

(2025) 05 KL CK 1143

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 29297, 29700 Of 2024

Ground Handling Association

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 16-05-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19, 226
Airports Authority Of India Act, 1994 — Section 1(3)(aa), 2(d), 2(e), 37, 42
Aircraft Act, 1934 — Section 5, 5A, 5(2). 5(2)(f), 5(2)(h), 5(2)(i), 5(2)(j), 5(2)(k),
5(2)(m), 5(2)(p), 5(2)(qq), 5(2)(r)
Aircraft Rules, 1937 — Rule 92

Citation : (2025) 05 KL CK 1143

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : Harish Gopinath, Surumi Nazar, S.Ramesh Babu, Krishna T C, Abel Tom Benny, George G.Poothicote, D.Prem Kamath, Tom Thomas, Aaron Zacharias, Benny, ??Amrutha Selvam, Gentle C.D., K.R.Paul, Clint Jude Lewis, M.Rishikesh Shenoy, Ann Mary.V.I, Benny P.Thomas, Ramesh Babu, Benny P Thomas, T C Krishna, Fereshte D Sethna, George G Poothicote

Final Decision : Dismissed

Judgement

C.S.Dias,J.

1. The writ petitions are filed by existing ground handling agencies challenging Ext.P4 addendum published by the Cochin International Airport Limited, modifying the conditions in Ext.P3 tender notification. The petitioner in W.P (C) No.29297/2024 is a society of eight ground handling agencies, and the petitioners in W.P (C) No.29700/2024 are three existing ground handling companies. The respondents in the writ petitions are (1) the Ministry of Civil Aviation, (2) the Directorate of Civil Aviation, and (3) the Cochin International Airport Limited ('CIAL', in short), a scheduled commercial international airport. The fourth respondent has got itself impleaded in the writ petitions stating that they propose to participate in the tender. As the parties are the same and

disputes are common, the writ petitions are consolidated, jointly heard, and disposed of by this common judgment.

2. Petitioners' case:

2.1. The common case of the petitioners in the two writ petitions are as follows:

2.2. CIAL had published Ext.P3 tender notification on 10.7.2024, inviting bids from eligible agencies to be appointed as second and third ground handling agencies to provide third-party ground handling services at their airport.

2.3. Clause 5.5 of Ext.P3 tender notification lays down the eligibility criteria for the bidders. Clause 5.5.2 stipulates that the bidder shall not have any conflict of interest affecting the bidding process. A bidder is deemed to have conflict of interest if, (a), the bidder is a ground handling agency providing self-handling services to airlines as defined in the National Civil Aviation Policy 2016, (b) the bidder is a scheduled and/or non-scheduled air carrier or any entity in which a scheduled/non-scheduled air carrier or its promoter directly or indirectly holds any interest or is otherwise an Associate of a scheduled air carrier and (c) a constituent of a bidder is also a constituent of another bidder.

2.4. However, by Ext.P4 addendum, CIAL deleted sub-clause (b) of clause 5.5.2 of Ext.P3 tender, thereby allowing scheduled and/or non-scheduled air carrier/helicopter operator, its entity, promoter or Associate to participate in the tender.

2.5 Ground handling is a critical activity. The terms 'ground handling', 'ground handling agency' and 'self-handling' have been defined by the second respondent in Aeronautical Information Services Circular No.3/2022 ('Ext.P5 AIC', for brevity). In light of the above definitions, CIAL cannot appoint a domestic scheduled airline/helicopter operator, its subsidiary or company as a 'ground handling agency'. It was to achieve the above purpose that clause 5.5.2 (b) was originally incorporated in Ext.P3 notification.

2.6. The regulation under Section 42 of the Airport Authority of India Act was made applicable to airports managed by the Airport Authority of India ('AAI', in short). Ext.P5 AIC lays down the eligibility criteria for undertaking ground handling services at non-AAI airports like CIAL.

2.7. AAI has framed the Airport Authority of India (Ground Handling Services) Regulations 2018 ('2018 Regulations', for brevity) ? (Ext.P9). Later, AAI promulgated the Airport Authority of India (Ground Handling Services) Amendment Regulations 2023 ('2023 Regulations', for brevity) ? (Ext.P12). Likewise, the second respondent issued Exts.P10 and 11 circulars dated 25.10.2018 and 28.10.2019, respectively.

