

2025:DHC:9671-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 28.10.2025

Judgment delivered on: 04.11.2025

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W.P.(C) 1799/2025, CM APPL No.8665/2025 & CM APPL.12931/2025

INTIME VINCOM PVT LTD

.....Petitioner

versus

GAIL INDIA LIMITED

.....Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Tanmaya Mehta, Mr. Rajeev Aggarwal, Ms. Rashmi Mehta, Mr. Mayank Kamra and Mr. Ankit Gupta, Advocates.

For the Respondent : Mr. Sanjay Jain, Senior Advocate with Mr. Kartik Sethi, SC, Ms. Harshita Sukhija, Ms. Rishika Agrawal and Mr. Shubhankar Singh, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present petition has been filed under Article 226 of the Constitution of India, 1950, seeking quashing of the cancellation of tender bearing no. GAIL/NOIDA/PMG/CS APPOINTMENT/PHASE VI/2023-24 dated 26.12.2023 for the Mumbai region and simultaneously seeking award of the contract in favour of the petitioner in pursuance to the said tender. Additionally, the petitioner also seeks restraint of the fresh tender dated 08.02.2025 notified by the respondent/Gas Authority of India Limited (hereinafter referred to as

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W.P.(C) 1799/2025

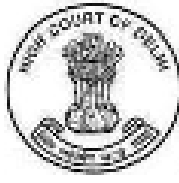
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“GAIL”).

2. Briefly, facts as culled out from the petition and germane to decide the *lis* are as under:-

- a) The GAIL invited a Notice Inviting Tender (NIT) dated 26.12.2023 for appointment of Stockists for various cities including Mumbai (hereinafter referred to as “*original tender*”). In terms thereof, the petitioner claims to have submitted its bid on 25.01.2024 alongwith the requisite EMD of Rs.5,00,000/-. Between 27.03.2024 and 12.04.2024, it is claimed that GAIL sought certain documents and clarifications in respect of power of attorney, DIN Number, etc.
- b) Petitioner claims that GAIL *vide* the e-mail dated 18.07.2024 sought the consent of the petitioner to extend the bid validity offer up to 25.10.2024 and by the reply e-mail dated 19.07.2024, the petitioner consented to such extension.
- c) The petitioner claims to have qualified for Stage-II evaluation as intimated by GAIL *vide* e-mail dated 13.09.2024. Yet again on 17.10.2024, GAIL sought consent of petitioner to extend the bid validity offer up to 25.12.2024 which was agreed to by the petitioner *vide* the reply e-mail dated 17.10.2024.
- d) It is stated that without there being any cause or any reason, the GAIL *vide* the e-mail dated 03.12.2024 arbitrarily, capriciously, and cryptically closed/annulled the Original Tender dated 26.12.2023.
- e) The petitioner claims to have served the advance copy of the writ petition upon GAIL *vide* e-mail dated 04.02.2025 and alleges that only to defeat the rights of the petitioner and to render the writ petition infructuous, GAIL invited/notified another fresh tender for appointment of



consignment Stockist by publication in a national newspaper on 08.02.2025 (hereinafter referred to as “*fresh tender*”). Hence the present writ petition.

3. Appearing for the petitioner Mr. Tanmaya Mehta, learned counsel at the outset contended that providing reasons are the bedrock of fairness and transparency in administrative law. He submitted that though GAIL has reserved unto itself the power to annul a tender at any time without assigning any reasons, yet, the same cannot be exercised arbitrarily or capriciously much less without assigning any reasons whatsoever. According to him, in a catena of judgments the Constitutional Courts including the Hon'ble Supreme Court innumerable have held that the tender issuing authorities will have to disclose reasons as to why a particular action which may be detrimental to the interest of the bidders has been undertaken. Inviting attention to the impugned e-mail dated 03.12.2024, he would contend that there are no reasons at all much less cogent reasons except that the “*Tender for appointment of CS at Mumbai has been closed*”. In order to buttress the aforesaid contention, he relied upon the following judgments passed by the Hon'ble Supreme Court. The relevant paragraphs of the said judgements are extracted hereunder:-

(i) Union of India (UOI) & Ors. vs. Dinesh Engineering Corporation & Anr.: (2001) 8 SCC 491

