

The Travancore Devaswom Board
v.
Ayyappa Spices & Ors.

(Civil Appeal Nos. 3866-3867 of 2024)

06 March 2024

[A.S. Bopanna and Pamidighantam Sri Narasimha,* JJ.]

Issue for Consideration

Whether the writ petition at the behest of respondent no.1 should have been entertained by the High Court; and whether the appellant-Board qualifies as a “food business operator” as defined u/s.3(1)(j) of the Food Safety and Standards Act, 2006.

Headnotes

Judicial review – Public tenders for procurement – Interested party invoking writ jurisdiction, exercise of power of judicial review – Contract by tender for sourcing raw material (cardamom) for preparation of Aravana Prasadam in the Sabarimala Temple – Eventually, respondent no.2 was given supply orders for cardamom – High Court allowing the writ petition filed as a PIL by respondent no.1 inter alia directed prosecution of the appellant-Board for violation of the Food Safety and Standards Act, 2006 and held that the appellant is a ‘food business operator’ as per s.3(1)(j), 2006 Act – Correctness:

Held: In matters of public tenders for procurement, judicial review is restrained– Constitutional courts should exercise caution while interfering in contractual and tender matters disguised as public interest litigations – In cases where a party invoking writ jurisdiction has been a participant in the tender process, courts should be slow and cautious in exercising the power of judicial review – Respondent no.1 had earlier supplied cardamom to the appellant and had also participated in the two tenders released by the appellant which were later cancelled – Its real grievance was about the grant of contract in favour of respondent no.2– Being an interested party, respondent no.1 could not have invoked the jurisdiction of High Court – Writ petition also challenged the manner in which the cardamom was sourced – Appellant initially

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tried to purchase cardamom by issuing tenders and calling for bids, not just once, but twice over – However, these tenders were cancelled since none of the bidders supplied cardamom of appropriate quality– It was in these compelling circumstances, considering the impending festive season and the imminent need to prepare a humungous quantity of Aravana Prasadam, that the appellant invoked the urgency clause in its regulations to procure cardamom from local sources – Thus, it cannot be said that the decision was arbitrary, irrational or unreasonable – All the prospective bidders were given a fair chance as the notice to purchase cardamom was published on the notice board of the Temple – Cardamom samples submitted by the bidders were then tested in a lab, which was established by the Commissioner of Food Safety as per an order of the High Court – Thereafter, price negotiations were conducted and respondent no.2 was given supply orders after quoting the lowest rates – Decision of the appellant was legal, fair and transparent – High Court erred in entertaining the writ petition filed by respondent no.1 and should have dismissed it on the question of maintainability itself – In this view of the matter, issue no.2 relating to applicability of the Act to the appellant does not arise for consideration – No illegality/arbitrariness in awarding the contract to respondent no.2– Impugned interim order and the judgment passed by High Court, set aside. [Paras 19, 21-23, 25]

Case Law Cited

Ashok Kumar Pandey v. State of West Bengal, [2003]

Supp. 5 SCR 716 : (2004) 3 SCC 349; UFLEX Ltd. v. Government of Tamil Nadu, [2021] 7 SCR 571 – relied on.

S.P. Gupta v. Union of India, [1982] 2 SCR 365 : (1981)

Supp SCC 87; Tata Cellular v. Union of India, [1994]

Supp. 2 SCR 122 : (1994) 6 SCC 651; Michigan Rubber v. State of Karnataka, [2012] 8 SCR 128 : (2012) 8

SCC 216; Caretel Infotech Ltd. v. Hindustan Petroleum Corporation Limited & Ors., [2019] 6 SCR 950 : (2019) 14 SCC 81 – referred to.

List of Acts

Food Safety and Standards Act, 2006.

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Sabarimala Temple; Public tenders; Contractual/Tender Matters; Public Interest Litigation (PILs); Judicial review; Illegality/arbitrariness; Interested party; Writ jurisdiction; Writ petition maintainability.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.3866-3867 of 2024

From the Judgment and Order dated 27.03.2023 in IA No.03 of 2023 and dated 11.04.2023 in WP (C) No.41743 of 2022 of the High Court of Kerala at Ernakulam

Appearances for Parties

V. Giri, Sr. Adv., P. S. Sudheer, Rishi Maheshwari, Ms. Anne Mathew, Bharat Sood, Ms. Miranda Solaman, Advs. for the Appellant.

