

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE :-

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

M.A.T. No. 1537 of 2025
IA No. CAN 1 of 2025

Sarlal Engineering Limited & Anr.

vs.

Damodar Valley Corporation & Ors.

For the Appellants	: Mr. Jishnu Chowdhury, Sr. Adv. Mr. Chayan Gupta, Adv. Mr. Raghunath Ghose, Adv. Mr. Andolan Sarkar, Adv. Ms. Pritha Ghose, Adv. Ms. S. Santra, Adv.
For the DVC	: Mr. Sabyasachi Chowdhury, Sr. Adv. Mr. Prasun Mukherjee, Adv. Mr. Deepak Agarwal, Adv.
For the Respondent No. 5	: Mr. Deepan Kr. Sarkar Mr. Parashar Baidya

Judgment reserved on	: 07.05.2026
Judgment pronounced on	: 23.06.2026
Judgment uploaded on	: 23.06.2026.

Shampa Sarkar, J.

1. The appeal arises out of an order dated September 3, 2025, passed by the learned Single Judge in WPA 20870 of 2025. By the order impugned

the learned Judge dismissed the writ petition, inter alia, holding that the tender inviting authority had the independence to fix the terms and conditions of the tender as per their requirement and those conditions could not be interfered with by the writ court. The respondent No. 1, Damodar Valley Corporation (DVC) decided to engage the best contractor who had the capacity to deliver the items as per the RFQ, by limiting the bid amongst three participants. Those participants were selected from the enlisted contractors of National Power Corporation Limited, (in short NTPC). As DVC did not have its own enlisted contractors and past experience had shown that materials procured from non-reputed vendors were not up to the mark and often resulted in unexpected breakdown of equipment, thereby, causing potential loss to the power generation plants, DVC had decided to opt for contractors enlisted with NTPC. This was done in order to maintain operational efficiency and for preservation of reliability in the systems. The learned Judge thus held that, a limited tender was permissible in the case in hand and DVC had the right to go for the same. NTPC was one of the leading and reputable entities in power generation and obtained materials only from its enlisted vendors. DVC had decided to follow the same list of vendors of NTPC, to ensure procurement of high quality materials. The decision of DVC to take the benefit of the vendors

retained by NTPC, was neither arbitrary nor illegal, as per the Her Lordship. DVC had formally requested consultancy services from NTPC in this regard and the two entities had entered into an agreement. The offer was restricted to streamlining DVC's procurement process, to ensure that only qualified and reputable vendors were engaged. As per the agreement, DVC was authorized to use the vendor enlistment which was uploaded on NTPC's portal. Six vendors were enlisted for supply of grinding balls and cube-type pole pulverisers. The Request for Quotation (RFQ) was published by DVC, for procurement of High Chrome Grinding Media Balls for BBD-Type Coal Mills at MTPS (1-6). When the financial involvement pertaining to the materials sought to be procured through the RFQ was entered into the NTPC's portal by DVC, names of only three out of the six enlisted vendors popped up as eligible vendors.

2. According to DVC, in order to obtain the best service and the best quality materials, the tender was sought to be limited amongst those three vendors. This, according to the learned Judge, was a policy decision of DVC, and should not be interfered with. Her Lordship held that, the decision adopted by DVC to keep the tender process restricted within a selected few, was not a tailor-made condition.

3. The object behind the limited tender was to get the best services from the vendors who had already proven to be efficient and reliable. Those vendors had supplied similar kind of materials to NTPC for a long time. The three vendors who were named by DVC in the RFQ, had qualified as per the financial involvement. Her lordship held that, the process adopted by DVC was fair and transparent. Proper justifications were provided by DVC to use the vendor enlistment list of NTPC, i.e., namely a guarantee that the selected vendor could supply the best quality material at the lowest cost and had the financial strength to execute the work.

4. The list of the three vendors whose names appeared in the RFQ and amongst whom the tender process was limited, had greater financial capability at execution of such work than the appellant No. 1. When the estimated contract value of the proposed RFQ was entered in NTPC's portal, only those three names emerged.

5. According to DVC, the enlistment certificate of the appellant No. 1, which was provided by NTPC, mentioned the financial capacity of appellant No. 1 at Rs. 13,85,98,360. The amount was lower than the estimated contract value. Had the financial capability of the appellant No. 1 been higher than or equivalent to the contract value, the appellant No. 1 would

also have been included in the RFQ. With the above findings, the writ petition was dismissed.