“15. Coming to the second question involved in these appeals, namely, the rejection of the tender of the writ petitioner, it was argued on behalf of the appellants that the Railways under clause 16 of the Guidelines was entitled to reject any tender offer without assigning any reasons and it also has the power to accept the lowest offer. We do not dispute this power provided the same is exercised within the realm of the object for which this clause is incorporated. This does not give an arbitrary power to the Railways to reject the bid offered by a party merely because it has that power. This is a power which can be exercised on the existence of certain conditions which in the opinion of the railways are not in the interest of the Railways to accept the offer. No such



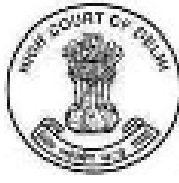
ground has been taken when the writ petitioner's tender was rejected. Therefore, we agree with the High Court that it is not open to the Railways to rely upon this clause in the Guidelines to reject any or every offer that may be made by the writ petitioner while responding to a tender that may be called for supply of spare parts by the Railways. Mr Iyer, learned Senior Counsel appearing for EDC drew our attention to a judgment of this Court in *Sterling Computers Ltd. v. M & N Publications Ltd.* [(1993) 1 SCC 445] which has held: (SCC p. 455, para 12)

“Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of ‘play in the joints’ to the executive.”

16. But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law, especially Article 14 of the Constitution. In the instant case, we have noticed that apart from rejecting the offer of the writ petitioner arbitrarily, the writ petitioner has now been virtually debarred from competing with EDC in the supply of spare parts to be used in the governors by the Railways, ever since the year 1992, and during all this while, we are told the Railways are making purchases without any tender on a proprietary basis only from EDC which, in our opinion, is in flagrant violation of the constitutional mandate of Article 14. We are also of the opinion that the so-called policy of the Board creating monopoly of EDC suffers from the vice of non-application of mind, hence, it has to be quashed as has been done by the High Court.

(ii) *Mihan India Ltd. vs. GMR Airports Ltd. and Ors.*: (2022) 19 SCC 69

“1. Leave granted. These four appeals have been filed challenging the judgment dated 18-08-2021 of the Nagpur Bench of the Bombay High Court



whereby the writ petition of the Respondent 1 GMR Airports Ltd. (for short "GAL") and GMR Nagpur International Airport Ltd. (for short "GNIAL") filed against MIHAN India Ltd. (for short "MIL") and Government of Maharashtra (for short "GoM") has been allowed. The High Court set aside the impugned communication of annulling the bidding process and directed to take further necessary steps as per prayer clause (b) of the writ petition.

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9. Even on completing the said formalities, the concession agreement was not executed for a long time, however on 25-02-2020, request was made by GAL to MIL for execution of concession agreement so as to enable GAL to implement the MIHAN project. The said letter was neither responded nor any steps were taken to execute the concession agreement in favour of GAL and GNIAL (being the SPV incorporated for implementing the MIHAN project). Thus, GAL and GNIAL both filed Writ Petition No.1343 of 2020 before the Nagpur Bench of the Bombay High Court seeking direction to the MIL and GoM to take all necessary and consequential steps pursuant to the letter dated 07-03-2019 and to sign the concession agreement.

10. On 11-03-2020, the High Court issued the notice and listed the case on 18-03-2020 for hearing. The notices were served on MIL and GoM by GAL on the same day and, through court bailiff on 16-03-2020. Immediately on receiving the notice, on the same day i.e. 16-03-2020, GoM issued the direction to MIL for retendering. Pursuant thereto, MIL annulled the bidding process vide communication dated 19-03-2020. MIL also informed GAL to take back the bid security submitted towards bid. Thereafter, through email dated 4-5-2020 MIL informed GAL that since the bank guarantee towards bid security expired on 30-04-2020 and because of lockdown due to Covid-19, the same may be treated as cancelled and fully discharged and may be taken back.

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60. Now, as per the material available and discussed hereinabove, it is clear that the appellants were aware of the procedure which is being adopted. After completion of the bidding process, GAL was declared as a selected bidder on offering highest revenue share and on issuance of LoA, it has been declared as a concessionaire and at the stage of execution of the concession agreement, all these formalities are not relevant and it amounts to arbitrary exercise of the power by the authorities which is not permissible under law. The said approach is fortified with the view taken in the judgment of this Court in *Union of India v. Dinesh Engg. Corpn.* [Union of India v. Dinesh Engg. Corpn., (2001) 8 SCC 491], wherein while dealing with the rejection of bid of the respondent therein by the Railways in a tender floated for procurement of certain items of spare parts for use in GE governors, this Court has held that power to reject bids cannot be exercised arbitrarily merely because the Railways has the



power to do so. Any arbitrary exercise of power to reject bids has been held violative of Article 14.