K M Nataraj, A.S.G., Abhilash M.R., Sayooj Mohandas, Rajkumar, Vinodh Kanna B., Ms. Meenakshi Kalra, C. K. Sasi, Ms. Meena K Poulose, Gurmeet Singh Makker, Yuvraj Sharma, Vatsal Joshi, Sandeep Singh, Rukhmini Bobde, T S Sabarish, Anuj Srinivas Udupa, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment****Pamidighantam Sri Narasimha, J.**

1. Leave granted.
2. *Tirth* and *prasad* offered at places of worship are regarded as sacred and bond the worshiper with the worshipped. While in temples and gurudwaras, *prasad* or *bhog* may be an essential part of their religion, it is not uncommon for other places of worship to serve some food, toast or drink as a religious offering.
3. As of 2019, it is believed that India has a place of worship for every 400 people. While in most of these religious places, food is prepared and served at a large scale on special occasions, there are hundreds of temples and gurudwaras, which serve tens of thousands of devotees twice every day. Several temples and gurudwaras have their own unique and traditional way of preparing the *prasad* or *bhog*.

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like the *Laddu* of Tirupati and *Karah Prasad* of the Golden Temple at Amritsar¹. Though somewhat connected with divine blessing in the form of *prasad* or *bhog*, this case draws us back to aggressive competing business interests - for supply of 7000 kilograms of cardamom for making *Aravana Prasadam*.

4. Travancore Devaswom Board is in appeal challenging the decision of the High Court of Kerala² allowing the writ petition filed as a public interest litigation by respondent company in a contract by tender for sourcing raw material for preparation of *Aravana Prasadam* in the Sabarimala Temple. By the first impugned order dated 27.03.2023, the High Court confirmed the order restraining distribution of *Aravana Prasadam* and by the second impugned order dated 11.04.2023, the High Court finally allowed the writ petition and directed – (i) prosecution of the appellant board for violation of the Food Safety and Standards Act, 2006³; (ii) that the appellant board is a ‘food business operator’ as per Section 3(1) (j) of the Act; and (iii) that the seized stock shall be destroyed in accordance with law.

Facts:

5. The appellant-Board is a statutory and an autonomous body which manages certain temples in the southern part of India, including the Sabarimala Temple. One of the many functions of the appellant-Board, in so far as the Sabarimala Temple is concerned, is the preparation and distribution of the *Aravana Prasadam*. The appellant-Board is also tasked with procuring the raw material necessary for its preparation. One such raw material is cardamom. In order to procure the same, the appellant-Board issues tenders in frequent intervals. Respondent no. 1 was the successful bidder in 2021 and it supplied 9000 kilograms of cardamom to the appellant-Board for the years 2021-2022.
6. In order to procure cardamoms for the period from 01.11.2022 to 30.09.2023, the appellant-Board issued a tender on 16.06.2022.

1 Guidance Document for Maintaining Food Safety & Hygiene in Places of Worship, Food Safety and Standards Authority of India, 1st Edition, January 2018.

2 Arising out of order dated 27.03.2023 in I.A. No. 3 of 2023 and judgment and final order dated 11.04.2023 passed by the High Court of Kerala at Ernakulam in W.P. No. 41743 of 2022.

3 Hereinafter referred to as the ‘Act’.

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However, this tender was cancelled as all the bidders supplied cardamom which contained pesticides beyond the permissible limit. A fresh tender came to be issued on 24.08.2022 and this was also cancelled for the same reason. It is an admitted position that respondent no. 1 has participated in these tenders.

7. Since the first two tenders had failed to fetch an appropriate bid, the appellant-Board issued a third tender on 12.10.2022. However, as the festive season was fast-approaching, the appellant-Board was constrained to invoke the urgency clause and authorise the Executive Officer of Sabarimala Temple to procure cardamom from local sources. Accordingly, on 04.11.2022, since a decent number of cardamom traders were present in the temple premises, a notice inviting quotations along with samples was published on the notice board of the Sabarimala Temple.
8. Pursuant to the above notice, four bids were received. Respondent no. 1 was not one of them. The cardamom samples submitted by these four bidders was subjected to testing at the Quality Testing Laboratory at Pamba, a place located close to the Temple. Two out of the four samples failed to meet the minimum standards. Subsequent to price negotiations with the remaining two bidders, respondent no. 2 was given supply orders aggregating to 7000 kilograms of cardamom. However, at the instance of the other bidders, the samples submitted by respondent no. 2 were sent for re-examination to Government Analysts Lab, Thiruvananthapuram, and the report dated 03.12.2022 said that the cardamom samples submitted by respondent no. 2 contained pesticides above the permissible threshold.
9. It is at this stage that respondent no. 1 filed a writ petition before the High Court seeking the following two reliefs:

