

M/S. Venkata Vijaya Poultries Pvt. ... vs The State Of Telangana And Another on 31 January, 2023

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.43886 OF 2022,

AND

WP.No.46306 OF 2022 & WP.No.236 OF 2023
W.P. No.43886 of 2022

Between :

Nomula Poultry Farm rep. by its Proprietor

Nomula Ashok, and 7 others.

...Petitioners

And

The State of Telangana rep. by its Principal Secretary,

Women Development & Child Welfare Department,

Secretariat Buildings, Secretariat, Hyderabad & another.

...Respondents

W.P. No.46306 of 2022

Between :

M/s. Geeta Poultry rep. by its partner

I.Kashinatha & Naother

...Petitioners

And

The State of Telangana rep. by its Principal Secretary,

Women Development & Child Welfare Department,

Secretariat Buildings, Secretariat, Hyderabad & another.

...Respondents

W.P. No.46306 of 2022

Between :

M/s. Geeta Poultry rep. by its partner

I.Kashinatha & Naother

...Petitioners

And

The State of Telangana rep. by its Principal Secretary,
Women Development & Child Welfare Department,
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Secretariat Buildings, Secretariat, Hyderabad & another. ...Respondents

W.P. No.236 of 2023

Between :

M/s. Venkata Vijaya Poultries Pvt. Ltd.

Vemsoor Village, rep. by its Director M. Suresh Babu ...Petitioner

And

The State of Telangana rep. by its Principal Secretary,
Women Development & Child Welfare Department,

Secretariat Buildings, Secretariat, Hyderabad & another. ...Respondents

DATE OF COMMON ORDER PRONOUNCED: 31.01.2023

HONOURABLE SRI JUSTICE J. SREENIVAS RAO

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|----|---|-----|
| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes |
| 3. | Whether Their Lordships wish to see the fair copy of the judgment? | No |

J. SREENIVAS RAO, J

* HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.43886 OF 2022,

AND

WP.No.46306 OF 2022 & WP.No.236 OF 2023

% DATED 31st JANUARY, 2023

Gist:

>Head Note:

! Counsel for the Petitioners

: Petitioner's counsel in WP No.43886/22

Sri Madas Bharath Chandra

Sri R.N. Hemendranath Reddy

Petitioner's counsel in WP No.46306/22

Sri Aadesh Varma

Sri Sanjeev Kumar, Spl.G.P.

On behalf of Add. Advocate General.

Petitioner's counsel in WP No.236/22

Sri M. Nagaiah

Sri Sanjeev Kumar Spl.G.P.

On behalf of Add. Advocate General.

^Counsel for Respondents

: Respondent's counsel in WP No.43886/22

Sri R.N. Hemendranath Reddy, Sr. Advocate.

Respondent's counsel in WP No.46306/22

Sri Sanjeev Kumar, Spl.G.P.

On behalf of Add. Advocate General.

Sri Sanjeev Kumar, Spl.G.P.

On behalf of Add. Advocate General.

? CASES REFERRED:

1. 2016 SCC OnLine Hyd. 330 : (2017) 4 ALD 31 (DB) : (2017) 1 ALT 47
2. AIR 1954 SC 728 + 1955 (1) SCR 707
3. (1997) 9 SCC 495
4. 48 L.ed 971
5. (2008) 1 SCC 683
6. Civil Appeal No.4020-4023 of 2003 decided on 7.5.2003
Supreme Court of India (From Delhi)
7. (2004) 11 Supreme Court Cases 485 : 2004 SCC Online SC 660
8. (2000) 2 supreme Court Cases 617
9. (2002) 6 Supreme Court Cases 127
10. (2022) 6 Supreme Court Cases 401

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HONOURABLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.43886 OF 2022,

AND

WP.No.46306 OF 2022 & WP.No.236 OF 2023

COMMON ORDER :

Heard Sri R.N. Hemendernath Reddy, learned Senior Counsel representing Sri Madas Bharath Chandra, learned counsel for the petitioner in WP.No.43886 of 2022, learned Special Government Pleader representing learned Additional Advocate General for respondents 1 and 2, and Sri A. Sudershan Reddy, learned Senior Counsel representing Sri A. Prabhakar Rao, learned counsel for the respondent No.3. Sri Addesh Varma learned counsel for the petitioner in WP.No.46306 of 2022, Sri M. Nagaiah, learned counsel for the petitioner in WP.No.236 of 2022 and learned Special Government Pleader representing learned Additional Advocate General for the respondents.

2. In WP.No.43886/2022 and W.P.No.46306/2022 the petitioners have challenged the Tender Reference No.3347/SNP/2022, dated 21.11.2022 issued by the respondent No.2/Commissioner, Women Development and Child Welfare Department (WD & CW) Department, Hyderabad.

3. In W.P.No.236/2023, the petitioner questioned the action of the respondents in not examining and not considering the e-mail representations dated 29.12.2022 and 31.12.2022 as illegal.

4. As a common question of fact and law are involved in all three writ petitions, they were heard together and are being disposed of by way of common order with the consent of the learned Counsel for the petitioners as well as respondents.

5. The petitioners in WP.No.43886 of 2022 and WP.No.46306 of 2022 are challenging the impugned Tender Reference No.3347/SNP/2022 dated 21.11.2022 issued by the respondent No.2, which is against the interest of small poultry farmers and floating the present tender by implementing the zonal system in place of existing I.C.D.S. projects for procurement of eggs and consequently to direct the respondents to float back to I.C.D.S. project-wise tender for procurement of eggs by revising the terms and conditions in the interests of poultry farmers, and to pass such other suitable order as this Court may deem fit and proper in the circumstances of the case.

6. The petitioner in WP.No.236 of 2023 is challenging the impugned action of the respondents in not considering the e-mail representations, dated 29.12.2022 and 31.12.2022 respectively as illegal and sought consequential direction to declare the petitioner's firm, as a qualified participant in a technical bid along with others in respect of Zonal-IV and V, pending disposal of the writ petition.

7. Brief facts leading to the filing of this writ petitions emerge from the writ affidavits are as follows:

Respondent No.2 issued Tender Reference dated 21.11.2022 calling tenders at State Level Zonal Tender for the procurement and supply of Eggs (Hen) as per "Agmark" specifications and other processing/grading conditions mentioned in the tender for a period of two years i.e., January 2023- December 2024 to the beneficiaries under the flagship Arogyalaxmi and supplementary nutrition programme. In the said tender reference, respondent No.2 stated the procurement of eggs by floating state-level zonal tender for seven zones as per the zonal system of the Government of Telangana and further mentioned that the tenderer can bid for a maximum of two zones. The qualifying condition prescribed for the tender document should be fulfilled by the tenderer separately. The successful tenderer after agreeing with the Department of Women Development & Child Welfare has to supply eggs (Hen) as per "Agmark" specification (Medium Agmark quality eggs each weighing 45 to 52 grams) and other specifications mentioned in the tender document for two years as per the monthly indent given by the Department of Women Development & Child Welfare. The supply should be done to Anganwadi Centres (AWCs) as per the schedule specified by the Department of Women Development & Child Welfare. The downloading bid document starts from 22.11.2022 at 11:00 a.m;

pre-bid meeting was scheduled in the Chamber of the Commissioner, WD&CW Department on 24.11.2022; closing date for downloading bid document and also the last date for submission of online bids was 08.12.2022; and the last date, time and place for submission of hard copies including E.M.D was fixed as 09.12.2022; date of technical bid opening was scheduled on 12.12.2022; and price bid opening was scheduled on 14.12.2022.

