

**HIGH COURT OF KARNATAKA**

**Bench: Justice M. Nagaprasanna**

**Date of Decision: 28<sup>th</sup> May 2024**

WRIT PETITION No. 7700 OF 2024 (GM – TEN)

**M/S. BANNARI CONSTRUCTIONS ... Petitioner**

**Vs**

**Karnataka Soaps and Detergents Limited**

**The Deputy General Manager**

**Karnataka Soaps and Detergents Limited, ... Respondents**

**Legislation:**

Articles 226 and 227 of the Constitution of India

Karnataka Transparency in Public Procurements Act and Rules

**Subject:** Challenge to the cancellation of a tender for the procurement of Sandranol perfumery item.

**Headnotes:**

Public Procurement – Cancellation of Tender – Judicial Review – Writ Petition challenging the cancellation of a tender for the procurement of Sandranol by Karnataka Soaps and Detergents Limited (KSDL) – Petitioner, Bannari Constructions, had emerged as the lowest bidder (L1) – Tender was cancelled due to alleged failure to submit a manufacturer’s authorization letter as per condition No.29 of the tender document – Court finds that the condition was introduced after opening of financial bids – Petitioner had a history of supplying the same product to KSDL without prior requirement of such authorization – Arbitrary action by KSDL, motivated by a complaint from the second lowest bidder – Writ Petition allowed – Cancellation order quashed – KSDL directed to conclude the tender process favoring the petitioner. [Paras 1-16]

Judicial Review – Scope – Arbitrariness in Tender Process – Analysis of the tender process by KSDL reveals arbitrary and inconsistent application of tender conditions – Requirement for manufacturer’s authorization introduced post facto – Such action deemed unfair and in violation of Article 14 – Judicial review warranted to prevent abuse of administrative discretion and ensure fair play. [Paras 9-14]

Decision – Quashing of Tender Cancellation – Mandamus Issued – Writ Petition allowed – KSDL directed to conclude the tender process and award the contract to Bannari Constructions within 15 days – Interim orders and directions maintained. [Para 16]

**Referred Cases:**

- Tata Cellular v. Union of India, (1994) 6 SCC 651
- Michigan Rubber (India) Limited v. State of Karnataka, (2012) 8 SCC 216

**Representing Advocates:**

**Sri D.R. Ravishankar, Sr. Advocate with Sri Sunil S. Rao, Advocate for the petitioner**

**Sri Jayakumar S. Patil, Sr. Advocate with Smt. Manjula D., Advocate for respondents**

**Sri P. Prasanna Kumar, Advocate for impleading applicant in I.A.No.1/2024**

**ORDER**

The petitioner is before this Court calling in question an order of cancellation of tender dated 07-03-2024 floated by the 1<sup>st</sup> respondent for procurement of Sandranol perfumery item.

2. Facts, in brief, germane are as follows:-

The petitioner is said to be in the business of distribution of various perfumeries including one such perfumery by name 'Sandranol' and claims to have been the successful bidder on several occasions, whenever such tenders were floated by the respondent/Karnataka Soaps and Detergents Limited (hereinafter referred to as 'the Company' for short). The issue in the *lis* would commence from a notice inviting tender by the Company on 14-10-2023 for procurement of Sandranol, which was a two cover tender as is obtaining under the Karnataka Transparency in Public Procurements Act and the Rules framed thereunder (hereinafter referred to as the 'Act and the Rules' for short). After the notice inviting tender the probable tenderers were called for pre-bid meeting on 23-12-2023. The averment is, it was again re-scheduled to 13-01-2024. Certain amendments insofar as timeline for bid submissions, revision in payment terms and execution of agreements subsequent to award of tender were sought to be modified. Therefore, the tender stood modified in terms of the resolution in the pre-bid meeting which was notified ON 23-01-2024. It is then the bids submitted by the tenderers were sought to be assessed. The petitioner submits its bid on 25-01-2024 on the e-procurement portal of the Company. The last date for submission of bid in terms of the tender document was 29-01-2024.

