AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 26886 of 2025
CNR No. ODHC010683402025

JM Baxi Ports and Logistics Pvt. Ltd. and another …. **Petitioners**

-Versus-

Paradip Port Authority and others …. **Opposite Parties**

Advocates appeared in this case:

For Petitioners : Mr. Saurjya Kanta Padhi, Sr. Advocate
Mr. Baibaswata Panigrahi, Advocate
Ms. S. Sheth, Advocate

For Opposite Parties : Mr. Lalitendu Mishra, Advocate

CORAM:

HON' BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE CHITTARANJAN DASH

J U D G M E N T

Date of Hearing : 9th September, 2026
Date of Judgment :10th November, 2026

HARISH TANDON, CJ.

1. The instant writ petition is filed by the petitioners assailing the disqualification of petitioner No.1 on the basis of a notification dated

10th September, 2025 and rejection of the application filed by petitioner No.1 by issuing a letter dated 10th September, 2025 with consequential relief to participate in the bid by making its financial offer in accordance with the request for qualification (RFQ) dated 10th April, 2025.

2. The aforesaid disqualification is primarily founded upon the premise that petitioner No.1-company does not meet the pre-qualification criteria (PQC). The petitioners challenge the said rejection order as the ground assigned therein is vague and ambiguous and issued in a mechanical manner. The said disqualification letter demonstrates a complete lack of consideration, fairness, reasonableness and is an attempt to eliminate the petitioners from participating in the RFQ in order to favour some other participants.

3. The writ petition was entertained by this Court and at the time of considering the prayer for interim order, it was perceived that the disqualification is presumed to have been founded upon the fact that petitioner No.1-company is already operating in the Paradip Port and handling the multipurpose cargo.

4. Learned counsel appearing for the Paradip Port categorically and firmly communicated the foundation of the said decision of disqualification under the policy dated 2nd August, 2010 issued by the Ministry of Shipping (Ports Wing), Government of India whereunder a restriction is imposed upon the existing operator to participate in any tender issued for operating the berth in the next terminal/berth for handling the same cargo in the same port. The Court after taking into consideration the relevant clauses appearing in the RFQ and the said policy constituting the foundation of the said decision, passed an interim order restraining the Paradip Port from proceeding any further on the basis of the RFQ for a period of eight weeks from the said date i.e. 25th September, 2025 or until further order and an opportunity was given to Paradip Port to file counter affidavit within a time stipulated therein and rejoinder by the petitioners and directed the matter to be taken up on the date so fixed. Subsequently, the pleadings are filed. The interim order was extended from time to time. However, in the interregnum, the Paradip Port, the opposite parties herein challenged the said interim order dated 25th September, 2025 before the Supreme Court of India by filing Special Leave Petition (Civil) Diary No.32610 of 2026 which came up on 24th August, 2026 and was disposed of

without interfering with the said interim order with the request to dispose of the writ petition expeditiously.

5. It is a specific stand taken by the Paradip Port that the disqualification is not merely dependent upon the technical, financial or O&M PQC, but by virtue of Clause 2.26 of the RFQ read with appendix VIII, namely, "Policy for Preventing Private Sector Monopoly in Major Ports". It is averred that the said Clause stipulates that the policy for preventing private sector monopoly in the Major Ports shall apply *mutatis mutandis* to the bidding process and it is open to the authorities to disqualify any bidder under the said policy. It is further averred that if there is only one private terminal/berth operator in a Port for a specific cargo, such operator of that berth or his associate shall not be allowed to bid for the next terminal/berth for handling the same cargo in the same Port. A specific stand is taken that one Paradip International Cargo Terminal Private Limited, an associate of the petitioners availed exclusively to handle the containers between 4th April, 2019 and 3rd April, 2024 and, therefore, the petitioners fall within the mischief of anti-monopoly policy. It is, thus, contended that there is no infirmity and/or illegality in invoking

Clause 2.26 and Appendix-VIII of the tender conditions in disqualifying from participating in the tender process.

6. On the conspectus of the aforesaid facts, the learned Senior Advocate for the petitioners submits that the said disqualification communication does not contain explicit reasons and, therefore, is an outcome of manifest arbitrary, unlawful and non application of mind. It is further submitted that the applicability of the anti-monopoly policy, which appears to be the basis for such disqualification, has been wrongly applied and the object and the purpose has been misconstrued. It is fervently submitted that the associate of the petitioners is only private terminal handling container cargo at Paradip Port is incorrect as it operates a multipurpose berth for handling clean cargo which includes containers to a minuscule extent and can be evident from the counter affidavit filed by the Paradip Port. It is arduously submitted that the anti-monopoly policy restricts the participation by the operator for next terminal/berth, if it is operating the same cargo in the same Port. The expression "specific cargo" appearing in paragraph 2 of the said policy once defined by giving a meaning thereof, it has to be understood in such perspective and each category mentioned in the said definition stands on its own footing.

