

IN THE HIGH COURT AT CALCUTTA
IN APPEAL FROM AN ORDER PASSED IN
ITS CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE AJAY KUMAR GUPTA

A.P.O.T. No. 41 of 2026

with

IA. G.A. No. 1 of 2026

&

IA G.A No. 2 of 2026

M/s Innovatiview India Limited

vs.

The Chief Electoral Officer,
West Bengal, Election Commission of India and Anr.

For the Appellant	: Mr. Aman Lekhi, Sr. Adv. Mr. Sanjay Mukherjee, Adv. Mr. Dhananjay Nayak, Adv. Mr. Anuj Saxena, Adv. Mr. Anuj Ruhela, Adv. Mr. Sourav Sardar, Adv.
For the Respondent	: Mr. S.N. Mookherjee, Sr. Adv. Ms. Anamika Pandey, Adv. Mr. Naman Choudhury, Adv. Mr. Ghanshyam Pandey, Adv.
Judgment Reserved on	: 10.03.2026
Judgment Delivered on	: 17.03.2026
Judgment Uploaded on	: 17.03.2026

Shampa Sarkar, J.

1. The appeal arises out of an order dated February 27, 2026 passed by a learned Single Judge in WPO No. 89 of 2026. The appellant filed the writ petition challenging the terms and conditions of the Request for Proposal (RFP) for selection of an agency to provide a surveillance system for live web streaming (audio, video record, viewing CCTV cameras and other surveillance) at the general election to the West Bengal Legislative Assembly, 2026. The RFP was issued from the Office of the Chief Electoral Officer, West Bengal. The appellant prayed for setting aside of the RFP dated February 9, 2026, an order restraining the respondent authorities from continuing with the said RFP and a further order directing the respondents to reconsider, review and suitably modify the eligibility criteria contained in sub-clause 4 of Clause 4 of the RFP.

2. According to the appellant, there were gross irregularities in the terms and conditions. Not only were the terms and conditions unreasonable and irrational, but they were also anti-competitive. Clubbing of separate experience criteria, namely, three years' experience in execution of orders relating to live election web streaming cumulatively totalling to not less than 1,30,000 cameras for web streaming at polling stations and at least 3,000 CCTV cameras in counting centres, as also, experience in executing order in respect of vehicles fitted with GPS tracking system was unreasonable and did not have any rational nexus with the objects ought to be achieved.

3. Mr. Lekhi, learned senior Advocate for the appellant submitted that, the above experience criteria created an artificial distinction, thereby excluding the appellant from the process. Any bidder who had executed live

election web streaming from polling stations would always have the capacity and capability to commission, install and operate CCTV cameras at the counting halls/booths. An additional criteria with regard to three years of experience in installation of at least 3000 CCTV cameras in counting centres, need not have been specified under sub-clause 4(a) of the eligibility criteria. Learned Senior Advocate relied on a corrigendum issued by the state of Kerala in respect of a similar RFP for the General Election to the Kerala Legislative Assembly, 2026 and submitted that, initially a similar provision with regard to experience in executing live web streaming including experience CCTV cameras for counting centres in a single work order, had been incorporated in the RFP. The requirement of experience in CCTV cameras at the counting centres had been done away with. If the Office of the Chief Electoral Officer, Kerala could do away with such requirement of experience in installation and operation of CCTV cameras for the purpose of counting, it would demonstrate that such experience was not essential and a bidder who had an experience in live web streaming of the election from multiple polling stations, would have the capability to cover the counting process by operationalizing CCTV cameras.

4. He next submitted that, commissioning and installation of CCTV cameras and the storage of the data were ancillary to the main work of live streaming of the election process. It was a subset of the main criteria of experience in live web streaming of the election process from the polling stations. As such a separate level of experience was not required.

5. The appellant had ample experience in webcasting poll proceedings in another state. However, such lack of experience of dealing with CCTV cameras at the counting halls would not render the appellant ineligible to

execute the work. Artificial bifurcation of experience between polling stations and counting centres served no functional purpose and was introduced solely to narrow the number of eligible bidders.

6. Learned Advocate next contended that the requirement of experience of the bidder having executed at least three “full state” orders of live web streaming of elections on behalf of the Election Commission of India during the past three years, was also unreasonable, excessive, irrational and discriminatory. Indian states varied in scale, complexity and operational requirements. Larger states like Uttar Pradesh had more than one lakh polling stations, whereas, smaller states like Manipur would have one thousand polling booths.