8. According to the tender conditions, the qualifying conditions for the tenderer are as follows :

1. The tenderer should be a poultry farmer with their farm located within the geographical limits of Telangana in the production of eggs (hen), for the past three years (i.e., 2019-20, 2020-21, 2021-22). The tenderer should submit a proof of owning a poultry farm for production of eggs (hen) certified by local bodies (Gram Panchayat/Municipal authorities). Leased farmers, i.e., individuals not having their own poultry farm but having other poultry farms on lease are not eligible to participate.
2. The tenderer should supply eggs (hen) as per AGMARK specifications as specified in Annexure-I of the tender document. The tenderer should possess AGMARK Certificate of Authorization for eggs (hen), AGMARK Certificate valid as on date should be enclosed with the bid.
3. The tenderer can bid for a maximum of only two (2) zones, bidders have to submit Annexure-II separately for each zone app[lied].
4. The tenderer should have the capacity to produce minimum of 40% of the tendered quantity for the zone for which they are bidding. For the rest of the capacity upto 100%, the tenderer shall submit proof of agreements entered with other poultry farmers. In proof of this, a certificate has to be obtained from the respective District Veterinary and Animal Husbandry Officer, Animal Husbandry Department of the respective district - certifying the per day production capacity of eggs (hen) of their own poultry farm and other poultry farms with whom tenderer has entered into an agreement and submitted along with bid.
 - a) Any or all of these poultry farms will be inspected by officials/third party nominated by the Commissioner, Women Development and Child Welfare Department to verify the production capacity,
 - b) The tenderer should not show their production capacity over and above their actual production capacity. If found other wise, the bid is liable to be rejected.
5. The Tenderer should have satisfactorily executed a single contract for having supplied Eggs (hen) for a value not less than Rs.5 Crores in any one year of last 3 preceding years.
6. The annual turnover of the tenderer should not less than Rs.5 crores per annum during each of the last 3 (three) completed financial years i.e., 2019-20, 2020-21, 2021-22, irrespective of the number of zones the tenderer is bidding.
7. In order to ensure the proven processing/grading and hazard analysis competency, the tenderer should possess a valid ISO-22000:2005 certificate for their egg storage and processing godown, as on date, which should be enclosed with the bid.

8. The tenderer should submit Earnest Money Deposit of Rs.10 lakhs per zone. In case, the tenderer is applying for 2 zones, they have to submit separate EMD amount of Rs.10 lakhs for each zone.

9. The tenderer should possess a valid license under Food Safety and Standard Act - 2006 (FSSAI license) and rules and regulations of 2011 and same certificate should be valid on the date of opening of tender. In proof of this, a valid certificate should be submitted along with the bid. If the tenderer has applied for re-validation, the proof of the same should be submitted with the bid.

10. The tenderer should quote price for one egg for the entire period of two year duration for the zone, which they are bidding including all overhead charges and transportation charges upto anganwadi centres, inclusive of taxes, if any, etc.

11. The tenderer should have the capability for delivering eggs upto anganwadi centre level and should have experience in supply of eggs to anganwadi centres or other Government institutions.

12. The tenderer should have technical capabilities for supply of eggs of at least 40% of tendered quantity in the particular zone as per AGMARK specification and marking. In proof of this, the tenderer should submit copy of certificate of grading issued by Director of Marketing and Inspection as per Agriculture Produce (Grading and Marketing) Act and Rules or authorized person of Marketing and Inspection (District Agricultural Marketing Officer).

9. Sri R.N. Hemendernath Reddy, learned Senior Counsel for the petitioners in WP.No.43886 of 2022 vehemently contended that the conditions mentioned in the impugned tender Reference dated 21.11.2022 are not feasible to the petitioners, who are the small poultry farmers and the conditions are depriving the interest of small and medium poultry farmers and there is ever need to amend/rectify/annul such conditions. He would submit that the tender contains certain contentious conditions, which are tailor-made for the purpose of granting the contract to the previously identified offerers. He further contended that the petitioners are poultry farmers/contractors supplying eggs under Integrated Child Development Services (I.C.D.S) project having registered with N.E.C.C. 9.1. He further contended that in the impugned tender reference, the respondents have changed the terms and conditions to bid for the tender. A poultry farmer needs "Agmark" certification, a valid ISO 2000:2005 certificate and an FSSAI license under Food Safety and Standard Act. He further contended that for obtaining "Agmark" certification, and an FSSAI license under Food Safety and Standard Act, the petitioners at least require 60 days time but the respondents without affording any opportunity and without discussing with the poultry farmers included onerous conditions of "Agmark" certification. Moreover, the person who wants to submit tender needs to have a turnover of not less than Rs.5 crores per annum in any one year of last 3 preceding years i.e., 2019-20, 2020-21 and 2021-2022. The above-said two conditions were included in the impugned tender notification to disqualify/ debar/exclude the petitioners, the majority of the poultry farmers, leading to lesser participation which seems to be tailored to benefit certain applicants.

9.2 He further contended that the other conditions mentioned for tender processing, grading go-down to be within the zone or at a nearby place where eggs can be located. The respondents in

the impugned tender notice for the first time introduced a zonal system for the procurement and supply of eggs (hen) as per the "Agmark" specification. He also contended that the respondents have not conducted any preliminary meeting with the poultry farm owners before designing/preparing the tender bid document and the poultry farm owners have not been given a reasonable opportunity of hearing before inviting the tenders at the zonal level. He further contended that respondent No.1/ Government issued G.O.Ms.No.12, Department for Women, Children, Disabled and Senior Citizens (Schemes), dated 26.11.2014, for implementation of One Full Meal Programme for I.C.D.S., beneficiaries. In the above said G.O., respondent No.1 specifically mentioned that to implement the Scheme One Full Meal Programme for I.C.D.S., and provide eggs for 30 days in all ICDS Projects and provide eggs for 30 days in a month for all children from 7 months to 6 years of age in all Anganwadi Centres by bridging the gaps in the existing Schemes as follows :

(a) To extend "One Full Meal" to all Pregnant and Lactating Women in the remaining uncovered 68 ICDS Projects covering 16,021 Anganwadi Centres.

(b) To extend Milk and Egg from 25 days per month to 30 days per month in the present "One full Meal" programme implemented in all (149) ICDS projects covering all (35,973) Anganwadi Centres.