The learned Senior Advocate further submits that the Paradip Port authorities have failed to take into account the definition of a clean cargo when undisputedly the said associate is a multipurpose cargo terminal handling a variety of clean cargo out of which a miniscule part is a container. It is vociferously submitted that the official website of the Paradip Port clearly and vividly reflects that it is not a container terminal and does not have any reference with regard to the facilities or berth dedicated to container handling and, therefore, the said Port cannot be said to be a detailed container terminal. In support of the contention that if the authority did not record an explicit reason or cogent reason in support of the conclusion, the same is infirm and bad in law, reliance is placed upon a judgment of the apex Court in ***M/s. Star Enterprises and others v. City and Industrial Development Corporation of Maharashtra Ltd. and others, (1990) 3 SCC 280.*** It is further submitted that the stand of the Paradip Port that Clause 2.7.1 of the RFQ reserves right on the tendering authority to reject or accept any bid without any reason is contrary to the well established principles of law relating to a necessity to record reason and placed reliance upon a judgment of the Supreme Court in ***Mihan India Limited v. GMR Airports Limited and others, (2022) 19 SCC 69***. Apart from the same, the learned Senior Advocate submits that if the

Court finds the decision of the authority to be whimsical and arbitrary, there is no fetter on the part of the writ Court to interfere with such decision and reliance is placed upon a judgment of the apex Court in ***ABCI Infrastructures Private Limited and Union of India and others, (2025) 6 SCC 813*** and ***Mythri Infrastructure and Mining India Private Limited v. Managing Director, Odisha Mining Corporation Limited and another, 2026 SCC OnLine Ori. 1459***. It is, thus, submitted that the stand of the Paradip Port is not tenable and, therefore, the order rejecting the bid on such disqualification warrants interference.

7. *Per contra*, learned counsel for the Paradip Port submits that the petitioners' bid was rendered disqualified under Clause-2.26 read with Appendix-VIII of the RFQ as it is only private terminal's berth operator for handling container and clean cargo. The definition given to the specific cargo under the said policy is expansive and, therefore, the Paradip Port does not have only one private terminal for handling the dry bulk cargo nor have one private terminal for handling liquid bulk cargo, but have only one private terminal for handling container cargo which is being operated by the associate of petitioner No.1. Once the associate has availed exclusive right to handle the containers,

it comes within the mischief of the said anti-monopoly policy and, therefore, the disqualification cannot be said to be infirm and/or illegal. It is further submitted that the said associate is already operating a private terminal/berth at Paradip Port and handling container cargo which would be evident from the concession agreement dated 7th March, 2015. It is, thus, submitted that once the associate is exclusively permitted to operate the container cargo, which is one of the constituents of the specific cargo, the anti-monopoly policy is applicable in this regard and there is no wrong in disqualifying petitioner No.1 from participating in the RFQ. It is submitted that the writ Court should not interfere on the decision of the administrative authority, but such interference is restricted to a decision making process and the moment the Court finds that the manner in which the decision has been arrived justifies the decision, no interference is warranted and reliance is placed upon a judgment of the apex Court in ***Tata Cellular v. Union of India, (1994) 6 SCC 651.*** It is further submitted that unless the decision is manifestly shown to be *mala fide,* arbitrary, irrational or intended to favour someone, no interference should be made and reliance is placed upon a judgment of the apex Court in ***Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517***. Learned counsel for the Paradip Port further submits that the

author of the tender document is ordinarily the best person to understand and interpret the scope and the meaning of the different clauses. In absence of any *mala fide,* arbitrariness or bias, interference should not be made in a mechanical manner and reliance is placed upon a judgment of the apex Court in ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818*** and ***Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489***. It is, thus, submitted that there is no room for any interference in the instant writ petition which deserves dismissal and the interim order granted therein should be vacated.