6. Mr. Jishnu Chowdhury, learned Senior Advocate for the appellants submitted that the appellant No. 1 was engaged in the business of supply of grinding media balls, which were a consumable components, used to crush coal. Such component was used by the respondent No. 1 for the purpose of generation of power. The appellant No. 1 was also a small enterprise registered under the Micro, Small and Medium Enterprises Development Act, 2006. The appellant No. 1 had successfully completed various contracts with DVC, NTPC and other public sector undertakings. Contracts worth more than Rs. 25 crores had been successfully executed with NTPC. Reliance was placed on some of those contracts in support of the contention that the appellant No. 1 also had the expertise, wherewithal, financial strength and efficiency to supply the materials to DVC, as per the RFQ.

7. Thus, it was urged by Mr. Jishnu Chowdhury that, the decision of DVC to limit the RFQ amongst three participants, on the specious plea that those three participants had greater financial strength and capability, was irrational, discriminatory and smacked of malafide. The limited tender which was invited as per the RFQ, was solely with the intention to exclude

all other eligible bidders. The intention of the DVC was to suit a particular favoured child, which was not permissible in a tender process initiated by a public sector undertaking. Limited tenders were permissible in case of war, famine, disaster and natural calamities, i.e. under very exceptional situations.

8. It was further submitted that, the policy of DVC to adopt the vendor's list of NTPC, was not clearly spelt out in the RFQ. Secondly, the appellant No. 1 was also an enlisted vendor of NTPC, but out of the six enlisted vendors of NTPC, DVC had limited the tender process amongst three. Such decision was without any basis and did not have any nexus with the object sought to be achieved.

9. It was next contended that the explanation given by DVC before the learned Single Judge that, the financial threshold or the contract value in respect of the goods sought to be procured through the RFQ was higher than the financial strength and capability of the appellant No. 1, was baseless and frivolous. On such ground, the appellant No. 1 could not be excluded from the participant's list.

10. It was further urged that the RFQ did not provide any eligibility criteria, with regard to the financial capability of the bidder. Unless the tender conditions clearly indicated the contract value and the financial

threshold which the participants would have to reach or cross, in order to be an eligible participant in the RFQ, DVC could not limit the tender process only amongst three bidders. The justification given by DVC was an afterthought, inasmuch as, the terms and conditions of the RFQ, did not provide for any qualification on the ground of financial capability of bidders. He submitted that the rules of the game were changed, after the game had started. This was prohibited by law.

11. Mr. Jishnu Chowdhury further submitted that, DVC had never floated any limited tender enquiry for procurement of materials in the past. Thus, the only reason which could be deciphered from such limited tender enquiry through the present RFQ, was to procure materials from their favourite bidder. According to Mr. Chowdhury, the contention of DVC that, the appellant did not qualify to participate in the said RFQ as the appellant did not satisfy the financial threshold of Rs. 16,41,67,570, was not a plausible ground to exclude the appellant No. 1 from the bidding process. Such requirement was not reflected in the RFQ. Thus, DVC had adopted a pick and choose method, which was mala fide and arbitrary. The appellants were not provided a level playing field.

12. The appellant No. 1 had the capacity to manufacture more than 25,000 metric tonnes of the said material per year. This meant that, it had

the financial strength of approximately Rs. 200 crores. Thus, the eligibility criteria laid down by DVC, by restricting the limited enquiry amongst the three bidders named in the RFQ, was an artificial barrier. The said tender process should have been set aside by the learned Trial Judge, inter alia, upon holding that the situation did not demand a limited enquiry. There were other vendors in the field who had adequate financial capability to supply the goods and the appellant No. 1 was also one of the vendors in the said list of the NTPC. The appellant No. 1 had been consciously kept out of the bidding process on the basis of an irrational bar. The contract value was never provided in the RFQ. Mr. Jishnu Chowdhury further submitted that the appellant No. 1 had also executed a single contract of more than Rs. 22 crores with DVC. DVC may have adopted a policy to use the enlisted vendors of NTPC for supply of materials and restrict the bidding process among those enlisted vendors, but could not create a class within a class. The artificial barrier was a poor explanation, subsequently configured to justify an illegal contractual term. The same could not be a reasonable eligibility criteria, especially because there were other enlisted vendors who were equally capable of supplying the material as per the RFQ and who had also executed work of higher value than the estimated value of the contract.

13. Thus, prayer was made that the impugned RFQ and the order of the learned Single Judge should be set aside and a re-tender should be directed. DVC filed an affidavit before the learned Single Judge to highlight the ground of financial capability, but such qualification or eligibility criteria was nowhere mentioned in the RFQ, and the explanation given to the learned Single Judge was an afterthought.