2.8 Exts.P9 and 10 have limited the right of the airline operators to engage only in self-handling services. There is a total embargo for airline operators to provide ground handling services at airports, including civil enclaves. The Regulations and Circulars have been issued to promote and sustain healthy competition, to

ensure the independence of ground handling and that there is no conflict of interest between the ground handling agency and the airline operator.

2.9 Other than for CIAL, all the AAI and non-AAI airports have complied with the above Regulations and Circulars ensuring that the ground handling agency is a distinct and independent entity without any interest in the airline. Although the petitioners had submitted representations to the second and third respondents to recall Ext.P4 addendum, no positive steps have been taken. Hence, the writ petitions.

3. Respondents' case:

3.1. The respondents 1 and 2 have filed a counter-affidavit in W.P. (C)No.29297/2024 stating that, in exercise of the powers conferred under Section 42 of the Airport Authority of India Act, 1994 and with the approval of the Central Government, AAI has framed the 2018 Regulations. The 2018 Regulations was amended by the 2023 Regulations. As per clause 2 of the 2023 Regulations, all domestic scheduled airline/helicopter operators may carry out ground handling activities solely for self-handling at all airports, including civil enclaves. In the event of Ext.P4 addendum facilitating any domestic scheduled airline/helicopter operators to carry out the ground handling activities other than self-handling, the same is violative of clause 3 (1) of the 2023 Regulation.

3.2. CIAL has filed a counter-affidavit in W.P. (C)No.29297/2024 stating that they are not a government company and, therefore, they are not an authority falling within the purview of Article 12 of the Constitution of India. Hence, the writ petition may be dismissed in limine. CIAL is a public-private partnership airport and is a non-AAI airport. The current regulation of the second respondent is not applicable to them, which is expressly admitted in paragraph 21 of the writ petition. The guidelines and regulations of the second respondent do not prevent/prohibit/disallow CIAL from implementing the eligibility criteria in Ext.P4 addendum. The purpose of publishing Ext.P4 addendum is to encourage broader participation in the tender process and to attract more qualified and experienced agencies. Ext.P4 addendum does not disqualify any agency from participating in Ext.P3 tender. CIAL is duty-bound to comply with the directives issued by the respondents 1 and 2 pertaining to non-AAI airports.

3.3. The additional fourth respondent has filed counter-affidavits in the writ petitions stating they are a globally accredited ground handling agency. The fourth respondent ? a joint venture between Air India Limited and Singapore Airport Terminal Services Limited ? was incorporated in 2010, with the approval of the Government of India. At that time, the Government of India controlled and managed Air India Limited. After Air India and Indian Airlines merged, the ground handling business got vested with Air India Air Transport Services Ltd. On 27.01.2022, the Tata Group of companies acquired Air India and the fourth respondent. The two companies are independent and distinct businesses, with Air India being a scheduled airline operator and the fourth respondent being a

ground handling agency. The two companies have separate corporate addresses, boards of directors, customers, business objectives, employees, and geographical presence. The writ petition mischaracterises the scope, ambit and legal effect of the National Civil Aviation Policy, and the circulars issued by the second respondent. As CIAL is a private airport, the 2018 or 2023 Regulations are not fully applicable. CIAL is principally governed by the Aircraft Act and the Rules framed thereunder, which only specify that the requirements of ground handling agencies nominated by the airport operators is to be driven by core infrastructural requirements, without compromise to safety and security. CIAL has rightly issued Ext.P4 addendum to obliterate restrictive covenants in Ext.P3 tender. The fourth respondent does not incur any conflict of interest in relation to offering and/or performing third-party ground handling services for CIAL. The terms of invitations to tender are matters of the contractual prerogative of CIAL. The private airports, including CIAL, are not bound by AAI's tender conditions. Ext.P4 addendum has the legal effect of promoting healthy competition, alongside the corollary valuable legal rights of the fourth respondent to participate in Ext.P3 tender. In the absence of arbitrariness, irrationality, unreasonableness, bias or mala fides in the decision-making process, there are inherent limitations in relation to interference with fair play in the decision-making process. The writ petition is an abuse of the process of law and endeavours to interfere with the vested rights of the fourth respondent, who is to participate in Ext.P3 tender.