3. There were four bidders to the procurement of Sandranol. On 30-01-2024 the technical bids were opened i.e., the first cover was opened and two people emerged technically eligible. One is the petitioner and the other is M/s Karnataka Aromas. The financial bid was yet to be opened, which comes to be opened at a later point in time and the petitioner emerges as the lowest bidder and was expecting to be awarded the contract in its favour. The contract was not executed by the Company in favour of the petitioner in terms of the notice inviting tender. But, a prenegotiation meeting with the petitioner was called by the Company on 24-02-2024. A clarification was sought on the ground that the petitioner had not enclosed manufacturer's authorization letter which is said to be the mandate as per tender condition No.29. The petitioner requests for some time to get the certificate on 02-03-2024. Four days thereafter

the tender itself is cancelled and the Company resolves to call for a fresh tender. It is then the petition is preferred on 11-03-2024. This Court directed maintenance of *status quo* during the pendency of the petition, which interim order is continued from time to time. The matter was heard with the consent of the learned counsel representing the parties.

4. Heard Sri D.R. Ravishankar, learned senior counsel appearing for the petitioner, Sri Jayakumar S. Patil, learned senior counsel appearing for respondents 1 and 2 and Sri P. Prasanna Kumar, learned counsel appearing for impleading applicant in I.A.No.1 of 2024.
5. The learned senior counsel Sri D.R. Ravishankar appearing for petitioner would vehemently contend that the manufacturer's authorization letter can never lead to rejection. It is the one that is to be sought at the time when the scrutiny of the tender happens. The law does not permit the Tender Inviting Authority to go back in the tender and begin the process after having declared the petitioner to be L1 and calling the petitioner for negotiation on certain terms. He would submit that the petitioner has been supplying the very same perfume, Sandranol for the last four years. He has a certificate given by the Company/Associate Allied Chemicals India Private Limited which was itself supplying till the petitioner came into the picture. No authorization letter was ever asked till now in any of the tenders. The letter submitted was taken as authorization letter. It is for the first time a new thing is sought to be introduced, that too at the fag end of the tender only to favour certain party. It is his submission that the said authorization letter also has been furnished. There can be no qualm now to award the contract in favour of the petitioner. He would seek to place reliance upon certain Rules which will bear consideration at a later point in time.
6. Per contra, the learned senior counsel Sri Jayakumar S. Patil would vehemently refute the submissions to contend that all was well all along. There were no complaints about authorization letter not being present. For the first time a complaint is registered and therefore, authorization letter was sought. Since the petitioner has failed to get the authorization letter, the drastic step of cancelling the tender was taken by the Company. He would submit that when the Company visited the website of the supplier from whom the petitioner procured perfume and distributed it does not

show that they are the manufacturers. The learned senior counsel would submit that only for the reason that the petitioner has failed to adhere to the tender conditions of authorization letter, the tender is cancelled. All other facts are admitted.

6.1. The learned senior counsel would further submit that if the tender condition of submission of authorization letter is not complied with, it would amount to non-fulfilling of conditions of tender. Therefore, the Tender Inviting Authority was left with no choice but to cancel the tender. Even after the order was passed by this Court where the petitioner was directed to secure the certificate, upon which the Company was directed to reconsider also does not reveal that the manufacturer's certificate is available. Therefore, no fault can be found with the action of the Company.

7. In reply, the learned senior counsel for the petitioner would contend that the manufacturer has issued the certificate. It is clear they are the largest manufacturers and they have been supplying to the Company up to 2016-17. Therefore, he would submit that this is deliberately done only to favour some tenderer.
8. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.
9. The afore-narrated facts are not in dispute. The notice inviting tender was for procurement of perfume by name 'Sandranol' for the purpose of preparation of perfumeries in the Company. 4 tenderers submit their bids. They are as follows:

**(1) Vinay Sampath Raj (1) (Karnataka Aromas). – Impleading Applicant**

(2) Bangalore Srinivasmurthi Gururaj (1) (Chemixil Corporation)

- (3) **Raju Gowda C (Bannari Constructions) - Petitioner**  
(4) Rajendra Raghavan Nair (Khyathi Advisory Services Limited).

*(Emphasis added)*

Out of four tenderers two tenderers at Sl.Nos.1 and 3 emerge as successful in the technical scrutiny. The petitioner and a Company by name Karnataka Aromas emerge as successful bidders on the technical side. The financial bids of both were to be on the web portal and the documents of the portal are appended to the petition. A perusal at the documents in the portal would clearly indicate that the price of the petitioner is close to 4 crores less than the next person i.e., Karnataka Aromas. From this it is clearly understandable that the petitioner was the lowest bidder. After emerging as the lowest bidder, the petitioner was called for negotiations. These are admitted facts.