7. Treating such fundamentally unequal states as equivalent for the eligibility purpose, demonstrated non application of mind. The insistence on full state experience rather than experience across multiple states, artificially restricted competition and excluded otherwise competent bidders who possessed extensive experience in diverse and complex jurisdictions.

8. It was urged that, inclusion of experience in execution of three orders in operating vehicles fitted with GPS for Real Time Vehicle Tracking System under sub-clause. 5 was unrelated to the work and restrictive. The requirement of prior experience in executing orders for GPS fitted vehicles with tracking systems had no rational nexus with the primary object of the tender, namely, providing a surveillance system for live web streaming for the general election. GPS tracking and CCTV surveillance were technologically, operationally and contractually distinct domains. The clubbing of these two distinct eligibility criteria in a single tender again operated as an arbitrary restriction in the participation of eligible,

competent, capable and experienced bidders. The GPS tracking system could be awarded by a separate work order and bids could have been invited from bidders experienced in such work. Otherwise, the bidders should have been allowed to enter into a back to back arrangement with any entity, having experience in GPS tracking. The example of Kerala was cited in this regard as the office of the Chief Electoral Officer allowed the bidders to enter into a back to back arrangement with a technically competent surveillance and/or GPS service provider, who was eligible as per the tender conditions, for execution and support.

9. The corrigendum issued by the Office of Chief Electoral Officer, Kerala, thereby relaxing the condition of experience in installation of CCTV cameras in the counting centres and experience in GPS fitted vehicle for real time vehicle tracking, would indicate that the conditions could be relaxed and they were not strictly essential for a single bidder to possess. Upon relaxation of the terms, the field of competition would expand, by allowing maximum participation of competent and capable bidders. The experience criteria was arbitrary, unreasonable, exclusionary and violative of the principle of fair competition.

10. In the writ petition another point was raised with regard to arbitrariness of clause 7 of the eligibility criteria being punitive, but such point was not urged either before the learned Single Judge, or before us.

11. Reliance was placed on the decision of ***Vinishma Technologies Pvt. Ltd. vs. State of Chhattisgarh and Another*** reported in ***2025 SCC OnLine SC 2119***, in support of the contention that confinement of the eligibility criteria for participation by a chosen few, would not only be irrational, but disproportionate to the goal of ensuring effective and efficient

execution of the work at the best price, in order to safeguard the interest of the public ex-chequer.

12. Mr. Lekhi submitted that, the doctrine of level playing field required that all equally placed bidders must be given equal opportunity to participate in the tender process. The doctrine was designed to prevent the state from skewing the market in favour of a few, by including unwarranted restriction. In the instant case, the tender conditions had the effect of excluding bidders who would be otherwise financially sound and technically competent, but may not have experience as required under sub clauses 4(a) (b) and 5. Requirement of three years' experience in all the three categories clubbed together was absurd. According to Mr. Lekhi, the learned Judge failed to appreciate the irrationality in the terms and conditions, and also the fact that those were tailor made, only to suit a chosen few.

13. Mr. Lekhi further submitted that the learned Single Judge failed to appreciate the corrigendum issued in respect of the Kerala election and erroneously held that only the requirement of experience in CCTV cameras were reduced numerically. The contentions of the appellant before the Learned Single Judge was that the eligibility criteria had been substantially restructured so that, the experience with regard to installation of CCTV cameras at counting centres would not operate as an exclusionary qualification. The finding of the learned Single Judge was contrary to the records. The entire process of reasoning of the learned Judge was vitiated.

14. He further submitted that the learned Judge failed to examine whether the requirement of experience in installation of 3000 CCTV cameras in the counting centres had any reasonable nexus to the object sort to be achieved. Such criteria was subsumed within the first limb of the eligibility

under sub-clause 4(a). The learned Single Judge failed to apply the doctrine of proportionality and did not examine whether the eligibility criteria were least restrictive.

15. Lastly Mr. Lekhi submitted that under the tender conditions at sub-clause 7 of the eligibility criteria, a bidder who had been blacklisted by a government agency during the past three years would not be entitled to participate, even if the blacklisting was subsequently withdrawn. In the instant case, SNR EDATAS Private Limited had been blacklisted, but they were selected in the technical ground.