4. Petitioners' reply:

4.1. The petitioners have filed reply affidavits to the counter-affidavits filed by the respondents 3 and 4. They have, inter alia, contended that, since the Government of Kerala ('GOK', in short) has 32.42% shareholding in CIAL, that GOK has the right to nominate one third of the directors of CIAL, that GOK has the right to appoint one among the directors as the Managing Director of CIAL, that the Chief Minister of GOK is the Chairman of CIAL, that two of the three Directors of CIAL are Ministers of the GOK, that the Manager of CIAL is from the rank of Chief Secretary/Additional Chief Secretary, that the Managing Director of CIAL is an IAS officer and that as GOK is exercising control over the management and policies of the CIAL; CIAL is an instrumentality of the State. Therefore, CIAL is amenable to the writ jurisdiction of this Court.

4.2. The Aircraft Act and the Rules govern airports' development, maintenance and operation, including green field airports. CIAL is a public airport and is licensed for public use. CIAL functions under a license issued by the second respondent. Rule 92 of the Aircraft Rules, 1937, which deals with ground handling services, mandates the Airport Operator to ensure a competitive environment, allowing the airline operator to engage, without restriction, any ground handling service provider, the Central Government permits. As per Ext.P5 AIC, the ground handling services must be "distinct and independent". An airline or subsidiary can only handle self- handling at an airport, not third-party ground handling services.

4.3. The additional fourth respondent is not providing ground services at Noida, Goa and Bhogapuram. As per the National Civil Aviation Policy, it is the duty of the Airport Operator to ensure that there will be three ground handling agencies at major airports to ensure fair competition, which is in addition to the rights of all domestic scheduled airline operators to carry out self-handling at all airports through their subsidiaries. A scheduled airline, its subsidiaries or joint venture cannot do third-party ground handling by extending their limited right of self-handling, as the same will not provide a competitive environment for other airlines who want to hire ground handling services. If such a course is permitted, airline operators may bid for second and third ground handling agencies directly or through their subsidiaries, leaving no scope for the airlines to choose the ground handling agency, which is against the spirit of the National Civil Aviation Policy.

5. Hearing:

Heard, Sri. Ramesh Babu, the learned Senior Counsel for the petitioners, assisted by Sri. Harish Gopinath; Sri. T.C. Krishna, the learned Deputy Solicitor General of India; Sri. Benny P. Thomas, the learned Senior Counsel for the 3rd respondent and Smt. Fereshte D Sethna, the learned counsel for the 4th respondent, assisted by Sri. George.G.Poothicote. The Counsel have also filed their written submissions.

6. Points for determination are whether:

- (i) CIAL is an instrumentality of the State, and
- (ii) Ext.P4 addendum is liable to be quashed.

7. Point No. (i):

7.1. The learned Senior Counsel for the petitioners submitted that CIAL falls within the definition of State under Article 12 of the Constitution of India. He relied on the decision of this Court in John George Nechupadom v. Kerala State Information Commission (2022 KHC 8035) and the unreported decision in W.P (C) Nos.37773/2022, 43012/2023, 20432/2024 and 33287/2024 to support his argument.

7.2. The learned Senior Counsel for CIAL relied on the decision of this Court in Girish G and another v. State of Kerala and others [2020 KHC 289] to fortify his contention that CIAL does not fall within the purview of Article 12 of the Constitution of India.

7.3. There is a cleavage of opinion in the decisions of this Court in John George Nechupadom and Girish G's cases (supra) on whether CIAL is an authority falling within the purview of Article 12 of the Constitution of India. However, the two decisions are rendered under different contexts. Girish's case concerns the termination of the services of the employees of CIAL, and John George Nechupadom's case concerns the applicability of the Right to Information Act,

2005, in CIAL. The latter decision is stayed by the Division Bench, and the writ appeal is pending consideration.

7.4. The learned Senior Counsel for CIAL submitted that he was not pressing on point No. (i) i.e., regarding the maintainability of the writ petitions, which shall be without prejudice to the right of the CIAL to raise all the contentions on the said point in the pending writ appeal.

