.2024, the 1st respondent issued fresh tender notice inviting open E-Tender Cum E-Auction Vide TENDER No: C6/363/2024/T, the petitioners submitted their bids, however, they were informed either through notification through email or whatsapp that their tender was rejected as they were not techno commercially qualified. Therefore, the petitioners submitted a representations on 13.09.2024 and 16.09.2024 before the 1st respondent seeking clarification regarding the rejection of their bids on techno commercial ground. Their representations were not considered by the 1st respondent and consequently, petitioners were constrained to file these writ petitions mentioned in Paragraph No.1 challenging the rejection of their bids.

9. After filing of these writ petitions by the petitioners, the 1st

respondent (2nd respondent in W.P.No.31577/2024) sent a communication to the petitioners dated 19.09.2024 giving reasons for the rejection of the petitioners bids and the same is challenged in writ petitions mentioned in Paragraph No.2 of this order. According to the impugned order passed by the 1st or 2nd respondent as the case may be, the petitioners were found to be guilty of violation of provisions of Integrity Pact under Section 3 and Tender Document Condition Nos.1.28 and 6.1.

10. It is admitted fact that petitioner in W.P.Nos.27977 and 31577 of 2024 namely ADK Impex is a Partnership Firm of which the petitioner in W.P.Nos.27980 and 31919 of 2024 namely Sunraja Oil Industries Private Limited is a partner. Both of them submitted their bid for Item - 1 and Item – 2, two out of four blocks for which tenders were floated.

11. The petitioner in W.P.Nos.27975 and 31912 of 2024 namely Arun Trading Point is a Partnership Firm of which petitioner in W.P.Nos.27982 and 31922 of 2024 namely Gem Edible Oils Private Limited is a partner. Both of them submitted their bid for Item 3 and 4, two out of four blocks for

which tenders were floated.

12. The learned Senior Counsel appearing for the respective petitioners vehemently contended that in the absence of any clause in the tender prohibiting firms and its partners from submitting the bid, petitioners firm and their partners are entitled to submit separate bids and the same cannot be termed as violation of Integrity Pact. It is submitted by the learned Senior Counsel that petitioners fairly disclosed Partnership Agreement among them and hence, there is no suppression of fact or formation of cartel as assumed by the respondents. It is also submitted that there are more than 25 bids in response to the tender floated by the 1st respondent and merely because four of the bidders namely the petitioners have got some connection among them by virtue of Partnership Agreement, the 1st respondent cannot assume formation of cartels. Therefore, the reasoning given in the impugned order for rejection of petitioners bids is only an assumption of the 1st respondent which is far from real truth and hence, the impugned order is liable to be set aside.

13. Per contra, the learned Additional Solicitor General of India

appearing for the Official Respondents would submit that a partner is an agent of a firm and hence, if firm and partners are allowed to submit separate bids, it is hit by Clause 1.28 of the Tender Conditions. The learned Additional Solicitor General of India by taking this Court to the Integrity Pact found in Annexure-V would submit that bidders agreed that they will not enter into any undisclosed agreement or understanding with other bidders, which will impact the prices, specifications, certifications etc. The Partnership Agreement among the petitioners certainly will have impact on the prices and certifications etc., and hence, violates Section 2(b) and 2(d) read with Section 3 of Integrity Pact. Therefore, the 1st respondent rightly invoked the said clause and rejected the petitioners bids as per the tender conditions.

14. The learned Additional Solicitor General of India further submitted that evaluation of tenders and awarding of contracts are essentially commercial functions and hence, the scope for judicial review of said action is very very limited and petitioners have not made out any case for interference with the decision of the Tender Inviting Authority as per the

accepted norms. In support of the said contention, the learned Additional Solicitor General of India relied on the following judgments:-

(i) ***Jagdish Mandal vs. State of Orissa and others*** reported in ***(2007) 14 SCC 517***.

(ii) ***Tata Motors Limited vs. The Brihan Mumbai Electric Supply and Transport Undertaking (BEST) and others*** reported in ***MANU/SC/0608/2023***.

(iii) ***The Silppi Constructions Contractors vs. Union of India and another*** reported in ***(2020) 16 SCC 489***.

15. Clause 1.28 of the Tender Conditions reads as follows:-

"1.28. Bidder shall not divulge their bids to any other party during auction. If a Bidder or any of its representatives are found to be involved in Price manipulation/ cartel formation of any kind, directly or indirectly by communicating with other bidders, strict action including black listing shall be taken against such bidders as per procurement guidelines/policies of the TIA."

16. Clause 6.1 of the Tender Conditions reads as follows:-

"6.1. On opening of Cover-I, the committee will evaluate the bid based on the fulfilment of Port's requirement in terms of documents submitted by the tenderer online. The offers with deviation in any of the conditions will be summarily rejected and no correspondence will be made in this regard."

17. Section 2(b) and (d) of Integrity Pact submitted by the petitioner as per Annexure-V reads as follows:-

"2 (b). The Bidder/Contractor will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids, or any other actions to restrict competitiveness, or to introduce cartelization in the bidding process.

2 (d). The Bidder will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract."

18. Section 3 of Integrity Pact reads as follows:-

> *“**Section-3 Disqualification from or exclusion from future contracts**-If the Bidder, before award of contract, has committed a transgression, through a violation of Section-2 or in any other form, such as to put his reliability as Bidder, into question, the principal is entitled to disqualify the Bidder, from the tender process, or to terminate the contract, if already signed, for such reason.”*

19. It was vehemently contended by the petitioners that there is no clause in the tender conditions prohibiting the firms and its partners from submitting separate bids and therefore, the petitioners, who are firms and its partners are entitled to submit separate bids in respect of the same block.

