

(2018) 08 RAJ CK 0264

In the Rajasthan High Court

Case No : Civil Writs No. 17412, 17725 of 2018

**Shree Shubham Logistics Limited @APPELLANT@Hash State of Rajasthan
& Ors**

Date of Decision : 30-08-2018

Acts Referred:

Rajasthan Transparency Public Procurement Act, 2012 — Section 4, 6, 6(3), 7, 7(e),
25, 25(3), 25(d), 30
Rajasthan State Agricultural Marketing Act, 1961 — Section 5(A)
Rajasthan Transparency Public Procurement Rules, 2013 — Rule 13, 16
Constitution of India, 1950 — Article 14, 19(1)(g), 21

Citation : (2018) 08 RAJ CK 0264

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

**Advocate : Paras Kuhad, Harsh Sahu, Venkat Rao, RN Mathur, Prateek Mathur,
Purushottam, Rajendra Prasad, Surya Pratap Singh, AK Sharma, VK Sharma,
Alankrita Sharma, Mahendra Goyal**

Final Decision : Allowed

Judgement

S.

No.", "Eligibility Criteria, Documents required

1, "The Bidder shall have an experience not less than 5 years

st

ending 31 March 2018, in the field of providing

warehousing services preferably for agri-commodities.", "Registration certification
of the

firm/Partnership

deed/Certificate of

incorporation, etc., as

applicable

2, "The bidder shall be a proprietorship/ partnership firm Or Limited Co. OR Private Limited Co., having a registered establishment in India",

3, "The minimum average annual turnover of the bidder from Postharvest Management services for last three financial years, i.e., FY 2014-15 to FY 2016-17, must be not less than Rs.

113.00 crore.", "Certificate from a Chartered Accountant certifying the turnover with its ICAI

Registration

Number & Seal

4, "st

The net worth of the bidder as on 31 March 2017 should be at least Rs. 45.00 crore.",

5, "i. The bidder (either directly or through its 100% owned subsidiary) should have its owned warehouses in the State of Rajasthan with a minimum total capacity of 100000 MT.

ii. The bidder (either directly or through its 100% owned subsidiary) should have at least 1 NABL accredited laboratory for testing and certification of agri-commodities in the State of Rajasthan. iii. The bidder must have tie-up with at least 10 nationalized banks in India for offering WHR based finance or collateral management services. iv. The bidder must have experience of NCDEX warehouse service provider business for last three st

financial years ending on 31 March, 2018.

v. The bidder (either directly or through its 100% owned subsidiary) must have experience of offering procurement services for agricultural commodities to any Centre/State level Institution during last 3 years.

vi. The bidder (either directly or through its 100% owned subsidiary) must have license from Rajasthan State Agriculture Marketing Board (RSAMB) to operate Private Sub eMarket in the state", "i. Documents supporting ownership of the warehousing capacity in the State of Rajasthan. ii. NABL certificate mentioning address of laboratory owned by bidder. iii. Agreements with banks for offering WHR based finance services. iv. Registration Certificate issued by NCDEX in the name of the bidder firm. v. Agreements with banks for offering WHR base finance services. vi. Experience certificate or letter of award of related work from State/ Center Government Institution.

6, "The bidder should have registered number of i. GST Registration ii. PAN", "i. GST Registration number ii. PAN number

7, "Bidder should :-

a) not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons;

b) Not have a conflict of interest in the question as specified in the bidding document.

c) Comply with the code of integrity as specified in the bidding document." , "A self certificate letter as per self Declaration.

12. In the second writ petition filed by the petitioner- Origo Commodities India Private Limited (for short, "Origo"), it has been prayed for,,

directing the respondents to recall/cancel/modify the bid document dated 11/07/2018 and to issue fresh tender by repealing/relaxing the eligibility,,

conditions as laid down in clause 5 of the bid document and to strike down the conditions mentioned therein. Another prayer has been made with,,

regard to initiating action for granting project to respondent no.2-StarAgri Warehousing and Collateral Management Limited but the said prayer was,,

dropped and not pressed by the petitioner.,,

13. Thus viewed, the main issues which need to be examined by this Court are (a) whether the writ petition assailing conditions of the bid document",,,

was maintainable; (b) whether the Court can examine the validity of the conditions which the procuring entity may lay down in a bid document; (c),,,

whether exclusion of SSSL as existing service provider from participation in the bid process was legal and valid; (d) whether the conditions laid down,,

in bid document for examining the eligibility criteria were in violation of RTPP Act and are liable to be held arbitrary and (e) whether the bid document,,

was a tailor made document with conditions therein only to favour respondent-StarAgri.,,

14. As regards the first and foremost question which is required to be addressed at the threshold is with regard to the power of judicial review in,,

relation to the contractual matters.,,

15. In the State of Rajasthan the legislature has enacted RTPP Act which was

notified on 22/05/2012 after receiving accent of the Governor on,,
21/05/2012. The preamble states that it is an Act to regulate public procurement with the objectives of ensuring transparency, fair and equitable",,
treatment of bidders, promoting competition, enhancing efficiency and economy and safeguarding integrity in the procurement process and for matters",,
connected therewith or incidental thereto.,,

16. The objects and reasons for enacting the RTPP Act was that there was a growing consensus in favour of enacting a public procurement law with,,
the objective of maximising economy and efficiency, promoting competition among suppliers and contractors while providing a fair and equitable",,
treatment, ensuring transparency and fairness in the procurement process, and promoting the integrity and public confidence in, the procurement",,
process.,,

17. In the case of Tata Cellular Vs. Union of India: (1994) 6 SCC 651, the Apex Court has observed as under:-",,

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.,,

71. Judicial quest in administrative matters has been to find that right balance between the administrative discretion to decide matters whether,,

contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an,,

unfairness is set right by judicial review.â??,,

18. The judicial review, as Lord Fraser observed in the case of Amin Vs Entry Clearance Officer: (1983) 2 All England Reporter 864, is that",,

â??Judicial review is concerned not with the merits of a decision but with the manner in which the decision was madeâ?|. Judicial review is entirely,,

different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to",,,

be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.â??,,,

19. In the judgment of Tata Cellular Vs. Union of India (supra), the Apex Court has laid down following guidelines:-",,,

â??77. The duty of the court is to confine itself to the question of legality. Its concern should be:,,