(c) The Government has decided to scale up the programme by providing 30 eggs per month instead of 8 eggs per month to the Children in the age group of 7 months to the Children in the age group of 3 - 6 years, in 35,973 Anganwadi Centres in 149 Projects.

(d) An honorarium for Rs.250/- per month is additionally provided to Anganwadi helpers for implementation of One Full Meal programme, in the newly covered 68 ICDS Projects covering 16,021 Anganwadi Centres.

9.3. In pursuance of the said G.O., respondent No.1 issued Memo No.3462/ Schemes/A1/2014, dated 09.12.2014, framing guidelines for implementation of the One Full Meal Programme. The learned Senior Counsel contended that G.O.Ms.No.12 issued by respondent No.1 dated 26.11.2014 and Memo, dated 09.12.2014 are existing. Now respondent No.2 issued an impugned tender reference contrary to the guidelines framed in Memo dated 09.12.2014 and contrary to G.O.Rt.No.298 and 276 dated 29-11-2016 and 11-10-2016. According to the learned Senior Counsel, the earlier Scheme N.E.C.C. registration certificate was sufficient, now the respondents modified the said condition and included a new condition that the tenderer should submit "Agmarks" certification for preventing the petitioners and similarly situated farmers in participation of tender reference. Also included other condition of Rs.5 crores turnover in any one year of last 3 preceding years.

9.4. The learned Senior Counsel further contended that respondent No.2 submitted revised/modified guidelines vide Lr. No.3347/SNP/2022, dated 21.11.2022 to the Special Secretary/Commissioner, DW&CW Department, Telangana, Hyderabad, wherein the Women Development and Child Welfare Department shall:

(a) Invite centralized tender for procurement of eggs, cluster-wise as per erstwhile districts of the state, at the state level, towards bringing uniformity in egg procurement cycle and setting uniform quality standards.

(b) Allow egg traders, aggregators with sufficient experience in eggs business, to participate in the centralized cluster-wise tender in addition to the poultry farmers, such that the trader/aggregators tie-

up with poultry farmers to procure eggs at competitive prices so that both have a win-win situation.

(c) Insist for specific egg processing, grading activities and safety and quality standards including "AGMARK" in the procurement of eggs in the new centralized tender.

9.5. Based on the said recommendations only, respondent No.1 issued Memo. No.3462/Prog.1/1/2014, dated 13.10.2022. According to the learned Senior Counsel for the petitioners, respondent No.2 is not having any power or authority to recommend the proposals for revised guidelines. Respondent No.1 without framing guidelines issued impugned tender notification contrary to the guidelines framed under G.O.Ms.No.12, dated 26.11.2014, which is in existence. 9.6. He further submits that in the Memo. No. 3462/Prog.1/1/2014, dated 13.10.2022 respondent No.1 has not mentioned in the reference with regard to earlier G.O.Ms.No.12, dated 26.11.2014, the guidelines framed in Memo. No.3462/Schemes.A-1/2014, dated 09.12.2014. On the other hand, respondent No.1 had issued Memo. No. 3462/ Prog.1/1/2014, dated 13.10.2022 based upon the recommendations made by respondent No.2 and the same is not permissible under law. Hence, the impugned tender reference issued by respondent No.2 is in clear violation of Articles 14 and 19 (1) of the Constitution of India as well as contrary to the Scheme of I.C.D.S. Scheme under G.O.Ms.No.12, dated 26.11.2014 and Memo.No.3462/Schemes.A-1/2014, dated 09.12.2014 and the same is liable to be set aside and consequently to direct the respondents to revert to I.C.D.S. project-wise tender for procurement of eggs by revising the terms and conditions as per G.O.Ms.No.12, dated 26.11.2014 and Memo. No.3462/Schemes.A-1/2014, dated 09.12.2014.

9.7. In support of his contention, the learned Senior Counsel for the petitioners relied on a judgment of the Division Bench of High Court of Andhra Pradesh in State of Telangana, rep. by its Prl. Secretary, Women and Child Welfare Dept , & Others Vs. M/s. SRI VENKATESWARA INDUSTRIES, Mahaboobnagar District, represented by its Proprietor, B.Damodar Reddy and Ors1 ., wherein the Division Bench of the Court held at Para Nos. 14, 16, 18, 40 and 52 as hereunder :

14. As the proceedings under challenge in this Writ Petition is the tender notification dated 16.07.2016, G.O.Ms. No.12 dated 26.11.2014 and the consequential Government memos dated 09.12.2014 and 17.12.2014, it is useful to note its contents. The 2nd respondent issued tender notice dated 16.07.2016, inviting applications from NECC registered poultry farmers in Mahaboobnagar District to participate in the supply of eggs under any one of the projects. The tender notification stipulates the number of egg required to be supplied each month to each of the projects, the EMD amount to be deposited, and the EMD amount to be produced along with the

tender form. The notification informs the tenderers that the other details are available in the website; the tender processing fee, and the earnest money deposit, should be paid to the Director, District Women and Child Development Agency, Mahaboobnagar; the tender should be submitted online; the documents, relating to the technical bid, the EMD, and other processing fees, should be submitted in the office; and the tender, submitted without EMD and processing fee, will be rejected. The last date for submission of the tender was 28.07.2016, and the technical bids and financial bids were to be opened on 29.07.2016.

16. Pursuant to the Scheme formulated in G.O.Ms. No.12 dated 26.11.2014, the Government had issued Memo No.3462/Schemes.

A1/2014 dated 09.12.2014 prescribing operational guidelines for implementation of the One Full Meal Programme. The guidelines provides for the constitution of a One Full Meal Committee. It prescribes the duties and responsibilities of the committee, the mode of procurement, the food model for spot feeding of pregnant and lactating women, and other beneficiaries, in the ICDS one full meal programme. It stipulates that eggs should be procured only from NECC registered poultry farmers without third party intervention, and that NECC should monitor the supply and the quality of eggs, and support the department in enforcing the guidelines. In terms thereof, 30 eggs per month, costing Rs.3.50 each, is required to be provided to pregnant and lactating women. For children between 7 months and 3 years, 30 eggs per month is required to be provided for spot feeding i.e., 1 egg per day of 50 grams each at the cost of Rs.3.50 per egg. While one egg is to be 2016 SCC OnLine Hyd 330 : (2017) 4 ALD 31 (DB) : (2017) 1 ALT 47 provided from Monday to Friday, two eggs are required to be provided on Saturday. Similarly one egg of 50 grams each, at a cost of Rs.3.50 per egg, is required to be provided for spot feeding of children aged between 3 to 6 years.

18. The petitioners are all traders, and are not poultry farmers. The tender conditions exclude them from consideration, as it restricts supply of eggs, to the 20 ICDS centres in Mahaboobnagar District, only by NECC registered poultry farmers. This, by itself, cannot be said to have violated the petitioners fundamental rights under Article 19(1)(g) of the Constitution of India to carry on any trade or business. Under Clause (1) (g) of Article 19, every citizen has the freedom and right to choose his own employment or take up any trade or calling subject only to the limits as may be imposed by the State in the interests of public welfare and the other grounds mentioned in clause (6) of Article 19. (Saghir v. State of U.P.2; Krishnan Kakkanth v. Govt. of Kerala3).