10. In the negotiation, the petitioner is informed that they would require manufacturer's authorization in terms of Condition No.29. This was sought for by the Company on 02-03-2024 and the petitioner was called on 05-03-2024 to produce the same. It appears that the petitioner did not attend the said meeting on 05-03-2024. On 07-03-2024 the tender itself was cancelled by recalling the tender and a decision was taken to call for a fresh tender. The petitioner knocks at the doors of this Court with the present petition. This Court on 13-03-2024 passes the following:

**“ORDER**

*The petitioner is before this Court calling in question an order of cancellation of tender dated 07.03.2024.*

*The petitioner along with three others participate pursuant to a Notice Inviting Tender on 14.10.2023. The tender was for procurement of Sandronol, a component used in the perfumery for manufacture of the soap. A pre-bid meeting was held on 23.12.2023 and the second on 11.01.2024. It transpires that certain amendment in so far as the timeline for bid submission was the deliberation in the pre-bid meeting. On 23.01.2024, the tender stood modified in terms of the deliberations in the pre-bid meeting between the tenderers and the Tender Inviting*

*Authority. The last date for submission of the tenders was on 29.01.2024.*

*The opening of the technical bid happens on 30.01.2024. The petitioner is technically qualified along with one other, out of the four, two thus qualified technically after the technical evaluation. The next day, the financial bid of the two is opened. The petitioner in terms of what was depicted in the financial bid is the lowest bidder. Therefore, he is L1. All these things happened on 30.01.2024. Long after the opening of the financial bid, comes an amendment to the tender. The amendment is communicated through electronic mail to the tenderers. The amendment is as follows:*

***"Trader/Agent should compulsorily upload Manufacturer Authorization letter (in original) in tender document while participating in the bid, failure of which will lead to bid rejection."***

*A new clause is brought up after opening of the financial bid that the Trader/Agent should compulsorily approve manufactured authorization letter with the tender document while participating in the bid, the failure of which, will lead to bid rejection.*

*It is un-understandable as to how this condition could emerge long after the opening of the financial bid while the said amendment takes the clock back to the submission of the bid. The petitioner's claim is rejected on 07.03.2024 by posting it on the web portal showing it as rejected. The reason for rejection is produced by way of a memo by the learned counsel for respondent No.2. The reason is that the manufacturers authorization is not produced. If that was not a condition at the beginning and the condition is emerged at the end, time atleast should have been granted to the petitioners to file such authorization on 07.03.2024. The tender of the petitioner is rejected and on 07.03.2024, a fresh tender is notified. The breakneck speed at which the respondents have proceeded the matter would completely be contrary to tenets of Article 14 of the Constitution of India.*

*Therefore, there shall be an interim order of stay of the fresh tender and all further proceedings taken thereto, till the filing of the statement of objections by the respondents.*

*The interim order will not come in the way of consideration of the authorization certificate if submitted by the petitioner.*

*List the matter on 22.03.2024.”*

The order is extended from time to time and on 27-03-2024 on the submission of the learned counsel for the Company this Court passed the following order:

**“ORDER**

*Smt. Manjula D., learned counsel for respondents – Karnataka Soaps and Detergents Ltd. submits that if authorization letter as is required is submitted, they would consider the case of the petitioner as admittedly the petitioner is the lowest bidder – L1.*

*Interim order granted by this Court will not come in the way to consider the case of the petitioner.*

*Subject to the aforesaid consideration of the case of the petitioner, the interim order shall continue, till the next date of hearing.*

*List this matter on 15.04.2024, in the fresh matters list.”*

It was directed that if authorization is submitted, they would consider the case of the petitioner, as admittedly the petitioner is the lowest bidder. Therefore, it is not in dispute that the petitioner is the lowest bidder even according to the Company. What is the authorization letter that is sought for is also extracted in the interim order *supra*. I deem it appropriate to re-notice the same, which reads as follows:

***"Trader/Agent should compulsorily upload***



***Manufacturer Authorization letter (in original) in tender document while participating in the bid, failure of which will lead to bid rejection."***

Condition No.29 indicates that the Trader/Agent should compulsorily upload Manufacturer Authorization letter (in original) in the tender document while participating in the bid, otherwise it would lead to bid rejection. This is the stage at which the tender would commence. If any default were to be found of the petitioner, it would have technically been disqualified and it is not. This is a condition that has been existing in all the tenders that were called by the Company for the last 5 years. Every time when the petitioner emerged as the successful bidder, the authorization letter is submitted. The authorization letter reads as follows:

