SUPREME COURT OF INDIA

Michigan Rubber(India) Ltd.

Vs.

State of Karnataka

C.A.No.5898 of 2012

(P.Sathasivam and Ranjan Gogoi,JJ.)

17.08.2012

JUDGMENT

P.Sathasivam,J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 02.07.2008 passed by the High Court of Karnataka at Bangalore in Writ Appeal No. 1928 of 2007 whereby the High Court dismissed the appeal filed by the appellant-Company herein.

3. Brief facts:

> "(a) On 04.08.2005, the Karnataka State Road Transport Corporation (KSRTC) - Respondent No.2 herein floated a Tender being No. G30-05 for supply of Tyres, Tubes and Flaps specifying certain pre-qualification criteria.
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> (b) Challenging the said pre-qualification criteria, the appellant- Company, which is engaged in the manufacture and supply of tyres, tubes and flaps filed a Writ Petition being No. 20543 of 2005 before the High Court. After filing of the writ petition, the said criterion was withdrawn by the KSRTC. Thereafter, the KSRTC modified the pre-qualification criteria and issued a Tender being No. G-23-07 dated 05.07.2007 wherein, a new prequalification criterion was specified.
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> (c) Being aggrieved by the said pre-qualification criteria, the appellant- Company preferred a Writ Petition being No. 11951 of 2007 before the High Court. By judgment dated 13.09.2007, the learned Single Judge of the High Court dismissed their writ petition.

(d) Challenging the said judgment, the appellant filed a Writ Appeal being No. 1928 of 2007 before the Division Bench of the High Court. By impugned judgment dated 02.07.2008, the Division Bench of the High Court dismissed the same.

(e) Being aggrieved by the said judgment, the appellant-Company has preferred this appeal by way of special leave before this Court."

4. Heard Ms. Madhurima Tatia, learned counsel for the appellant-Company and Mr. S.N. Bhat, learned counsel for respondent Nos. 2 3 and Mr. V.N. Raghupathy, learned counsel for the State.

5. Ms. Madhurima Tatia, learned counsel for the appellant-Company, after taking us through the tender pre-qualification criteria and their performance, raised the following submissions:

"(i) 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, viz., G- 23-07 dated 05.07.2007 is unreasonable, arbitrary, discriminatory and opposed to public interest in general.

(ii) The said conditions were incorporated to exclude the appellant- Company and other similarly situated companies from the tender process on wholly extraneous grounds which are unsustainable in law.

(iii) The appellant-Company was successful in previous three contracts and supplied their products to the KSRTC. There was no complaint pertaining to short supply and quality. The financial capacity of the appellant-Company was never doubted by the KSRTC at any point of time, hence, the impugned pre-qualification criteria was included to exclude the appellant-Company from the tender bidding process with an ulterior motive."

6. Per contra, Mr. S.N. Bhat and Mr. V.N. Raghupathy, learned counsel for the respondents, after taking us through the relevant materials including the constitution of high level Committee i.e. Contract Management Group (CMG), its deliberations and decisions etc., submitted that:

"(i) To have the best of the equipment for the vehicles, which ply on road carrying passengers, the respondents, in the circumstances, thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and hence only those manufacturers, who satisfy the eligibility criteria, should be permitted to participate in the tender.

(ii) The said two conditions were imposed in order to ensure the supply of good quality tyres.

(iii) The two conditions were incorporated in the tender notice pursuant to the decision of the Contract Management Group (CMG) of the KSRTC which consists of higher level officials having technical knowledge. (iv) The corrigendum was issued to minimize the confusion, which might have occurred due to condition No. 2(a)."

Discussion:

7. We have carefully considered the rival submissions and perused all the materials placed before us. It is not in dispute that the KSRTC has issued tender No. G-23-07 dated 05.07.2007. The pre-qualification criteria as specified in Condition No.2 of the tender dated 05.07.2007 reads as under:-

"2 Pre-qualification criteria for procurement of TTF Sets:

(a) Only the tyre manufacturers who have supplied a minimum average of 5000 sets of Tyres, Tubes and Flaps set per annum, in the preceding three years out of 2003-04, 2004-05, 2005-06 and 2006- 07 to any one of the OE chassis manufacturer, i.e. Ashok Leyland, Tata Motors, Eicher, Swaraj Mazda and Volvo are eligible to participate, for supply of respective size/type of Tyres, Tubes and Flaps set. They should produce purchase order copies and invoice supplies in support of the same.