14. Mr. Jishnu Chowdhury relied on the following decisions:-

(i) ***Dwarka Nath vs Income Tax Officer, Special Circle, D- Ward, Kanpur and Anr.*** reported in ***(1965) SCC Online SC 61.***

(ii) ***Indian Medicines Pharmaceuticals Corporation Ltd. vs Kerala Ayurvedic Cooperative Society Limited and Ors.*** reported in ***(2023) 19 SCC 755.***

15. Mr. Sabyasachi Chowdhury, learned Senior Advocate for DVC submitted that the decision to procure goods/materials from the vendors enlisted with the NTPC, was taken to minimize the likelihood of supply of substandard materials from unreliable contractors. Such procurement policy was a critical strategy for organizations like the respondent No.1, which aimed to establish a reliable and efficient supply chain. The strategy ensured that only qualified and vetted suppliers should be considered. This significantly reduced the risk of supply of inferior quality materials and

unsatisfactory performance. Suppliers who were not enlisted with well-known public sector undertakings, frequently failed to supply materials of high quality. As DVC had not finalized its own vendors list, NTPC being one of the reputable entities in the power generation sector, who regularly procured materials from their enlisted vendors, was thought to be the perfect entity from whom a consultancy service could be obtained for such purpose. In the said background, DVC entered into an agreement with NTPC for consultancy services, to facilitate the usage of NTPC's vendor enlistment. The respondent No. 1 was authorized to use the vendors list available on the NTPC portal, on the basis of the said agreement.

16. The respondent No. 1 had been provided with a dedicated Login ID for usage of the vendor's portal. The only purpose for such arrangement with NTPC, was to ensure that experienced and reputable vendors could be identified by DVC, for supply of materials, till such time DVC prepared its own vendor's list.

17. The entire process adopted by DVC was fair and transparent. On March 12, 2025, DVC had published a notice on its website, inter alia, stating that it had decided to procure materials from the vendors who were already qualified and enlisted with NTPC. The vendors were requested to visit NTPC's vendor portal, to get themselves enlisted with NTPC, in the

event they wanted to participate in DVC's tender processes. On May 9, 2025, DVC had set up a Standard Operating Procedure (SOP) for such purpose. The said SOP provided a mechanism for preparation of indent etc. It also contained a clause that, DVC should ensure that the selected vendors would meet the qualification criteria based on their annual average turnover and execution capability relative to the total estimated cost and the delivery/completion period. The respondent No.1 intended to procure 2177 MT of high chrome grinding media balls for BBD type Coal Mills at MTPS. The total estimated value of the indent was Rs. 16,41,67,570. The said value was arrived at, based on the rates of the last procured item contract.

18. From the enlisted contract of NTPC, only three vendors were available for supply of the subject items, based on their annual turnover and execution capability. The execution capacity of the appellant No. 1 was Rs. 13,85,98,360, as would be evident from the certificate of enlistment issued by the NTPC. After inserting the estimated cost of the subject tender for procurement of 2177 MT of grinding balls, in the NTPC's portal, the names of only three enlisted vendors appeared. The other two and the appellant No. 1 did not meet the financial threshold. Reliance was placed on the joint supply completion chart.

19. In this background, the limited tender was published on August 22, 2025 on the GeM Portal. The RFQ clearly described the same as a limited tender enquiry with e-reverse auction. The three enlisted vendors participated in the tendering process and Blue Star Malleable Private Limited, the added respondent in the writ petition, was the successful bidder. The work is well in progress.

20. Mr. Sabyasachi Chowdhury submitted that the limited tender was legally valid. The process was transparent and reasonable. The policy decision of the DVC to restrict the RFQ to eligible enlisted vendors of the NTPC was well-known to the appellants and the same could not be questioned in a court of law. DVC, in its commercial interest and freedom, was entitled to keep the tender type limited, amongst the qualified enlisted vendors of NTPC. The policy was devised to procure the best quality services and materials and to eliminate the risk in engaging non-reputed vendors or vendors who did not meet the financial threshold. The successful completion of the various contracts of the appellant either with NTPC or DVC was immaterial, inasmuch as, the procedure followed by DVC was restricted to entering the financial involvement of the contract in the portal of NTPC, which provided an option. As soon as such information with regard to the estimated cost was fed, the names of three entities who

matched the financial involvement in the subject contract, emerged. DVC decided to keep the tender process restricted amongst those three vendors.