16. He further submitted that four entities including SNR EDATAS Private Limited had repeatedly emerged as successful participants under similarly structured eligibility frameworks and the cumulative design and application of the impugned conditions effectively confined participation to such entities. Prayer was made for setting aside the RFP and the order of the learned Single Judge.

17. Mr. S.N. Mookherjee, learned senior Advocate for the respondents submitted that the relevance of the tender conditions depended on the scope of the work. Capacity and capability were distinct and separate from experience. Experience had a direct nexus with the scope of the work.

18. Referring to the “Introduction”, under clause 2.2 of the RFP, Mr. Mookherjee submitted that webcasting was also to be carried out from approximately 108 counting halls. The counting was to be conducted in large halls totaling to 421.

19. Thus, the requirement of having experience in commissioning, installing and operating 3000 CCTV cameras at the counting stations was directly relatable to the scope of the work.

20. Referring to the tender documents (Annexure 8 : Financial Bid), Mr. Mookherjee submitted that 4027 cameras were required for the counting event, whereas, in Kerala only 1400 cameras would be required. Thus, relaxation may have been given by Kerala on such experience criteria, but it was entirely within the domain of the respondents to require experience as categorized under sub-clause 4(a) as an essential eligibility criteria.

21. He referred to clause 3.2 of the RFP, i.e., the total scope of work and submitted that under serial No.7 thereof, supply and installation of the IP-based HD CCTV cameras in counting halls (minimum seven cameras in each hall) and counting premises (ten cameras) was also within the scope of the work. He further submitted that, experience in execution of three work orders with vehicles fitted with cameras for GPS tracking was essential in case of Flying Squad Vehicles. The vehicles carrying the EVM and VVPATS ought to be traced, to avoid any kind of interception or tampering.

22. He next submitted that the election process in West Bengal was a difficult one and a bidder having experience of execution of similar work in three states would be capable of providing the service as contemplated under the RFP. Greater the experience of having executed similar kind of work in three other states, better would be the performance in the election of 2026 in West Bengal.

23. Mr. Mookherjee also submitted that the appellant participated in the pre-bid meeting and some of the conditions were updated. The appellant made an incorrect statement in the writ petition that, the respondents sat quietly over the suggestions made by the appellant. He next submitted that the pre-bid queries raised by the appellant and the suggestions made, would indicate that the appellant only asked the respondents to relax or rationalise

the experience requirement pertaining to installation of CCTV Cameras at counting centres.

24. Thus, according to Mr. Mookherjee, the appellant did not treat the impugned eligibility criteria under sub-clause 4(a) to be either redundant or not essential. The appellant only wanted a relaxation of the experience of deploying 400 CCTV Cameras at the counting centres instead of 3000. He relied on the decision of ***Airport Authority of India vs Centre for Aviation Policy, Safety & Research (CAPSR) & Ors.*** reported in **2022 SCC Online SC 1334**, in support of his contention that the terms and conditions of the RFP were within the domain of the tenderer or tender making authority and were not open to judicial scrutiny. The conditions were neither arbitrary, nor discriminatory or malafide. The tendering authority must have a free hand in setting the terms of the tender. The bidders intending to participate in a tender process could not insist upon relaxation of the experience criterion.

25. Heard the learned Senior advocates for the respective parties. The RFP was published for the following work:-

“Selection of an Agency for providing a Surveillance System for Live Web Streaming (Audio, Video, Record, Viewing, CCTV & other Services)) for the General Election to West Bengal Legislative Assembly, 2026.”

26. Clause 2.2 of RFP is quoted below:-

“As per the Election Commission of India’s instructions, all polling stations i.e. 100% with internet connectivity have to be monitored through webcasting to ensure oversight of critical activities.

In West Bengal currently, there are 80681 Polling Booths, and the office of the Chief Electoral Officer of West Bengal intends to monitor all Polling Booths with 1 camera inside and 1 camera outside each booth. However, 02 Cameras may be installed inside critical booths requiring 360 Degree view of the proceedings inside the booth. These 80681 Polling Stations are required to be monitored through Webcasting. Moreover, the webcasting is to be carried out from approximately 108 Counting halls, which will be conducted in large halls from designated counting counters, besides 1470

Checkposts, 2646 FSV, approximately 3093 QRT Vehicles across the constituency as per the instructions of the Election Commission of India.”