7.5. Recording the above submission, and leaving open the right of CIAL to raise all its contentions in the writ appeal, I answer point No. (i) in favour of the writ petitioners for the purpose of these cases, and accordingly, proceed to decide point No. (ii).

8. Point No. (ii):

8.1. CIAL has published Ext.P3 tender to appoint second and third ground handling agencies for third-party ground handling services at its airport. The eligibility criteria in the Ext.P3 tender read thus:

"5.5 ELIGIBILITY CRITERIA

5.5.1 The bidder to be eligible to participate in the tender shall satisfy the following conditions and should also comply with the conflict-of-interest clause mentioned 5.5.2.

(a) The bidder may be a single entity (which may be private entity, government-owned entity incorporated under the Indian Companies Act, 1956/2013 or applicable laws of foreign countries or a Partnership Firm under the Indian Partnership Act, 1932 or an LLP or a JV company). Proprietorship entities are not permitted.

(b) The bidder should be a bona-fide Ground Handling entity with Security Clearance for GH operations from BCAS.

(c) The bidder should have a minimum of 5-year experience in Ground Handling (Ramp & Passenger Handling) of aircrafts during the last 7 years. Outsourced manpower activities or equipment lease shall not be considered as eligibility qualification.

(d) The bidder should have carried out Ground Handling services in at least one international airport with 7.5 million annual pax movement or three (3) Airports each with at least 3.5 million annual pax movement. This experience should be at Airports in India. For avoidance of doubt, the airport should have the said passenger capacity during any one year in the past 5 Financial Years.

(e) The bidder should have directly signed SGHA with at least 4 scheduled airlines in the past 7 years. Out of the 4 client airlines, at least 1 airline should have international operations for which entire GH services are provided by the bidder agency. For avoidance of doubt, this experience can be in any international airport in India.

(f) Out of the 4 client scheduled airlines, at least 1 airline should have wide-body operations. Proof of wide-body handling from the airline must be submitted separately. For avoidance of doubt, the widebody handling shall be for a scheduled airline.

(g) The bidder shall comply with the MoCA guidelines No. AV24011/10/2021 dated 27th October 2022, attached as Annexure – 10, pertaining to standardization of ground handling equipment at Airport having passenger movement more than 3.5 million passengers per annum.

(h) The bidder must have a minimum annual ground handling turnover of Rs. 50 crores during any one of the last 5 financial years.

5.5.2 The bidder shall not have a conflict of interest to participate in this tender process. A bidder is deemed to have a conflict of interest affecting the bidding process if,

(a) The bidder is a GHA providing self-handling services to airlines as defined in NCAP 2016. Such Bidders shall not be eligible to participate in this tender.

(b) The Bidder is a scheduled or/and non-scheduled air carrier or any entity in which a scheduled air carrier or a non-scheduled carrier or its promoter(s) directly or indirectly holds any interest or is otherwise an Associate of a scheduled air carrier.

(c) A constituent of a bidder is also a constituent of another bidder."

8.2. Later, by the impugned Ext.P4 addendum dated 08.08.2024, CIAL modified clause 5.5.2 of Ext.P3 in the following manner:

"1. Clause no: 5.5.2 stands modified and replaced with the italicised text below:

"The bidder shall not have a conflict of interest to participate in this tender process. A bidder is deemed to have a conflict of interest affecting the bidding process if,

(a) The bidder is a GHA providing self-handling services to airlines as defined in NCAP 2016. Such Bidders shall not be eligible to participate in this tender.

(b) A constituent of a bidder is also a constituent of another bidder."

8.3. The petitioners contend that CIAL cannot appoint domestic scheduled airline/helicopter operators or their subsidiaries as Ground Handling Agencies. Ext.P5 AIC lists the eligibility criteria for agencies undertaking ground handling services at non-AAI airports, like CIAL. Similarly, the 2018 and 2023 Regulations and Exts.P10 and P11 circulars restrict domestic scheduled airline/helicopter operators from carrying ground handling activity, except self-handling.