(b) The firm should have minimum average annual turnover of Rs.500 crores in the preceding three years out of 2003-04, 2004-05, 2005- 06 and 2006-07 from the sale of tyres, Tubes and Flaps."

8. Being aggrieved by the above-mentioned conditions, viz., 2(a) and 2(b) of the tender dated 05.07.2007, the appellant-Company preferred W.P No. 11951 of 2007 before the High Court. After filing of the said writ petition, before opening of the tender bids, the KSRTC amended the tender conditions as were incorporated in the earlier tender document replacing Condition Nos. 2(a) and 2(b) with Condition Nos. 4(a) and 4(b). Condition Nos. 4(a) and 4(b) read as under:

"4. Pre-qualification criteria for procurement of TTF sets:

a) Only the tyre manufacturers who have supplied a minimum average of 5000 sets of Tyres, Tubes and Flaps set per annum, in the preceding three years out of 2003-04, 2004-05, 2005-06 and 2006- 07 to any of the heavy goods/passenger vehicles/chassis

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manufacturers in the country are eligible to participate. They should produce purchase order copies and invoice supplies in support of the same.

b) The firm should have minimum average annual turnover of Rs.500 crores in the preceding three years out of 2003-04, 2004-05, 2005- 06 and 2006-07 from the sale of Tyres, Tubes and Flaps."

Under the said amendment, only Condition No. 2(a) was replaced by Condition No 4(a). In Condition No. 4(a), the classification of the vehicles was maintained but the names of the manufacturers were deleted. 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."

9. This Court, in a series of decisions, considered similar conditions incorporated in the tender documents and also the scope and judicial review of administrative actions. The scope and the approach to be adopted in the process of such review have been settled by a long line of decisions of this Court. Since the principle of law is settled and well recognized by now, we may refer some of the decisions only to recapitulate the relevant tests applicable and approach of this Court in such matters.

10. In *Tata Cellular vs. Union of India*[1] this Court emphasised the need to find a right balance between administrative discretion to decide the matters on the one hand, and the need to remedy any unfairness on the other, and observed:

"94. (1) The modem trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

> (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. ...
>
> (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi- administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
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> (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

11. In *Raunaq International Ltd. vs. I.V.R. Construction Ltd. Ors*[2]this Court reiterated the principle governing the process of judicial review and held that the writ court would not be justified in interfering with commercial transactions in which the State is one of the parties except where there is substantial public interest involved and in cases where the transaction is mala fide.

12. In *Union of India Anr. vs. International Trading Co. Anr*[3]this Court, in similar circumstances, held as under:

> "15. 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 the impression that it was so done arbitrarily or 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 heartbeat 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. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be

labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See *Parbhani Transport Coop. Society Ltd. v. Regional Transport Authority, Shree Meenakshi Mills Ltd. v. Union of India, Hari Chand Sarda v. Mizo District Council and Krishnan Kakkanth v. Govt. of Kerala.)"*

13. In *Jespar I. Slong vs. State of Meghalaya Ors*[4]this Court, in paragraph 17, held as under:

"17 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"

14. In *Association of Registration Plates vs Union of India Ors*[5]similar issue was considered by a bench of three Judges. In that case, the dispute was about the terms and conditions of notices inviting tenders (NITs) for supply of high security registration plates for motor vehicles. The tenders have been issued by various State Governments on the guidelines circulated by the Central Government for implementing the provisions of the Motor Vehicles Act, 1988 and the newly amended Central Motor Vehicles Rules, 1989. The main grievance of the appellant therein was that all notices inviting tenders (NITs) which were issued by various State Governments, contained conditions which were tailored to favour companies having foreign collaboration. Their further grievance was that the tender conditions were discriminatory as per Article 14 of the Constitution and were being aimed at excluding indigenous manufacturers from the tender process. It was also contended that in all the cases,