*"Date: 15-01-2024*

*To*

*Karnataka Soaps & Detergents Ltd.,*

*PB No.5531,*

*Bangalore Pune Highway, Bangalore-560 055.*

*Sub: Authorization letter.*

*Dear Sir,*

***We are pleased to note that in the event that M/s Bannari Constructions, Mysore bearing address No.4, Giridarshini Layout, Alanhalli T.Narasipura Road, Mysuru, Mysore-570 028 successfully wins the bid against your tender 2024-2025, we will be pleased to supply the material to them for the orders placed by them further to supply Karnataka Soaps & Detergents Limited for the tender period.***

*Thanking you,*

*Yours Faithfully,*

*For Associate Allied Chemicals India Pvt. Ltd.,*

*Sd/-*

*SATISH GANDHI "*

*(Emphasis added)*

The learned senior counsel for petitioner submits that this is the authorization letter being submitted for the last 5 years, which is admitted by the learned senior counsel for the Company.

11. The defence of Sri Jayakumar S.Patil, learned counsel appearing for Company is that there were no complaints till now and, therefore they had accepted such authorization letter. It now becomes necessary to notice the complaint and when the complaint has emerged. The complainant is from the 2<sup>nd</sup> lowest bidder. The complaint is not any time earlier. The moment financial bid is notified on the web portal which happens on 24-02-2024, the complaint is written on 25-02-2024. Therefore, the foundation for an arbitrary action is laid on 24-02-2024 by the second lowest bidder to register the complaint. This trivial complaint is taken forward. The reason is even today an enigma as it was never the issue. On the submission made by the learned senior counsel for the Company, assessment was directed to be made if the petitioner would produce the authorization certificate. The petitioner produces authorization certificate. The authorization certificate submitted on 19-03-2024 to the petitioner reads as follows:

*"Date 19-03-2024*

*To*

*Bannari Construction,  
Mysore.*

*Sub: Self-declaration*

*--*

***We are the largest manufacturer and trader of various perfumery chemicals in Indian and we are marketing our product in all over the world and we are also customer for some of perfumery chemicals to china-based companies (Letter enclosed of china company)***

*We are going to supply perfumery chemicals like SANDACANOL and other products to M/s Bannari construction, Mysore as their requirements.*

*Yours faithfully,*

*For Associate Allied Chemicals India Pvt. Ltd.,*

*Sd/- SATISH GANDHI*

*(MANAGING DIRECTOR)”*

*(Emphasis added)*

The petitioner communicates the same to the Company by the following communication dated 12-04-2024:

*“Date:12-04-2024*

*To*

*The Managing Director,*

*Karnataka Soaps and Detergents Ltd., Rajajinagar,  
Bangalore.*

*Sir,*

*Sub: Submission of Authorization letter and Self Declaration Letter against Order of Honourable High Court of Karnataka vide WP No.7700 of 2024 dated 27-03-2024.*

*--*

*With respect above order of Honourable High Court of Karnataka vide WP No.7700 of 2024, dated 27-03-2024, we hereby submitting the Authorization Letter and Self Declaration Letter of M/s Associate Allied Chemicals (India) Pvt. Ltd., Mumbai for your consideration.*

*We request your good self to issue Purchase Order for the perfumery chemicals of “Sandranol” to our firm as directed by the Honourable High Court of Karnataka.*

*Thanking you,*

*Yours faithfully,*

*For Bannari Constructions,*

*Sd/- Partner”*

*(Emphasis added)*

Enclosing two documents – one authorization letter by the manufacturer to the Company itself and the other to the petitioner. They are dated 15-01-2024 and 06-04-2024. All these are communicated by the Manufacturer to the Company and to the petitioner.

12. It is rather surprising that a submission is still made that Associate Allied Chemicals India Private Limited who has been manufacturing and supplying “Sandranol” is not a manufacturer and there is no communication that it is the manufacturer. The documents themselves would belie such submission. The Associate Allied Chemicals India Private Limited clearly indicates that it is the largest manufacturer and trader of various perfumery chemicals and it has supplied perfumery chemicals like Sandranol to the petitioner and the petitioner to the Company. If this would not suffice, it is understandable even to this Court as to what is necessary for the Company. A successful bidder is trying to be driven away by an action which on the face of it is arbitrary. This triviality which is also complied with by the petitioner has not been looked into. The defence is that the website of Associate Allied Chemicals India Private Limited does not indicate that it is manufacturer. But, in the same breath the Company admits that Associate Allied Chemicals India Private Limited is itself manufacturing Sandranol. Therefore, the action on the face of it is arbitrary.