8. On the conspectus of the aforesaid stands taken before us, it would be apposite to recapitulate the policy adopted by the Ministry of Shipping (Ports Wing), Government of India dated 2nd August, 2010 from preventing private sector monopoly in Major Ports. Paragraph 2 of the said policy exposits that if there is one private terminal/berth operator in a port for a specific cargo, such operator of that berth or his associates shall not be allowed to bid for next terminal/berth for handling the same cargo in the same port. The said policy further defines the word 'operator' to include consortium members of the bidder and also the 'associates' to mean a person who controls or is

controlled by or is under common control with such applicant/consortium member. Paragraph 2 of the said policy is reproduced as under:

> ***"2. Policy***
>
> *If there is only one private terminal/berth operator in a port for a specific cargo, the operator of that berth or his associates shall not be allowed to bid for the next terminal/berth for handling the same cargo in the same port.*
>
> *For the purpose of this policy, the terms*
>
> *(i) 'Operator' includes consortium members of the bidder:*
>
> *(ii) 'Associates' means, in relation to the Applicant/Consortium member, a person who controls, is controlled by, or is under common control with such Applicant/Consortium Member (the Associate). As used in the definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, or more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.*

(iii) 'Berth' shall have the same meaning as "Wharf" given in Section 2 (za) of the MPT Act, 1963.

(iv) 'Specific Cargo' means (i) containers (ii) liquid bulk, (iii) dry bulk or (iv) multipurpose/other general cargo."

9. It appears from the above quoted paragraph that the expression "specific cargo" is also defined to mean containers, liquid bulk, dry bulk or multipurpose/other general cargo. It is not in dispute that the associate company of petitioner No.1 entered into a concession agreement with the Paradip Port for development of multipurpose berth to handle clean cargo which includes the containers at Paradip Port on build, operate and transfer basis. The RFQ was floated for development of a south container berth as a dedicated container berth at Paradip Port through PPP model on build, operate and transfer basis for a period of thirty years. It further envisages that it would be held in two stage bidding process that is a technical qualification stage and the financial stage. The prequalification criteria is vividly reflected in Clause 2.2 of the said RFQ and Clause 2.26, which assumes significance in the instant case, postulates the prevention of private sector monopoly in the Major Ports. The said clause is quoted as under:

> ***"2.26 Prevention of Private Sector Monopoly in Major Ports***
>
> *Ministry of Ports, Shipping & Waterways, Government of India vide its letter No. PD-24018/8/2009-PD.III dated 2nd August, 2010 has issued the policy to be followed by all Major Ports while awarding projects to private parties through Public Private Partnership (PPP) route so as to avoid private sector monopoly in the Major Ports. The aforesaid policy or any other issued by Government applicable policy shall apply mutatis mutandis to this Bidding Process and the Authority shall be entitled to disqualify any Bidder in accordance with the aforementioned policy."*

10. The bare look of the language used in the said clause indicates that the policy dated 2nd August, 2010 issued by the Ministry of Shipping (Ports Wing), Government of India shall be rigorously and scrupulously followed to eliminate private sector monopoly in the Major Ports and the said policy would also be extended *mutatis mutandis* to the bidding process and the tendering authority may disqualify any bidder in accordance with the aforesaid policy. Thus, there is no ambiguity and/or misconception that in the event the tendering authority perceived any bidder coming under the purview of

the said anti-monopoly policy, disqualification is inevitable. The cumulative effect of Clause 2.26 of the RFQ and paragraph 2 of the policy manifestly indicate that the private terminal operator is handling a specific cargo at the Port and is the only private terminal/berth operator for a specific cargo and the bid is invited for next terminal/berth for handling the same cargo in the same port. Though the specific cargo is defined in paragraph 2 of the said policy, yet the petitioners and the Paradip Port authorities are not *ad idem* on its applicability.

11. In order to ascertain the correctness of the stand taken by the respective parties, few facts emanating from the pleading as well as the document annexed thereto are required to be recapitulated. The RFQ was floated by the Paradip Port authority for development of south container berth (SCB) on BOT basis i.e. build, operate and transfer basis. The background incorporating in Clause 1.1.1 is indicative of the fact that the said authority realizes the responsibility for operation and maintenance of the Port and also to cater the need of a future growth in traffic. The decision was taken to undertake the development of SCB for handling containers through PPP on BOT basis. The invitation was made to all the intending participants who

shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the said project with all allied facilities and equipments for handling containers. Thus, it is apparent from the said object engulfed within the background of such invitation that the authorities intended to set up the south container berth exclusively for handling the containers which logically inferred that the port is not otherwise have the facility to cater the need of the container/berth. Since Clause 2.26 of the RFQ imbibes within its fold, the policy dated 2nd August, 2010 which eliminates the private sector monopoly in the major ports, the queries were raised to the authority at the pre-bid stage, which was replied in the form of a clarification that the State of Odisha being rich in mineral resources, several industries which produce finished products like steel, aluminium ingots etc. have come up in recent years and many more are being set up. Many finished products required transportation in safe mode through containers. It is further clarified that given the proximity, the Paradip Port is in a position to attract cargos which otherwise is being diverted because of lack of dedicated container terminal at Paradip. It is, thus, apparent that the Paradip Port does not have exclusivity for handling the container *per se,* but mainly caters the need of a multipurpose berth which handles the clean cargo

