Item No.3
22.06.2026
Court. No. 12
GB

MAT 996 of 2026
With
CAN 1 of 2026

Flemingo Dutyfree Shop Private Limited
Vs.
Airports Authority of India & Anr.

Mr. Ratnanko Banerji,
Mr. Krishnaraj Taker,
Mrs. Nasrin Sultana,
Mr. Arin Chakraborty,
Mr. Rahul Singh
... for the Appellant.

Mr. Shashwat Nayak,
Mr. Dipankar Das,
Mr. M. Bhattacharyya
... for the Respondent No.1.

Mr. Abharajit Mitra, Sr. Adv.,
Mr. Arindam Guha,
Mr. Shuvasish Sengupta,
Ms. Shalini Dey
... for the Respondent No.2.

1. The appellant is the existing operator of the duty free outlets at Netaji Subhas Chandra Bose International Airport, Kolkata (hereinafter referred to as the 'said airport'). In a tender process of 2015, the appellant was the successful bidder. The Concession Agreement between the Airports Authority of India and the appellant was originally for a period of seven years and the same was extended by the Airports Authority of India until April 21, 2026. On January 20, 2026, the respondent no.1 (Airports Authority of India) issued a fresh Request for Proposal (RFP) for development, operation and maintenance of dutyfree outlets at the said airport.

2. The appellant filed WPA No.3830 of 2026 challenging the legality and validity of Clause 2.1.1 of the RFP pertaining to an eligibility criterion relating to outstanding dues. The appellant was required to furnish an additional bank guarantee of 50% of the outstanding dues with regard to prior disputes between the respondent no.1 and the appellant, in order to be eligible to participate. The operation of this clause was stayed by the writ Court with reasons. The writ Court allowed the appellant to participate in the subject tender. The appellant was unsuccessful in the process and filed WPA No.10962 of 2026, which has given rise to the order impugned before us.

3. Mr. Banerji, learned senior advocate appearing for the appellant submits that the qualification of the respondent no.2 in the technical round was vitiated by malice and favouritism. The bid document which was uploaded by the respondent no.2 was incomplete and liable to be rejected. Instead, the said respondent was allowed to rectify the mistakes and cure the defects, although there was no provision in the RFP, permitting rectification and resubmission of documents. He submitted that Clause 2.14.1 of the RFP required the bidder to provide all information sought for and the authority was entitled to evaluate the proposals that were received in the required format and which were complete in all respects. Incomplete

and/or conditional proposals were liable to be rejected. Pointing out to the mandatory nature of the clause, Mr. Banerji submits that the respondent No. 1 could not have called upon the respondent No. 2, to sign the proposal and furnish missed out documents.

4. Mr. Banerji drew the attention of this Bench to the signature/initials of the authorized signatory of the respondent no.2 on the pages of the bid document in order to substantiate that a scanned signature of the authorized representative was affixed on each and every page and uploaded. The placement of the signature and stamp/seal of the company would clearly indicate that the authorized representative did not sign on ever page in blue ink before scanning and uploading the same in the portal. Reliance was placed on Clause 2.14.7 to establish that physical signature in writing on each and every page should have been completed before such page was scanned and uploaded. Further reference was made to Clause 2.14.8 in order to substantiate that the proposal should have been typed or written in indelible ink and signed by the authorized signatory of the bidder. Each and every page should have borne the initial in blue ink. The stamp should also have appeared in each and every page. Clause 3.3 of the RFP was further relied upon to substantiate how the evaluation of the technical proposal should be made. It was contended that

the authority was required to determine whether the technical proposal was in compliance with the requirement of the RFP. A technical proposal would be considered to be in compliance with the required RFP only if the bidder satisfied the threshold eligibility criteria and the bid proposal contained all information and document as per the RFP. Those technical proposals which were not in compliance with the RFP, were liable to be rejected forthwith without further reference to the bidder. Mr. Banerji further submits that the learned court committed an error apparent on the face of record by referring to a non-existent clause in the RFP, to support the action of the respondent no.1 i.e. Clause 7.8.5.