21. It was submitted that, it was not the obligation of the tender inviting authority to justify in the tender documents, the reasons as to why the tender process was kept limited. It was also not required to justify why only those three entities were named in the RFQ. The Portal of DVC clearly provided that DVC had decided to use the enlisted vendors of NTPC. The SOP also mentioned that DVC should ensure that the selected vendors met the qualification criteria based on their annual average turnover and execution capability, relative to the total estimated cost and the delivery completion period. Mr. Chowdhury prayed for dismissal of the appeal.

22. Mr. Chowdhury relied on the following decisions:-

(a) Asiatic Labour Corporation vs Union of India and Others
reported in ***1982 SCC Online Guj 47***,

(b) Airport Authority of India vs Centre for Aviation Policy, Safety & Research (CAPSR) & Others reported in ***2022 SCC Online SC 1334***.

23. Reference was made to the certificate of enlistment of the appellant No. 1, that was granted by NTPC on March 27, 2025, i.e. for the same year when the RFQ was floated. It stated that the execution capacity of the appellant No. 1 was 13,85,28,360, whereas the estimated contract value

was more than Rs. 16 crores. This figure was arrived at by DVC, upon estimating the cost of the subject items in respect of the RFQ, as per the cost of the materials in the earlier year.

24. Mr. Sabyasachi Chowdhury submitted that the estimated cost could never be included in the RFQ, for the simple reason that the chance of getting the materials at the lowest possible price would be lost, if the estimated cost of Rs. 16 crores and above was mentioned in the RFQ. Thus, it was urged that the proposed RFQ did not suffer from any arbitrariness and the choice of the three entities was not by a pick and choose method, but was based on sound reason.

25. Mr. Dipan Kumar Sarkar, learned Advocate for the successful bidder submitted that the scope of judicial review in contractual matters was limited. There must be judicial restraint while interfering with such administrative action. The soundness of the decision of the tender-inviting authority should not be questioned in a court of law, unless such decision was absolutely irrational or mala fide or intended to favour someone. The decision of DVC and the rationale behind such decision, were not shocking to the conscience of the court. Even if the court disagreed with the procurement method or the selection method, such decision could not be interfered with and the administrative authority should be given some fair

play in the joints. DVC was best suited to understand and appreciate its requirement.

26. DVC devised a method for procurement of materials from the best available entities. The method was reasonable. The portal of NTPC was used for choosing the vendors. NTPC was a well-known public sector undertaking in the power generation sector, and it was expected that the vendors of NTPC had good reputation and capability. DVC was justified in using the portal of the NTPC.

27. The decision to select the vendors from those enlisted with NTPC, on the basis of the financial involvement in the contract, was a reasonable eligibility criteria. The process could not be said to have been vitiated by arbitrariness, favouritism or irrationality.

28. The writ court could not sit in appeal over the decision of the tendering authority. He further submitted that the supply of the items as per the RFQ, to a public sector undertaking involves public interest and any interference with the said process would be detrimental to generation of power. Cancellation of the tender process would put an additional burden to the public exchequer.

29. Mr. Sarkar relied on the following decision:-

(i) ***N.G. Projects Limited vs Vinod Kumar Jain and Ors.*** reported in ***(2022) 6 SCC 127***

(ii) ***Kimberley Club Pvt. Ltd. vs Krishi Utpadan Mandi Parishad and Ors.*** reported in ***2025 SCC Online SC 2323.***

(iii) ***Reliance Energy Ltd. and Anr. vs Maharashtra State Road Development Corporation Ltd. and Ors.*** reported in ***(2007) 8 SCC 1***

30. Heard the learned Advocates for the respective parties. The tender process was under challenge in the writ petition on the ground that the respondent No. 1, being a statutory authority and a public sector undertaking could not issue a limited tender enquiry, thereby, excluding other eligible participants. According to the appellants, such decision to invite tenders from three prospective bidders on the strength of an internal policy or directive, lacked transparency. The method followed was not available in the public domain. The policy also did not clarify whether the contract value would be an eligibility criteria and the execution capacity of the vendors would be determined by reference to NTPC's enlistment certificate. It was urged that the appellants were enlisted vendors of NTPC and had also supplied materials to DVC. Thus, reliance of DVC, on the execution capacity of the appellant No. 1 as certified by NTPC, was completely illegal, irrational and arbitrary, inasmuch as, DVC should have

looked into the execution capacity of the appellants with reference to the contract executed by the appellants for DVC itself, instead of relying solely on the certificate issued by NTPC. The respondent No. 1 for the first time followed the route of limited tenders, although the said respondent had always ensured maximum participation and transparency through open tenders. The decision to proceed for a limited tender reflected high-handedness on the part of the respondent No. 1, which vitiated the fundamental principles laid down under Article 14 of the Constitution of India. Thus, the writ petition was filed assailing the participation of only three selected bidders in the tender process. The entire process was claimed to be vitiated.