27. Thus, the number of polling stations to be monitored through web casting are 80681. Web casting are to be carried out from approximately 108 counting halls, to be conducted in large halls from designated counting centres besides 1470 check posts, 2646 Flying Squad Vehicles and 3093 Quick Response Team vehicles, across the constituency, as per the instruction of the Election Commission of India. Whereas, in Kerala, the total number of polling stations are 30471, and the total number of counting centres are 140. The appellant is aggrieved by the experience criteria in sub clauses 4(a), 4(b), and 5 under the eligibility criteria. The experience criteria was challenged before the learned Single Judge on the ground that the same were tailor made, restrictive of fair competition, denied a level playing field to eligible bidders. They were unreasonable, arbitrary and irrational.

28. The eligibility criteria with regard to experience which are the subject matters of challenge in the writ petition are quoted below :-

S No.	Basic Requirements	Eligibility Criteria	Documents Required
4.	Bidders' Experience	a) Bidder should have executed live election web streaming (IP based HD CCTV cameras-based audio & video from multiple locations) orders cumulatively totaling in not less than 1,30,000 cameras for web streaming at Polling Stations and at least 3000 CCTV camera in counting in India for CE office or any government Departments/ PSUs and Government Agencies on behalf of Election Commission of India during the 3 financial years from the date of RFP (2023-24, 2024-25 and 2025-26). b) Bidder should have executed at least 3 full state order of live web streaming (IP based HD CCTV cameras-based audio & video from multiple locations) for web streaming of Elections in different states of India on behalf of Election Commission of	Copies of the Word order or completion certificate for order cumulatively totaling in not less than 1,30,000 cameras for web streaming at Polling Stations and 3000 cctv counting cameras in India to be submitted from the concerned Government Departments PSUs and Government Agencies.

		India during 3 years from date of issue of RFP 92023-24, 2024-25 & 2025-26). Consortium, Joint Ventures, UT or Local Body experience not allowed. In case of consortium, Only Prime Bidder experience allowed.	Copy of the work order(s) or agreement from the customer should be submitted.
5.	Bidders Experience	The Bidder should have successfully executed the following project/s during 3 financial years from date of issue of RFP (2023-24, 2024-25 & 2025-26) in India for CEO office or any Government Departments/PSUs and Government Agencies on behalf of Election Commission of India covering the following: a) Minimum 3 orders for check post surveillance during Election. b) Minimum 3 orders for vehicle fitted with GPS for Real Time Vehicle Tracking System with centralized monitoring software using cloud technology for chartered/squad vehicle during election. Consortium, Joint Ventures, UT or Local body experience not allowed. In case of consortium, Only Prime Bidder experience allowed.	Copy of the work orders or completion certificates to be submitted

29. The scope of the work is under clause 3. It has several sub-clauses. Sub-clause 3.1(A) deals with the details of the Districts, the number of District Electoral Officers and the number of Returning Officers. Sub-clause 3.1(B) deals with the distribution of the polling stations amongst the Returning Officers, the District Electoral Officers. The details of the polling stations and counting centres, from which webcasting should be done are under clause 3.1(C). The number of Flying Squad Vehicles required are also stated in details. Therefore, it is evident that the entire project to be executed and the service to be provided by the selected bidder was of a larger scale than that of Kerala. The execution of the project in West Bengal is critical, involving national and public interest.

30. In such a situation, if a more stringent provisions with regard to experience in not only web streaming from polling stations, but in installation and operation of CCTV cameras for the surveillance of the counting centres and storage of data etc., as also, in operating vehicles fitted with GPS for real time vehicle tracking system are required by the tendering authority, the same cannot be classified as either unfair, unjust or irrational.

31. Moreover, considering the variety of the work to be undertaken by the bidder and the uniqueness of the West Bengal elections, involving past history of pre-poll and post-poll violence, prescribing a criterion that the bidders who had executed similar nature of work in three states would be eligible, is not unreasonable. The scope of the work undoubtedly requires installation of CCTV cameras. Moreover, the GPS tracking system is required in the vehicles in order to ensure security, transparency and real time monitoring during the elections. The GPS devise will allow the election authorities to track the exact location of the vehicle, whether the same had taken the designated route, whether the same has been stopped in any unauthorized location, whether the vehicle reached the polling station or the strong rooms on time. The risk of interference with the EVM machines can be reduced.