5. The primary argument of Mr. Banerji before us was based on the non-compliance of the clauses relating to signing of the bid documents. Reliance was placed on the following decisions of different High Courts, in the matter of ***M/s. Shyamji Transport Company*** ***versus*** ***Food Corporation of India & Ors., ATC Telecom Infrastructure Private Limited*** ***versus*** ***Kerala State Warehousing Corporation & Anr.*** and ***Maquet Medical India Pvt., Ltd. & Anr.*** ***versus*** ***Odisha State Medical Corporation Ltd. & Anr.,*** in support of the contention that signing the bid document was a mandatory condition and the same could not be

either relaxed or done away by the tendering authority.

6. Mr. Nayak, learned advocate for the respondent No. 1 submits that the documents which were scanned, bore the signature of the authorized signatory of the bidder in blue ink. The stamp was also affixed. Only two pages did not bear the initial/counter-signature and those were required to be incorporated. Hence, for this minor slip, an opportunity was granted to the respondent No. 2 to cure the defect. He further submits that, with regard to shortfall in documents and clarifications, an equal opportunity was also given to the appellant. Both the appellant and the writ petitioner were permitted to rectify the defects, submit further document, clarify the quarries, etc. Thus, the question of the respondent no.1 treating the appellant as a stepchild or the respondent no.2 as a favoured child, did not arise. Such allegations were baseless. He further submits that the Airports Authority was not a handwriting expert and, as such, it was not possible for them to scrutinize the signatures to assess whether the scanned document had actually been signed before being uploaded or whether one pre-existing scanned signature of the said authorized signatory was affixed on every page. The bid proposal bore the signature in blue ink and the pages contained the initials seal/stamp.

The respondent No. 1 found the same to be sufficient compliance.

7. Mr. Mitra, learned senior advocate for the respondent no.2 submits that the grievance of the writ petitioners before the learned Single Judge were three-fold and the respondent No. 2 has made out a third case in the appeal. It was urged before the writ court that:-

(a) The authority did not have any right to allow rectification of documents and correction of errors.

(b) The authority did not use the designated portal to communicate with the appellant while requiring the appellant to provide further documents and clarification.

(c) A digital domain operated by a third party was used to communicate with the appellant.

d) That the respondent no.2 had pre-signed on blank sheets and thereafter, typed out the proposal.

8. We have considered the rival contentions of the parties. First and foremost, the reference to Clause 7.8.5 in the RFP by the learned Single Judge, we are of the view that the incorrect description of the document was a bonafide mistake. Clause 7.8.5 appears in the <u>Commercial Manual Of The Airports Authority of India</u>, which is a handbook or a guideline followed in the matter of grant of award of contracts. Paragraph 7.8.5 is quoted below:-

> *"7.8.5 During scrutiny process, <u>if it is observed that documents are deficient i.e. the party has not submitted documents as per NIT/Tender Document, OR certain</u>*

> *clarifications are required then, with the approval of NIT Approving Authority, copies of the said document(s) can be sought. But, in case EMD or Tender fee or Unconditional Acceptance letter is not submitted by the party, then the said bid may be rejected straightaway, without seeking any shortfall documents/clarification.*
>
> *The shortfall documents and clarifications thereof should only be sought through e-tender portal only in case of e-tenders.*
>
> *Maximum two opportunities only should be given to the bidders to provide the Shortfall documents/Clarifications."*

9. This clause entitles the respondent no.1 to call upon a party to correct the deficiencies in the documents or to furnish further documents. Such action can be taken by the respondent no.1 upon approval from the NIT approving authority. Maximum of two opportunities can be given to the bidders to provide the shortfall documents and clarifications. Similar clarification was also sought for from the appellant. The appellant was allowed to furnish clarifications and documents. Thus, we do not accept the contention of Mr. Banerji that the respondent no.1 did not have any authority under the RFP to ask a party to correct the deficiency or provide further documents and clarifications. The extract of the portal at page 79 of the CAN 1 of 2026 indicates that certain documents were asked to be furnished for clarification and counter-signatures were directed to be affixed in pages 1

and 2 of the certificate of the CA numbered as pages 25 and 26 in the proposal. The respondent no.2 was asked to sign and stamp those documents.

10. Clause 7.8.5 of the manual deals with scrutiny of documents. The respondent no.1 had allowed the respondent no.2 to correct the defect and also provide the short fall in the documents, in terms of the said clause. Thus, it cannot be said that the learned single Judge had relied on a non-existing clause.

