
(2025) 04 SC CK 0270

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5542, 5543 , 5544 Of 2025 (@ Special Leave
Petition (Civil) No (S). 12353-12355 Of 2021)

The Principal Chief Conservator Of Forest & Ors

APPELLANT

Vs

Suresh Mathew & Ors

RESPONDENT

Date of Decision : 25-04-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226

Citation : (2025) 04 SC CK 0270

Hon'ble Judges : Bela M. Trivedi, J;Prasanna B. Varale, J

Bench : Division Bench

Advocate : Nishe Rajen Shonker, Alim Anvar, Namit Saxena, Subhash Chandran
K R, Biju P Raman

Final Decision : Allowed

Judgement

Prasanna B. Varale, J

1. Leave granted.

2. The present civil appeals arises out of the common judgement and order dated 19.01.2021 passed by the Hon'ble High Court of Kerala at Ernakulam in writ appeals nos. 1568 of 2020, 1577 of 2020 and 1589 of 2020 whereby the High Court of Kerala dismissed the Writ Appeals by confirming the judgement passed by learned Single Judge.

BRIEF FACTS:

3. The factual matrix of the case is that the Divisional Forest Officer, Konni issued an order dated 12.10.2020 cancelling an earlier e-tender notification dated 25.05.2020 for final tree felling works of 1954 Nellidappara in South Kumaramperoor Forest Station under Konni Range in Konni Forest Division and decided to float a tender afresh. The writ petitioners were participants in the earlier e-tender notification dated 25.05.2020 and according to them, the action

of the appellants; to retender the work after cancelling the earlier tender was an arbitrary and illegal action. In fact, the Principal Conservator of Forests issued a circular dated 29.02.2020 in regard to the renewal of registration of A class contractors, wherein it was stipulated that A class registered contractors, who have not participated in any of the tenders notified by the Department for timber extraction during the last financial year, are not eligible to get renewal of the A class registration.

4. On the basis of the said circular, the registration of the petitioners in W.P.(C) Nos. 24075 and 24241 of 2020 were not renewed. However, the appellants had floated the e-tender dated 25.05.2020 for the work in question. The said petitioners, being aggrieved by the said action, have approached Hon'ble High Court by filing W.P.(C) Nos. 11854 and 12389 of 2020 respectively challenging the aforesaid circular dated 29.02.2020, in which interim directions were sought to permit them to participate in the e-tender dated 25.05.2020. Learned Single Judge of the Hon'ble High Court granted interim orders permitting the said petitioners to participate in the tender proceedings provisionally. Learned Single Judge of Hon'ble High Court vide common judgment dated 28.09.2020 allowed the said writ petitions and set aside the impugned orders declining renewal of registration of the petitioners. The Court directed the authority to reconsider their applications for renewal of registration on merits dehors the circular dated 29.02.2020. The reasons given by the High Court for allowing the writ petitions have been reproduced as below:

"...11. The rules [Rules 6 to 8 of the rules for Registration of Contractors for Working Down Timber Firewood from Timber Depots (Supply Coupe Contracts).] would indicate that the registering authority may refuse renewal of registration for reasons stated as (i) to (iv) in Rule 6. The 4th reason namely, "or any other reason which in the opinion of the registering authority makes the applicant unsuitable for such registration", need not be confined to reasons of the nature indicated in Clauses (i) to(iii)...

...Firstly, the rules of registration of contractors are not statutory rules but are part of the Kerala Forest Code which is only a compilation of administrative/ executive instructions...

12. ...Registration or renewal of registration as Contractors is not a fundamental or statutory right. The Government can very well right-size the panel of registered Contractors for the purpose of administrative convenience...

14.... Petitioners as registered Contractors do not hold vested right for renewal of their license..."

However, the Learned Judge allowed the writ petition on the sole ground that the authorities cannot put a new condition for consideration of applications after the last date prescribed for submission of the applications as it would be highly arbitrary offending Article 14 of the Constitution of India. Thus, it was observed that the refusal of renewal of registration based on circular dated 29.02.2020 is

illegal and unsustainable.

5. However, vide order dated 12.10.2020, the Divisional Forest Officer (hereinafter 'DFO') cancelled the e-tender dated 25.05.2020 and floated fresh tenders for the same work on 31.10.2020. This order was further challenged by the Respondent before the High Court in Writ Petition No. 24241 of 2020.

6. Vide order dated 16.11.2020, Single Judge of the Hon'ble High Court allowed the writ petition and set aside the re-tender notification dated 31.10.2020. The Court observed that the writ petitioners who had been granted renewal of license should be treated as qualified to participate in the earlier tender pursuant to the renewal of their A Class license. Accordingly, the Court directed the authority to proceed with the e-tender dated 25.05.2020 and award the work to the eligible tenderer at the earliest. The reasons given by the High Court have been reproduced as under:

"12. ...One fails to understand as to how a re-tendering abandoning the existing tender process would not expedite the re-planting work. If anything, it would only cause further delay...

13... When already the tender proceedings were in place, the DFO ought not have cancelled the same without concrete reasons, ostensibly to beat the model code of conduct.