8.4. On the contrary, the respondents 3 and 4 contend that since CIAL is a non-AAI airport, there is no legal impediment in CIAL issuing Ext.P4 addendum, particularly given clause (aa) of sub-section (3) of Section 1, clauses (d) and (e)

of Section 2 and Section 37 of the Airport Authority of India Act, 1994 and Sections 5 and 5 A of Aircraft Act read with Rule 92 of the Aircraft Rules, 1937. It is only to ensure a competitive environment and encourage broader participation, that Ext.P4 addendum has been issued.

8.5. Ext. P3 tender was published on 10.7.2024. The last date for submission of bids and opening of the bids was scheduled on 7.8.2024. Subsequently, the last date was extended till 24.8.2024 and further until 31.8.2024. The impugned Ext.P4 addendum was published on 8.8.2024.

8.6. Clause (aa) of sub-section (3) of Section 1 of the Airports Authority of India Act, 1994 states that the Act applies to all private airports insofar as it relates to providing air traffic service, to issue directions under Section 37 and for the purposes of Chapter V-A; (b) all civil enclaves; (c) all aeronautical communication stations; and (d) all training stations, establishments and workshops relating to air transport services.

8.7. Clause (d) of Section 2 of the above Act defines "air traffic service" to include flight information service, alerting service, air traffic control service, area control service, approach control service and airport control service'; and Clause (e) of Section 2 defines "air transport service to mean any service, for any kind of remuneration, whatsoever, for the transport by air of persons, mail or any other thing, animate or inanimate, whether such service relates to a single flight or series of flights.

8.8. Section 37 of the above Act also empowers the Authority or any authorised officer to issue directions consistent with the provisions of the Aircraft Act, 1934, concerning any of the matters specified in clauses (f), (h), (i), (j), (k), (m), (p), (qq) and (r) of sub-section (2) of Section 5 of that Act, in the interest of the security of India or for securing the security of the aircraft.

8.9. Section 5 of the Aircraft Act, 1934, empowers the Central Government to make rules under the Act, and Section 5A empowers the Director General of Civil Aviation (2nd respondent) to issue directions.

8.10. Regarding the cases at hand, the 2nd respondent is empowered to issue directions in respect of clause (aa) of sub-section (2) of Section 5 of the Aircraft Act, 1934, i.e., to issue directions for regulating air transport services.

8.11. By virtue of the powers conferred under Section 5 of the Aircraft Act, 1934, the Central Government has promulgated the Aircraft Rules, 1937. It is pertinent to refer to Rule 92 of the Rules, which reads as under:

"R.92: Ground handling service.?The license shall, while providing ground handling service by itself, shall ensure a competitive environment by allowing the airline operator at the airport to engage, without any restriction, any of the ground handling service provider, who are permitted by the Central Government to provide such services:

Provided that such ground handling service provider shall be subject to the security clearance of the Central Government”.

8.12. In exercise of the powers under Section 5A of the Aircraft Act, 1934, the 2nd respondent has framed Ext.P5 AIC, defining ground handling, ground handling agency and self-handling in sub-paragraphs (b), (c) and (h) of paragraph 1.1 of Ext.P5 AIC, which read as follows:

“(b) "ground handling" means services necessary for an aircraft's arrival at, and departure from, an airport other than air traffic control and it includes-

- (i) ramp handling including activities as specified at Annexure 'A;
- (ii) traffic handling including activities as specified at Annexure 'B'; and
- (iii) any other activity specified by the Central Government from time to time;

(c) "Ground Handling Agency" means an entity, with distinct and independent existence at the airport established for the purpose of providing ground handling service at an airport and security cleared by the Bureau of Civil Aviation Security and duly appointed by the airport operator;

h) "self-handling" means the ground handling services relating to its own aircraft or helicopter by an airline or helicopter operator or its hundred percent owned subsidiary through its own regular employees, using equipment owned or taken on lease”;

8.13. It is also necessary to refer to paragraphs 1.2, 2 and 2.4 of Ext.P5 AIC, which read as follows:

“1.2 The Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2000, and Airports Authority of India (General Management, Entry for Ground Handling Services), Regulations, 2007, have been made under Section 42 of the Airports Authority of India Act, 1994 and thus are applicable to the airports managed by the Airports Authority of India. With the restructuring of certain airports and development of a few Greenfield airports in the private sector, it has become imperative for the Central Government to lay down the eligibility criteria for various agencies to undertake ground handling services at non- AAL airports. The number of such agencies to be permitted at each airport is also to be determined by the Government having regard to all the relevant factors such as demand for such services, available infrastructure and competitive environment, without compromising the safety and security aspects.