11. Although, the manual is a separate guideline to be followed by the Airport Authority of India, we find that a similar provision is available in the RFP, that is, Clause 3.3.3 which is quoted below:-

> *"3.3.3 Authority reserves the right to seek clarifications or additional information/documents from any Bidder regarding its Proposal. Such clarification(s) for additional information/document(s) shall be provided within the time specified by Authority for the purpose. Any request and response thereto shall be in writing. If the Bidder does not furnish the clarification(s) or additional information/document(s) within the prescribed time, the Proposal shall be liable to be rejected. In the case Proposal is not rejected, Authority may proceed to evaluate the Proposal by construing the particulars requiring the clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of Authority."*

12. We also find from page 93 of the CAN 1 of 2026 that, the appellant was allowed to submit the shortfall documents and provide further clarifications. The objection that the official portal

was not used when the clarification was sought for from the appellant was dealt with by the learned single Judge and it was rightly held that the appellant did not suffer any prejudice for use of another portal. The respondent no.1 had justified such action on the ground that the official portal which was being used for the subject RFP was temporarily unavailable due to a technical glitch. The use of the portal operated by a third party does not appear to have caused disadvantage to the appellant. Both the appellant and the respondent No. 2 qualified in the technical round.

13. Thus, we are of the view that while seeking clarifications, additional documents and rectifications, the respondent no.1 treated the appellant and the respondent no.2 equally. The other issue raised by Mr. Banerji with regard to signature and initials, we are of the view that the writ Court is not an expert to examine whether the pages were signed/initialled/stamped in blue ink, and then scanned and uploaded or whether a pre-existing signature and initial were affixed on the document and then scanned and uploaded. The respondent no.1 was satisfied with the signature and initials in blue ink and the stamp/seal on each and every page, except two pages. They allowed rectification of the same, treating the omission as a minor slip. Further probe into the genuineness of the signature was beyond the domain of the

respondent no.1 as also the writ Court. The tendering authority had the authority to do so, both under the Commercial Manual and RFP.

14. The order impugned discloses consideration of each and every submission of the appellants including, the issue urged before us. On the scope of judicial review in tender matters, His Lordship followed the well-settled principles of law i.e. a writ Court must exercise its power with circumspection and restraint. A writ Court cannot sit in appeal over the decision of the tendering authority. The source of the power of the respondent no.1 in the RFP as also the manual was considered. However, His Lordship committed a simple error in recording that Clause 7.8.5 was a part of the RFP whereas, we find that the same was a part of the Commercial Manual, which was to be followed by the respondent no.1. Paragraph 23 of the writ petition also clarifies the stand of the appellant before the writ Court. It appears that the appellant relied on the relevant clauses of the Commercial Manual and RFP, which includes the Clause 7.8.5. His Lordship rightly held that unless the decision making process was found to be palpably arbitrary, mala fide or patently illegal, thereby, causing prejudice to the aggrieved party which was apparent from the face of the record, the writ Court could not interfere with the tender process.

15. We find Clause 2.17.3 of the RFP expressly provides that alteration, modification, additional information could be supplied by a bidder subsequent to the proposal due date, if called for by the respondent No. 1. The appellant was unsuccessful in the financial round. The contention of the appellant before us is that, had the respondent no.2 not been allowed an opportunity to rectify the omission and correct the deficiencies by affixing the signatures in two pages and submit clarificatory documents, their bid would have automatically failed and the appellant would be the sole successful bidder in the technical round. This submission cannot be accepted in view of the fact that the respondent no.1 treated both the participants equally and allowed an opportunity to both to clarify and rectify the shortfall in the documents.

16. Under such circumstances, we are of the view that the learned Judge did not commit any material irregularity in dismissing the writ petition. The decision of ***M/s. Shyamji Transport Company (supra)*** is distinguishable on facts, inasmuch as, the bid documents did not contain any signature at all. Similarly, in the decision of ***Maquet Medical India Pvt. Ltd. & Anr. (supra)*** we also find that the signature of the authorized signatory in the documents which were uploaded in the format T-5 were totally absent.

With regard to the decision of ***ATC Telecom Infrastructure Private Limited (supra)*** the general conditions of contract had not been signed at all.