1. Whether a decision-making authority exceeded its powers?,,

2. committed an error of law,,

3. committed a breach of the rules of natural justice4. reached a decision which no reasonable tribunal would have reached or 5. abused its powers.,,,

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only",,,

concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case, shortly put, the",,,

grounds upon which an administrative action is subject to control by judicial review can be classified as under :,,

i. Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.,,,

ii. Irrationality,Â Â namely,Â Â Wednesbury",,,
unreasonableness,",,

iii. Procedural impropriety.,,,

The above are only the broad grounds but it does not rule out additional of further grounds in courts of time. As a matter of fact, in R v. Secretary of",,,

State for the Home Department *ex parte* *Blind* [1991] 1 AC 696 Lord Diplock refers specifically to one development, namely, the possible recognition",,,

of the principle of proportionality. In all these cases the test to be adopted is that the court should, ""consider whether something has gone wrong of",,,

nature and degree which requires its intervention"".",,

20. Recently, while discussing the scope of judicial review in the case of CRRC Corporation Ltd. Vs. Metro Link Express for Gandhinagar and",,,

Ahmedabad (MEGA) Company Ltd.: (2017) 8 SCC 282, the Apex Court, while following the judgments rendered in the case of In the case of Tata",,,

Cellular Vs. Union of India (supra) and Montecarlo Ltd. Vs. NTPC Ltd.: 2016 (15) SCC 272, has observed as under:-",,,

As rightly contended on behalf of the Appellant, we are of the view that this clarification has no application to its case and, therefore, the",,,

decision to disqualify it on this ground is apparently arbitrary, discriminatory, unreasonable, illogical and non-transparent, thus rendering the same",,,

irreversibly illegal, unjust and unfair. The improvement endeavoured by the Respondent in its reply affidavit is belied by the records and is",,,

unacceptable. No other view or elucidation of the relevant clauses of the tender conditions is at all possible. The interpretation offered by the",,,

Respondent and endorsed by the High Court in the contextual framework is thus patently impermissible and absurd.,,,

40. In the wake of the above determination, the impugned disqualification of the Appellant on the ground of deficiency, in experience in terms of",,,

Clause 2.4, is unsustainable in law and on facts being grossly illegal, arbitrary and perverse. As a corollary, the judgment and order of the High Court",,,

in challenge is also set-aside. The tender process in view of the above conclusion, would be furthered hereinafter as per the terms and conditions",,,

thereof and in accordance with law and taken to its logical end as expeditiously as possible. We make it clear that the present adjudication is confined",,,

only to the issue of disqualification of the Appellant on the ground of experience on the touchstone of Clause 2.4 of the ""Eligibility and Qualification",,,

Criteria"" of ""Tender Document"" and no other aspect. The appeal is allowed. In the facts and circumstances of the case, there shall be no order as to",,,

costs.â??,,

21. The view taken by the Apex Court in the case of Tata Cellular Vs. Union of IndiaÂ (supra) has been followed by the Apex Court with same,,

observations in the case of Reliance Terlecom Limited and another Vs. Union of India and another: 2017 (4) SCC 269; CRRC Corporation Ltd. Vs.,,,

Metro Link Express for Gandhinagar and Ahmedabad (MEGA) Company Ltd. (Supra) and in the case ofÂ Montecarlo Ltd. Vs. NTPC Ltd.: 2016,,

(15) SCC 272 (supra).,,

22. The first issue, as noted above, thus stands answered to the effect that the

High Court can strike down the conditions which may be laid down in",,,

the bid document if the same is illegal i.e. contrary to the settled legal principles and the provisions of the RTTP Act in the present case, or if it is",,,

irrational i.e. to say such just in ordinary course would not be accepted by a common man to be reasonable i.e. facet of wednesbury principles and",,,

where the conditions are such which can be termed as arbitrary and causing per se discrimination between the similarly situated persons i.e. if it hits",,,

Article 19(1)(g) vis-a-vis Article 14 of the Constitution which embodies the principles of non-discrimination and such nondiscrimination has to be with",,,

reference to allowing equal opportunity to participate as, has been included under Article 21 of the Constitution. In the case of Reliance Energy Ltd.",,,

and another Vs. Maharashtra State Road Development Corpn. Ltd. and others: (2007) 8 SCC 1 which reads as under:-",,,

â??36. We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the",,,

proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of ""nondiscrimination"". However, it is not a",,,

freestanding provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21,,

refers to ""right to life"". It includes ""opportunity"". In our view, as held in the latest judgment of the Constitution Bench of nine Judges in the case of I.R.",,,

Coelho v. State of Tamil Nadu MANU/SC/0595/2007 : AIR2007SC861 , Article 21/14 is the heart of the chapter on fundamental rights. It covers",,,

various aspects of life. ""Level playing field"" is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is",,,

invoked by REL/HDEC in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to",,,

invoke the said doctrine of ""level playing field"". We may clarify that this doctrine is, however, subject to public interest. In the world of globalization,,,

competition is an important factor to be kept in mind. The doctrine of ""level playing field"" is an important doctrine which is embodied in Article 19(1)(g)",,,

of the Constitution. This is because the said doctrine provides space within which equally-placed competitors are allowed to bid so as to subserve the,,

larger public interest.,,,

Globalization"", in essence, is liberalization of trade. Today India has dismantled

licence-raj. The economic reforms introduced after 1992 have brought",,,
in the concept of ""globalization"". Decisions or acts which results in unequal and
discriminatory treatment, would violate the doctrine of ""level playing",,
field"" embodied in Article 19(1)(g) . Time has come, therefore, to say that
Article 14 which refers to the principle of ""equality"" should not be read as a",,
stand alone item but it should be read in conjunction with Article 21 which
embodies several aspects of life. There is one more aspect which needs to,,
be mentioned in the matter of implementation of the aforesaid doctrine of
""level playing field"". According to Lord Goldsmith - commitment to ""rule of",,
law"" is the heart of parliamentary democracy. One of the important elements of
the ""rule of law"" is legal certainty. Article 14 applies to government",,
policies and if the policy or act of the government, even in contractual matters,
fails to satisfy the test of ""reasonableness"", then such an act or decision",,
would be unconstitutional.â??,,

23. The RTTP Act lays down certain general principles relating to procurement
and it would be appropriate to quote few provisions as under:-,,