2. Eligibility Criteria for Ground Handling Service Providers

While the Airports Authority of India would promulgate the necessary regulations, with the previous approval of the Central Government, under the Airports Authority of India Act, 1994, with respect to provision of ground handling services at the airports under their control, it has been decided by the Central Government that the following entities shall be eligible to undertake

ground handling services at airports other than those belonging to the Airports Authority of India:-

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2.4 At the airport having annual passenger throughput of ten million passengers per annum or above, the airport operator shall ensure that there will be three ground handling agencies including that of (a) the airport operator or its joint venture or its hundred percent owned subsidiary (b) a joint venture or a subsidiary of the Air India; and (c) any other ground handling agencies appointed by the airport operator through a transparent bidding process.

(emphasis supplied)

9. Analysis:

9.1. 2018 Ground Handling Regulations and 2023 Ground Handling Regulations are on the same lines as that of paragraph 2.4 of Ext.P5 AIC, the Acts and the Rules referred to above.

9.2 On a consideration of the law, the Rules, the Regulations and Ext.P5 AIC referred to above, this Court finds that it is the airport operator's responsibility to verify and ascertain whether a bidder is a distinct and independent entity to provide ground handling service at the airport and has security clearance from the Bureau of Civil Aviation Security. Furthermore the airport operator has to ensure a competitive environment by permitting the airline operator to engage, without any restriction, any of the ground handling service provider, whom the Central Government permits; and where the airport has an annual passenger throughput of ten million passengers or above, the airport operator shall also ensure that there are three ground handling agencies including that of (a) the airport operator or its joint venture or its hundred percent owned subsidiary (b) a joint venture or a subsidiary of the Air India; and (c) any other ground handling agencies appointed by the airport operator through a transparent bidding process. Therefore, even if a ground handling agency (bidder) is selected by the licensee/airport operator, such selection would be subject to the approval of the Central Government.

(emphasis given)

10. Precedents on the point:

10.1. In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd and another*, (2016) 16 SCC 818, the Hon'ble Supreme Court has expounded the law that the decision to accept or reject the bid should not be interfered with. Interference is permissible only if the decision-making process is arbitrary or irrational to an extent that no responsible authority could have reached such a decision. Having authored the tender documents, the owner/employer of the project is the best person to understand and appreciate its requirements and

interpret its documents. It has been cautioned that the constitutional courts are expected to exercise restraint in interfering with the administrative decision and should not substitute their view for that of the administrative authority.

10.2. In *Association of Registration Plates v. Union of India and others* (2005) 1 SCC 679, the Hon'ble Supreme Court has held thus:

"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.....".

10.3. In *Michigan Rubber (India) Ltd. v. State of Karnataka and others* (2012) 8 SCC 216, the Hon'ble Supreme Court observed as under:

"24. 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".

10.4. In *Tata Motors Limited v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others*, 2023 SCC OnLine SC 671, the Hon'ble Supreme Court has held as follows:

"48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal

of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See: *Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489)".

11. Conclusion:

11.1. The petitioners do not have a case that the Ext.P4 addendum has been issued to favour anyone, or the process adopted is arbitrary or irrational. They contend that the addendum has been issued without any application of mind, and therefore, it is arbitrary, unreasonable and restricts a level playing field. Only in the written submission have the petitioners alleged that Ext.P4 has been issued to accommodate the fourth respondent. The said submission is without any foundation in the pleadings. The eligibility of the bidders is a matter that is to be evaluated and scrutinised by CIAL. As it is trite that it is the prerogative and discretion of an employer to settle the tender conditions, and a bidder has no voice to dictate its terms, the petitioners are precluded from contending that CIAL is not empowered to modify the tender conditions. Since the petitioners have failed to establish any malice or arbitrariness in CIAL issuing Ext.P4 addendum, this Court does not find any illegality in the addendum. The discussions conclude that the writ petitions lack merit and are liable to be dismissed. Consequently, point No. (ii) is found against the petitioners, and the writ petitions are dismissed.