16... the lowest tenderer has quoted an amount of 12.67% below the estimated rate, which should be treated as a reasonably good offer for the respondents. There is no guarantee that in the re-tendering process tenderers would quote lesser amounts.

17. There were sufficient participants in the earlier tender proceedings. There is nothing on record to show that there have been any serious complaints regarding the e-tender proceedings initiated earlier. In the earlier tender proceedings, offers have been received to do the work at lesser than the estimated rate. Even according to the tendering authority, expeditious implementation of the project is imperative."

7. Aggrieved by the aforementioned order, the Petitioner filed Writ Appeal before Division Bench of the Hon'ble High Court.

8. The High Court vide its impugned judgment dated 19.01.2021 dismissed the writ appeal being devoid of merit and upheld the order passed by the Learned Single Judge.

9. Aggrieved by the said judgement of the High Court, the appellant is before us.

CONTENTIONS:

10. The Ld. Counsel for the appellant vehemently submitted that the judgment of the Hon'ble High Court setting aside the order of the Petitioner No. 3 as well as the retendering notice dated 31.10.2020 is against the settled principles of law.

It was submitted that the finding of the High Court that the transportation restrictions cannot affect the tender proceedings on account of the fact that the e-tender is also against the facts on record as the bidder has to submit both the e-tender by speed post or registered post simultaneously within the time limit stipulated in the notice inviting tender. The Ld. Counsel for the appellant also submitted that the judgment of the learned Single Judge allowing the writ petition setting aside the retender without even advertng to the fact that the tender has not been finally awarded to any person and that the technical bid is under process is illegal. The Ld. Counsel for the appellant further submitted that the finding of the Ld. Single Judge that the lowest bidder has quoted an amount of 12.67% below the estimate rate which would be treated as reasonable for the Respondent and there is no guarantee that in the retendering process, the tender would cost lesser amount is a finding without any material on record and the same cannot be ground for setting aside the bona fide order issued by the competent authority. It was further submitted that as per principles laid down by this Hon'ble Court in contractual matters, the Court should interfere only if the Petitioner proves that there is malafides on the part of the government authority. The Hon'ble High Court had failed to appreciate that the DFO, Konni has rightly exercised the power conferred on him under Clause 3 of the tender notice read with Clause 20 of e-government procurement notice of the retender wherein it reserves the right to modify/cancel all bids without assigning any reason.

11. As the respondents failed to file a counter affidavit despite sufficient opportunities granted to them and required further time, this Court via order dated 29.02.2024 declined to grant further opportunity to them, as such there is no affidavit in reply by the respondents. Ld. counsel for the respondents orally argued that the judgement passed by the Ld. Single Judge of High Court is a very well-reasoned judgement. The division bench of High Court has rightly affirmed it on appreciation of evidence and the appeal/SLP of the appellant needs to be set aside.

ANALYSIS:

12. We have heard Ld. counsel for the Appellant as well as Ld. Counsel for the Respondent. We have also perused relevant documents on record and judgment passed by the High Court.

13. The High Court while dismissing the writ appeals observed as under:

"13. In our considered opinion, on an analysis of the findings made by the learned single Judge, we see that even though the expressions 'arbitrary' and 'unreasonable' are not employed by the learned single Judge in the judgment, it is clear that it was after entering into the requisite findings leading to arbitrariness, the writ petitions were allowed and the impugned cancellation order was quashed. We also find force in the argument advanced by the learned counsel for the writ petitioners that one of the reasons shown in the cancellation order that there were complaints from eligible contractors on their failure to

participate in the e-tender is a baseless contention, since it was an e-tender. In order to substantiate the said contention, there should have been participation in the e-tendering process by any other eligible contractors.

14. We also do not find any basis in the arguments of the learned Special Government Pleader that the bid documents had to be submitted physically, in view of the stipulation contained in the notice inviting tender, and it was not possible due Covid 19 restrictions, for the reason that such a requirement arises only if any eligible contractor participated in the e-tendering process. In order to establish as to whether any eligible contractor participated in the e-tender, no documents were produced, and if such a situation had arisen, there would have been substantive documents available with the tender inviting authority and having not produced any such evidence, it can only be legally presumed that there were no such incident to support the stand adopted by the appellants. Therefore, we are of the clear opinion that the fundamental reason assigned in the cancellation order that there were complaints from the eligible contractors expressing their inability to participate in the e-tender, has no factual and legal foundation and cannot be sustained under law, and thus it can only be termed as an arbitrary and illegal act. If there is no conclusive proof for participation of any other eligible contractors in the e-tendering process, the contention advanced by the appellants that many contractors could not participate due to restriction in transportation facilities is a hollow and baseless argument. Which thus means, without submitting e-tender, nobody can submit the tender documents physically before the tender inviting authorities, which is quite clear and evident from the notice inviting tender, which specifies that the tender documents should reach the Department on or before the bid opening time and date, failing which the bid is liable to be rejected. Therefore, such a requirement can only be understood as an additional requirement to the submission of the e-tender by the willing and eligible contractors.