61. Paras 15 and 16 of the aforesaid judgment are relevant and reproduced thus : (Dinesh Engg. Corpn. case [Union of India v. Dinesh Engg. Corpn., (2001) 8 SCC 491] , SCC pp. 500-501)

“15. Coming to the second question involved in these appeals, namely, the rejection of the tender of the writ petitioner, it was argued on behalf of the appellants that the Railways under Clause 16 of the Guidelines was entitled to reject any tender offer without assigning any reasons and it also has the power to accept or not to accept the lowest offer. We do not dispute this power provided the same is exercised within the realm of the object for which this clause is incorporated. This does not give an arbitrary power to the Railways to reject the bid offered by a party merely because it has that power. This is a power which can be exercised on the existence of certain conditions which in the opinion of the Railways are not in the interest of the Railways to accept the offer. No such ground has been taken when the writ petitioner's tender was rejected. Therefore, we agree with the High Court that it is not open to the Railways to rely upon this clause in the Guidelines to reject any or every offer that may be made by the writ petitioner while responding to a tender that may be called for supply of spare parts by the Railways. Mr Iyer, learned Senior Counsel appearing for EDC, drew our attention to a judgment of this Court in *Sterling Computers Ltd. v. M & N Publications Ltd.* [Sterling Computers Ltd. v. M & N Publications Ltd., (1993) 1 SCC 445] which has held : (SCC p. 455, para 12)

‘12. ... Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of “play in the joints” to the executive.’

16. But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has



certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law especially Article 14 of the Constitution. In the instant case, we have noticed that apart from rejecting the offer of the writ petitioner arbitrarily, the writ petitioner has now been virtually debarred from competing with the EDC in the supply of spare parts to be used in the Governors by the Railways, ever since the year 1992, and during all this while, we are told the Railways are making purchases without any tender on a proprietary basis only from the EDC which, in our opinion, is in flagrant violation of the constitutional mandate of Article 14. We are also of the opinion that the so-called policy of the Board creating monopoly of EDC suffers from the vice of non-application of mind, hence, it has to be quashed as has been done by the High Court.”

62. Bare perusal of the abovestated case law in light of the facts of the instant case makes it clear that merely having the power of rejection of bids does not entitle authorities to exercise the said power arbitrarily. While discussing the applicability of Clauses 2.16.1, 3.3.1 and 3.3.5, it is made clear that in pre-bid procedure prior to acceptance, the bidding process may be annulled otherwise after issuance of LoA, the annulment cannot be done. The authorities further acted arbitrarily relying upon the GoM's letter dated 16-03-2020 in reference to PMIC's meeting dated 14-10-2019 in which re-tendering was directed. Re-tendering was not possible without ignoring the bid already accepted. Therefore, the order of annulment has been directed applying Clause 2.16.1 arbitrarily.

63. As discussed hereinabove, while explaining the scope of Chapters 1, 2 and 3 of RFP, it is clear that Chapter 2 deals with the bidding instructions which are general in nature. Clause 2.16 deals with the rejection of bid which is a situation prior to acceptance of the bid. After Chapter 2, in Chapter 3 evaluation of bid starts. While evaluating those bids in Clause 3.3.1, if the provision of Clause 2.16.1 has not been invoked and the bidder whose bid has been adjudged as responsive in terms of the Clause 3.3.1 and who offered the highest revenue share would be a selected bidder. In the present case, the selection of the bidder was complete. Thereafter, LoA was issued as per Clause 3.3.5 and by issuance of draft of concession agreement, it has been declared as a concessionaire. At that stage, Clause 2.16.1 for annulment of the bidding process would not apply. It appears to us that as per the objections raised in the meeting dated 30-08-2019 held by MoCA, clause (iv) in Para 5 persuaded the MIL and GoM to pass the order of re-tendering.

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65. In view of the above, it is apparent that in government contracts, if granted by the government bodies, it is expected to uphold fairness, equality and rule of



law while dealing with contractual matters. Right to equality under Article 14 of the Constitution abhors arbitrariness. The transparent bidding process is favoured by the Court to ensure that constitutional requirements are satisfied. It is said that the constitutional guarantee as provided under Article 14 of the Constitution demands the State to act in a fair and reasonable manner unless public interest demands otherwise. It is expedient that the degree of compromise of any private legitimate interest must correspond proportionately to the public interest. It is specified that using a ground of public interest or loss to the treasury cannot undo the work already undertaken by the authority.