40. The basis of the classification of persons or things may appear on the face of the policy or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. (Ram Krishna Dalmia²⁸; Gauri Shanker⁵²). Relevant material is always admissible to show the reason and the justification for the classification. Such reasons need not appear on the face of the Rule or the law or the policy which effects the classification. (Triloki Nath Khosa³⁵). We are satisfied that the classification of suppliers under the impugned notification, and restriction on supply of eggs only by NECC registered poultry farmers, neither suffers from the vice of discrimination nor can it be said to be arbitrary and in violation of Article 14 of the Constitution of India. The petitioners are not poultry farmers and it is, therefore, unnecessary for this Court, in a Writ Petition instituted by

them, to examine whether excluding non-NECC registered poultry farmers from consideration would violate the equality clause under Article 14 of the Constitution of India.

52. Article 14 cannot be interpreted in a doctrinaire or dogmatic manner. Excessive interference by the judiciary in the functions of the executive is not proper. In view of the inherent complexities involved in modern society, some free play must be given to the executive. (Transport and Dock Workers Union⁴⁸; Missouri, Kansas and Texas Railway Co. v. May⁴; Aravali Golf Club v. Chander Hass⁵). If a decision has been taken in a bonafide manner, although not strictly following the norms laid down by Courts, such decisions are upheld on the principle that Courts, while judging the validity of executive policy decisions, must grant certain measure of freedom or "play in the joints" to the executive. (Sterling Computers Ltd.¹⁸). The Government has, 2 AIR 1954 SC 728 = 1955 (1) SCR 707 3 (1997) 9 SCC 495 4 48 L Ed 971 5 (2008) 1 SCC 683 while taking a policy decision, the right to 'trial and error' as long as both trial and error are bonafide and within the limits of authority. (BALCO Employees' Union (Regd.)⁶⁶; Netai Bag⁶⁵; Ram Singh Vijay Pal Singh⁶⁴).

9.8. He further relied on another decision of the Hon'ble Supreme Court in UNION OF INDIA Vs. INTERNATIONAL TRADING COMPANY 6., wherein it was held at Para No.16 as follows :

16. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily on by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

6.9. The learned Senior Counsel for the petitioners relied on a decision of the Hon'ble Supreme Court in JESPARI. SLONG Vs. STATE OF MEGHALAYA AND ORS 7., wherein it was held at Para No.19 as follows :

19. It goes without saying that the Government while entering into contracts is expected not to act like a private individual but should act in conformity with certain healthy standards and norms. Such actions should not be arbitrary, irrational or irrelevant. The awarding of contracts by inviting tenders is considered to be one of the fair methods. If there are any reservations 6 Civil Appeal No. 4020-4023 of 2003

Decided on 07 May, 2003 Supreme Court of India (From Delhi) (2004) 11 Supreme Court Cases 485 : 2004 SCC OnLine SC 660 or restrictions then they should not be arbitrary and must be justifiable on the basis of some policy or valid principles which by themselves should be reasonable and not discriminatory. [See Para 7 of Hindustan Development case (supra)]. The said judgment also states that any act which excluded competition from any part of the trade or commerce by forming cartels should not be permitted.

9.10. The learned Senior Counsel for the petitioners lastly relied on a judgment of the Hon'ble Supreme Court in AIR INDIA LTD. Vs. COCHIN INTERNATIONAL AIRPORT LTD. & OTHERS⁸., wherein it was held at Para No.7 as hereunder :

7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in R. D. Shetty v. International Airport Authority 1979 (3) SCC 488), Fertilizer Corporation Kamgar Union v. Union of India 1981 (1) SCC 568), Assistant Collector, Central Excise v. Dunlop India Ltd. 1985 (1) SCC 260 = 1984 (2) SCALE 819), Tata Cellular v. Union of India 1994 (6) SCC 651 = 1995 (1) Arb. LR 193), Ramniklal N. Bhutta v. State of Maharashtra 1997 (1) SCC 134 = 1996 (8) SCALE 417), and Raunaq International Ltd. v. I.V.R. Construction Ltd. 1999 (1) SCC 492 = 1999 (1) Arb.

LR 431 (SC). The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amendable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some (2000) 2 Supreme Court Cases 617 defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

10. Per contra, the learned Special Government Pleader appearing on behalf of respondents 1 and 2 would seek to contend that respondent No.1/Government framed the I.C.D.S. Scheme, which is one

of the largest unique programmes for early childhood and development introduced in India. In writ petition No.43886 of 2022, respondent No.2 filed its counter, wherein it is averred that as per the Scheme, the beneficiaries under the Scheme are the children in the age group of 0-6 years, pregnant women and lactating mothers. The main objective of the Scheme is to improve the nutritional and health status of children in the age group of 0-6 years, nursing and lactating mothers. It is stated that after the formation of the State of Telangana, Government introduced the "Arogyalakshmi" Scheme in order to improve upon the existing I.C.D.S. Government Scheme and accordingly issued orders to implement revised and new feeding norms of the One Full Meal Programme/Aarogyalakshmi for all Pregnant and Lactating Mothers and also to scale-up the programme by providing 16 eggs per month instead of 8 eggs per month to the children in the age group of 7 months to 3 years and for providing 30 eggs instead of 16 eggs in a month to the children in the age group of 3 to 6 years in Anganwadi Centres. 10.1. It is further averred that the respondents received several complaints about substandard quality of eggs being supplied. To resolve the issue of the supply of substandard quality eggs, the Government in various meetings with the stakeholders put them on notice and several directions were issued to improve the quality of eggs supplied. Considering the importance of the Scheme and the commitment of the State to improve the nourishment of mother and child, it was decided to revamp, evolve and design the implementation of the Scheme in a transparent manner decentralization, multiple players, adequate infrastructure and logistic supply were found to be the most prominent issues in the egg supply mechanism. It is averred that respondent No.2 constituted a team to visit and study the best practices adopted across other States with regard to the procurement and supply of eggs under the I.C.D.S. Scheme. Accordingly, the team submitted a report identifying various best practices followed in the State of Tamil Nadu, especially with respect to grading, processing, quality and safety of eggs.

10.2. Respondent No.2 further averred that on 03.09.2022 the Commissioner, WD&CW, addressed Lr. No.3347/SNP/2022, to the Special Secretary and Commissioner, the WD&CW department proposing for centralized procurement of eggs, insisting on egg processing, grading activities and safety and quality standards including "Agmark" to bring in quality improvements in the supply of eggs. Respondent No.1 after examining the entire matter, issued Memo. No.3462/Prog.1/1/2014, dated 13.10.2022, Department of WCD&SC according permission to Commissioner, WD&CW Department to procure eggs by floating zonal tenders and also insisted on specific safety and quality standards including "Agmark".