32. Thus, the respondents acted within their authority in prescribing the experience criteria under all the three heads of sub-clauses 4(a), 4(b) and 5. It is neither the appellant's choice nor the appellant's prerogative to require bifurcation of the eligibility criteria or relaxation thereof. It is not for the appellant to dictate to the tendering authority that, the three experience criteria should not be clubbed together and/or bidders can be assigned

these three works separately as three separate items instead of one, and/or that the experience of live streaming from polling stations would be adequate and the experience in CCTV surveillance was not an essential requirement.

33. Moreover, the appellant did not raise any objection with regard to the experience required under sub-clause 5 of the eligibility criteria. The suggestion given was that, the department should relax or rationalize the experience requirement pertaining to installation of CCTV cameras at the counting centres. Request was made to allow bidders with at least one work order involving counting centre deployment or bidders having experience of deploying a minimum of 400 CCTV cameras at counting centres to participate in the subject tender. The suggestion given by the appellant is quoted below :-

S.No	RFP Page No.	Current Clause/Requirement Description	Query/Suggestion for change
1	31	a) Bidder should have executed live election web streaming (IP based HD CCTV cameras-based audio & video from multiple locations) orders cumulatively totalling in not less than 1,30,000 cameras for web streaming at Polling Stations and at least 3000 CCTV cameras in counting in India for CEO office or any Government Departments / PSUs and Government Agencies on behalf of Election Commission of India during the 3 financial years from the date of RFP (2023-24, 2024-25 and 2025-26). b) Bidder should have executed at least 3 full state orders of live web streaming (IP based HD CCTV cameras-based audio & video from multiple locations) for web streaming of Elections in different states of India on behalf of Election Commission of India during 3	We respectfully submit that we possess the requisite experience of deploying more than 1,30,000 cameras for live web streaming at polling stations. In this context, we request the department to relax or rationalize the experience requirement pertaining to the installation of CCTV cameras at counting centres. Further, an agency that has demonstrably executed live web streaming across tens of thousands of polling stations has, by definition, established its technical capability, operational scalability, manpower planning

		years from date of issue of RFP (2023-24, 2024-25 & 2025-26). Consortium, Joint Ventures, UT or Local body experience not allowed. In case of consortium, only Prime Bidder experience allowed.	capacity, and logistical maturity. Accordingly, the counting-centre experience condition does not evaluate a materially distinct capability but instead introduces an artificial entry barrier that may disproportionately limit competition. Therefore, we request the department to kindly allow bidders with at least one work order involving counting-centre deployment, or bidders having experience of deploying a minimum of 400 CCTV cameras at counting centres, to participate in the tender.
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34. The criteria cannot be relaxed by the court on the ground that, the appellant has the technical and financial capacity to install CCTV cameras and operate them at the counting halls, even without experience in such work.

35. Past experience is an important criteria in tender matters. It not only allows the tendering authority to assess technical capability or the financial ability, but also reliability, in order to ensure efficiency and timely completion of the work. The work involves training, logistical support, setting up of infrastructure throughout West Bengal. Thus, past experience of having performed similar nature of work in three other states will definitely throw a light on the reliability and performance of a bidder. Timely completion of prior contracts, whether there were breaches and penalties imposed, are relevant factors. The project requires organizational infrastructure, man power, technical staff, financial and operational capacity and capability to train the Returning Officers, Electoral Registration

Officers, District Election Officer. Thus, greater amount of experience, with stricter conditions, than usual, cannot be held to be arbitrary, considering the object sought to be achieved i.e. free, fair and peaceful elections in West Bengal. Moreover, the scope of the work is based on the instructions from the Election Commission of India.

36. The appellant did not deny that experience in installation and operation of CCTV cameras at the counting centres, was essential. Only, relaxation of the criteria to experience in deployment of 400 cameras in one work order was requested. It was up to the authority whether to accept such request or not.. Past experience provides an objective criteria to evaluate bidders. It helps in selection and guarantees that the tender process remains free and transparent. The tendering authorities have discretion to stipulate the eligibility criteria, as long as the conditions are reasonable and not arbitrary. An instance of an arbitrary condition would be when experience in an unrelated field is prescribed by the authorities and the requirements do not have a reasonable nexus with the object of the tender.