â??4. Fundamental principles of public procurement.- (1) In relation to a public
procurement, the procuring entity shall have the responsibility and",,
accountability to -,,

- (a) ensure efficiency, economy and transparency;,,
- (b) provide fair and equitable treatment to bidders;,,
- (c) promote competition; and,,
- (d) put in place mechanisms to prevent corruptpractices.,,

(2) Subject to the provision of sub-section (3) of section 3, every procuring
entity shall carry out its procurement in accordance with the provisions of",,

this Act and the rules and guidelines made thereunder.,,

5. Determination of need for procurement.- (1) In every case of a procurement
made under this Act the procuring entity shall first determine the need,,
for the subject matter of procurement.,,

(2) While assessing the need under sub-section (1), the procuring entity shall
take into account the estimated cost of the procurement and also decide",,

on the following matters, namely:-",,

- (a) the scope or quantity of procurement, ifdetermined;,,

- (b) the method of procurement to be followed with justification thereof;,,
 - (c) need for pre-qualification, if any;,,
 - (d) limitation on participation of bidders in terms of section 6, if any applicable, and justification thereof; and",,,
 - (e) any other matter as may be prescribed.,,,
- (3) The procuring entity shall maintain documents relating to the determination of the need for procurement under sub-section (1) and the assessment,,
made under sub-section (2),,,
6. Participation of bidders.- (1) The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement,,
process that discriminates against or among bidders or against any category thereof, except when authorised or required to do so by this Act or the",,,
rules or guidelines made thereunder or by the provisions of any other law for the time being in force.,,,
- (2) The State Government may, by notification in this behalf, provide for mandatory procurement of any subject matter of procurement from any",,,
category of bidders, and purchase or price preference in procurement from any category of bidders, on the following grounds, namely:-",,,
- (a) the promotion of domestic industry;,,
 - (b) socio-economic policy of the Central Government or the State Government;,,
 - (c) any other consideration in public interest in furtherance of a duly notified policy of the Central Government or the State Government:,,
- Provided that any such notification shall contain a reasoned justification for such mandatory or preferential procurement, the category of suppliers",,,
chosen and the nature of preference provided.,,,
- (3) The procuring entity, when inviting the participation of bidders in the procurement process, shall declare whether participation of bidders is limited",,,
pursuant to this section and on what ground and any such declaration may not ordinarily be later altered. (4) Nothing in this section shall be construed,,
as preventing the State Government or any procuring entity from imposing or enforcing measures limiting participation on account of the need (a) to,,
protect public order, morality or safety;,,
- (b) to protect human, animal or plant life or their health;,,
 - (c) to protect intellectual property;,,

(d) to protect the essential security and strategic interest of India.,,

7. Qualifications of bidders.- (1) A procuring entity may determine and apply one or more of the requirements specified in sub-section (2) for a bidder,,

to be qualified for participating in a procurement process.,,

(2) Any bidder participating in the procurement process shall -,,

(a) possess the necessary professional, technical, financial and managerial resources and competence required by the bidding documents, pre-,,

qualification documents or bidder registration documents, as the case may be, issued by the procuring entity;,,

(b) have fulfilled his obligation to pay such of the taxes payable to the Central Government or the State Government or any local authority as may be,,

specified in the bidding documents, pre-qualification documents or bidder registration documents;,,

(c) not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business,,

activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons;,,

(d) not have, and their directors and officers not have, been convicted of any criminal offence related to their professional conduct or the making of,,

false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of three years preceding the,,

commencement of the procurement process, or not have been otherwise disqualified pursuant to debarment proceedings;,,

(e) not have a conflict of interest as may be prescribed and specified in the pre-qualification documents, bidder registration documents or bidding,,

documents, which materially affects fair competition;,,

(f) fulfil any other qualifications as may be prescribed.,,

(3) Subject to the right of bidders to protect their intellectual property or trade secrets the procuring entity may require a bidder to provide any such,,

information or declaration as it considers necessary to make an evaluation in accordance with sub-section (1).,,

(4) Any requirement established pursuant to this section shall be set out in the pre-qualification documents or bidder registration documents, if any, and,,

in the bidding documents and shall apply equally to all bidders.,,

(5) The procuring entity shall evaluate the qualifications of bidders only in accordance with the requirement specified in this section.,,

8. Obligations related to value of procurement.- (1) A procuring entity shall,

(2). A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid,,

its obligations under sub-section (1) or to limit competition among bidders or otherwise avoid its obligations under this Act:,,

25. Exclusion of bids.- (1) A procuring entity shall exclude a bid if-,,

(a) the bidder is not qualified in terms of section 7;,,

(b) the bid materially departs from the requirements specified in the bidding documents or it contains false information;,,

(c) the bidder submitting the bid, his agent or any one acting on his behalf, gave or agreed to give, to any officer or employee of the procuring entity or",,,

other governmental authority a gratification in any form, or any other thing of value, so as to unduly influence the procurement process;,,

(d) a bidder, in the opinion of the procuring entity, has a conflict of interest materially affecting fair competition.",,

(2) A bid shall be excluded as soon as the cause for its exclusion is discovered.,,

(3) Every decision of a procuring entity to exclude a bid shall be for reasons to be recorded in writing.,,

(4) Every decision of the procuring entity under subsection (3) shall be -,,

(a) communicated to the concerned bidder in writing; (b) published on the State Public Procurement Portal.,,

30. Limited bidding.- (1) A procuring entity may choose to procure the subject matter of procurement by the method of limited bidding, if -",,,

(a) the subject matter of procurement can be supplied only by a limited number of bidders; or,,

(b) the time and cost involved to examine and evaluate a large number of bids may not be commensurate with the value of the subject matter of,,

procurement; or,,

(c) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be",,,

usefully obtained by adopting the method of open competitive bidding; or,,

(d) procurement from a category of prospective bidders is necessary in terms of

sub-section (2) of section 6.,,

(2) Subject to the rules as may be made in this behalf, the procedure for limited bidding shall include the following, namely:- .",,

(a) the procuring entity shall issue an invitation to bid by writing directly, and on the same day, to- (i) all the bidders who can supply the subject matter",,

of procurement in terms of clause (a) of sub-section (1); or,,

(ii) all the bidders who are registered for the subjectmatter of procurement with the procuring entity or with any other procuring entity, where",,

procuring entity uses the list of registered bidders of such other procuring entity in terms of subsection (5) of section 19; or,,