“Issue a writ of mandamus or appropriate writ, direction or order to the respondents to conduct an analysis of the cardamom which was purchased after cancellation of Ext. P9 tender at Government Analytical Lab Thiruvananthapuram under the supervision of this Court.

Issue a writ of Certiorari or appropriate writ, direction to the respondents to cancel the local purchase of cardamom as it was done without competition and newspaper advertisement.”

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10. After taking cognizance of the matter, the High Court passed an order dated 23.12.2022 directing the sample to be subjected to re-examination at the Government Analyst Laboratory, Thiruvananthapuram. The resultant report dated 28.12.2022 was nothing different from the previous report, labelling the cardamom as ‘unsafe’. In fact, even the Commissioner of Food Safety through his report dated 05.01.2023 termed the product as ‘unsafe’. Further, the High Court through its order dated 06.01.2023 directed the samples to be sent to the FSSAI Office at Kochi for re-examination. Even FSSAI, Kochi, termed the product as ‘unsafe’ through its report dated 11.01.2023. Therefore, placing reliance on these developments, the High Court of Kerala by its order dated 11.01.2023 restrained the appellant-Board from distributing the *Aravana Prasadam* and directed the sealing of the warehouse where the *Aravana Prasadam* was stored.
11. Pending disposal of the writ petition, the appellant-Board filed I.A. No. 3 of 2023 on 17.01.2023 before the High Court. Through this application, it sought the following relief:

[...] permit the petitioners to draw sample, from the stock of Aravana kept sealed, through the food safety officers and to send the same for analysis to any laboratory accredited by FSSAI to test whether the Aravana prasadam confirms to the food standards prescribed by FSSAI and is safe for human consumption, in the interest of justice, pending disposal of the writ petition.”

In this application, it was asserted that the sale of *prasadam* was stopped on 11.01.2023. It stated that the available stock of 6,65,159 cans of *prasadam*, balance stock of 800 grams of cardamom, and 43.92 kilograms of cardamom powder were sealed. While this was to be sampled by the Government Analyst’s Laboratory, Thiruvananthapuram, the appellant-Board sought that the same be sampled by another laboratory in parallel.

12. The writ petition itself came to be partly disposed of by the High Court through the impugned *interim* order dated 27.03.2023, where the High Court dismissed the I.A. No. 3 of 2023. The High Court relied on the tests conducted previously to dismiss the said application. It further held that the appellant-Board falls under the definition of “*food business operator*”, for the purposes of section 3(1)(j) of the Act, with a co-relative obligation to ensure that the food sold / distributed, and

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the raw material used for its preparation are safe and pure. Eventually, the final impugned order came to be passed on 11.04.2023 where the High Court allowed the writ petition, and the impugned interim order dated 27.03.2023 was affirmed. It further ordered the destruction of the seized stock and directed that appropriate criminal proceedings be initiated. The appellant-Board has filed the instant appeals against the above-referred two orders.

Before this Court:

13. This Court issued notice on 15.05.2023, and stayed the orders impugned herein. By the same order FSSAI was directed to get an analysis of the *Aravana Prasadam* and file a report before this Court. The relevant portion of this direction is as follows:

“Further, the competent authority under the Food Safety and Standards of India (FSSAI) shall, in the meanwhile, take random samples for the stock of Aravanam Prasadam available and get an analysis done with regard to the quality and as to whether the same is fit for human consumption.”

14. Pursuant to our direction, the FSSAI got the sample analysed and filed a report of its opinion before this Court on 12.06.2023. The relevant portion of the opinion is as follows:

“Opinion:

1. *Pesticides mentioned in the analytical report are below limit of quantification and is satisfactory.*
2. *Microbiological parameters conforms to ready to eat grain products and is not substandard. Based on the above analytical report it is fit for consumption.”*

Submissions:

15. At the outset, Sri V. Giri, learned senior counsel appearing for the appellant-Board, submitted that even though the report of FSSAI called by this Court clarifies that the *Aravana Prasadam* is fit for human consumption, the appellant-Board is no longer desirous to distribute the *Prasadam* in view of the long lapse of time. We had taken note of the statement and proceeded to hear the submission of the parties.