37. The scope of the work and the tasks as per the RFP are prescribed under clause 3.3 of the tender document based on the latest guidelines of the Election Commission of India.

38. Task 1 deals with the hosting of web based streaming software. The key features of the software have been enumerated in great details, under sub-clauses 1 to 25 thereof.

39. Task 2 prescribes live streaming and recording of the polling at polling stations, counting centres, Flying Squad Vehicles, Check posts and other sensitive locations including the vehicles carrying EVMs and VVPAT

machines. The details of the task have been enumerated under sub-clauses 1 to 32 thereof.

40. Clause 22 thereunder provides that the successful bidder has to provide suitable manpower for live web streaming and CCTV recording for the complete duration of the poll event, as specified by the Chief Electoral Officer/District Election Officer.

41. Task 3 provides for the recording of the counting process. Sub-clauses 1 to 9 thereunder clarifies the nature of the work under the task. The same are quoted below :-

“1. The Bidder has to supply and install the IP-based HD CCTV cameras, as per the minimum specification in the identified counting centres. The IP-based HD CCTV camera should have the facility for local recording, with a minimum of 3-megapixel camera resolution. The camera should have night vision capability, a wide angle with 30/170 degrees coverage. The camera should have the capability of 10x zooming. The camera should have a minimum illumination of .05 lux.

2. The camera should support 16-4096 kbps code rate, support constant bit rate/variable frame rate of up to 30 fps. Image control: Backlight compression, automatic white balance, 3D digital noise reduction, the display should be supported in 1920x1080.

3. A pre-determined list of locations where the counting process will happen shall be shared with the Bidder.

4. All the items for Task 1 are required to be adhered to as applicable.

5. Number of locations for audio video recording: 421 Halls \$ 408 Counting Centres 421 Halls in 108 Counting Centres.

6. The Bidder shall supply the following IP-based HD CCTV cameras as per the specifications given in the RFP at each counting center location as per the breakups:

a.	At Counting Centre	7nos. of Cameras per hall
b.	At Counting Premises	10 nos. Cameras per premises for other purposes.

7. These cameras should support full HD recording. These cameras will be owned and operated by the Bidder and shall be taken back at the end of the assignment.

8. Description and make/model of these cameras should be provided in the proposal.

9. Number of Days required for recording at each location : 1.”

42. Task 4 requires setting up of help centre and deployment of manpower.

43. Task 5 deals with the development of training material.

44. The roles and responsibilities of the bidder under Clause 3.6.1 are quoted below:-

“3.6 Roles and Responsibilities

3.6.1 Bidder

1. Bidder shall be responsible for turnkey implementation of the project.
2. Prepare a Project Plan.
3. Deliver services & deliverables as per the contract terms & conditions.
4. Conduct of live run to see that the web streaming from the identified locations goes through smoothly without any bottlenecks on the days of particular event (Polling/ Counting/FSV/ Checkpost).
5. The Bidder is required to ensure the live streaming and recording of poll process, check post, FSV and at the identified Polling Stations and counting process at the Counting Centers.
6. Supply and Installation of required equipment for all the events assigned to Bidder.
7. Establishment of the centralized Help desk to manage and resolve the complaints/issues coming during the execution of the events.
8. Conduct of trial runs to ensure that the web streaming from the identified locations goes through smoothly without any bottlenecks and rectification of the same where necessary.
9. The Bidder is required to have at least two (2) trial run of the audio/ video streaming and recording to ensure availability of network, concurrency, load balancing by server and technical support of each event assigned to him.

10. The Bidder will provide the Internet Connectivity of sufficient bandwidth at the Control Room at CEO office to monitor/view all the events (FSVs/Polling/Counting/) etc.
11. Training of BLOs/ Technical Assistants regarding installation, troubleshooting of web streaming equipment, configuration of web streaming software for the purpose of monitoring/ viewing the live streaming.
12. The Bidder shall provide training to the officials of CEO Office and district administration regarding the process of viewing and monitoring the live stream and report generation.
13. The Bidder is required to ensure that Servers with necessary system software licenses, sufficient storage capacity and internet bandwidth, shall be provided in a secured cloud environment / Data Centre.
14. The Bidder will host the streaming of all Polling Stations / Counting Centers on the server on public domain with user credentials.
15. The Streaming Server shall serve the officers at ECI, CEO, DEOS, ROs, AROs, BLOS levels as required.
16. Bidder shall ensure that BLO should have facility to view his/her own Polling Station.
17. Provide web link details for each event to view web streaming
18. Provide reports of live video streams with downtime/uptime of each event up to the level of event. (State/District/Assembly/Polling Stations/FSV/ Checkpost Team wise).
19. Submit reports as and when required and asked for. Prepare reports to assist in the process of monitoring and execution.
20. Bidder may withdraw supplied equipment after completion of event once approval is granted by CEO.
21. On completion of the Election Process, handing over of the transmitted data to the Client along with the software in a suitable backup device to view the same as and when required.
22. Shall be liable and / or responsible for the compliance of all Statutory provisions and especially those relating to labour laws in respect of this contract.
23. Bidder shall maintain warehouse for storage of equipment / hardware to be used in any event.”