31. According to Mr. Jishnu Chowdhury, the rules of the game had been changed after the game had started, inasmuch as, an artificial bar was created by clinching the financial capacity, to justify the limited tender amongst three bidders, although such eligibility criteria had never been prescribed in the bid document.

32. We find from the records that, the tender document clearly provided that it was a limited tender enquiry and offer would be accepted from the three bidders who were mentioned. Such limited tender was published on August 22, 2025 on the GeM Portal. The said decision was in consonance

with the policy decision of DVC, to restrict the participation amongst eligible enlisted vendors of NTPC. The execution capability of the enlisted vendors of NTPC was the sole criteria for limiting the tender amongst the three bidders.

33. A policy decision was taken by DVC to ensure reliability and an efficient supply chain. Procurement of goods from enlisted vendors is practiced nationwide, in almost all public sector undertakings. Qualified and vetted suppliers are expected to reduce the risk in supply of poor quality materials and unsatisfactory performances. The same minimises the likelihood of dealing with sub-standard materials and unreliable suppliers, who frequently fail to honour their obligations under the contract. As DVC had not finalized its own enlistment process, it decided to proceed with the enlisted vendors of NTPC, and share the list. This decision was entirely within the domain of DVC and DVC had the commercial independence to do so. The decision taken by DVC does not appear to be against public interest. DVC entered into an agreement with NTPC to obtain consultancy services in the facilitation and usage of NTPC's vendor's list. The above decision of DVC was published in its website on March 12, 2025. This information was available to all concerned, including the appellant. An SOP had been prepared by DVC regarding preparation of the

indent. Step 2, under the heading Preparation of Indent in the SOP is quoted below:

"Follow vendor selection procedures based on NTPC's enlisted vendors for the respective items.

If the material is included in the list of vendor enlistment portal of NTPC then, indent should be prepared considering the respective vendors in NTPC portal.

Ensure that the selected vendors meet the qualification criteria based on their annual average turnover and execution capability relative to the total estimated cost and the delivery/completion period.

Confirm that the vendor's enlistment is active during the submission of the indent.

A PDF generated from the NTPC vendor portal for DVC enlistment should be attached to the indent. The document must contain the total estimated cost, indent number, supply completion period, average annual turnover, execution capacity, and name of plant/station."

34. In the third paragraph, it has been mentioned that DVC shall ensure that the selected vendors would meet the qualification criteria based on their annual average turnover and execution capability relative to the total estimated cost and the delivery/completion period. Thus, the contention of Mr. Jishnu Chowdhury that, the execution capability in reference to the financial strength as certified by the NTPC was not the criteria, but an afterthought, cannot be accepted. The SOP provided for assessment of the qualification criteria based on annual average turnover and execution capability.

35. With regard to the next contention of Mr. Jishnu Chowdhury, that the financial criteria had never been spelt out in the tender document, we

find that the reason given by Mr. Sabyasachi Chowdhury is neither wholly irrational nor arbitrary. In order to obtain the names of the eligible bidders from NTPC's portal, DVC had entered the approximate contract value in the portal of NTPC. This value was taken from the past year's cost of the subject items. The estimated value came to more than Rs. 16,41,67,570. Three names emerged in the NTPC's portal, who had the capability to execute the work of such value. The enlistment certificates provided by NTPC was relied upon. Under such circumstances, it cannot be said that there was either lack of transparency in the process and that the selection was vitiated by favouritism. The tender process was limited amongst those three bidders on the parameter of financial capacity and other than those three bidders in the NTPC's portal, no one else was certified to be capable of executing the work in terms of the estimated value of the contract.

36. The wisdom in the policy of DVC to enter into an agreement with NTPC for consultancy services as regards the vendors list, cannot be questioned in a writ court. The decision to use the enlisted vendors of the NTPC for procurement of goods was in the public domain. DVC had uploaded such decision in its website prior to the limited tender being floated. The appellant No. 1 also claims to be a regular supplier of DVC.

Under such circumstances, it is expected that the policy was known to the appellant No. 1. The appellant No. 1 was not taken by surprise.