17. Under such circumstances, the decisions cited by Mr. Banerji do not help the appellant. The tender evaluation committee is the expert to assess whether the documents provided by a bidder was sufficient or not. The authority was also equipped to decide whether the defects were minor and could be cured. The appellant has not been able to demonstrate any illegality which has gone to the root of the tendering processing, thereby, rendering the entire process to be either illegal or malafide, necessitating interference by a writ court.

18. In ***Silppi Constructions Contractors vs. Union of India and Another*** reported in ***(2020) 16 SCC 489,*** the law relating to tender was discussed as hereunder :-

> **"7.** *In Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] , it was held that judicial review of government contracts was permissible in order to prevent arbitrariness or favouritism. The principles enunciated in this case are: (SCC pp. 687-88, para 94)*
>
> *"94. …*
>
> *(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.

(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 in original)

***8.** In Raunaq International Ltd. v. I.V.R. Construction Ltd. [Raunaq International Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492] , this Court held that the superior courts should not interfere in matters of tenders unless substantial public interest was involved or the transaction was mala fide.*

***9.** In Air India Ltd. v. Cochin International Airport Ltd. [Air India Ltd. v. Cochin International Airport Ltd., (2000) 2 SCC 617] , this Court once again stressed the need for overwhelming public interest to justify judicial intervention in contracts involving the State and its instrumentalities. It was held that the courts must proceed with great caution while exercising their discretionary powers and should exercise these powers only in furtherance of public interest and not merely on making out a legal point.*

***10.** In Karnataka SIIDC Ltd. v. Cavalet (India) Ltd. [Karnataka SIIDC Ltd. v. Cavalet (India) Ltd., (2005) 4 SCC 456] it was held that while effective steps must be taken to realise the maximum amount, the High Court exercising its power under Article 226 of the Constitution is not competent to decide the correctness of the sale effected by the Corporation.*

***11.** In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. [Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138] it was held that while exercising power of judicial review in respect of contracts, the court should* *concern itself primarily with the question, whether there has been any infirmity in the decision-making process. By way of judicial review, the court cannot examine details of terms of contract which have been entered into by public bodies or the State.*

12. *In B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. [B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd., (2006) 11 SCC 548] it was held that it is not always necessary that a contract be awarded to the lowest tenderer and it must be kept in mind that the employer is the best judge therefor; the same ordinarily being within its domain. Therefore, the court's interference in such matters should be minimal. The High Court's jurisdiction in such matters being limited, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record.*

13. *In Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] it was held: (SCC p. 531, para 22)*

"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."

14. *In Michigan Rubber (India) Ltd. v. State of Karnataka [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216] it* *was held that if the State or its instrumentalities acted reasonably, fairly and in public interest in awarding contract, interference by court would be very restrictive since no person could claim fundamental right to carry on business with the Government. Therefore, the courts would not normally interfere in policy decisions and in matters challenging award of contract by the State or public authorities.*

15. *In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] it was held that a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision. 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. 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.*

16. *In Montecarlo Ltd. v. NTPC [Montecarlo Ltd. v. NTPC, (2016) 15 SCC 272 : AIR 2016 SC 4946] it was held that where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.*

17. *In Municipal Corpn., Ujjain v. BVG (India) Ltd. [Municipal Corpn., Ujjain v. BVG (India) Ltd., (2018) 5 SCC 462 : (2018) 3 SCC (Civ) 291] it was held that the authority concerned is in the best position to find out the best person or the best quotation depending on the work to be entrusted under the contract. The court cannot compel the authority to choose such undeserving person/company to carry out the work. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work.*

18. *Most recently this Court in Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd. [Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd., (2019) 14 SCC 81] observed that a writ petition under Article 226 of the Constitution was maintainable only in view of government and public sector enterprises venturing into economic activities. This Court observed that there are various checks and balances to ensure fairness in procedure. It was observed that the window has been opened too wide as every small or big tender is challenged as a matter of routine which results in government and public sectors suffering when unnecessary, close scrutiny of minute details is done.*

19. *This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.*

20. *The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over*

> *the appropriate authority; 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. 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. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."*

19. Under such circumstances, the appeal and the connected application are dismissed.

20. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)