66. Analysing the facts of this case in the light of the judgments in *Dinesh Engg. [(2001) 8 SCC 491]* and *Shishir Realty [(2022) 16 SCC 527]*, after issuing the LoA in terms of Clause 3.3.5 of RFP and declaring GAL as concessionaire as per Clause 3.3.6, issuing letter of annulment of bidding process on the basis of the meeting of PMIC on 14-10-2019, which directed for re-tendering of the bid, is completely an arbitrary exercise of power, contrary to the provisions of RFP and violative of Article 14 of the Constitution.

67. In view of the discussion made hereinabove, we are of the considered opinion that the findings as recorded by the High Court in the impugned judgment are in consonance with the above reasonings. The impugned judgment passed by the High Court is based on the sound reasonings and true analysis of facts, which do not warrant interference by this Court.

4. In support of the aforesaid contention, coupled with the assertion that GAIL has not only violated the settled law but has also contravened the principle laid down in *Mohinder Singh Gill & Anr. vs. Chief Election Commissioner, New Delhi & Ors.: (1978) 1 SCC 405*, by tendering and assigning reasons in its counter affidavit which were not hitherto before contained in the impugned e-mail dated 03.12.2024. He stoutly contended that no document has been placed on record to justify or give any explanation as to why the original tender was annulled. According to him, the reasons provided in the counter affidavit, particularly in the paragraphs 7.2, 7.3 and 7.4 are claimed to be reasons which led GAIL to annul the original tender. These reasons which have been provided now cannot be considered to be genuine or *bonafide* reasons for the action taken by GAIL. That apart, learned counsel vehemently contended that even if the



reasons contained in the said paragraphs are taken at their face value, the same cannot be believed since the defects or lacunae which are claimed to have propelled GAIL to annul the original tender/contract, are conspicuous by their absence in the fresh tender. Thus, there is no nexus or rationale between the reasons assigned by GAIL in its counter affidavit for the annulment of original tender/contract with that of issuing a fresh tender rendering the actions arbitrary. According to him, on that basis itself not only the annulment of the original tender ought to be set aside but the notice inviting fresh tender dated 08.02.2025 ought to be enjoined from operation. As an example, while reading through the aforesaid paragraphs, learned counsel sought to demonstrate that the reasons assigned have neither been acted upon nor are they demonstrably evident in the fresh tender. In the absence whereof, the writ petition ought to be allowed.

5. The next contention of Mr. Mehta, learned counsel for the petitioner was predicated on the allegation that the cancellation of the original tender and issuance of fresh tender without any substantial change in the terms and conditions thereof was designed to favour a particular party and invariably disentitled the petitioner from either participating or being rendered ineligible to qualify in the tender process. As an example, while handing over a chart comparing certain conditions of the original tender with that of the fresh tender, learned counsel invited attention to the infrastructure facility to be available with the bidder in terms of the tender documents. He would contend that while in the original tender the area in square feet of the office space for a bidder having an area of more than 1500 sq. feet on leasehold basis would be entitled to four marks, in the case of the fresh tender, the area in square feet was drastically reduced to more than 200 sq. feet for leasehold offices with three marks to such bidders. Learned counsel was at pains to demonstrate as to how this drastic



alteration has not only affected the petitioner but also appears to be widening the scope to make certain bidders eligible to participate in the fresh tender. He would contend that though the petitioner would be unable to name such bidders in whose favour the tender conditions have been tweaked, yet, on a comparison and as a corollary it can be logically deduced that such changes have been made only to entitle certain bidders to participate. He vehemently contended that the Constitutional Courts have deprecated such practices and have interfered/interdicted such actions undertaken by the tender issuing authority. In the present case too, he would contend that the annulment of the original tender coupled with issuance of the fresh tender with such tweaked conditions demonstrate the *malafide* intention of GAIL.