37. The appellant No. 1 also congratulated DVC by a written communication, on the decision to use the enlisted vendors of NTPC for its own contract. Secondly, the SOP which was put together for the preparation of indent, clearly mentions that financial capability would be one of the criteria for selection of vendors. Admittedly, in the NTPC's list, the appellant No. 1 figures along with others. The execution capacity of the appellant No. 1, as mentioned in the enlistment certificate provided by the NTPC to the appellant No. 1, does not cross the financial threshold of the estimated value of the tender.

38. The determination of the financial capability of the enlisted vendors was not arbitrary. DVC had entered the estimated tender value of the subject goods with reference to the previous year's cost and the estimated contract value came to Rs. 16,41,67,570. When the item wise costs were entered into the system or the portal of NTPC, only three names had emerged. Thus, the question of arbitrariness and favouritism towards a particular entity does not arise. The contention of Mr. Jishnu Chowdhury that the contract value was not mentioned in the notice inviting tender, is not a reasonable submission. DVC would always try to procure best

materials at the least cost. If the estimated amount of the tender was mentioned in the tender document, DVC would run the risk of not getting the best goods at the lowest price.

39. For the above reasons, the contentions of Mr. Jishnu Chowdhury cannot be accepted. The tendering authority is the best judge to frame the terms and conditions. Limited tender is not totally impermissible in law. There were none other than the three bidders in NTPC's portal who crossed the financial threshold. The tendering authority should get some fair play in the joints. DVC has equal right to enter into the arena of commercial transactions and frame policies and terms and conditions to best suit its needs. All that is required to be seen is that, the decision is not arbitrary, public interest should not suffer and public money should not be wasted. Mere exclusion of other bidders cannot be a ground to hold that the decision of the DVC in this case was vitiated by malice. The terms and conditions of a notice inviting tender are within the domain of the tenderer or the tender-making authority and are not open to judicial scrutiny, unless they are so absurd and arbitrary that they shock the conscience of a reasonable man.

40. DVC has a free hand in setting the terms of the tender. The appellant No. 1 had failed to demonstrate that the said appellant was subjected to

discriminatory treatment or had been singled out and given an unfair deal. Award of a contract is essentially a commercial matter, which must be determined on the basis of considerations that are relevant to such commercial decisions.

41. The consideration of DVC appears to be relevant to their commercial requirements and as such, the terms which have been challenged by Mr. Jishnu Chowdhury, are not open to judicial scrutiny. The court does not find that the same was tailor-made only to suit a particular tenderer or class of tenderers. The authority invited a limited tender enquiry with e-reverse auction and the authority has justified how only three bidders from the NTPC's vendors list were found to be eligible. None other than those three bidders fulfilled the eligibility criteria. The letter of the appellant No. 1, clearly indicates that the entire process and the decision behind such process were well-known to the appellants, and they did not object to the use of NTPC's portal. Rather they were pleased.

42. The extract of the said letter is quoted below:-

“

Date: 28.08.2025

To.
The Chairman
Damodar Valley Corporation
Kind Attention: Shri S Suresh Kumar IAS

Subject :- Consideration of our credentials for current Limited Tender NIT # DVC/Tender/HQ/CMM/CMM/Supply/00021 for Procurement of High Chrome Grinding Media for BBD type Coal Mills at MTPS

Reference:- Our earlier letter dated 26/08/2025 & meeting with you on 27/08/25 at your office

Respected Sir,

In line with above subject and reference we thank you very much for the immediate audience provided during the meeting in your office. Further to elaborate on the subject as has been apprised to you, following the recent internal policy or directive DVC has adopted or been referring to NTPC Vendor Portal for all its purchases and contracts.

While the requirement/ PR for the above subject is being processed internally, as per COS under ED Operations has informed us that they have referred to NTPC Vendor Portal and accordingly suggested C&M for three vendors who are eligible/ capable for this requirement which mentions clearly the vendors in the tender documents. Further COS has also informed us that our credentials are not considered and referred to C&M due to being shortlisted by NTPC vendor portal due to difference in estimated value & our execution capability value as per NTPC Vendor Portal. Precisely the current NIT estimated value is approx INR I7 Crores and our execution capability as per NTPC Vendor Portal is of INR 13.85 Crores.

.....”