- 15.1 On merits, Sri Giri submitted that the writ petition was a motivated one. It was submitted that respondent no. 1 had

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concealed the fact that he had supplied cardamom in the past and also that he had contested the earlier two tenders which later came to be cancelled. It was further submitted that the filing of the writ petition suggests unresolved business conflicts and underlying rivalry. In this light, it was contended that the High Court should not have entertained the writ petition and should have dismissed it at the very threshold. He relied on the decisions of this Court in S.P. Gupta v. Union of India, (1981) Supp SCC 87 and Ashok Kumar Pandey v. State of West Bengal, (2004) 3 SCC 349 for this purpose.

- 15.2 The second leg of Mr. Giri's submission is against the determination of appellant-Board as a "*food business operator*". It is contended that *Aravana Prasadam* is not a sale for revenue or profits, but considered as an offering to devotees. It was submitted that the *Aravana Prasadam* holds religious significance to devotees, and is treated as an offering from the deity itself. Therefore, subjecting it to stringent regulations under the Act would hinder its object, purpose and functions. He also submitted that the Board itself takes all measures to ensure that the health of the devotees is never compromised. As a matter of principle, it is submitted that Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011, do not contemplate regulating religious offerings integral to religious and cultural practices.
16. Learned counsel appearing for respondent no. 1 made submissions regarding their *bonafide* action in initiating the PIL in this case. It asserted that its primary intent was not to hinder the distribution of *Aravana Prasadam* but to highlight malpractices within the administration of the Sabarimala Temple, one such issue is the opaque manner in which the supply order was issued to respondent no. 2 i.e., without open tenders. The respondent no. 1 also raised an issue regarding the supply order being issued without a proper quality check.
17. Sri Natraj, learned ASG, representing the Ministry of Health & Family Welfare and FSSAI, submitted that he is not concerned with the factual matrix of the case but confined his arguments to the legal issue. He submitted that *prasadam* is understood as offerings made to a deity and returned to devotees. It is considered sacred. While

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it is sacred and symbolical, it is not meant for appetite satiation. He also submitted that there is no fundamental or statutory right to enforce a specific form or standard of *prasadam*. He would submit that judicial review based on an individual's claim of quality is not permissible, and therefore, the High Court should not have interfered in the matter.

18. Two questions emerge for our consideration – (i) whether the writ petition at the behest of respondent no. 1 should have been entertained by the High Court; and (ii) whether the appellant-Board qualifies as a “*food business operator*” as defined under Section 3(1)(j) of the Act.

Re: Whether the writ petition at the behest of Respondent No. 1 should have been entertained by the High Court?

19. The principle that in matters of public tenders for procurement, judicial review is restrained is well established⁴. In cases where a party invoking writ jurisdiction has been a participant in the tender process, courts should be slow and cautious in exercising the power of judicial review. In a recent decision, ***UFLEX Ltd. v. Government of Tamil Nadu, Civil Appeal Nos. 4862-63 of 2021***, this Court has held that constitutional courts should exercise caution while interfering in contractual and tender matters, disguised as public interest litigations. The following observations are important for the purpose of this case:

“1. The enlarged role of the Government in economic activity and its corresponding ability to give economic “largesse” was the bedrock of creating what is commonly called the “tender jurisdiction”. The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek

4 *Tata Cellular v. Union of India, [1994] Supp. 2 SCR 122* : (1994) 6 SCC 651, *Michigan Rubber v. State of Karnataka, [2012] 8 SCR 128* : (2012) 8 SCC 216, *Caretel Infotech Ltd. v. Hindustan Petroleum Corporation Limited & Ors., [2019] 6 SCR 950* : (2019) 14 SCC 81.

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to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The public interest litigation (PIL) jurisdiction is also invoked towards the same objective, an aspect normally deterred by the Court because this causes proxy litigation in purely contractual matters.

2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.

3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, “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.”