(iii) an adequate number of bidders who can supplythe subject matter of procurement selected in a nondiscriminatory manner to ensure effective,,

competition, in case of clause (b) of sub-section (1);",,,

(b) a procuring entity may allow all prospective bidders who fulfil the qualification criteria laid down for the procurement, whether an invitation to bid",,

has been issued to such a bidder or not, to participate in the bidding process.",,,

31. Single source procurement.- (1) A procuring entity may choose to procure the subject matter of procurement by the method of single source,,

procurement, if-",,,

(a) the subject matter of procurement is available onlyfrom a particular prospective bidder, or a particular prospective bidder has exclusive rights in",,,

respect of the subject matter of procurement, such that no reasonable alternative or substitute source exists, and the use of any other procurement",,,

method would therefore not be possible; or,,

(b) owing to a sudden unforeseen event, there is anextremely urgent need for the subject matter of procurement, and engaging in any other method of",,,

procurement would be impractical; or,,

(c) the procuring entity, having procured goods,equipment, technology or services from a supplier, determines that additional supplies or services must",,,

be procured from that supplier for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or",,,

services; or,,

(d) there is an existing contract for the subject matterof procurement which can be extended for additional goods, works or services and that the",,,

procuring entity is satisfied that no advantage would be obtained by further competition, the prices are reasonable and provisions for such extension",,,

exist in the original contract; or,,

(e) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of national security interests;,,

or (f) procurement from a particular prospective bidder is necessary in terms of sub-section (2) of section 6; or (g) subject matter is of artistic nature;,,

or,,

(h) subject matter of procurement is of such nature as requires the procuring entity to maintain confidentiality, like printing of examination papers.",,

(2) Subject to the rules as may be made in this behalf, the procedure for single source procurement shall include the following, namely:-",,,

(a) the procuring entity shall solicit a bid from a single prospective bidder;,,

(b) the procuring entity may engage in negotiations in good faith with the bidder.,,

46. Debarment from bidding.- (1) A bidder shall be debarred by the State Government if he has been convicted of an offence -,,

(a) under the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988); or",,,

(b) under the Indian Penal Code, 1860 (Central Act No. 45 of 1860) or any other law for the time being in force, for causing any loss of life or property",,,

or causing a threat to public health as part of execution of a public procurement contract.,,

(2) A bidder debarred under sub-section (1) shall not be eligible to participate in a procurement process of any procuring entity for a period not,,

exceeding three years commencing from the date on which he was debarred.,,

(3) If a procuring entity finds that a bidder has breached the code of integrity prescribed in terms of section 11, it may debar the bidder for a period not",,,

exceeding three years.,,

(4) Where the entire bid security or the entire performance security or any substitute thereof, as the case may be, of a bidder has been forfeited by a",,,

procuring entity in respect of any procurement process or procurement contract, the bidder may be debarred from participating in any procurement",,,

process undertaken by the procuring entity for a period not exceeding three years.,,

(5) The State Government or a procuring entity, as the case may be, shall not debar a bidder under this section unless such bidder has been given a",,,

reasonable opportunity of being heard.â??,,

24. The RTPP Act is essentially in terms of the UNICITRALÂ which governs the conditions of contract at international level.,,,

25. Thus, after the enactment as above, the judicial review relating to the actions of the State to be in consonance with the provisions of the RTPP",,,

Act can be undertaken and this Court would thus be empowered to examine whether any bid document follows the said provisions or not.,,,

26. In the aforesaid guidelines laid down by the Apex Court, this Court deals with the submissions raised at bar.",,,

27. The petitioner-SSLL has submitted that it could not be excluded from participation by including clause 17(vii) in the bid document as such action,,

constitutes violation of his rights to equity guaranteed by Article 14 of the Constitution and has a right to participate in the process essentially for,,

carrying out a business protected by Article 19(1)(g) of the Constitution. It is his submission that there is no reasonable cause for excluding the,,

petitioner-SSLL from participationÂ as the petitioner-SSLL is already engaged in providing services by way of management of 38 warehouses with,,

the respondent-RSWC and is a premium logistic company having its owned infrastructure network of AgriLogistics Parks (ALPs), testing laboratories",,,

chain of cold and dry warehouses, pest management, services and fumigation, arrangements for commodity funding through various banks, etc. with",,,

25 locationsÂ (including cold storage), Pan India and 13 ALPs (including cold storage) in Rajasthan, it could not be ousted from participation. The",,,

submission of the petitioner is that it has successfully upgraded the existing infrastructure of RSWC ware houses and has been able to ensure,,

accreditation with various scheduled Banks to provide finance against warehouse receipt to eligible farmers and traders and has successfully,,

conducted standard operating procedures, trading at all locations in Rajasthan and therefore, there was no occasion to disallow the petitioner to",,,

participate in the bid. It is also stated that clause 17(vii) is an anti-competitive provision with the sole purpose to oust the petitioner and with an oblique,,

purpose to grant benefit to respondent-StarAgri. It is his submission that the disqualifying condition is unreasonable, arbitrary, restrictive and contrary",,,

to the terms on which every public tender is floated and amounts to hostile discrimination. The condition is contrary to the mandate contained under,,

Section 6 of the RTPP Act. In view of the condition provided under Section 6 of RTPP Act, if there was any limitation required to be done under",,,

Section 6(3) of the RTPP Act, the participation of bidder could be limited only after mentioning the ground on which such participation is being denied.",,,