the work of supply of high security registration plates for all existing vehicles and new vehicles was being entrusted to a single licence plates manufacturer in a State or a region and for a long period of 15 years thus creating monopoly in favour of selected bidders to the complete exclusion of all others in the field. The further contention advanced therein was that creation of monopoly in favour of a few parties having connection with foreign concerns is violative of the fundamental right of trade under Article 19(1)(g) and discriminatory under Article 14 of the Constitution. It was also pointed out that in the name of implementing the amended Rule 50 of the Motor Vehicles Rules,1989, the States are imposing conditions in the tender that would take away the existing rights of the manufacturers of plates in India. On the condition laid down for prescribed minimum turnover of business, the challenge made on behalf of the petitioners therein was that fixing such high turnover for such a new business is only for the purpose of advancing the business interests of a group of companies having foreign links and support. It is impossible for any indigenous manufacturer of security plates to have a turnover of approximately 12.5 crores from the high security registration plates which were sought to be introduced in India for the first time and the implementation of the project has not yet started in any of the States. On behalf of the Union of India, the State authorities and counsel appearing for the contesting manufacturers, in their replies, have tried to justify the manner and implementation of the policy contained in Rule 50 of the Motor Vehicles Rules. On behalf of the Union of India, learned ASG submitted that Rule 50 read with Statutory Order of 2001 issued under Section 109(3) of the Motor Vehicles Act, the State Governments are legally competent to formulate an appropriate policy for choosing a sole or more manufacturers in order to fulfil the object of affixation of security plates. The Scheme contained in Rule 50 read with the Statutory Order of 2001 leaves it to the discretion of the State concerned to even choose a single manufacturer for the entire State or more than one manufacturer regionwise. It was pointed out that such a selection cannot be said to confer any monopoly right by the State on any private individual or concern. He further pointed out that the tender conditions were formulated taking into account the public interest consideration and aspects of high security.

15. While considering the above submissions, the three- Judge Bench held as under:

> "38. In the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring supply of high security registration plates, greater latitude is required to be conceded to the State authorities. Unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, tender conditions are unassailable. On intensive examination of tender conditions, we do not find that they violate the equality clause under Article 14 or encroach on fundamental rights of the class of intending tenderers under Article 19 of the Constitution. On the basis of the submissions made on behalf of the Union and State

authorities and the justification shown for the terms of the impugned tender conditions, we do not find that the clauses requiring experience in the field of supplying registration plates in foreign countries and the quantum of business turnover are intended only to keep indigenous manufacturers out of the field. It is explained that on the date of formulation of scheme in Rule 50 and issuance of guidelines thereunder by the Central Government, there were not many indigenous manufacturers in India with technical and financial capability to undertake the job of supply of such high dimension, on a long-term basis and in a manner to ensure safety and security which is the prime object to be achieved by the introduction of new sophisticated registration plates. The notice inviting tender is open to response by all and even if one single manufacturer is ultimately selected for a region or State, it cannot be said that the State has created a monopoly of business in favour of a private party. Rule 50 permits the RTOs concerned themselves to implement the policy or to get it implemented through a selected approved manufacturer. Selecting one manufacturer through a process of open competition is not creation of any monopoly, as contended, in violation of Article 19(1) (g) of the Constitution read with clause (6) of the said article. As is sought to be pointed out, the implementation involves large network of operations of highly sophisticated materials. The manufacturer has to have embossing stations within the premises of the RTO. He has to maintain the data of each plate which he would be getting from his main unit. It has to be cross-checked by the RTO data. There has to be a server in the RTO's office which is linked with all RTOs in each State and thereon linked to the whole nation. Maintenance of the record by one and supervision over its activity would be simpler for the State if there is one manufacturer instead of multi¬manufacturers as suppliers. The actual operation of the scheme through the RTOs in their premises would get complicated and confused if multi-manufacturers are involved. That would also seriously impair the high security concept in affixation of new plates on the vehicles. If there is a single manufacturer he can be forced to go and serve rural areas with thin vehicular population and less volume of business. Multi-manufacturers might concentrate only on urban areas with higher vehicular population. 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. Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim a fundamental right to carry on business with the Government. 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. Undisputedly, the legal position which has been firmly established from various decisions of this Court, cited