20. We find merit in the argument of the appellant-Board that respondent no. 1 could not have invoked the jurisdiction of the High Court, being an interested party. The reliance placed by the appellant-Board on the precedent of this Court in Ashok Kumar Pandey (supra) is apposite. In a similar context, this Court held:

“4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be “public interest litigation” or “private interest litigation” or “politics interest litigation” or the latest

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trend “paise income litigation”. If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke one’s nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in Janata Dal case [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Kazi Lhendup Dorji v. Central Bureau of Investigation [1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873]. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See Ramjas Foundation v. Union of India [1993 Supp (2) SCC 20 : AIR 1993 SC 852] and K.R. Srinivas v. R.M. Premchand [(1994) 6 SCC 620].

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches

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the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. ...”

21. In the present case, respondent no. 1, the writ petitioner, is an interested party. It had supplied cardamom to the appellant-Board for the year 2021-2022. It had also participated in the two tenders released by the appellant-Board, which later came to be cancelled. Although this information has not been concealed, it is quite evident that the writ petitioner was interested in the outcome of the writ petition. The second prayer in the writ petition, which has been extracted before, is for cancellation of the purchase of cardamom from respondent no. 2. This prayer makes it clear that the real grievance is about the grant of contract in favour of respondent no. 2. The High Court should not have entertained the writ petition on behalf of an interested person who sought to convert a judicial review proceeding for enhancing personal gain.
22. This writ petition also challenged the manner in which the cardamom was sourced. We cannot lose sight of the fact that the appellant-Board initially tried to purchase cardamom by issuing tenders and calling for bids, not just once, but twice over. However, these tenders were cancelled since none of the bidder's supplied cardamom of appropriate quality. It is in these compelling circumstances, considering the impending festive season and the imminent need to prepare a humungous quantity of *Aravana Prasadam*, that the appellant-Board invoked the urgency clause in its regulations and authorised the Chief Executive Officer of the Sabarimala Temple to procure cardamom from local sources. Thus, it cannot be said that the decision is arbitrary, irrational or unreasonable. There is neither arbitrariness nor malice in the decision of the appellant-Board as all the prospective bidders were given a fair chance as the notice to purchase cardamom was published on the notice board. The cardamom samples submitted by the bidders were then tested in a nearby lab, which was also established by the Commissioner of Food Safety as per an order of the High Court. Thereafter, price negotiations were conducted, and respondent no. 2 was given supply orders after quoting the lowest rates. We are of the opinion that the decision of the appellant-Board is legal, fair and transparent. For the above reasons, we are of the view that the High Court committed an error in entertaining the writ petition filed by respondent no. 1.

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23. In view of the above discussion we are of the opinion that the High Court should have dismissed the Writ Petition on the question of maintainability itself. In this view of the matter, issue no. 2 relating to applicability of the Act to the appellant Board does not arise for consideration in this case.
24. After hearing the parties and at the time of reserving the judgment on 03.11.2023, we passed the following order:-

“...

At this stage, the learned senior counsel for the petitioner(s) would submit that the stock of Aravanam Prasadam, which was to be distributed earlier, but prevented pursuant to the interim and final orders of the High Court, is still lying in the premises but the petitioner-Board is not intending of using the same.

In that regard, we take note of the report filed on behalf of the Food Safety and Standard Authority of India (FSSAI) which would indicate that Aravanam Prasadam is fit for human consumption.

However, as the petitioner-Board itself has taken a decision that the Aravanam Prasadam will not be distributed, the stock presently existing will have to be destroyed as per the appropriate procedure as indicated by the State Government.

Under these circumstances, we direct the State Government to destroy/dispose of the existing stock of Aravanam Prasadam in an appropriate manner by following the necessary procedure. For this purpose, we also direct the Travancore Devaswom Board to extend complete co-operation and ensure that the stock is destroyed/disposed as it is stated that the next season for opening of the temple is due and fresh Aravanam Prasadam will have to be stored.

All necessary steps may be taken by the State Government and the Travancore Devaswom Board as expeditiously as possible.”

25. In conclusion, we allow the appeals and set aside the Impugned Interim Order dated 27.03.2023 in I.A. No. 3 of 2023 and the impugned

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final judgment dated 11.04.2023 passed by a Division Bench of the High Court in W.P. No. 41743 of 2022, and hold that there was no illegality or arbitrariness in awarding the contract to respondent no. 2.

26. Pending application(s) shall be disposed of accordingly.
27. There shall be no order as to costs.

Headnotes prepared by: Divya Pandey

Result of the case:

Appeals allowed.