Since the bid document does not declare the reasons and justification thereof, the bid document and condition laid down therein deserves to be",,,

quashed. The petitioner has also further alleges that while in the clarification the petitioner has been excluded, the respondent-StarAgri, who was also",,,

an existing service provider having work of similar nature as the petitioner for management and handling of warehouses at other locations, has been",,,

allowed. 30. The respondents in their reply have denied the said allegations and submit that the reasons for excluding the petitioner-SSLL who is an,,

existing service provider was in light of the factual background. It is stated that the petitioner is already handling and managing 38 locations and is also,,

having additionally 13 Agri Logistic Parks (ALPs) and is undertaking a substantial amount of work for RSWC. Presently, there is no other private",,,

player who is working with the respondent-RSWC in managing its warehouses and with a view to invite wider participation of other private players,,

engaged in managing, operating and upgrading warehouses and also to shed its dependence on only one private company, the said condition has been",,,

laid down in clause 17(vii).Â,,

28. It is further stated on behalf of respondents that in view of the Competition Act, 2002, which provides for concept of dominant position, if the",,,

entire work is awarded to the petitioner, it would be in such a dominant position which may likely to be opposed. It is also stated that as per directions",,,

from the office of Chief Minister, who had cautioned the procuring entity to act in a manner so as to avoid monopoly, the clause was entered in the bid",,,

document. Thus, it was a policy decision at the level of the Chief Minister to avoid monopoly of a particular service provider. Additionally, the",,,

respondents pointed out that so far as the work allotted to respondent-StarAgri is concerned, the same was a temporary measure.",,,

29. The questions raised haveÂ to be looked into in light of provisions of RTPP Act and the judgments in this regard.,,,

30. The provisions of RTPP Act, as noted above, do not provide anywhere a prospective bidder from participation. The very purpose of RTPP Act requires transparency and equitable treatment to all bidders which may promote competition. The said facets having been laid down as fundamental principles of public procurement under Section 4 of RTPP Act. Section 6 of RTPP Act lays down that if there is any limitation on participation of bidders, justification thereof has to be mentioned and the same should be contained in the bid document itself and grounds thereof have also to be mentioned. In view of the provisions contained under Section 7 of the RTPP Act, which lays down qualifications of bidders, the procuring entity can only disqualify those who do not possess such qualifications and not otherwise.

31. One of the arguments raised by learned counsel for the respondent-RSWC is that in terms of Section 7(e) of RTPP Act, there was a conflict of interest of the petitioner vis-a-vis the respondent-RSWC and therefore, the petitioner could have been ousted. However, this Court denies that conflict of interest as mentioned in Section 7(e) of RTPP Act would be only in relation to claim of a particular person just opposite to that of RSWC. Taking note of the fact that the petitioner is already an existing service provider and has augmented the business and turnover of RSWC, this Court does not find it to have a conflict of interest with the RSWC.

32. Conflict of interest cannot mean interest of the department in a particular firm or a private bidder to exclude the others. The very purpose of RTPP Act stands negated if a competition is not treated as a healthy competition. In this regard, the Apex Court in the case of Union of India and others Vs. Hindustan Development Corporation and others: (1993) 3 SCC 499, the Apex Court has held as under:-

It is true, as it is today, that the Government in a welfare State has the wide powers in regulating and dispensing of special services like leases, licenses, and contracts etc. The magnitude and range of such Governmental function is great. The Government while entering into contracts or issuing quotas is expected not to act like a private individual but should act in conformity with certain healthy standards and norms. Such actions should not be arbitrary, irrational or irrelevant. In the matter of awarding contracts inviting tenders is considered to be one of the fair ways. If there are any

reservations or restrictions then they should not be arbitrary and must be justifiable on the basis of some policy or valid principles which by themselves,,

are reasonable and not discriminatory.â? 33. The observations in the judgment as above and the observations in the other judgments, cited above,",,

seem to have been imbideo while enacting RTPP Act.,,

34. A look at Section 25 (supra) of the RTPP Act goes to show that a bidder can be excluded for reasons to be recorded in writing and such a reason,,

can be where a bidder in the opinion of the procuring entity has a conflict of interest materially affecting fair competition.,,

35. In a recent judgment rendered by the Apex Court in the case of JSW Infrastructure Limited and another Vs. Kakinada Seaports Limited and,,

others: (2017) 4 SCC 170, two consortium had submitted their bids for EQ-1-2 and EQ-3 berths at Paradeep Port Trust of 30 MTPS capacity on BOT",,,

basis under PPP mode for concession period of thirty years. Four parties including the first and second consortium submitted their bids in response to,,

the RFQ. All the parties were duly qualified and were asked to participate in the next stage of RFP. Only two parties submitted the bid and the,,

sameÂ was allotted to first consortium. At that stage, the second consortium submitted objections on the basis of the policy clause against creation of",,,

monopoly pointing out that the first consortium was not entitled to take part in the entire bid process as he was already operating one berth for dry,,

cargo.,,,

36. The Policy Clause was â??If there is only one private terminal/berth operator in a port for a specific cargo, the operator of that berth or his",,,

associates shall not be allowed to bid for the next terminal/berth for handling the same cargo in the same port.â? 37. The writ petition was filed by the,,

second consortium before the Orissa High Court and the High Court held inclusion of the first consortium JSW Infrastructure to be wrongly,,

considered and consequently set aside the letter of award passed in favour of first consortium leaving it open for the authorities to negotiate with,,

second consortium or to invite fresh bids. On the said facts, after taking into consideration the law as laidÂ by the Apex Court in the case of Ramana",,,

Dayaram Shetty Vs. International Airport Authority of India: (1979) 3 SCC 489 and other judgments including the judgments rendered in the case of,,

Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corpn. Ltd.: (2016) 16 SCC 818

and APM Terminals B.V. Vs. Union of India: (2011) 6 SCC 756,",,

it was held by the Apex Court that the High Court had erred in interpreting the clause and the decision of Paradeep Port Trust in allowing the first,, consortium was upheld.,,

38. Thus viewed, this Court is of the view that while a mere disagreement with the decision making process or the decision of the administrative",,,

authority may not be a reason for the Court to interfere while exercising writ jurisdiction, however, at the threshold of malafides, apparent intention to",,,

favour someone, perversity, irrationality or arbitrariness in the bid conditions, which go contrary to the RTPP Act, if are found, then alone the Court",,, would interfere.,,

39. Exclusion of one party at the threshold on presumption that if the said party is allowed to participate, it would necessarily be successful bidder and",,,

thereupon the result in causing monopoly is a too far fetching conclusion to be drawn for including such a clause in the bid document itself.,,

40. The proviso to Section 25 of the RTPP Act regarding exclusion of bids as put up by the learned Senior Counsel Mr. Rajendra Prasad, AAG would",,,

only come into operation after a bid has been submitted. The question whether a bid in the opinion of procuring entity has a conflict of interest,,

materially affecting fair competition as provided under Section 25(d) of RTPP Act would come into operation only after a bidder has submitted his bid.,,