43. The certificate of enlistment of the appellant No. 1 is quoted below:-

“Ref.No. VDC/11366/46MEG-02/3467873 Application dated:05.11.2024

This is to certify that **SARLAL ENGINEERING LIMITED (PAN-AAZCS9825R)** has been enlisted for the supply of materials as per the details given below:-

MEG No.	46MEG-02 (Grinding Ball for Ball and Tube Type Coal Pulveriser)
Average Turnover (AATO)	INR 77,74,50,514.00
Execution Capability	INR 13,85,98,360.00
Communication Address	M-11 AND 12, PHASE-4, ADITYAPUR INDUSTRIAL AEAGAMHARIA, SARAIKELLA- KHARSAWAN, JAMSHEDPUR- 832108, JHARKHAND, INDIA.
Work Address	Address 1 M-11 & 12, Phase-4, Adityapur Industrial Area, Gamharia-832108, Dist- Sarailela- Kharsawan, JAMSHEDPUR, Jharkhand.
Validity	27-03-2025 to 26-03.2028

This Certificate will remain valid unless overridden otherwise, Subject to Terms and Condition attached with this certificate. We look forward to have a fair, transparent and mutually beneficial long term relationship with you and contribute towards growth of our nation.”

44. The certificate indicates that the execution capability of any work by the appellant No. 1, in terms of money, was less than the estimated value of the contract.

45. The appellant No. 1 has also been a supplier to DVC, but cannot claim to have a fundamental right to carry on business with DVC in all commercial transactions. DVC has acted in conformity with certain healthy standards and norms, and as such, scope of interference by the writ court was limited. The order impugned is justified.

46. In the matter of ***Maa Binda Express Carrier and Anr. vs Northeast Frontier railway and Ors.*** reported in ***AIR 2014 SC 390***, the Hon'ble Apex Court held as follows:-

“8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons

provided such relaxation is permissible under the terms governing the tender process.

9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest. (See *Meerut Development Authority v. Assn. of Management Studies* [(2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803] and *Air India Ltd. v. Cochin International Airport Ltd.* [(2000) 2 SCC 617 : (2000) 1 SCR 505])

10. The scope of judicial review in contractual matters was further examined by this Court in *Tata Cellular v. Union of India* [(1994) 6 SCC 651] , *Raunaq International Ltd. case* [*Raunaq International Ltd. v. I.V.R. Construction Ltd.*, (1999) 1 SCC 492] and in *Jagdish Mandal v. State of Orissa* [(2007) 14 SCC 517] besides several other decisions to which we need not refer.

11. In *Michigan Rubber (India) Ltd. v. State of Karnataka* [(2012) 8 SCC 216] the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words: (SCC p. 229, paras 23-24)

“23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) *fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable.* If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

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

(e) *if the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.*

20. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) *Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached'?* and

(ii) *Whether the public interest is affected?*

If the answers to the above questions are in the negative, then there should be no interference under Article 226."

(emphasis supplied)

12. As pointed out in the earlier part of this order, the decision to cancel the tender process was in no way discriminatory or mala fide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process serious questions touching the legality and propriety affecting the validity of the tender process would have arisen. Inasmuch as the competent authority decided to cancel the tender process, it did not violate any fundamental right of the appellant nor could the action of the respondent be termed unreasonable so as to warrant any interference from this Court. The Division Bench of the High Court was, in that view, perfectly justified in setting aside the order [*Maa Binda Express Carrier v. Union of India*, WP (C) No. 4668 of 2011, order dated 4-2-2012 (Gau)] passed by the Single Judge and dismissing the writ petition."

47. In ***Tata Cellular v. Union of India*** reported in **(1994) 6 SCC 651**,

the Hon'ble Apex Court held as follows:-

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

48. In the matter of **Balaji Ventures Pvt. Ltd. vs Maharashtra State Power Generation Company Ltd. & Anr.** decided in **Special Leave to Appeal (C) No(s). 1616 & 1673 /2022**, the Hon'ble Apex Court held as follows:-

“5.1 Now so far as the impugned Judgment and order passed by the High Court dismissing the writ petitions is concerned, what was challenged before the High Court was one of the tender conditions/clauses. The High Court has specifically observed and noted the justification for providing clause 1.12(V). The said clause was to be applied to all the tenderers/bidders. It cannot be said that such clause was a tailor made to suit a particular bidder. It was applicable to all. Owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is found to be arbitrary, mala fide and/or tailor made. The bidder/tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or convenient to him. As per the settled proposition of law as such it is an offer to the prospective bidder/tenderer to compete and submit the tender considering the terms and conditions mentioned in the tender document.

