

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.320 of 2025
In
Civil Writ Jurisdiction Case No.7771 of 2017

1. The State of Bihar through Principal Secretary, Home Department, Government of Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. Assistant to Deputy Inspector General of Police Q, Office of Director General of Police, Bihar Patna.
4. Deputy Inspector General of Police Protection Special Branch, Bihar, Patna.

... .. Appellant/s

Versus

1. M/s Kumar and Kumar through Its Proprietor Raj Kuma Gupta @ R. K. Gupta Son of Sri Radha Prasad Gupta, Resident of Bibiganj, Danapur Cantt, Banbasti, P.O. and P.S. Danapur Cantt and District- Patna.
2. Inspector General of Police Provision, Office of Director General of Police, Bihar, Patna.
3. Superintendent of Police Protection Bihar, Patna.
4. Sri Raj Kumar Gupta @ R.K. Gupta, Proprietor of M/S Kumar and Kumar, Son of Sri Radha Prasad Gupta, Resident of Bibiganj, Danapur Cantt, Banbasti, P.O. and P.S. Danapur Cantt and District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P K Shahi, Advocate General Mr. N H Khan, SC-1 Mr. Md. Irshad, AC to SC-1 Mr. M H Kuraishi, AC to SC-1
For the Respondent/s	:	Mr. Madan Mohan, Adv.
For the Res. Nos. 1 & 2	:	Mr. Ganpati Trivedi, Sr. Adv. Mr. Saurabh Suman, Adv. Mr. Ritik Shah, Adv. Mr. Rahul Raj, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-04-2026

This Letters Patent Appeal has been filed by the State of Bihar, challenging the order dated 18.11.2024 passed by the learned Single Judge in C.W.J.C. No. 7771 of 2017 in allowing



the writ petition and setting aside the order passed in Memo No. 3408 dated 16.03.2017 as well as notice inviting tender vide Notice No. 02/2017-18.

2. Writ petition was filed by M/s. Kumar and Kumar represented through its proprietor Raj Kumar Gupta, seeking quashing of the order passed by the Inspector General of Police contained in Memo No. 3408 dated 16.03.2017, whereby he cancelled the previous tender no. 7/2008-09, which was approved in favour of the petitioner's firm for the purpose of sale of empty cartridges stored at Munger Gun Factory, Munger, with a further information that fresh tender would be issued for the said purpose.

Further prayer has been made by the petitioner firm for a direction to the respondent to abide by the previously approved tender as the delay was not caused at the instance of the petitioner firm and to restrain the respondent authorities from proceeding with the fresh notice inviting tender, which has been previously issued in favour of the petitioner firm.

3. Briefly stated, a notice inviting tender was floated for the purpose of sell of empty cartridges stored in Munger Gun Factory and the petitioner firm submitted its quotation to the Assistant of Inspector General of Police (Q), Bihar, Patna along with all necessary documents required for such purpose and



National Saving Certificate of Rupees One Lakh as security. Several firms also submitted tender papers and after scrutiny, the petitioner firm was approved for the purpose of sale of empty cartridges at the rate of Rs. 241.11/- paise per kg. The Assistant to Inspector General of Police (Q) was informed vide letter dated 17.10.2008 that the sale of empty cartridges, is to be conducted under the supervision of Superintendent of Police (Protection), Special Branch, Bihar, Patna and the petitioner firm was to take possession of such empty cartridges after weightment thereof and making payment of the sale value.

4. It is the further case of the petitioner firm that the Deputy Inspector General of Police (Protection), Special Branch, Bihar, Patna constituted a committee of four members, presided by Deputy Superintendent of Police, Special Branch Headquarters, Bihar, Patna for the purpose of disposal of empty cartridges stored at the gun factory, situated at Munger on 09.01.2009 with a direction to the members of the Committee to be present on the occasion. Since there was some health issues, the petitioner firm through its proprietor requested the Deputy Inspector General of Police, Special Branch for extending the date of measurement of empty cartridges after 15th February, 2009, and the request was accepted and the measurement of empty cartridges was deferred and the petitioner's firm was



communicated by the concerned authorities to remain present on 20.03.2009 at Gun Factory, Munger for the purpose of measurement of empty cartridges vide letter dated 06.03.2009.