10.3. The learned Special Government Pleader specifically contended that the quality criteria as mentioned in the tender document, namely "Agmark" certification, ISO certificate and FSSAI license are intended to avoid the supply of substandard quality of eggs. He further contended that the duty of the Government is to provide safety to its citizen and in furtherance of its duty, the Government enacted the Food Safety and Standard Act and under the Act, a new National Regulatory Body, the Food Safety and Standards Authority of India (FSSAI) was established to develop science-based standards for food and to regulate and monitor the manufacture, processing, storage, distribution, sale and import of food so as to ensure the availability of safe and wholesome food and one of the key provisions of the Prevention of sale of misbranded, unsafe/ contaminated or sub-standard food. In view of the same, to regulate the quality of the eggs supplied, the certification

of "Agmark" and certificate of FSSAI were made mandatory.

10.4. It is further contended that subsequent to the issuance of tender reference, the condition with regard to a security deposit of 3% of the contract value has been modified by corrigendum, dated 05.12.2022 by fixing an upper limit of Rs.50 lakhs as a security deposit for each zone. He further submits that earlier the weight of the eggs to be supplied was specified as 50 grams. However, the eggs supplied weighed much below the specified standard and it was difficult to ensure compliance. In view of the same, it was decided to insist on "Agmark" certification, as it has greater compliance and quality control mechanism.

"Agmark" gradation of eggs is based on their weight. The corresponding grade for an egg weighing in the range of 50 grams was A - medium (lower limit of 45 grams and higher limit of 52 grams). Therefore, he submitted that the allegation made by the petitioners in the writ affidavit that the tender reference was issued to prevent the petitioners from participating the tender and seems tailored to benefit certain applicants is not true and correct.

10.5. He further contended that the allegations made by the petitioners that respondent No.2 has made the inclusion of condition that the tenderer should have satisfactorily executed a single contract for having supplied eggs (hen) for a value not less than Rs.5 crores in any one year of last 3 preceding years intentionally to deprive the petitioners and similarly situated poultry farmers in participating to bid tender is also not correct on the ground that pursuant to the tender reference, several tenderers have submitted their tenders and the respondents have opened the technical bids on 21.12.2022, wherein 37 bids from 24 unique bidders were received and the petitioners in W.P.No. 46306 of 2022 and W.P.No.236 of 2023 are not qualified in technical bid.

10.6. In support of his contention, the learned Special Government Pleader relied upon the same judgment of the Division Bench of this Court in State of Telangana, rep. by its Prl. Secretary, Women and Child Welfare Dept., & Others (supra) in W.A.No.751 of 2016 and WPMP.No.36043 of 2016 in W.P.No.24599 of 2016 which was relied by the learned Senior Counsel for the petitioners in W.P.No.43886 of 2022. The Hon'ble Division Bench after considering the various judgments of the Hon'ble Supreme Court, held as follows :

"Although a citizen has a fundamental right to carry on a trade or business, he has no fundamental right to insist that the Government or any other individual should carry on business with him. The government, or the individual concerned, has the right to enter into contract with a particular person or to determine person or 6 AIR 1958 SC 731 7 AIR 1981 SC 873 8 AIR 1968 SC 1323 9 AIR 1970 SC 1453 10 AIR 1960 SC 801 11 (1974) 1 SCC 468 12 AIR 1967 SC 829 = 1967(1) SCR 1012 23 persons with whom he or it will deal. (Krishnan Kakkanth5). The Constitution does not recognise franchise or rights to business which are dependent on grants by the State or

business affected by public interest. (Saghir⁴; Krishnan Kakkanth⁵). No person can claim a fundamental right to carry on business with the government, and all that he can claim is that, in competing for the contract, he should not be unfairly treated and discriminated to the detriment of public interest. (Association of Registration Plates v. Union of India¹³; Erusian Equipment & Chemicals Ltd. v. State of W.B.¹⁴). As the petitioners cannot insist that the Government should carry on business with them, or procure eggs from them alone, refusal by the respondents to include traders, among the categories from whom eggs for these 20 ICDS centres in Mahaboobnagar District would be procured, does not violate the petitioners fundamental rights under Article 19(1)(g) of the Constitution of India. The challenge to the validity of the impugned tender notification, and to G.O.Ms. No.12 dated 26.11.2014 and the memos issued pursuant thereto, on this ground necessitates rejection.

Before examining whether or not the aforesaid tender condition, G.O.Ms. No.12 dated 26.11.2014 and the Government memos dated 09.12.2014 and 17.12.2014 are in violation of Article 14 of the Constitution of India, it is necessary to consider the scope of judicial review of prescription of conditions by the Government in an invitation to tender. While contractual matters are not beyond the realm of judicial review, its application is limited (Noble Resources Ltd. v. State of Orissa¹⁵; Indian Oil Corpn. Ltd. v. Amritsar Gas Service¹⁶; and LIC of India v. Escorts Ltd.¹⁷) primarily to the 13 (2005) 1 SCC 679 14 (1975) 1 SCC 70 15 (2006) 10 SCC 236 16 (1991) 1 SCC 533 = 1990 4 JT 601 17 AIR 1986 SC 1370 24 infirmity in the decision making process, and whether it is reasonable and rational or arbitrary and in violation of Article 14 of the Constitution of India. (Sterling Computers Ltd v. M & N Publications Ltd¹⁸). The Court does not sit as a Court of appeal, but merely reviews the manner in which the decision was made. Although the terms of the invitation to tender is not open to judicial scrutiny as it is in the contractual realm, Courts can examine the award of contract, by the Government or its agencies, to prevent arbitrariness or favouritism. (Noble Resources Ltd.¹⁵; Binny Ltd. v. V. Sadasivan¹⁹; G.B. Mahajan v. Jalgaon Municipal Council²⁰; Directorate of Education v. Educomp Datamatics Ltd.²¹).

There are inherent limitations in the exercise of judicial review of contractual powers as the Government must have the freedom of contract and a free-play in the joints. The duty to act fairly will vary in extent, depending upon the nature of cases to which the said principle is sought to be applied. (Tata Cellular v. Union of India²²). The actions of the State are amenable to judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. In the matter of formulating conditions of a tender document, and in 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, interference by Courts is not warranted. If the State or its instrumentalities act reasonably, fairly and in public interest in awarding the contract, interference by the Court is limited. (M/s. 18 AIR 1996 SC 51 19 (2005) 6 SCC 657 20 1991 1 JT 605 21 (2004) 4 SCC 19 22 AIR

1996 SC

11 25 Michigan Rubber (I) Ltd. v. State of Karnataka²³; C.S.R. Infratech India Pvt. Ltd, Hyderabad¹).