6. Mr. Mehta, learned counsel also contended that though no specific order regarding any lack of eligibility criteria of the petitioner was ever issued or served upon the petitioner, however, in para 4.2 of the counter affidavit, GAIL has also exposed itself to another controversy which has no legs to stand on. He would contend that paragraph 4.2 sought to justify the action taken by GAIL while referring to the lease deed of the petitioner for the office space offered by it, by falsely claiming that the conference room admeasuring 358.5 sq. feet is on a sharing basis with one M/s. Panache Digilife Ltd., while in the letter dated 22.05.2024 it is claimed that the petitioner stated that “*conference space is not on a sharing basis*”. It was on the basis of these two allegedly contradictory stands that GAIL doubted the petitioner’s credibility. This was vehemently contested by Mr. Mehta. It is his contention that in the tender conditions only an office space of varying area in sq. feet was the requirement and not as to compartmentalization of the office itself. He asserted that there was no condition which required the office space to be distributed in various categories or rooms.



He would contend that in the absence of such a tender condition, from where and on what basis such absurd contentions and reasons have been submitted by GAIL in its counter affidavit, is unknown. He claimed that this aspect too would also lend credibility to the contention of the petitioner that the original tender was annulled without any justification or reasons and the reasons which have been provided in the counter affidavit are an afterthought and whimsical. He prayed that the submissions of GAIL in the counter affidavit being demonstrably false and frivolous be outrightly rejected and the prayers sought be granted.

7. *Per contra*, Mr. Sanjay Jain, learned senior counsel appearing for GAIL submitted that it is fairly well settled by now that the tendering authority has the right and jurisdiction to annul a contract without assigning any reason whatsoever. He relied upon the judgment of the Supreme Court in ***IJM Corporation Berhad vs. National Highways Authority of India & Anr.***: SLP (C) No. 10811/2022 decided on 12.05.2022 in support of this contention.

8. That apart, learned senior counsel submitted that GAIL had not opened the financial bid yet, and it was only at the initial stage of the tender when the competent authority of GAIL deemed it appropriate to annul the tender process. Thus, according to learned senior counsel, no prejudice muchless any detriment of any nature was caused to any of the bidders who participated including the petitioner. He also countered the submission of the petitioner that its sensitive data has been exposed, by contending that since the financial bid was never opened, no sensitive data at least to the extent of financial proposal of any of the bidders was exposed.

9. As a matter of fact and also to support the contention that the GAIL found certain lacuna in the original tender, which propelled it to not only annul the same but also simultaneously issue a fresh tender, learned senior counsel handed



over to the Court the document called “*CS Appointment Procedure*” which contain the Standard Operating Procedure (hereinafter referred to as “*SOP*”) for the purpose of technical evaluation of the bids submitted by the prospective bidders. He contended that while the original tender was annulled on 03.12.2024, the competent authority of GAIL after having deliberated upon the lacuna found in the original tender drafted the said SOP document on 24.12.2024. It was only thereafter that on 08.02.2025 the fresh tender was notified. Predicated on the aforesaid, he contended that the submission of the petitioner that GAIL had annulled the original tender arbitrarily or capriciously is without merit and *sans* the factual background.

10. Drawing attention to the SOP, learned senior counsel read through Serial no.15 and 18 to contend that the lacuna which was identified in the original tender was rectified by providing ample power or authority to the evaluation committee which was found deficient. He would contend that at the stage of field verification of the office space offered by the bidder, while in the original tender the marks awarded to a particular bidder in Stage-I of the process could not be varied, however, by virtue of the provisions of the SOP, the evaluation committee, if so required or found, could vary the marks awarded to a bidder at Stage-I. He contended that this lacuna had to be cured since Stage-I marks were awarded purely on the basis of documents, while Stage-II was relatable to awarding of marks during site verification. He submitted that many a time, the evaluation committee found that there is a discrepancy between the description contained in documents submitted and verified at Stage-I process in comparison to the actual site verification at Stage-II process. Thus, according to him, it was only to empower the evaluation committee to award appropriate marks and vary the marks originally awarded for Stage-I, that the SOP was drafted, which



necessarily had to happen only once the original tender was annulled or cancelled. Therefore, learned senior counsel contended that there are no merits in the contention of the petitioner and the writ petition be dismissed.

11. In rejoinder, Mr. Tanmaya Mehta, learned counsel for the petitioner contended that if the evaluation committee was of the opinion that there is a discrepancy or a misdescription of the office space shown or indicated in the documents at the Stage-I process in comparison to the site verification during Stage-II process, GAIL could have simply disqualified the petitioner's bid without annulling the original tender. He vehemently contended that no reason has been assigned by GAIL as to why the simple process of disqualifying a bid of petitioner could not have been undertaken rather than annulling the entire original tender. This, according to him, has resulted in not only the petitioner being deprived of challenging the disqualification of its bid had GAIL followed the correct procedure, but also deprived other bidders from being treated fairly.