5. It is the further case of the petitioner that the proprietor of the petitioner firm appeared before the Superintendent of Police on the date fixed i.e. on 20.03.2009, however, he submitted an application requesting again to defer the measurement work after 5th or 6th of April, 2009. The request was accepted and the Superintendent of Police (Protection), Special Branch, Bihar, Patna fixed the date of measurement to 06.04.2009. However, in view of the Parliamentary Election as well as deployment of police force, the measurement work which was supposed to be conducted on 06.04.2009 could not be done and it was intimated to the petitioner firm that the date would be communicated to him after the completion of Parliamentary Election. The petitioner firm was again intimated by the authority that in connection with some security works of the VVIP, the measurement of the empty cartridges could not be conducted, which was scheduled to be held on 09.06.2009 and another date would be communicated to him.

6. It is the further case of the petitioner that thereafter he submitted repeated representations to the concerned authority for fixing an early date for measurement of the empty cartridges,



for which his tender had been approved. However, he received no response from the authorities. In the meanwhile, all of a sudden, he came to know that the previous tender has been cancelled and a decision has been taken to issue a fresh tender, as after lapse of eight years since 2009, the quantity of empty cartridges in different districts stored in the Ordinance Factory, Munger has increased to a great extent and the price thereof had also multiplied.

7. It is the further case of the petitioner that the measurement could not take place due to the fault of the petitioner firm, rather the delay was caused at the instance of the authorities themselves for not holding the measurement and deferring the same on some ground or the other and inspite of his repeated representations before the authorities, no response was received and all of a sudden the tender issued in his favour of was cancelled and a new tender has been floated illegally. According to the petitioner, the action of the respondent authorities is illegal, arbitrary and tainted with malice and the ground of financial loss to the Government exchequer cannot be sustained in the eyes of law.

8. After issuance of notice, counter affidavit has been filed on behalf of respondent no. 2 to 5, wherein it is stated *inter alia* that total number of six firms participated in the tender and



since the cost rate of the petitioner firm was maximum, his name was recommended by the C.P.C. for selling of the empty cartridges. However, it is stated that at the first instances, when the authorities were ready for conducting the measurement and to hand over the materials to the petitioner firm, the petitioner sought time on the ground of extreme cold and that labourers were not ready and his request was accepted and the disposal work of the empty cartridges was postponed. Thereafter, when another date was fixed, again a request came from the petitioner firm for deferment and that was also accepted.

9. It is the case of the respondents that according to the agreement, six months has been fixed for the authorized contractor, which was supposed to end on 17.04.2009 and since the petitioner firm continuously delayed to co-operate with the authorities for disposal of the empty cartridges, the materials could not be handed over to him. Thereafter, on account of Parliament Election, 2009 and for other reasons, the authorities remained busy.

10. It is also highlighted in the counter affidavit that another tender bearing no. 08/2011-12 was published by the Police Headquarters, Bihar, Patna for supply of iron folding cot to Bihar Police and the petitioner firm participated in the tender, but due to commission of forgery, a decision was taken and the



petitioner firm was declared *black-listed* vide order dated 21.12.2011.

11. It is further emphasized in the counter affidavit that during the period of eight years, a large quantity of additional empty cartridges had gathered and the cost of cartridges rate had gone up and, therefore, keeping in view the basic tenets of the financial rules i.e. transparency, economy and competitiveness, the previous tender was cancelled and a fresh tender was published vide Memo No. 3408/S dated 16.03.2017.

12. The petitioner submitted his rejoinder to the counter affidavit filed by the respondent nos. 2 and 3 and also filed a supplementary affidavit.

13. The learned Single Judge after considering the pleadings and also the submissions of the learned Counsel for the respective parties has been pleased to observe as follows:-

“8. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents and perused the records.

9. On perusal of the record, it is evident that the petitioner has requested twice for time which was granted by the respondent. Pursuant to the petitioner's request, the Superintendent of Police (Protection) Special Branch, Bihar, Patna by order contained in memo dated 16.03.2009 fixed the date of measurement on 06.04.2009 and also directed the Deputy Superintendent of Police vide letter dated 25.03.2009 to make all



necessary arrangement for completion of the measurement work of empty cartridges at Gun factory Munger and issued necessary gate pass for the labourers of the petitioner. However, the Superintendent of Police, (G), Special Branch, Bihar, Patna under his letter dated 06.04.2009 (Annexure-10) adjourned the measurement process till further orders keeping in view the Parliamentary Election with a content that the date for disposal of empty cartridges would be informed at a later stage. The impugned order do not disclose that the tender was cancelled due to lapse of six months time as per condition No. 5 of the notice inviting tender. On perusal of condition No. 5 of notice to inviting tender the Director General of Police would be the competent authority to take a decision, but it appears that the Director General of Police has not passed any order. It also appears from the record that on last occasion, the respondent authorities deferred the matter themselves for the measurement of the empty cartridges, stored at the Gun Factory Munger due to Parliamentary Election and thereafter took a plea of lapse of six months time as per condition No. 5 of the notice inviting tender.