45. It also appears that the bidder is responsible for supply, installation and commissioning of all materials. Control centres are to set up and the bidder is required to assist the Chief Electoral Officer, District Electoral Officer, Returning Officer and Nodal Officers in setting up of such control centres at their offices. On the day of the polling/ counting/ surveillance, the live streaming data (video and audio) are to be transmitted in a secured manner to the server, simultaneously from all strong room/ polling stations/ counting centres/ flying squad vehicles and further the stream shall be viewed at the control centre in multiple frames or individually within the grid/views as required by the Office of the Chief Electoral Officer, District Electoral Officer, Returning Officer and Nodal Officer and Assistant Returning Officer for the complete duration of the event. Thus, considering the specific and critical nature of the work, it was not for the writ court to enquire as to whether the installation and commission of the CCTV cameras in the counting halls involved a similar technology required for live election web streaming from multiple polling stations, or not. Whether experience in live streaming of the election process from the polling stations would be adequate and bidders who did not have adequate experience with regard to CCTV surveillance in the counting centres would be equally competent to execute the project, was not to be decided by the writ court.

46. It is also not for the writ court to decide whether the works could be bifurcated on the basis of the technology required under each category, i.e., live streaming of the entire election process from the polling stations, the streaming from the counting centres, CCTV surveillance at the counting centres and real time vehicle tracking system with GPS fitted vehicles, to be monitored with centralised monitoring software using cloud technology. The

conditions cannot be said to be tailor made and favouring a particular bidder or class of bidders. Bidders from all over India could participate and four bidders were successful. The allegation of favouritism and mala fide intention has not been substantiated in the writ petition. Some illustrations have been given in ground No. V of the Memorandum of Appeal, which were not a part of the writ petition. The scope of appeal cannot be widened.

47. The respondents, as the tendering authority, have the freedom in such commercial decisions. Courts cannot substitute their views only because the conditions appear to be unwise or harsh. The decision in ***Vinishma Technologies Private Limited vs State of Chattisgarh and Anr.*** reported in **2025 SCC Online SC 2119**, does not apply in the facts of this case inasmuch as, the condition imposed was a restriction in participation/experience and not an eligibility criteria. The condition is quoted below:-

“13. We have considered the rival submissions and have perused the record. For the facility of reference the impugned tender condition is extracted below:

“(4) Past Performance Restriction: Bidders must have supplied sports goods worth at least Rs. 6.00 crores (cumulative) to State Government agencies of Chattisgarh in the last three financial years (2021-22, 2022-23, 2023-24 or 2022-23, 2023-24, 2024-25).”

48. The Apex Court held that the condition was a restrictive one and violative of Article 19(1)(g) of the Constitution. The doctrine of level playing field required that all equally placed competitors must be given an equal opportunity to participate in the trade and commerce. In the case before the Hon’ble Apex Court, the tender condition had the effect of excluding bidders who were otherwise financially sound and technically competent and had experience, but did not supply sports goods to the state government agencies of Chhattisgarh in the past three years. Thus, the competition was

restricted to only those persons who had supplied goods to the state government agencies at Chhattisgarh, thereby, ousting the competition from all other states. This restriction was found to be not only irrational, but disproportionate to the goal sought to be achieved through the tender process. With regard to the selection of SNR EDATAS Pvt. Ltd. Mr. Mookherjee submitted that the order of blacklisting had been stayed, but Mr. Lekhi has pointed out the eligibility criteria which provides that even if the order of blacklisting had been subsequently revoked or set aside, the said candidate could not be allowed to participate in the tender. However, such issue was not before the learned Single Judge and cannot be raised for the first time in appeal, especially because SNR EDATAS Pvt. Ltd. is not a party to the proceeding and this is a fresh cause of action. The appellant can challenge the selection of the bidders at the technical and financial round, before the appropriate forum at the appropriate stage in accordance with law. Such ground was beyond the scope of the writ petition, and consequently not answered in the appeal. The challenge in the writ petition was restricted to the irrationality, arbitrariness and unreasonableness in the eligibility criteria and the scope of the appeal is also restricted to the above challenge.