The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender, and that is not open to judicial scrutiny. (Air India Ltd.²). Price need not always be the sole criterion for awarding a contract. But the State is bound to adhere to the norms, standards and procedures laid down, and cannot depart from them arbitrarily. Though that decision is not amendable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. (Air India Ltd.²). If two views are possible, and no mala fides or arbitrariness is alleged or shown, there is little scope for interference with the view taken by the authorities in inviting tenders. (Reliance Airport Developers (P) Ltd. v. Airports Authority of India²⁴; Siemens Public Communication Networks (P) Ltd. v. Union of India²⁵).

Bearing the aforesaid principles in mind, let us now examine the petitioners challenge to the validity of the tender notification, the impugned G.O and memos, on the ground that it violates Article 14 of the Constitution of India. Sri D. Prakash Reddy, Learned Senior Counsel, would submit that the classification between NECC registered poultry farmers on the one hand, and poultry traders on the other, has no nexus with the object sought to be achieved which is to provide eggs to the beneficiaries, of the One Full Meal Scheme in terms of G.O.Ms. No.12 dated 26.11.2014, at the lowest possible price. According to the Learned Senior Counsel since the price of the eggs is fixed at the NECC rate of Rs.3.50 per egg, the tender notification is, in effect, an invitation for bids for a transport contract, 23 Judgment of the Supreme Court in Civil Appeal No.5898 of 2012 dated 17.08.2012 24 (2006) 10 SCC 1 25 (2008) 16 SCC 215 26 and the object sought to be achieved thereby is to transport the eggs to the ICDS centres at the minimum stipulated price; and, in the light of the aforesaid object, it hardly matters whether the eggs are transported by traders or by poultry farmers. Before examining this contention, it is necessary to first consider the tests prescribed for a valid classification under Article 14 of the Constitution of India. In order to pass the test of a permissible classification under Article 14 two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) the differentia must have a rational relation to the object sought to be achieved. In order to accept a classification as permissible, and not hit by Article 14, the measure in question will have to pass these twin tests. (Dimapati Sadasiva Reddi, Vice-Chancellor, Osmania University v. Chancellor²⁶; Budhan Choudhry v. State of Bihar²⁷; Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar²⁸). The classification may be founded on different basis. What is necessary is that there must be a nexus between the basis of classification and the object of the policy under consideration. (State of Maharashtra v. Indian Hotel & Restaurants Assn.²⁹; Budhan Choudhry²⁷).

Article 14 forbids class legislation, and not a reasonable classification. Persons similarly situated must be similarly treated. Where, however, the persons are not similarly situated, there is no prohibition to treat them separately, provided of course there is a reasonable nexus between the

basis of classification and the object sought to be achieved. (K. Muthusamy v. Government of 26 AIR 1967 SC 1305 27 (1955) 1 SCR 1045 28 (1959) SCR 279 29 (2013) 8 SCC 519 27 Tamilnadu³⁰). Every instance of discrimination does not necessarily fall within the ambit of Article 14 of the Constitution. Discrimination means an unjust and unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and unfavourable bias, an unfair classification. (Rajasthan State Industrial Development & Investment Corporation v. Subhash Sindhi Coop. Hs. Society³¹; The State of M.P. v. Narmada Bachao Andolan³²; Madhu Kishwar v. State of Bihar³³).

A valid classification based on a just objective is truly a valid discrimination. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. Legalistically, the test for a valid classification may be summarized as a distinction, based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. (Kallakurichi Taluk Retired Officials Assn. v. State of T.N.³⁴). Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved. (Indian Hotel & Restaurants Assn.²⁹; State of Jammu and Kashmir v. Triloki Nath Khosa³⁵).

The doctrine of reasonable classification recognises that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated. The question is: what does 30 LAWS -TLMAD 2003-0-582: MANU/TN/0192/2003 31 (2013) 5 SCC 427 32 (2011) 7 SCC 639 33 (1996) 5 SCC 125 34 (2013) 2 SCC 772 35 (1974) 1 SCC 19 28 this ambiguous and crucial phrase "similarly situated" mean? The test which has been evolved for this purpose is that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved. (Mohd. Shujat Ali v. Union of India³⁶).

It is not even urged by Sri D. Prakash Reddy, Learned Senior Counsel for the petitioners, that poultry farmers (be they registered with NECC or not), and poultry traders, do not constitute two different and distinct classes. The question whether non-NECC registered poultry farmers have been discriminated against is a question which need not detain us in the present Writ Petition, as the challenge to the validity of the notification is not by poultry farmers who are not registered with the NECC, but by traders all of whom are not being considered for supply of eggs to the ICDS centres in Mahaboobnagar District. While poultry farmers supply eggs from their farms, traders have to procure eggs from the poultry farmers and, in turn, supply them to the 2nd respondent at the respective ICDS centres. It is evident, therefore, that poultry farmers and traders constitute two distinct and different classes. The only question which necessitates examination is whether such classification has a reasonable nexus with the object sought to be achieved.

In order to examine this question, it is necessary to take note of the objects which the Government claims that it seeks to achieve by way of the present classification. As noted hereinabove, the

impugned tender notification was issued pursuant to G.O.Ms. No.12 dated 26.11.2014, and the memos issued by the Government dated 09.12.2014 and 17.12.2014. By G.O.Ms. No.12 dated 26.11.2014 the State Government revised the earlier orders regarding the 36 AIR 1974 SC 1631 29 supplementary nutrition programme under the Integrated Child Development Scheme for implementation of the One Full Meal Programme for all pregnant and lactating mothers, and for children aged between 7 months and 6 years in all the Anganwadi centres. In terms of the policy in G.O.Ms. No.12 dated 26.11.2014, the Government decided to supply 30 eggs a month i.e. one egg per day between Monday and Friday and two eggs on Saturday. The Scheme attempts to provide all pregnant women, lactating mothers and infants a quality meal each day, and requires the beneficiaries to consume the eggs at the centre itself, and not carry it home as it may then be consumed by other members of their respective families. The object of G.O.Ms. No.12 dated 26.11.2014 is to reduce the incidence of infant mortality and maternal mortality. In addition to the existing budget, the Government sanctioned Rs.84.83 crores as an additional budget under this Scheme.

The operational guidelines, in Government memo dated 09.12.2014, prescribe the modalities of supply for effective implementation of the One Full Meal Programme, and to improve the nutritional status of pregnant and lactating women, and reduce low birth weight and mortality of infants and children under 6 years. Clause II (2) thereof stipulates that the eggs shall be procured by the District Procurement Committees from NECC registered poultry farmers without third party involvement, and the average annual cost of an egg, including transport charges, should not exceed Rs.3.50. Clause II (3)(d) of the said guidelines requires NECC to monitor the supplies and the quality of eggs, and support the department in enforcing the guidelines. The Government memo dated 17.12.2014 was issued in partial modification of the operational guidelines issued under the Government memo dated 09.12.2014 and, instead of the 30 cost of an egg including transport being stipulated at Rs.3.50 per egg, it was decided that the NECC rate and transport charges be paid based on the distance duly following the terms and conditions."