10. In view of the discussion it is evident that the respondents, unilaterally cancelled the tender for no fault of the petitioners and the impugned order under challenge is liable to be quashed.”

14. The learned Advocate General argued that on 17.10.2008, the tender of the petitioner firm was approved for the sale of empty cartridges and the period of six months was



completed by 17.04.2009 and two dates i.e. 09.01.2009 and 20.03.2009 were fixed by the Bihar Police Headquarters, Patna for weighing the empty cartridges. However, on both the dates, the petitioner firm requested on some ground to defer the weighing of the empty cartridges and thereafter, the authorities remained busy in Lok Sabha Election and VVIP's security and for that, the process of weighing of the empty cartridges could not be completed on the next scheduled fixed date i.e. on 06.04.2009. He argued that the approach of the petitioner firm was delaying the weighing of the empty cartridges and the authorities cannot be said to be at fault.

15. The learned Advocate General further argued that the petitioner firm could have approached this Court earlier, if he had a bona fide grievance but only submitted representation before the authorities, which according to him was not acted upon but there was gross delay on his part in approaching this Court in the year 2017. It is further argued that the price has gone up substantially and the State would suffer huge loss, if at the old rate the petitioner firm is provided the empty cartridges as per the tender floated and it would not be in the public interest.

16. It is also argued that since there is no arbitrariness and *mala fide* in the conduct of the respondents in inviting the



fresh tender, the learned Single Judge was not justified in allowing the writ petition and quashing the orders dated 16.03.2017 and also the notice inviting tender. Reliance has also been placed upon the decision of the Hon'ble Supreme Court in the case of *Kisan Sahkari Chini Mills Ltd. & Ors. -Vrs.- Vardan Linkers & Ors.* reported in *(2008) 12 Supreme Court Cases 500*.

17. Learned Senior Counsel Mr. Ganpati Trivedi, appearing for the respondents, on the other hand, supported the impugned judgment and submitted that though the petitioner firm has taken time on two occasions, requesting deferment of the measurement of the empty cartridges, but thereafter, the petitioner firm was all along ready and willing to co-operate, but the authorities did not take any step in completing their part and the petitioner firm has also submitted number of representations for such purpose. He further argued that the issuance of fresh tender would not only cause financial loss to the petitioner firm, but it would be detrimental to him and it would also not be in the interest of justice. He contended that the decisions of the authorities were illegal, arbitrary and capricious. He placed reliance on the decision of *Subodh Kumar Singh Rathour -Vrs.- Chief Executive Officer & Ors.*, reported in *AIR 2024 Supreme Court 3784*. The relevant paragraphs are quoted



hereinbelow:-

“116. We may again refer to the decision of this Court in M.P. Power Management Co. [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703] wherein this Court observed that merely because the rates embodied in a contract with the passage of time have become less appealing, the same cannot become a determinative criterion for either terminating the contract or for the courts to decline interference in such contractual disputes. The relevant observations read as under: (SCC pp. 779-80, paras 138-40)

“138. Therefore, on a conspectus of the case law, we find that the concept of overwhelming public interest has essentially evolved in the context of cases relating to the award of contract by the State. It becomes an important consideration in the question as to whether then the State with whatever free play it has in its joints decides to award a contract, to hold up the matter or to interfere with the same should be accompanied by a careful consideration of the harm to public interest. We do not go on to say that consideration of public interest should not at all enter the mind of the court when it deals with a case involving repudiation of a claim under a contract or for that matter in the termination of the contract. However, there is a qualitative....