5.2 In the case of **Silppi Constructions Contractors vs. Union of India, (2020) 16 SCC 489**, it is observed in para 20 as under:

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”

5.3 In the case of **Montecarlo Limited vs. National Thermal Power Corporation Limited, (2016) 15 SCC 272**, it is observed and held that the tender inviting authority is the best person to understand and appreciate its requirement and tender documents, so long as there are no mala fides/arbitrariness etc. It is further observed and held that the Government must have freedom of contract and such

action can be tested by applying Wednesbury principle and also examining whether it suffers from arbitrariness or bias or mala fides.

6. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and when it is found that clause 1.12(V) cannot be said to be arbitrary, mala fide and/or tailor made and the same shall be applicable to all the bidders/tenderers and there is justification also shown providing such a clause and even subsequently a corrigendum has been issued and even the Respondent No.2 private bidders also made it clear that uniform charge shall be quoted for each bidder and even clause 1.12(V) was modified to the extent the necessary permission/consent/no objection certificate that was required at the time of submission of the bid was now required to be submitted before the opening of the price bid and the date for submission of the bid was extended, the High Court has rightly dismissed the writ petition and has rightly refused to interfere with the decisions of the respondents providing clause 1.12(V) of the tender document.”

49. In the matter of ***Airport Authority of India vs Centre for Aviation***

Policy, Safety and Research (CAPSR) & Ors. decided in ***CIVIL APPEAL***

Nos. 6615-6616 of 2022, the Hon'ble Apex Court held as follows:-

“7. While considering the scope and ambit of the High Court under Article 226 of the Constitution of India with respect to judicial scrutiny of the eligibility criteria/tender conditions, few decisions of this Court are required to be referred to, which are as under:

In the case of ***Maa Binda Express Carrier (supra)***, in paragraph 8, this Court observed and held as under:

“8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is

essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.”

In the case of ***Michigan Rubber (India) Ltd. (supra)***, after considering the law on the judicial scrutiny with respect to tender conditions, ultimately it is concluded in paragraph 23 as under:

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

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

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

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27. Even otherwise, even on merits also, the High Court has erred in quashing and setting aside the eligibility criteria/tender conditions mentioned in the respective RFPs, while exercising the powers under Article 226 of the Constitution of India. As per the settled position of law, the terms and conditions of the Invitation to Tender are within the domain of the tenderer/tender making authority and are not open to judicial scrutiny, unless they are arbitrary, discriminatory or mala fide. As per the settled position of law, the terms of the Invitation to Tender are not open to judicial scrutiny, the same being in the realm of contract. The Government/tenderer/tender making authority must have a free hand in setting the terms of the tender.”

50. In the case of ***Silppi Constructions Contractors vs. Union of India***, reported in **(2020) 16 SCC 489**, the Hon’ble Apex Court held as follows:-

“**20.** The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”

51. The writ court could not have interfered with the terms of the RFQ prescribed by the authority, even if it felt that some other term in the tender would have been fairer, wiser or logical. The decision of DVC and the policy to invite a limited tender enquiry cannot be said to be actuated by bias or mala fide. The writ court could not sit in appeal over the decision of

the tendering authority regarding the terms and conditions in the bid document. The decision of DVC to limit the bidding process amongst three eligible bidders who had the financial capability to execute the work of an estimated value of close to Rs. 17 crores, cannot said to be against public interest. DVC must be allowed the commercial freedom. The court could not substitute its decision with the decision of the authority.

52. The decision cited by Mr. Jishnu Chowdhury, in the matter of ***Indian Medicines Pharmaceuticals Corporation Limited vs Kerala Ayurvedic Cooperative Society Limited & Ors.*** reported in ***(2023) 19 SCC 755***, is not applicable in the facts of the case.

53. In the present case, DVC had gone for a limited tender. The reason why such limited tender was floated is available from the documents and the records. It is not a fact that the three bidders were selected either with any ulterior motive, or to favour them. Had the appellant No. 1 crossed the eligibility threshold of being capable of executing work beyond the estimated value of the contract, the name of the appellant No. 1 would have emerged in the portal of NTPC as an eligible vendor, and the said appellant's name would be incorporated in the RFQ.

54. Under such circumstances, the appeal and the application are dismissed. The learned Single Judge rightly appreciated the law behind

procurement of goods through limited tender and the rationale behind such decision was available from the records. There is a nexus in the decision to go for a limited tender enquiry with the object sought to be achieved. The order does not call for any interference.

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

(Shampa Sarkar, J.)

I agree

(Ajay Kumar Gupta, J.)