20. As mentioned earlier, the petitioner in W.P.Nos.27977 and 31577 of 2024, who is a firm and its partner, who is petitioner in W.P.Nos.27980 and 31919 of 2024 submitted separate bids in respect of Items 1 and 2. It is also not in dispute that petitioner in W.P.Nos.27975 and 31912 of 2024, who is a firm and its partner, who is petitioner in W.P.No.27982 and 31922 of 2024 have submitted separate bids in respect of Items 3 and 4. Now, we have to see whether submission of separate bids by firms and its partners are

prohibited by the tender conditions.

21. A reading of Clause 1.28 of the Tender Conditions extracted above would make it clear that bidder shall not divulge their bids to any other party during auction and if a bidder or any of its representatives are found to be involved in price manipulation/cartel formation of any kind either directly or indirectly by communicating with other bidders, the 1st respondent is entitled to take strict action including black listing of the bidders involved in such activities.

22. Section 18 of the Indian Partnership Act, 1932, reads as follows:-

> *"**Section 18.Partner to be agent of the firm**.- Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm."*

23. Therefore, a partner is regarded as an agent of a firm and as a consequence, knowledge of the agent is deemed to a knowledge of the Principal. When Principal and agent submit separate bids, it cannot be said they are not aware of details of price bids submitted by each other.

24. The knowledge of the Agent is deemed to be the knowledge of the

Principal. When Agent makes a bid, whether there is evidence to show that he revealed his bid details to his Principals or not, by virtue of legal fiction, the bid details are deemed to be known to the Principal. Therefore, when Principal and Agent submit their separate bids in response to the same tender notice issued by the 1st respondent, certainly clause 1.28 of the tender conditions gets attracted. As a consequence, the 1st respondent is entitled to take any action against the petitioners including black listing. In such view of the matter, the impugned order of rejection of bids by invoking Clause 1.28 of Tender Conditions, cannot be found to be bad in law.

25. In ***Jagdish Mandal*** case cited supra, while explaining the scope of judicial review in the contractual matters, Apex Court observed as follows:-

> *"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is*

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

(i) Whether the process adopted or decision made .by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

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

26. In ***Tata Motors Limited*** case cited supra, the Apex Court observed as follows:-

"52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot

of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in Association of Registration Plates v. Union of India and Others, reported in (2005) 1 SCC 679.

53. The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd., reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to *decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."*

27. In ***Silppi Constructions Contractors*** case cited supra, the Apex Court observed as follows:-

> *"20. ... ... The 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 accepted."*

28. In view of the law settled by the Apex Court in the above mentioned decisions in contractual/tender matters, the scope for judicial review is very very limited and the Tender Inviting Authority is the best judge to interpret the tender documents. Even assuming two interpretations are possible, the interpretation given by the Author of the tender shall be accepted as correct, unless, it is so irrational or vitiated by *mala fides* or perversity.

29. It was vehemently contended by the learned Senior Counsel

appearing for the petitioners that there is no express clause in the tender document prohibiting firm and its partners from submitting separate bids. In view of Section 18 of the Partnership Act, 1932, the interpretation given by the respondents that submission of the tender document by firm and its partners in respect of same block would be hit by Clause 1.28 of Tender Conditions, appear to be reasonable and it is not so irrational or perverse to enable this Court to interfere.

30. Likewise, Section 2 (d) of Integrity Pact says that a bidder shall not collude with other interested parties in the contract so as to impair the transparency, fairness and progress of the bidding process and bid evaluation. The bidder/contractor is also prohibited from entering into any undisclosed agreement or understanding with regard to the prices, specifications and certifications concerning the bid. The conclusion reached by the 1st respondent that action of the petitioners in submitting two separate bids in the name of firm and its partners would violate the Integrity Pact appear to be reasonable. Even though it was argued that the Partnership Agreement was disclosed by the petitioners, the knowledge of the other

bidder (partner of the firm) is only by virtue of legal fiction and not by any disclosed agreement. Therefore, the said argument made by the learned Senior Counsel appearing for the petitioners is also not acceptable to this Court. Therefore, I do not find any reason to interfere with the conclusion reached by the 1st respondent that act of petitioners in submitting separate bids in the name of firms and its partners, violates the Tender Conditions Clauses 1.28, 6.1 and Section 3 of Integrity Pact.

31. Accordingly, Writ Petitions in W.P.Nos.27977, 27980, 27975, 27982, 31577, 31919, 31912 and 31922 of 2024 are dismissed.

32. In view of the dismissal of the above writ petitions, the declared highest bidders namely petitioners in W.P.No.38980 of 2024 and W.P.No.431 of 2025 are entitled to get work order from the 1st respondent. As a consequence, the 1st respondent is directed to issue work order to the petitioners in these two writ petitions, if they are otherwise entitled to.

33. With this direction, the writ petitions in W.P.No.38980 of 2024

and W.P.No.431 of 2025 are disposed of. No costs. Consequently, the connected writ miscellaneous petitions are closed.

31.01.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm

To

1.The Chairman,
Chennai Port Authority,
Traffic Department,
No. 1, Rajaji Salai,
Chennai – 600 001.

2.The Traffic Manager,
Traffic Department,
Chennai Port Authority,
No. 1, Rajaji Salai,
Chennai – 600 001.

S.SOUNTHAR, J.

dm

Pre-delivery common order made in W.P.Nos.31577, 27980, 27982, 31912, 31919, 27975, 27977, 31922 and 38980 of 2024 and W.P.No.431 of 2025

31.01.2025