at the Bar (supra) is that government contracts are highly valuable assets and the court should be prepared to enforce standards of fairness on the Government in its dealings with tenderers and contractors. The grievance that the terms of notice inviting tenders in the present case virtually create a monopoly in favour of parties having foreign collaborations, is without substance. Selection of a competent contractor for assigning job of supply of a sophisticated article through an open-tender procedure, is not an act of creating monopoly, as is sought to be suggested on behalf of the petitioners. What has been argued is that the terms of the notices inviting tenders deliberately exclude domestic manufacturers and new entrepreneurs in the field. In the absence of any indication from the record that the terms and conditions were tailor-made to promote parties with foreign collaborations and to exclude indigenous manufacturers, judicial interference is uncalled for."

After observing so, this Court dismissed all the writ petitions directly filed in this Court and transferred to this Court from the High Courts.

16. In *Reliance Airport Developers (P) Ltd. vs. Airports Authority of India Ors*[6]this Court held that while judicial review cannot be denied in contractual matters or matters in which the Government exercises its contractual powers, such review is intended to prevent arbitrariness and must be exercised in larger public interest.

17. In *Jagdish Mandal vs. State of Orissa and Others*[7]the following conclusion is relevant:

> "22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should

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be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. 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; 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";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

18. The same principles have been reiterated in a recent decision of this Court in *Tejas Constructions Infrastructure Pvt. Ltd. vs. Municipal Council, Sendhwa Anr*[8].

19. 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 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 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 negative, then there should be no interference under Article 226."

21. Respondent No. 1-the State, in their counter affidavit, highlighted that tyre is very critical and a high value item being procured by the KSRTC and it procured 900x20 14 Ply Nylon tyres along with the tubes and flaps in sets and these types of tyres are being used only by the State Transport Units and not in the domestic market extensively. It is highlighted that the quality of the tyre plays a major role in providing safe and comfort transportation facility to the commuters.

22. It is also pointed out by the Respondent-State that in order to ensure procurement of tyres, tubes and flaps from reliable sources, the manufacturers of the same with an annual average turnover of Rs. 200 crores during the preceding three years, were made eligible to participate in the tenders. In the tender issued for procurement of these sets during October, 2004, the appellant participated and based on the L1 rates, the orders for supply for 16,000 sets of tyres were placed on the firm. It is also pointed out that the appellant supplied 10,240 sets of tyres and remaining quantity was cancelled due to quality problems.

23. Materials has also been placed to show that the appellant participated in subsequent tenders and orders were released for supply of 900 x 20 14 PR tyres, tubes and flaps from October 2006 to September, 2007. It is also explained that after going into various

complaints, in order to achieve good results, new tyre mileage and safety of the public etc., and after noting that vehicle/chassis manufacturers such as M/s Ashok Leyland, M/s Tata Motors etc. have strict quality control system, it was thought fit to incorporate similar criteria as a pre¬qualification for procurement of tyres.

24. It is also highlighted by the State as well as by the Ksrtc that the tender conditions were stipulated by way of policy decision after due deliberation by the KSRTC. Both the respondents highlighted that the said conditions were imposed with a view to obtain good quality materials from reliable and experienced suppliers. In other words, according to them, the conditions were aimed at the sole purpose of obtaining good quality and reliable supply of materials and there was no ulterior motive in stipulating the said conditions.

25. Both the counsel for the respondents have brought to our notice that the two impugned conditions were incorporated in the tender notice pursuant to a decision of the Contract Management Group (CMG) of the KSRTC, which is an institutional mechanism for the purpose of devising proper method in the matter, inter alia, of procurement of materials to the KSRTC. The said Group consists of various high level officials representing different departments of KSRTC. The CMG constitutes of the following officials:

> "a)Managing Director, Bangalore Metropolitan Transport Corporation
>
> b) Managing Directors of four sister Corporations
>
> c) Director, Security Vigilance
>
> d) Director, Personnel and Environment
>
> e) Chief Accounts Officer
>
> f)Chief Engineer (Production)
>
> g) Chief Engineer(Maintenance)
>
> h) Chief Accounts Officer(Internal Audit)
>
> i) Controller of Stores and Purchase
>
> Thus it is clear that the said CMG is a widely represented body within the Respondent No. 2-KSRTC."