49. In the decision of ***Airport Authority of India vs Centre for Aviation Policy, Safety & Research (CAPSR) & Ors.*** reported in **2022 SCC Online SC 1334**, the Hon'ble Apex Court held that, as per the settled position of law, the terms and conditions of the NIT were within the domain of the tenderer or the tender making authority and not open to judicial review unless they were arbitrary, discriminatory or mala fide. In the matter of formulating conditions of a tender document and in awarding a contract,

greater latitude should be given to the authorities, unless the action of the tendering authority was found to be either malicious or in misuse of statutory powers.

50. The Courts cannot interfere with the terms of the tender prescribed by the authority because it feels that other terms would have been fair, wise and logical.

51. In ***M/s Michigan Rubber (I) Ltd. vs State of Karnataka and Ors.*** reported in **(2012) 8 SCC 216**, the Hon'ble Apex Court observed that unless it can be substantiated that the authority acted whimsically or with ulterior motive, the procedure adopted cannot be said to be unfair or violative or Article 14. Paragraph 23 is quoted below:-

“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 the 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;

(c) 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 the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(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 a fundamental right to carry on business with the Government.”

52. In ***Tata Cellular v. Union of India*** reported in **(1994) 6 SCC 651**, it was emphasized that invitation to tender would not be open to judicial scrutiny because such invitation was in the realm of contract. Paragraph 94 is quoted below:-

“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.

(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.”

53. The courts must proceed with great caution while exercising its discretionary powers and should exercise these powers only in furtherance of public interest and not merely on a legal point being attempted to be made out. By way of judicial review, the court cannot examine details of the terms of the notice inviting tender and the court's interference must be minimal.

54. Normally, the courts must exercise judicial restraint unless illegality or arbitrariness on the part of the tendering authority is apparent on the face of the record. Evaluation of tenders and awarding contracts are essentially commercial functions and principles of equity and natural justice stay at a distance.

55. The threshold of mala fide intention to favour someone or arbitrariness, illegality, irrationality and perversity, must be met before the constitutional court can interfere with the eligibility criteria.

56. Unless there is overwhelming public interest involved, the courts should not interfere with the terms and conditions of a contract, especially the eligibility criteria, which requires past experience. The learned Single Judge rightly held that, although, the appellant had made a specific allegation of tailor-made conditions, the appellant failed to disclose the name or names of the intending bidders who would be favoured with the contract in view of such alleged restrictive provisions.

57. The learned Single Judge was correct in holding that the tendering authority must have a free hand in setting up the terms of the tender and courts cannot interfere unless the terms and conditions are either arbitrary, discriminatory, mala fide or actuated by bias.

58. Under such circumstances, the appeal is dismissed.

59. G.A No.1 of 2026 is an application for stay of the operation of the judgment and order dated 27.02.2026 passed in W.P.O No. 89 of 2026 and the same is disposed of along with this appeal.

60. G.A 2 was filed in this appeal with the prayer of impleading Brihaspati Technologies Limited, Vmukti Solutions Private Limited and SNREDATAS Private Limited as respondent nos. 3, 4 and 5 in A.P.O.T 41 of 2026. This application was not moved. The learned Advocate for the appellant proceeded with the hearing of the appeal on merits. In any event, addition of these entities in the appeal for the first time will not be the proper procedure. We have already held that any challenge to the selection of the entities sought to be impleaded would be a fresh cause of action and can be

raised at the appropriate stage as per law. Accordingly G.A 2 of 2026 is disposed of.

61. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)

I Agree.

(Ajay Kumar Gupta, J.)

Later

62. Learned Advocate for the appellant prayed for stay of the judgment and order. The prayer was considered and rejected.

(Shampa Sarkar, J.)

I Agree.

(Ajay Kumar Gupta, J.)