10.7. He further relied on a decision of the Hon'ble Supreme Court in N.G. PROJECTS LIMITED Vs. VINOD KUMAR JAIN AND ORS., 9 wherein it was held at Para No's. 22 and 23 as hereunder :

"22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e., not satisfying the tender conditions. The writ petitioner was one (2022) 6 Supreme Court Cases 127 of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide.

Therefore, on the same set of facts, different conclusions can be arrived at in a bona-fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.

23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work."

10.8. He also relied on another decision of the Hon'ble Supreme Court in NATIONAL HIGH SPEED RAIL CORPORATION LIMITED Vs. MONTECARLO LIMITED AND ANOTHER¹⁰., wherein the Hon'ble Apex Court held at para Nos. 47 and 48 as follows :

"47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken (2022) 6 Supreme Court Cases 401 by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision "that no responsible authority acting reasonably and in accordance with relevant law could have reached" as held in Jagdish Mandal followed in Michigan Rubber.

48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot."

10.9. While relying upon the aforesaid judgments, the learned Special Government Pleader lastly contended that the dispute raised by the petitioners is not amenable for writ jurisdiction. As this is a purely contractual dispute the petitioners are not entitled to seek a writ of Mandamus. The petitioners are not pleaded or attributed any mala fides are not pleaded. The impugned tender reference was issued pursuant to the memo issued by respondent No.1/Government and there is no illegality. It is a policy framed by the respondents, and there is no violation of Article 14 of the Constitution of India. The petitioners have not questioned the policy/decision taken by the respondents through Memo. No.3462/Prog.1/1/2014, dated 13.12.2022 and also there is no allegation of discrimination. He further submitted that the petitioners in W.P.No.46306/2022 have submitted their tender pursuant to the impugned tender reference and they are not entitled to challenge the tender conditions while participating in the tender process. Further, the petitioners have not qualified in Technical bid. In W.P.No.236/2023 also the petitioner's firm has not qualified in Technical bid and the petitioner is not entitled any relief much less consideration of e-mail representations.

11. Sri A. Sudershan Reddy, learned Senior Counsel representing respondent No.3 submits that the impugned tender reference issued by respondent No.2 is not tailor-made and the respondents included the tender condition of enclosure of "Agmark" certificate and the "Agmark" certificate is a quality certificate. The particular condition is included in the tender in the larger interest of the public. Clause No.3 (2) (b) of tender reference specifically mentioned weighment.

"2 (b): WEIGHMENT : Each egg must be checked for its weight by weighing scales i.e., whether each egg measures 45-52 grams in weight. Eggs that are less than 45 grams in weight shall be rejected. Only those eggs measuring between 45-52 grams in weight as per "AGMARK" MEDIUM 'A' grade standards shall be sent for further grading and processing. It must be noted that the suppliers should have separate weighing scales, properly maintained for measuring the weight of eggs and shall not use weighing scales used for weighment of other stocks like poultry feed, mixtures, etc. In the poultry farm. The godown should have sufficient number of weighing balances for this purpose of weighment of eggs.

2 (c): CLEANING: Eggs weighing 45-52 grams must be cleaned off their exterior surfaces using permissible cleaning agents for any foreign particles, faecal mater, dirt or other waste particles."

11.1. The above-said conditions were included in the larger interest of the public. He further submits that the tender condition further stipulated that the successful tenderer has to fulfill the following condition:

"11 (b) The successful tenderer's premises will be visited by officials/third party officials nominated by the Commissioner, WD&CW department to ensure that the poultry farms/processing/grading and sorting/storage premises are maintained properly.

19. Penalty on default/extension time:

19 (4) If eggs are supplied without labelling/stamping(unstamped) as prescribed by WD&CW department, the Commissioner, WD&CW Department will impose a penalty to the L-1 bidder equivalent to double the cost.

19 (6) It is to be ensured that the stocks are supplied as per the indented quantity. If the ordered quantity is not supplied in full, within the stipulated time the EMD and Security Deposit will be forfeited besides blacklisting. Further for any defaults in supplies either wholly or partially on account of quality aspect (or) quantity aspect and delay in supply, apart from not only forfeiture of security deposit, further action will be initiated as per terms and conditions mentioned in tender document and Acts/rules in vogue.

19 (7) In the event of failure to supply the ordered quantity by the successful bidder within the stipulated time, the Commissioner, WD&CW Department reserves the right to cancel the orders for the unsupplied quantity and place orders with the remaining supplier (s) for the supply of the said quantity or purchase the unsupplied quantity from open market/other Government Agencies or has the discretion to re-tender the desired quantity through e-procurement to ensure un-interrupted supplies.

In such circumstances, the differential cost, transportation cost, incidental charges and other excess expenditure, if any will be recovered from the successful L-1 bidder. If the rate is cheaper, the benefit will not accrue to the L-1 bidder."

11.2. The decision taken by the respondents is only for the purpose of supplying quality eggs under the particular Scheme in the interest of children, pregnant women and lactating women. The respondents have taken a particular decision as a policy decision in the larger interest of the public. The respondents have not violated the ICDS Scheme or operational guidelines of the One Full Meal Programme and Memo dated 09.12.2014. He further submits that the petitioners are not entitled to challenge the tender conditions. The tender reference issued by respondent No.2 is for a public purpose only.

11.3. In support of his contention, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in MICHIGAN RUBBER (INDIA) LIMITED Vs. STATE OF KARNATAKA AND OTHERS¹¹ , wherein it was held at para No's. 9 and 35 as hereunder:

"9. It is the grievance of the appellant-Company that the pre-qualification criteria as specified in Condition Nos. 2(a) and 2(b) (amended Condition Nos. 4(a) and 4(b)) of the tender in question is unreasonable, arbitrary, discriminatory and opposed to public interest in general. It is also their grievance that the said conditions were incorporated to exclude the appellant-Company and other similarly situated companies from the tender process on wholly extraneous grounds which is

unsustainable in law. In other words, according to the appellant-Company, the decision of the KSRTC in restricting their participation in the tender to Original Equipment Manufacturer (OEM) suppliers is totally unfair and discriminatory.

35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the (2012) 8 Supreme Court Cases 216 tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts would interfere. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, the CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

12. Having considered the rival submissions and also the material placed on record and the arguments advanced by the respective parties, the points that arise for consideration are as follows :

(i) Whether the tender reference issued by the respondent No.2 dated 21.11.2022 is valid under law and/or in violation of Article 14 of the Constitution of India ?