26. Further materials placed by KSRTC show that the CMG met on 17.05.2007 and deliberated on the question of conditions to be incorporated in the matter of calling of tenders for supply of tyres, tubes and flaps. It is pointed out that in view of the experience gained

over the years, it was felt by the said Group that the impugned two conditions should be essential qualifications of any tenderer. The said policy decision was taken in the best interest of the KSRTC and the members of the traveling public to whom it is committed to provide the best possible service. In the course of hearing, learned counsel for the respondents have also brought to our notice the Minutes of Meeting of the CMG held on 17.05.2007. The said recommendation of the CMG was ultimately approved by the Vice Chairman of KSRTC. In the circumstances, the said impugned two conditions were incorporated in the tender notice dated 05.07.2007.

27. It is also brought to our notice that the KSRTC is governed by the provisions of the Karnataka Transparency in Public Procurements Act, 1999 and the Rules made there under, viz., Karnataka Transparency in Public Procurements Rules, 2000. Though in Condition No 2(a) in the tender notice dated 05.07.2007, the names of certain vehicle manufacturers were mentioned, after finding that it was inappropriate to mention the names of specific manufacturers in the said condition, it was decided to delete their names. Accordingly, a corrigendum was put up before the CMG and by decision dated 04.08.2007, CMG decided to revise the prequalification criteria by deleting the names of those manufacturers. Learned counsel for the respondents have also placed the Minutes of Meeting of the CMG held on 04.08.2007. It is also brought to our notice that the said corrigendum was also approved by the competent authority.

28. In addition to the same, it was not in dispute that the appellant- Company was well aware of both the original tender notices and the corrigendum issued. It is also brought to our notice that the appellant wrote a letter making certain queries with regard to the corrigendum issued by the KSRTC and the said queries were suitably replied by the letter dated 11.08.2007.

29. It is also seen from the records that pursuant to the tender notice dated 05.07.2007; seven bids were received including that of the appellant- Company. They are:

"i) M/s Apollo Tyres

iii) M/s Ceat Ltd

ii) M/s Birla Tyres

iv)M/s Good Year India

v) M/s JK Industries

vi) M/s MRF Ltd

vii) M/s Michigan Rubber (Former Betul Tyres) It is brought to our notice that successful bidders were CEAT and JK Tyres. Accordingly, contracts were entered into with the said two companies by the KSRTC and the purchase orders were placed and they have also effected supplies and completed the contract and the KSRTC also made payments to the said suppliers."

30. It is pertinent to point out that the second respondent has also issued 4 (four) more tender notices after the tender notice dated 05.07.2007. The said tender notices were dated 04.03.2008, 22.08.2008, 24.10.2008 and 19.03.2009. Pursuant to the tender notices dated 04.03.2008, 22.08.2008 and 24.10.2008, contracts have been awarded and have been substantially performed. It is also brought to our notice that all the said four subsequent tender notices also contained identical conditions as that of the impugned conditions contained in tender notice dated 05.07.2007.

31. 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 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.

32. The learned single Judge considered all these aspects in detail and after finding that those two conditions cannot be said to be discriminatory and unreasonable refused to interfere exercising jurisdiction under Article 226 of the Constitution and dismissed the writ petition.

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The well reasoned judgment of the learned single Judge was affirmed by the Division Bench of the High Court.

33. In the light of what is stated above, we fully agree with the reasoning of the High Court and do not find any valid ground for interference. Consequently, the appeal fails and the same is dismissed with no order as to costs.

Judgment Referred

[1] *(1994) 6 SCC 0651*
[2] *(1999) 1 SCC 0492*
[3] *(2003) 5 SCC 0437*
[4] *(2004) 11 SCC 0485*
[5] *(2005) 1 SCC 0679*
[6] *(2006) 10 SCC 0001*
[7] *(2007) 14 SCC 0517*
[8] *(2012) 6 SCC 0464*