The opinion of the procuring entity would have to rest on material available with it at that stage, moreover, as per Section 25(3) of RTPP Act, the",,,

decision to exclude shall have to be on the basis of cogent reasons to be recorded in writing and has to be subsequently communicated to the,,

concerned bidder in terms of sub-clause 4 thereto that the concerned bidder would be entitled to assail such decision and get it tested upon the anvil of,,

judicial pronouncements and the provisions of law. Thus, viewed, this Court does not find the submission of learned counsel for the respondents to be",,,

sufficient to oust the petitioner from participation. In the considered opinion of this Court, the exclusion of an individual from participation in bidding",,,

merely because he is already engaged in the same work with the State Government is clearly arbitrary and the reason put forward that such a bidder,,

might be able to become successful in the prospective bid and therefore should be disallowed to participate is nothing sort of perversity.,,

41. To assess a bidder of having materially affected fair competition can only be after the concerned bidder may form a cartel and affect the fair,, competition. However, to put a provision in the bid document itself excluding a particular prospective bidder in an apprehension that his participation",,, may not allow any other bidder in competition, has to be considered as a prejudged action. The prejudged action emanates very prejudice, causes",,, inherent bias in the decision making process. From what has come on record in reply, it is apparent that with a prejudiced and biased attitude such a",,, clause has been added in the bid document clause 17(iii) thus in the opinion of this Court is wholly unreasonable and is liable to be quashed on the anvil,, of Articles 14, 21 and 19(1)(g) of the Constitution keeping in view the observations of the Apex Court in the case of Reliance (supra).",,,

42. As regards the second aspect with regard to the conditions laid down for eligibility inÂ clause 5 of the bid document as challenged by both the,, petitioners on the ground of being unjustified and contrary to the provisions of the Central Vigilance Commission (CVC) as also discriminatory and,, arbitrary with the purpose to benefit private respondent-StarAgri, it would be appropriate to examine the eligibility criteria conditions individually.",,,

43. The first condition assailed is with regard to minimum average turnover as laid down in clause 5(3) of the bid document.,,,

44. Learned counsel for the petitioners have assailed the said eligibility on the ground that it does not have nexus to the purchase sought to be,, achieved. The total annual revenue which approximately required is only Rs.45 crore. However, in the eligibility criteria the same has been enhanced",,, to 113 crore without any basis.,,,

45. Learned counsel has relied on the guidelines issued by the CVC wherein it is stated that while framing per-qualification criteria, end purpose of",,, doing so should be kept in view and for civil electronic works, the average financial turnover during last three years should be at least 30% of the",,, estimated cost. The office memorandum dated 17/12/2002 issued by the CVC for the said purpose has been relied upon.,,,

46. Per-contra, learned counsel appearing for respondent-RSWC submits that CVC has clarified vide its office memorandum dated 07/05/2004 its",,, earlier circular dated 17/12/2002 specifying that the tender document should neither be made very stringent/very lax to restrict/facilitate the entry of,,

bidders and has clarified that the guidelines issued earlier are illustrative. However, it has been highlighted that the pre-qualification criteria should be",,,

exhaustive, yet specific and there is a fair competition and clearly stipulated in unambiguous terms. Learned counsel points out that the criteria is for",,,

civil and electrical works whereas the present work is of a completely different purpose. The criteria thus laid down need not be interfered.,,,

47. This Court has considered the submissions and finds that the eligibility criteria with regard to the requirement of turnover cannot be said to be in,,

any manner arbitrary or perverse and as regards the nexus, apparently it is for the concerned authority to lay down a particular financial criteria for",,,

the satisfaction of the authority and the same is not amenable to judicial interference and thus does not call for interference.,,,

48. The next condition assailed is as contained in Clause 5(5)(i) of the bid document which requires that the bidder either directly or through his 100%,,,

owned subsidiary should have its own warehouses in the State of Rajasthan with the minimum total capacity of 100000 MT.,,,

49. The challenge to the said qualification is essentially on the aspect that the same is a restrictive qualification which only allows those participants,,

who have an ownership of warehouses in Rajasthan.,,,

50. The petitioner-Origo has claimed to haveÂ its ownership in large number of warehouses in different states of India. It is stated to have credited,,

Pen India more than 500 warehouses across 15 States and is a certified company with a testing and certification lab based in Kota. It is one of the,,

largest private sector warehouse providers and managing over 155 Government warehouses in State of Punjab and Orissa. The condition of having,,

warehousing capacity in Rajasthan has been challenged on the ground of it resulting in exclusion of all the other experienced warehouse managing,,

companies from participation having much more experience in the field in various other States of India and therefore is an arbitrary and whimsical,,

condition and goes against the main objective defined in the tender document which is for operation and management of RSWC. While the tender,,

document itself provides for option to the higher warehouses and offer to response when the need arises, the condition is per se arbitrary.",,,

51. The respondents have mainly supported the said condition on the ground that the need may arise for the State to demand warehouses owned by,,

the bidder. It is submitted that merely because the petitioner does not fulfill the said condition, cannot be termed as arbitrary.",,

52. This Court has examined the said condition and in the light of what has been stated above, this Court finds that if a condition is incorporated to limit",,,

persons from participation, reasons have to be assigned in terms of Section 6 of RTPP Act. As has been argued by learned counsel, the bid document",,,

is not a limited bid in terms of Section 6 of RTPP Act. Thus viewed, if a prospective bidder is only denied participation that he does not have his",,,

personal owned warehouse in Rajasthan, the same would amount to exclusion by default and would thus be arbitrary condition as it seeks to deny",,,

participation for want of owned warehouse in Rajasthan.No reasons have come forward in the bid document and it is thus not transparent.,,,