12. Having heard learned counsel for the parties as also perusing the entire record and the SOP handed over by Mr. Jain, learned senior counsel, we are of the considered opinion that there are no merits in the writ petition.

13. It is no more *res integra* that a tendering authority can annul or cancel the tender process at any stage without assigning any reasons whatsoever. Of course, there is a caveat to that. In that, the Constitutional Courts may have to appreciate such action keeping in view and having regard to the various clauses of the tender document. In such of those tenders where certain clauses confer power and authority to the tendering authority to annul or revoke the tender process, it may be construed differently. Whereas, in those tenders where no such power has been accorded to the tendering authority, the Constitutional Courts may have to apply a little different standards of appreciation. While the judgment in *IJM*



Corporation (*supra*) is an authoritative pronouncement of the Hon'ble Supreme Court in such tender documents where the clauses contained therein provide the right and authority to a tendering authority to annul or revoke a tender process at any stage without assigning any reasons, whereas this Court in **Agrawal Infrabuild Private Limited vs. National Highway Private Limited & Anr.**: W.P.(C) No.16226/2025 decided on 21.10.2025, while following the ratio of the **IJM Corporation** (*supra*) held as under:

“42 ...Though annulment of bidding process without assigning any reason was upheld by Hon'ble Supreme Court in **IJM Corporation** (*supra*), in para 27 above, we have held that even if reasons are not required to be given, the Court may, if so required, satisfy its conscience by calling for the deliberations behind such annulment. Upon such inspection, this Court found that the action of annulment was indeed based on deliberations by the Executive Committee of the NHAI...”

(emphasis supplied)

14. The Hon'ble Supreme Court in **Subodh Kumar Singh Rathour vs. Chief Executive Officer & Ors.**: 2024 SCC OnLine SC 1682, laid down the principle that the action and process undertaken by a tender issuing authority, which may be in the nature of revocation or cancellation of a tender process, essentially should not be arbitrary or capricious but based on transparency and fairness. Having regard to the principles laid down by the Hon'ble Supreme Court in both the aforesaid judgments, we would now proceed to consider the rival contentions urged before us.

15. Mr. Mehta very fairly had pointed out to the original tender document whereby GAIL had reserved the right to cancel/withdraw/amend the tender or extend the due date at its sole discretion without assigning any reason which is extracted hereunder:

“The company reserves the right to cancel/withdraw/amend this tender or extend the due date at its sole discretion without assigning any reason. GAIL will not be



responsible for any delay in receipt of the applications, whatsoever and the same will be rejected without assigning any reasons”

16. A plain reading of the aforesaid paragraph makes it abundantly clear that GAIL had reserved unto itself the right to cancel or withdraw the original tender process, that too, without assigning any reasons. Having regard to the ratio laid down in ***IJM Corporation (supra)***, we see little reason to interfere in the revocation or annulment of the original tender process. It is also pertinent to observe that such annulment occurred at a time when the tender process was at the stage of evaluation of the technical bids and financial bids were yet to be opened. Thus, the cancellation or annulment of the tender process was at the very initial stage, and it cannot be said that the same would have caused any prejudice to any bidder including the petitioner. Moreso, since petitioner is at liberty to participate in the fresh bid too. As a fact it has been informed that the petitioner indeed has participated in the fresh bid.

17. Apart from the above, following the judgment in ***Agrawal Infrabuild (supra)***, and the principle laid down in ***Subodh Kumar Singh Rathour (supra)***, we find that GAIL appears to have a justifiable reason to annul the original tender process. The SOP which was handed over to us by GAIL provides sufficient and justifiable reasons as to why and under what circumstances the competent authority of GAIL had to take a decision to annul the tender process. Unlike what was stated on behalf of the petitioner, we find substance and force in the submission of Mr. Jain, learned senior counsel appearing for the respondent. In that, the drafting of SOP and making it applicable to the fresh tender dated 08.02.2025 seems to align with the original reason for cancellation/annulment of the original tender process. Though, as held by us in ***Agrawal Infrabuild (supra)***, a Constitutional Court is not to satisfy itself as to



the justiciability of the reasons for annulment or cancellation but to arrive at an opinion that such decision was not taken arbitrarily or capriciously but with a clear reason or motive. We reiterate that the Constitutional Courts may not enter into examining the merits of the reasons or justification for such action but only to satisfy its judicial conscience that the decision was based on some reason.