139. ... State enters into the contract, rights are created. If the case is brought to the constitutional court and it is invited to interfere with State action on the score



that its action is palpably arbitrary, if the action is so found then an appeal to public interest must be viewed depending on the facts of each case. If the aspect of public interest flows entirely on the basis that the rates embodied in the contract which is arbitrarily terminated has with the passage of time become less appealing to the State or that because of the free play of market forces or other developments, there is a fall in the rate of price of the services or goods then this cannot become determinative of the question as to whether the Court should decline jurisdiction. In this case, it is noteworthy that the rates were in fact settled on the basis of international competitive bidding and in which as many as 182 bidders participated and the rate offered by the first respondent was undoubtedly the lowest. The fact that power has become cheaper in the market subsequently by itself should not result in non-suiting of the complaint of the first respondent, if it is found that a case of clear arbitrariness has been established by the first respondent.

140. In other words, public interest cannot also be conflated with an evaluation of the monetary gain or loss alone.”

(emphasis supplied)

x x x

118. Considerations of public interest should not be narrowly confined to financial aspects. The courts must have a more holistic understanding of public interest wherever the fairness of public authorities is in question, giving due regard to the broader implications of such action on the stability of contractual



obligations. Merely because the financial terms of a contract are less favourable over a period of time does not justify its termination. Such decisions must be based on a careful consideration of all relevant factors, including the potential harm to the integrity and sanctity of contractual relationships. The larger interest of upholding contracts cannot be discarded in the name of monetary gain labelled as public interest.

x x x

127. Public tenders are designed to provide a level playing field for all potential bidders, fostering an environment where competition thrives, and the best value is obtained for public funds. The integrity of this process ensures that public projects and services are delivered efficiently and effectively, benefitting society at large. The principles of transparency and fairness embedded in public tender processes also help to prevent corruption and misuse of public resources. In this regard we may refer to the observations made by this Court in Nagar Nigam, Meerut v. Al Faheem Meat Exports (P) Ltd. [Nagar Nigam, Meerut v. Al Faheem Meat Exports (P) Ltd., (2006) 13 SCC 382] , which reads as under: (SCC p. 395, para 16)

“16. The law is well settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with



all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution.”

(emphasis supplied)

128. The sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness. Once a contract has come into existence through a valid tendering process, its termination must adhere strictly to the terms of the contract, with the executive powers to be exercised only in exceptional cases by the public authorities and that too in loathe. The courts are duty bound to zealously protect the sanctity of any tender that has been duly conducted and concluded by ensuring that the larger public interest of upholding bindingness of contracts are not sidelined by a capricious or arbitrary exercise of power by the State. It is the duty of the courts to interfere in contractual matters that have fallen prey to an arbitrary action of the authorities in the guise of technical faults, policy change or public interest, etc.

129. The sanctity of contracts is a



fundamental principle that underpins the stability and predictability of legal and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered, there is a legitimate expectation, that the obligations arising from the contract will be honoured and that the rights arising from it will not be arbitrarily divested except for a breach or non-compliance of the terms agreed thereunder. In this regard we may make a reference to the decision of this Court in Sivanandan C.T. v. High Court of Kerala [Sivanandan C.T. v. High Court of Kerala, (2024) 3 SCC 799 : (2024) 1 SCC (L&S) 67] wherein it was held that a promise made by a public authority will give rise to a legitimate expectation that it will adhere to its assurances. The relevant portion reads as under: (SCC pp. 812 & 822, paras 18 & 45)

“18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure. [Salemi v. MacKeller (No. 2),



1977 HCA 26 : (1977) 137 CLR 396]

x x x

45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.”

(emphasis supplied)

18. Adverting to the contentions raised by the learned Counsel for the respective parties and on perusal of the records, it is evident that in the notice inviting tender i.e. Annexure-J dated 14.08.2008 issued by Director General of Police, Bihar, especially Clause 5 thereof, it was specifically stipulated that the empty cartridges shall be mandatorily lifted within six months by the successful firm from the date of the order, failing which the penal cost shall be realized in this regard. Clause 6 further stipulated that the Director General of Police shall reserve the right to cancel the tender without assigning any reason.

19. Admittedly, during such period of six months, on



the request made by the petitioner firm, the measurement of empty cartridges could not be held twice and thereafter, the authorities concerned remained busy in general elections and other duties. If the petitioner firm was genuinely ready thereafter and for which he submitted the representation and no response was received from the authorities to carry out the measurement and to hand over the empty cartridges as per the tender, then the petitioner firm could have approached this Court at the earliest. Going on filing the representations, would not save the delay and it is the well settled principle of law that this Court may refuse to grant relief to a party, whose conduct suffers from delay and laches.