15. Circumstances being so, the prime reason assigned for the cancellation of contract as extracted above becomes an arbitrary, unreasonable and illegal act on the part of the tender inviting authority. Merely because there is a likelihood of the rates being lowered, if successive tenders are invited, it cannot be a justifiable ground at all for cancellation of the contract, since we are of the firm opinion that, if that is to be taken as a valid reason, then there would not be any end to the tender inviting procedure...

... we are at a loss to understand as to how the situation of emergency pointed out by the appellants could be achieved by cancelling the e-tender and inviting fresh tenders, which in our opinion, undoubtedly protracts and retards and elongates the finalisation of the proceedings to a future date. To put it otherwise, the reason so assigned is not at all a conducive and compatible one to justify the said reasoning of the tender inviting authority in the order impugned...

17. We have no doubt in our mind that in a writ petition seeking judicial review, certain restraints have to be followed by the court, bearing in mind the public

interest, the commercial functions of the Government, the feasibility of the contract and the viability etc. However, we cannot forget the fact that if there is any patent arbitrariness in the matter of cancellation of a contract and that too after opening the bids submitted by the participants, a writ court shall step in to undo such arbitrariness and unreasonableness. "

14. The factual matrix of this case involve the process of tender and the power of the tendering authority to cancel the tender is a legal question.

15. A perusal of the record shows that the order dated 12.10.2020 passed by the DFO categorically states as under:

"Some other contractors had complained that they could not participate in the e-tender due to Covid-19 transportation restrictions. Their grievances need proper redressal."

It is thus clear that the DFO, being the tendering authority, found that some contractors could not participate due to Covid restrictions and thus, proceeded to retender the work. The respondents, being still allowed to participate, were not prejudiced by the retender.

16. The question of scope of judicial review in the cases of award of contracts has already been dealt with by the Hon'ble Supreme Court in the case of Jagdish Mandal vs. State of Orissa and Others (2007) 14 SCC 517 wherein the Court observed as under:

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bonafide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

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.

(ii) Whether public interest is affected.

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

We are of the opinion that the High Court has committed a gross error while observing the facts in the case of Jagdish Mandal (supra) were entirely different in regard to a defective tender submitted by a participant.

17. In the case of State of Orissa and others vs. Harinarayan Jaiswal and others (AIR 1972 SC 1816) ,in relation to excise revenue, the Supreme Court observed as under:

"13. ... The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the Legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19 (1)(g) and Article 14 can arise in these cases..."

18. The law regarding government contracts or auctions and the nature and scope of its judicial review is well settled. In the case of M/s Michigan Rubber (I) Ltd. vs. State of Karnataka and ors. (2012) 8 SCC 216 , the Supreme Court observed as under:

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

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

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for

striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

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

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

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

19. In the case of *Tata Cellular vs. Union of India* (1994) 6 SCC 651, the Supreme Court emphasised the need to find a right balance between administrative discretion to decide the matters on the one hand, and the need to remedy any unfairness on the other, and observed:

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

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

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

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract..

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of *Wednesbury* principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by *mala fides*.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

20. It is noteworthy that the order dated 12.10.2020 is an order issued by the DFO who is the competent authority. The setting aside of this order of the DFO by the Ld. Single Judge is erroneous since it does not record any finding that the order of the DFO is *mala fide*. We are of the opinion that the order of DFO would give an equal opportunity to all the bidders and thus, there would be a fair play

between them, ultimately benefitting the Government.

21. A perusal of the order of the DFO reveals that as per clause 3 of the e-tender notice in English, the bidding authority reserves the right to modify/ cancel, any all bids without assigning any reason. Clause 27 of e-Government procurement notice inviting tender for works puts it in explicit items that the tender inviting authority or other sanctioning authority reserves the right to reject any tender or all the tenders without assigning any reason therefore.

22. The Division Bench of the High Court, which upheld the judgment of the Ld. Single Judge, was of the opinion that merely because there was a likelihood of the rates being lowered if successive tenders are invited, the same cannot be a justifiable ground at all for cancellation of the contract since it would lead to a situation of an unending tender inviting procedure. However, we are of the opinion that the said observations by the High Court are contrary to the settled principles of law laid down by the Supreme Court that the Government is the protector of financial resources of the state and thus, it has every right to cancel and call for fresh tender if it is in the nature of protecting the financial interests of the State.

23. We may state here that if our observations are seen qua the touchstone of questions framed by this Court in the judgment of Jagdish Mandal (supra) the answer would be in negative, therefore the decision taken by the authorities cannot be termed as a mala fide decision or a decision to favour someone. At the cost of repetition, we may state that the decision of the authority is giving a fresh opportunity to all interested bidders to compete with each other in the process of the fresh selection. In our opinion, the decision taken by the authority is not affecting the public interest, on the contrary it furthers the cause of the public interest and fair play.

24. For reasons stated above, the present appeals deserves to be allowed and are allowed accordingly. The judgment and order dated 19.01.2021 passed by the High Court of Kerala at Ernakulam in writ appeals nos. 1568 of 2020, 1577 of 2020 and 1589 of 2020 is set aside.