13. It is trite law that this Court would not sit in the arm chair of experts like Tender Scrutiny Committee or Tender Inviting Authority to tinker with the conditions. But that would not mean that there should be no judicial review of any administrative action, even if it is in the realm of contract. The decision is not what is challenged, but what is challenged is the decision making process. The decision making process is clearly a flaw, as the petitioner admittedly emerged as the successful bidder – L1. L2 who was 4 crores higher than the petitioner, after getting to know the financial credentials, resisters the complaint. The complaint is shrouded with triviality and improbability. Therefore, such arbitrary action would necessarily entail judicial review and obliteration of such arbitrary action. This view of mine is fortified by the judgments rendered by the Apex Court from time to time. It is apt to notice three Judge Bench judgment of the

Apex Court in the case of **TATA CELLULAR v. UNION OF INDIA**<sup>1</sup> –  
wherein the Apex Court holds as follows:-

“.....”

**68.** *Having regard to the above arguments we propose to deal with the matter from the following five aspects:*

1. ***The scope of judicial review in matters of this kind.***
2. ***Whether the selection is vitiated by arbitrariness? — (a) regarding financial projection and (b) regarding rental.***
3. *Bias of Mr Nair — whether affected the selection?*
4. *Whether the Apex Committee has been bypassed?*
5. *Evolving of hidden criteria — whether valid?*

#### *1. Scope of Judicial Review*

**69.** *A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender:*

1. *It must be unconditional.*
2. *Must be made at the proper place.*
3. *Must conform to the terms of obligation.*
4. *Must be made at the proper time.*
5. *Must be made in the proper form.*
6. *The person by whom the tender is made must be able and willing to perform his obligations.*
7. *There must be reasonable opportunity for inspection.*
8. *Tender must be made to the proper person.*
9. *It must be of full amount.*

**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*

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<sup>1</sup> (1994) 6 SCC 651

*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 the 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.*

... ..

*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 justice,***
- 4. **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, namely, Wednesbury unreasonableness.***
- (iii) **Procedural impropriety.***

*The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(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 a nature and degree which requires its intervention”.*

... ..

**94. The principles deducible from the above are:**

- (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. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.**
- (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.**

*Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”*

*(Emphasis supplied)*

The principles that the Apex Court would deduce is that the Court does not sit as a Court of appeal but merely reviews the manner in which the decision is made. The said judgment is followed subsequently in plethora of cases. The Apex Court in the case of **MICHIGAN RUBBER (INDIA) LIMITED v. STATE OF KARNATAKA**<sup>2</sup> has held as follows:

“.....”

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

**(a)** *The basic requirement of Article 14 is fairness in action by the State, and nonarbitrariness 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*

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<sup>2</sup> (2012) 8 SCC 216



*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.*

**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.”*

*(Emphasis supplied)* The Apex Court holds that basic requirement of Article 14 is fairness in action by the State and if it is found that the action is arbitrary, the Apex Court holds that judicial review would be permissible.

14. On the bedrock of the principles laid down by the Apex Court, the facts narrated hereinabove are noticed, this Court cannot but put a stamp of arbitrariness on the action of the Company, at the outset, entertaining the complaint by the second lowest bidder who failed to emerge as the

lowest bidder, as the complaint is entertained after the financial bids were opened and reputed manufacturers certificate also being given is deliberately ignored even when the proceedings were pending before this Court and the respondents have stuck to their stand of recalling the tender and a decision to re-notify the tender. As submitted by the learned senior counsel for petitioner, the impugned action and the reason for such action would run foul of the Karnataka Transparency in Public Procurements Act and the Rules.

15. The second lowest bidder also has filed an impleading application to demonstrate that he was the complainant and his complaint has resulted in the cancellation of tender and, therefore, he is a necessary party. This submission is noted only to be rejected and no application of the kind preferred by the intervener can be entertained. Therefore, the said application is to be rejected and is accordingly rejected.

16. For the aforesaid reasons, the following:

### **ORDER**

- (i) Writ Petition is allowed.
- (ii) The order dated 07-03-2024 passed by the 1<sup>st</sup> respondent stands quashed.
- (iii) The respondent/Company is directed to take the tender notified on 14-10-2023 to its logical conclusion, bearing in mind that the petitioner has emerged as the lowest bidder.
- (iv) This exercise should be done within a period of 15 days, if not earlier.

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