53. In the case of Gangaram Moolchandani Vs.State of Rajasthan and others: (2001) 6 SCC 89, the condition laid down by the High Court for",,,

participation for selection of candidates for the post of District Judge limiting to those who have experience of practice in Rajasthan alone, was",,,

examined and it was held as under:-,,

12. While considering the attack on the Rule, the Court observed that when any Rule or a statutory provision is assailed on the ground that it",,,

contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be",,,

based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second is that the",,,

differentia in question must have a reasonable relation to the object sought to be achieved by the Rule or a statutory provision in question. It was",,,

observed that the object of the Rule was to recruit suitable and proper persons to the judicial service in the State of Andhra Pradesh with a view to",,,

secure fair and efficient administration of justice, and so there can be no doubt that it would be perfectly competent to the authority concerned to",,,

prescribe qualifications for eligibility for appointment to the said service. Knowledge of local laws as well as knowledge of regional language and",,,

adequate experience at the Bar may be prescribed as a qualification which the applicants must satisfy before they apply for the post. In that case, it",,,

was contended before this Court that the Rules were framed to require an applicant to possess knowledge of local laws. Though this Court in the case,,

of Pandurangaro (supra) has expressly laid down that validity of such a rule can be sustained on the ground that the object intended to be achieved,,

thereby is that the applicant should have adequate knowledge of local laws and regional language, but while saying so, it has observed that for",,,

achieving this object, the proper course could be to prescribe a suitable examination which a candidate should pass whereby knowledge of local laws",,,

can be tested.â??,,

54. Thus viewed, the condition limiting only participants having property in terms of a warehouse of a capacity of 100000 MTÂ in Rajasthan alone is",,,

arbitrary and violative of Article 21 and 19(1) (g) of the Constitution as it seeks to deprive stake holders operating in different States of India from,,

participation. It is also otherwise noted that the tender document itself provides for the bidder to make available warehouses if required only as is laid,,

down under Clause No.15(xx) which reads as under:-,,

â??15(xx).The bidder may continue with owned/hired capacity at locations under agreement, he is operating on the date of work order. The Bidder",,,

will be bound to provide the additional capacity as may be required by RSWC, other than locations as mentioned in Annexure I and sharing in this case",,,

will be in the ration as 15 (RSWC): 85 (Bidder)â??.,,,

55. Once such a condition is already laid down as a part of the responsibility of the service provider, to add a condition as a per qualification would",,,

amount to limit participation which can only be done under Section 30 of the RTPP Act and after following Rule 13 and 16 of the RTPP Rules, 2013.",,,

56. Mr. RN Mathur, learned senior counsel has argued that although the bid document states itself to be an open bidding but the effect is that it is a",,,

limited bid.,,,

57. Mr. AK Sharma, learned senior counsel, on the other hand, submitted that a potential bidder has to confirm to the eligibility criteriaÂ which is a",,,

domain of the procuring authority. Rationality of a condition cannot be on the touchstone of the qualifications possessed by the petitioner and the,,

condition has to be examined on its own.,,,

58. This Court agrees that the principle of law as put up by Mr. AK Sharma, learned senior counsel appearing for the respondentRSWC. However, on",,,

examining the said condition as noted above, this Court finds that the condition itself seeks to limit the competition. Moreover, such a limitation is not",,,

provided in the bid document in terms of Section 6 and 30 of the RTTP Act and the rules framed thereunder. Taking note of the law as laid down by,,

the Apex Court in the case of *Â Gangaram Moolchandani Vs.State of Rajasthan and others (supra)*, the condition is held to be bad in law and is",,,

arbitrary and unjustified.,,,

59. The condition no. 5(5)(iv) provides that a bidder must have experience of NCDEX warehouse service provider business for last three financial,,

years and a registration certificate issued by the NCDEX in the name of the bidder firm must be provided.,,,

60. The petitioners submit that the respondent-StarAgri has stock share holding in NCDEX and that is the sole reason for patronage being extended to,,

it. A chart has been placed for perusal to show the StarAgri Warehousing having 1.38% total capital of the equity share holding in NCDEX. It is,,

stated that the State instrumentality cannot promote only one commodity private exchange and cannot ignore the other commodity exchanges namely;,,

MCX, ACE Commodities, Derivatives Exchange, ICEX and UCX. It is stated that some of the exchanges are exclusively focused on agri",,,

commodities while the others are commodity exchanges operating in various fields including agri, non-agri commodities. Since the warehouses are",,,

required to have competitive commodity exchange, the singular requirement of registration with business with NCDEX would not allow transparency",,,

and promotion of a competition.,,,

61. The RSWC has submitted that merely because the petitioner company does not have the required experience with NCDEX, it cannot be urged",,,

that such a condition is unjustified. The condition is uniform for all bidders irrespective of their extent of share holding. The procuring entity can choose,,

to include a particular exchange for its business and the same cannot be termed as arbitrary or unjustified.,,,

62. Having noted the aforesaid submissions, this Court finds that in the case of *Reliance Energy Ltd. and another Vs. Maharashtra State Road",,,*

Development Corpn. Ltd. and others (supra), it has been noted by the Apex Court that the procuring entities must always try to attain a healthy",,,

competition. By limiting a condition too of experience in a particular exchange alone, excluding the others, would amount to limitation of the",,,

competition and unless the procedure laid down under Section 6 and 30 of the

RTPP Act and rules contained therein isÂ followed and reasons are,,
provided as discussed herein above, such a limitation condition without assigning reasons would amount to arbitrariness and would be in violation of",,,

RTPP Act. Accordingly, the said condition is held to be unjust and contrary to the provisions of the RTPP Act.",,,

63. The next condition laid down is with regard to Clause 5(5)(v) of the tender document which provides that a bidder must have experience of,,
offering procurement services for agri commodities to any Centre/State level institution alone.,,,

64. Learned counsel for the petitioner-OrigoÂ has submitted that while the experience may not be with Central and State Government, the",,,
experience with Food Corporation of India could not have been excluded and the petitioner has been denied wrongfully from participation on account,,
of entering such a condition.,,,

65. The respondents have submitted that the experience has to be in accordance with the requirement of the procuring entity. Laying down of such,,
condition is within the sole domain of the procuring entity. The condition only excludes the petitioner and the same cannot be a reason to set aside such,,
a condition.This Court finds that the petitioner has challenged the condition on the ground that the experience with Food Corporation of India would not,,
fall within the experience as provided under clause 5(5)(v) is misconceived. The Center and State level institutions offering procuring services for agri,,
commodities would be of institutions which may be engaged in the said work either at the Central level i.e. all India level or at the particular State,,
level. As such, the conditions takes into its ambit all the institutions and the said condition cannot be said to be in any manner arbitrary.",,,

Accordingly, the contention of the petitioner-OrigoÂ is rejected.",,,

66. The eligibility condition 5(5)(vi) provides that a bidder must have license from Rajasthan State Agricultural Marketing Board to operate Private,,
Sub e-Market in the State.,,,