(ii) Whether the respondents have violated ICDS Scheme issued by the State Government under G.O.Ms.No.12, dated 26.11.2014 and violated the operational guidelines for implementation of One Full Meal Programme vide Memo.No.3462/Schemes.A1, dated 05.12.2014 ? Point Nos. (i) & (ii):

13. Before dealing with these issues, it is pertinent to mention herein that earlier in similar circumstances, the poultry farmers have filed WP.No.24599/2016 questioning the tender notice issued by the Respondents therein, restricting the eligibility of poultry farmers/association with NECC Certification and eliminating other suppliers/traders like the petitioners therein from participating in the tender process as illegal, discriminatory, violative of Articles 14, 19 (1)(g) and 21 of the Constitution of India. The learned single Judge passed an interim order in WPMP.No.36043 of 2016 in W.P.No.24599 of 2016. Challenging the said interim order, the respondents therein filed WA.No.751 of 2016. The Division Bench of this Court heard WA.No.751 of 2016 as well as

WP.No.24599 of 2016 and passed a common judgment, dated 26.09.2016, wherein WP.No.24599 of 2016 was dismissed and WA.No.751 of 2016 was allowed.

14. The Division Bench held that the petitioners under Article 226 of the Constitution of India would not make a comparative evaluation of the merits and demerits of the policy decision of the Government or examine whether the interest of the beneficiaries under the ICDS would have been better served by permitting traders also to participate in the tender process. In the said case, the poultry farmers have questioned the tender notice for insisting NECC certificate. In the policy decision of the Government in G.O.Ms.No.12, dated 26.11.2014 and the orders issued by the Government in Memo's dated 09.12.2014 and 17.12.2014, it is held that implementing the policy decision of the Government in G.O.Ms.No.12, dated 26.11.2014, do not necessitate interference.

15. It is pertinent to mention herein that in the present tender reference, the only difference is that the respondents have included the clause in the tender reference that the tenderer should possess an "Agmark" Certificate in place of NECC. The NECC Certificate is only for the registration of farmers in the particular organization and whereas the "Agmark" Certificate is issued by the particular authority certifying the quality of eggs (hen). The particular "Agmark" is the quality certificate, which is included in the tender reference in the larger interests of the public, children, pregnant women and lactating women. To improve the quality of eggs (hen), the "Agmark" Certificate is included in the tender reference, therefore, it cannot be said that there is any mala fide intention on the part of the respondents. The proposal submitted by respondent No.2 in Lr. No.3347/SNP/2022, dated 03.09.2022 is only for modification and revision of existing guidelines. Respondent No.1/Government-issued Memo. No.3462/ Prog.1/1/2014, dated 13.10.2022, according to permission to respondent No.2 for procurement system of eggs under Arogya Lakshmi and Supplementary Nutrition programme with the following conditions; viz.

a) Floating zone wise tenders to all zones at a time at State level.

b) Allowing Poultry farmers of the State as per existing system.

c) Insisting for specific egg processing, grading activities and safety and quality standards including "AGMARK" in the procurement of eggs in the tender.

16. Pursuant to the said Memo only the impugned tender reference was issued by respondent No.2. It is appropriate to note that what is under challenge is only the condition of inclusion of 'Agmark' in the tender reference but not the Memo dated 13.10.2022 wherein such requirement is specified. As the policy decision is not under challenge but consequential notification is only challenged the challenge should fail on that ground. The petitioners in WP.No.43886 of 2022 and WP.No.46306 of 2022 have not questioned the said Memo. The challenge to the consequential tender reference questioning only the tender condition of inclusion of "Agmark", is not permissible.

17. It is next contended that inclusion of clause that the tenderer should have satisfactorily executed a single contract for having supplied eggs (hen) for a value of not less than Rs.5 crores in any one year in the last 3 preceding years is illegal and arbitrary. The inclusion of the said condition in the

tender reference is also not amenable to question on the ground that in the counter affidavit, the respondent No.2 specifically averred that pursuant to the tender reference/schedule, the respondent No.2 opened the technical bids on 21.12.2022, wherein 37 bids from 24 unique bidders were received. The learned Special Government Pleader rightly contended that the allegation made by the petitioners that the tender reference issued by respondent No.2 is tailor-made, not correct in view of 24 unique bidders were received.

18. It is pertinent to mention herein that the inclusion of condition of "Agmark" and also the inclusion of more than Rs.5 crores turnover in the impugned tender notification to supply the quality eggs (hen) to the children, pregnant women and lactating woman is in the interest of a larger public. The inclusion of particular conditions is a policy decision of the Government in the larger interest of the public. Such those conditions cannot be questioned by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Hon'ble Supreme Court in the decision in MICHIGAN RUBBER (INDIA) LTD., (supra), specifically held that "the courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the instant case on hand, the inclusion of condition of "Agmark" and also the inclusion of more than Rs.5 crores turnover in the impugned tender reference to supply the quality eggs (hen) to the children, pregnant women and lactating women is in the interest of a larger public.

19. Moreover, the impugned tender reference was not issued as tailor-made and the petitioners have not established or proved that there is any mala fide intention on the part of the respondents while issuing the impugned tender reference. The decisions of the Hon'ble Supreme Court in UNION OF INDIA Vs INTERNATIONAL TRADING COMPANY, JESPER I. SLONG Vs. STATE OF MEGHALAYA AND ORS, and AIR INDIA LTD. Vs COCHIN INTERNATIONAL AIRPORT LTD & ORS., relied by the learned Senior Counsel appearing for the petitioners in WP.No.43886 of 2022 are not applicable to the facts of this case.

20. It is specifically asserted by the respondent No.2 that 37 bids from 24 unique bidders were received. This shows huge response. Imposing higher requirements by participants in a tender process can not be said as illegal or arbitrary. The stand of the respondents 1 and 2 that on review of previous experience higher standards of eligibility is found desirable to ensure supply of quality eggs to needy children cannot be said as vitiated or intended to favour a particular group of tenderers. In fact, in a given situation, the State can customize tender terms to choose the best contractor in the business in the larger public interest. In view of the same, the petitioners' contention that in the entire state, no poultry farmers are having more than Rs.5 crores turnover in one year of 3 consecutive years is not correct.

21. The judgment of the Division Bench in W.A. No.751 of 2016 has become final and the same is binding. For the reasons mentioned supra and also the principles laid down by the Division Bench of this Court, the impugned tender reference issued by respondent No.2 is valid in law and there is no violation of Articles 14 and 19 of the Constitution of India.

22. The learned Special Government Pleader appearing on behalf of respondents 1 and 2 has rightly submitted that the petitioners in W.P.No.46306 of 2022 and WP.No.236 of 2023 have submitted their tenders pursuant to the tender reference but they are not qualified in a technical bid, which is opened on 21.12.2022 and they are not entitled to claim any relief.

23. When the petitioners have participated in the tender process, pursuant to the tender reference, wherein they were declared not qualified technically they cannot turn around or question tender conditions or seek any other relief much less consideration of e-mail representations.

24. For the foregoing reasons mentioned herein above, all three writ petitions are accordingly dismissed. As a sequel, miscellaneous applications if any, pending in all the above writ petitions shall stand disposed of.

JUSTICE J. SREENIVAS RAO.

Date:31-01-2023 ISL/SKJ Note:

L.R. Copy to be marked.

HONOURABLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.43886 OF 2022,
AND
WP.No.46306 OF 2022 & WP.No.236 OF 2023

Date : 31-01-2023.

ISL