18. In the present case, the SOP clearly conferred the authority to the evaluation committee to vary the marks awarded to a bidder for the Stage-I process at the time when the evaluation committee would conduct the site verification at the Stage-II process. The reason is not far to see. It is well nigh possible and plausible that a bidder may furnish documents in support of the office space etc, for the fulfilment of Stage-I process, however, at the time of site inspection during Stage-II process, the evaluation committee may find that there is a discrepancy or a variation in the description provided in the documents and what it finds at the site inspection stage. If that be so, the tendering authority appears to want to have a discretion to vary the marks awarded to a particular bidder at the Stage-I process. This particular measure or evaluation of marks awarded to a particular bidder at Stage-I and varying it while finding discrepancy in the Stage-II process, by no stretch of imagination, can be said to be arbitrary or capricious. In fact, to us it appears to be a prudent methodology adopted by a tender issuing authority which knows its requirements and needs to have “play in the joints”. Though, the SOP itself is not called in question before us, yet, we have made this observation in view of the trite law that the tendering authority knows its requirements best. [See: *N.G. Projects Ltd. vs. Vinod Kumar Jain* (2022) 6 SCC 127; *Jagdish Mandal vs. State of Orissa* (2007) 14 SCC 517 and *Tata Cellular vs. Union of India* (1994) 6 SCC 651].

19. The argument of Mr. Mehta, of manifest arbitrariness on the anvil of



Article 14 of Constitution of India, 1950 does not appeal to us nor does the reliance of Mr. Mehta on the judgment of ***D.S. Nakara vs. Union of India: (1983) 1 SCC 305***. The judgment in ***DS Nakara (supra)*** was based on service jurisprudence while examining the contention of one set of retired employees holding a grievance that the revision in pension awarded to certain set of employees was not extended to them on an irrational basis of cut-off date. In those circumstances, the Hon'ble Supreme Court held that creation of two classes by such action would strike at the very root of the Article 14 of the Constitution of India. It was in those circumstances and such background facts that the said opinion was rendered. That principle would surely not apply to the facts of the present case. There is no violation of Article 14 nor could we find one. It is not the case of the petitioner that it has been deprived from submitting its bid in the fresh tender nor is it its case that any action for debarment has been initiated against the petitioner merely to deprive its participation or that there is an apprehension of being disqualified. That stage is yet to arrive.

20. Mr. Mehta had contended that the sole motive behind annulment was to favour one party. Though, fairly he conceded that the petitioner could not name any such bidder yet, on the preponderance of probabilities of the narration of facts, he attempted to persuade us to believe so. Even this submission is *sans* merit and is unpersuasive. This is for the reason that not only GAIL has a right to annul the tender process but also that by drafting the SOP and making it applicable to the fresh tender, GAIL has been able to demonstrate a reasonable nexus between annulment of the original tender process and calling for the fresh tenders. To us, it appears that there is no *malafide* or ill motive on the part of GAIL to have annulled the original tender nor does it seem plausible that such action was motivated with a view to confer benefit to certain parties/bidders.



21. Mr. Mehta had sought to buttress the aforesaid contention by referring to the drastic reduction in the requirement of the office space in the fresh tender and the marks attributable to various categories of office space in comparison to the original tender. His contention was that while reducing the office space requirement from 1500 sq. feet with a maximum of four marks to the office space requirement to greater than 200 sq. feet with a maximum three marks was intentionally carried out to suit or make certain ineligible/unqualified bidders, eligible. We do not find any merit in this too. In fact, to the contrary, all that GAIL may have achieved by reduction in the requirement of office space would be to widen the scope of eligible bidders and to best suit its needs. Merely because the tendering authority has changed its requirements in the fresh tender cannot be a reason for the Constitutional Court to construe or arrive at a finding that such action was either *malafide* or motivated to suit the needs of an ineligible bidder. Nothing more demonstrable has been displayed or submitted by the petitioner.

22. In view of the aforesaid observations and analysis on the crucial aspects of the *lis*, the other contentions and submissions pale into insignificance.

23. In view of the above, we are of the considered opinion that the writ petition lacks merit, and is accordingly dismissed without any order as to costs. Pending applications, if any, also stand disposed of.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

NOVEMBER 4, 2025

rl/yrj