67. It is the case of the petitioners before this Court that only the prospective bidder possessing the eligibility condition as noted above, is the private",,,
respondent-StarAgri. The petitioner-Origo assails the condition on the ground that the same is a tailor made condition entered with the purpose to oust,,
the other competing bidders. The condition has no concern with the operation

and management works as invited by the tender and is an arbitrary,,
condition introduced with oblique purposes. Moreover, such a license, if so
required, could not be an eligibility criteria and even the successful bidder",,,
can be asked to promote such license if the need so arise.Â The petitioner-SSLL
assails the said condition pointing out that the respondent-StarAgri,,
was granted license to operate Private Sub e-Market in the State of Rajasthan
recently. The purpose of managing and operating of warehouse for,,
which the petitioner is already performing has no relation to the requirement of
license to operate Private Sub e-Market in the State. As per Section,,
5(A) of the Rajasthan State Agricultural Marketing Act, 1961, the same is
granted for processing of agricultural produces, export of agriculture",,,
produces, trade of agricultural produces. Such requirement can only be an
ancillary requirement if at all such work may arise in future and on the said",,,
count, the bidders cannot be ousted. There has been a complete non-application
of mind for introduction of such a condition. The eligibility conditions",,,
are for the purpose of aid and evaluating the competence and qualification of the
prospective bidder but the said condition is with the purpose to oust,,
the petitioner from competition.,,,
68. The respondents have stated that the RSWC has 515 godowns at 93
locations across the State with another 200 leased godowns. The State has,,
142 regulated markets out of which 48 Mandis are in SA or A category and rest
are B,C, and D category. The farmers bring their produce to the",,,
procurement centers and after quality check, the produce is packed and
transported to warehouses owned and leased by the Corporation. The multiple",,,
handling of stock leads to transit losses and lot of disputes between cooperative
societies. This logistics and storage issue was recognized as a major,,
road block which prevented from buying crops. In order to widen the MSP net,
Price Deficiency Procurement Scheme, e-markets like e-National",,,
agricultural Market (eNAM) has been implemented. Apart from eNAM, the
Rajasthan State Agriculture Market Board allows private companies to",,,
set up private Sub e-markets in the State. The role of private Sub e-Markets also
includes making arrangements for warehousing, weighment, grading",,,
and certification. While eNAM has implemented mandi yards, the private Sub e-
market would intend to use existing warehouses and with the said",,,
purpose, the condition has been incorporated in the tender as an eligibility

criteria so that the private service providers must have licenses to operate",,,
private Sub e-markets in the State. All the warehouses owned and leased by the Corporation would be declared as delivery centers for Sub e-,,
markets.,,,

69. Having noted the aforesaid reply filed by the respondents, it has been contended by the counsel for the petitioners that the contentions as set up in",,,
the reply are for the future requirements and are not meant for the work as proposed to be done as per bid document by the bidders and the,,
contractors in the tender invited. It is also contended that if such a requirement was there, the same would also be required for 38 warehouses already",,,
functioning under the management and care of the petitioner. However, for the said warehouses, no such directions have been issued by the",,,
authorities for obtaining such a license. It is also argued that once there is already an eNAM portal at all India level, there is no requirement for having",,,
been registered under the Rajasthan State Agriculture Marketing Board as a sub market yard.,,,

70. Learned counsel has also taken this Court to the provisions of the Rajasthan State Agriculture Marketing Board Act to show that there are,,
additional 22 conditions required for an entity to get registered under the State Board.,,,

71. Having examined the contentions in this regard, this Court finds that the condition of having registered as a private sub emarket does not have any",,,
nexus to the purpose of the contract. Availability of fiscal market at warehouses is in no manner connected with the purpose as mentioned by the,,
respondents in their reply. As per reply, the e-market is a proposed objective of providing Gramin agricultural markets in the State. The same is in no",,,
manner related to the management and storage infrastructure. The purpose as highlighted in the reply is not found in the tender document nor the,,
scope of work of RSWC in this regard has been mentioned in the introductory part in the general clause. A look at the general clause shows that the,,
RSWC has invited tenders for providing warehouses, the management services on revenue sharing basis and to provide better storage facilities to",,,
farmers, traders and other trade participants facilitating availability of finance and evolving functional models for the purpose of development of an",,,
efficient warehousing system. It nowhere speaks of what has been stated in the

reply to the writ petition. In view thereof and taking into consideration,,
that the license was available only for respondent-StarAgri and also in view of
the fact that while the petitioners have applied for the said license since,,
long and was not granted to them, this Court is satisfied that the condition is a
tailor made condition with the purpose of benefiting the private",,
respondent-StarAgri alone. It is also to be noted that during pendency of the writ
petition one of the other prospective bidder who had challenged the,,
said condition was granted license after the last date was extended by the
respondents due to pendency of the present case. The petitioners have,,
informed that the license in favour of the said prospective bidder was issued on
an application which was submitted much later than the petitioner.,,
75. Taking into consideration the aforesaid circumstances and the eligibility
conditions which this Court has found to be arbitrary, suffering from",,
perversity, tailor made and also in violation of the provisions contained under the
RTPP Act, this Court deems it appropriate to quash the NIT dated",,
11/07/2018 issued by the respondent-RSWC and strike down the eligibility
conditions laid down therein as well as the condition by which the petitioner-,,
SSLL has been excluded from participation. This court is satisfied that the action
of the respondents amounts to disturbing the level playing field as,,
one of the facet of right to life under Article 21 of the Constitution as held by the
Supreme Curt in the case of Reliance Energy Ltd. and another Vs.,,
Maharashtra State Road Development Corpn. Ltd. and others (supra),,
72. Thus, as per aforesaid findings and conclusions, the impugned notice inviting
bid dated 11/07/2018 issued by the respondent-RSWC is quashed and",,
set aside. The respondentRSWC is directed to issue a fresh notice inviting bid in
consonance with the RTPP Act, 2012 imbining the conditions which",,
do not create any discrimination and allow maximum participation and
transparency so that the very purpose of the RTPP Act, 2012 to allow",,
maximum competition is achieved.,,
73. Accordingly, both the writ petitions succeed and are hereby allowed. No
costs.",,