including the containers. It is all along the specific stand of the petitioners that the multipurpose berth which it handles though contains a miniscule part of the container, but cannot receive the exclusivity to handle the container and, therefore, the multipurpose cargo having separately incorporated in the specific cargo under the said policy stand distinct to the container cargo. The clean cargo is defined in a concession agreement dated 7th March, 2015 to mean non-hazardous and dust free cargo including iron and steel products, aluminum ingots, pig iron, finished fertilizers, food grains, sugar (both raw and finished), containerized cargo, but excluding hazardous and dusty cargo like iron ore, thermal coal, chrome ore, chrome concentrate charge chrome, ferro chrome, silicon manganese ore, coking coal, hard coke, fertilizer raw materials and other cargo of similar nature. The very nomenclature of the said concession agreement is indicative of the fact that the same has been entered into between the Board of Trustees of Paradip Port Trust and the associate of petitioner No.1 for development of multipurpose berth to handle clean cargo including containers at Paradip Port on BOT basis. The reliance under Clause 12.2 of the said concession agreement by the Port authority that the concessioning authority was permitted to handle the container cargo appears to be misplaced. The moment the

multipurpose berth includes the variety of the handling of the cargo even if it includes a container, the Port does not have an exclusive facility to handle the container cargo. The recourse thereunder does not appear to be correct.

12. We are conscious of the proposition of law that the author of the tender document is ordinarily the best person to understand and interpret the several clauses of the tender and the scope of judicial review remain in a very limited compass as held in ***Afcons Infrastructure Ltd.*** (supra) and ***Silppi Constructions Contractors*** (supra). Yet, it does not take away the power of judicial review, in the event, the Court finds that there is a fallacy in ascertaining the meaning thereof which on the face of it does not invite any different meaning. In ***Jagdish Mandal*** (supra), the apex Court has clearly and in an unequivocal terms held that if the decision taken by the authority appears to be *mala fide,* arbitrary and irrational, there is hardly any scope of latitude to be given to the authorities and interference becomes inevitable. We are conscious of the proposition of law laid down in ***Tata Cellular*** (supra) that the Court does not exercise the power of judicial review over the decision, but the process by which the decision has been made, being contrary of the same, if the

authorities have wrongly interpreted the words and the expression used in the policy, which is explicit and clear, the very foundation of the decision disturbs the fabric thereof and the Court may interfere in exercise of power of judicial review. The anti-monopoly policy dated 2nd August, 2010 creates a compete embargo on the operator of one private terminal/berth handling the specific cargo to bid for the next terminal/berth for handling the same cargo. The expression "same cargo" is to be read in juxtaposition with the expression "specific cargo" which is defined as under:

> *"(iv) 'Specific Cargo' means (i) containers (ii) liquid bulk, (iii) dry bulk or (iv) multipurpose/other general cargo."*

13. The moment the container and the multipurpose or other general cargos are kept in a distinct category, the ordinary rule of interpretation presupposes that each definite and distinct species of the cargo stands on an independent footing. If the stand of the Port authorities is accepted that the multipurpose cargo not only handles the clean cargo, but also the container, there was no occasion to categorize the container cargo differently and separately within the said definition of "specific cargo". What could be reasonably gathered from the said

policy that if any operator is handling the container cargo exclusively, he is precluded from participating in any bid for the next terminal/ berth for handling the said container cargo in the same Port.

14. We, thus, do not find the stand taken by the authority in interpreting the said policy differently. The order impugned in the instant writ petition disqualifying the petitioner No.1 from submitting the bid is hereby quashed and set aside. The interim order passed earlier stands vacated. The authority shall proceed with the RFQ treating the bid of the petitioner No.1 to be valid so far as it relates to applicability of the said policy is concerned and all efforts should be made to complete the tender process at an earliest.

15. The writ petition is, accordingly, disposed of. There shall be no order as to costs.

I agree.

(Chittaranjan Dash)
Judge

(Harish Tandon)
Chief Justice

Signature Not Verified
Digitally Signed
Signed by: SUBASH KUMAR GUIN
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 11-Nov-2026 17:18:28

S.K. Guin/PA