20. In the case of *Mrinmoy Maity -Vrs.- Chhanda Koley & Ors.*, reported in *(2024) 15 Supreme Court Cases 215*, the Hon'ble Supreme Court has observed as follows:-

“11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ



petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, inasmuch as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court.”

21. All the more after going through the pleadings in the writ petition as well as the counter affidavit, we are of the view that no fault can be found with the authorities concerned so far as the delay is concerned, rather we are of the view that the petitioner firm should have approached this Court within a reasonable period, knowing very well that the validity of tender period was only for six months and there was no specific stipulation for relaxation of the period. Further, there is no dispute that the cost of the material/brass, which was used in that empty cartridges had gone up substantially in the meantime and the quantity has also increased by passage of time.

22. In the case of ***Kisan Sahkari Chini Mills Ltd.*** (supra), the Hon'ble Supreme Court has been pleased to hold as follows:-

“45. The various serious irregularities were noticed by the



Secretary (Sugar) in his detailed and reasoned order dated 24-4-2004 and resultantly, he directed cancellation of the letter dated 26-3-2004 issued by the Assistant Cane Commissioner which permitted the first respondent to lift 85,000 quintal of molasses from five mills. He also held that there was no valid contract. In the facts and circumstances narrated hereinabove, it is not legally possible to hold that the order dated 24-4-2004 was either arbitrary or unreasonable or mala fide. It was fully justified and in public interest. If the order dated 24-4-2004 did not suffer from an infirmity which required correction by application of principles of administrative law, the High Court ought not to have interfered with it. There was, apparently, no justification for invoking the principles of legitimate expectations, estoppel, acquiescence and principle of part performance to make out a contract where none existed, or to give directions to five independent sugar mills to supply huge quantities of molasses to the first respondent without any contract at an admittedly low price of Rs 127 per quintal.”

23. After hearing the learned Counsel for the respective parties, we are of the view that if a tender period lapses without a formal extension, the contract is considered to have naturally terminated; hence it cannot be said that the action of the appellants in cancelling the earlier tender and deciding to hold a fresh tender was arbitrary and there is any kind of *mala fide* in it. If such quantity would be put to fresh tender, it would



definitely fetch more money and that is one of the reasons for which the decision had been taken to float a new tender.

24. The Hon'ble Supreme Court in the case of ***Principal Chief Conservator of Forest & Ors. -Vrs.- Suresh Mathew & Ors.***, reported in ***(2025) Supreme Court Cases OnLine SC 933***, in context of scope of judicial review in tender matters and Government being the State Exchequer has observed as follows:-

“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 v. State of Orissa 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.”

17. *In the case of State of Orissa v. Harinarayan Jaiswal, 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 Michigan Rubber (I) Ltd. v. State of Karnataka, 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 v. Union of India, 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.”

x x x

22.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.”

(emphasis supplied)

25. In the case of ***State of Jharkhand & Ors. -Vrs.- CWE-SOMA Consortium*** reported in ***(2016) 14 Supreme Court Cases 172***, the Hon'ble Supreme Court has observed as follows:-

“22. The Government must have freedom of contract. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. [Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138] , SCC in para 12 this Court held as under: (SCC p. 147)

“12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. 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. The Government must have freedom of contract. In other words, 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 principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)”

26. We are of the humble view that since there was no illegality committed by the authorities in cancelling the tender on account of passage of time and since admittedly, during the relevant period, the petitioner firm did not come forward to receive the goods, rather took time on some pretext or the other which was also granted to him and, moreover, since he approached this Court about seven to eight years thereafter, and went on filing representation after representation and by floating the new tender, there would benefit to the State exchequer and the same is necessary for public interest, the learned Single Judge was not justified in entertaining such writ petition and also passing the impugned order. The order passed by the learned Single Judge suffers from palpable unreasonableness and there is perversity in it and therefore, in exercise of the appellate jurisdiction, we have to correct the same and



accordingly, the impugned order stands quashed.

27. However, the security money, which has been deposited by the petitioner firm amounting to Rs. One Lakh shall be refunded to him within a period of four weeks from today, with 6.5% interest per annum from the date of deposit till the date of actual payment.

28. Accordingly, the LPA stands allowed with the direction, afore-noted.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

shivank/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.04.2026
Transmission Date	NA

