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APHC010407122026

**IN THE HIGH COURT OF ANDHRA PRADESH
 AT AMARAVATI**

Bench Sr:
 [3614]



**WRIT APPEAL NO: 939 of 2026 along with
 WRIT APPEAL NO: 941 of 2026**

WRIT APPEAL NO: 939 of 2026:

Mohammed Zuber and Others ...Appellant(s)

Vs.

The State Of Andhra Pradesh and Others ...Respondent(s)

WRIT APPEAL NO: 941 of 2026:

Sri Venkateswara Traders ...Appellant

Vs.

The State Of Andhra Pradesh and Others ...Respondent(s)

Advocate for Appellants	:	Mr. P. Veera Reddy, Sr. Counsel with Mr. Phani Viswanath Challa in W.A.No.939 of 2026 Mr. O. Manohar Reddy, Sr. Counsel with Mr. Abhay Siddhanth Mootha, - W.A.No.941 of 2026
Advocate for Respondents	:	Mr. G. Rama Chandra Rao, GP for School Education Mr. Kalamata Raghu Babu, Standing Counsel for Samagra Shiksha Abhiyan Mr. K.S. Murthy, Sr. Counsel with Mr. P. Hemachandra - R4 in W.A.No.941 of 2026 Mr. Ravi Teja Padiri for Mr.Pilla Yaswani -R5 in W.A.No.941 of 2026

**CORAM : THE CHIEF JUSTICE LISA GILL
SRI JUSTICE BALAJI MEDAMALLI**

DATE : 25th August 2026

COMMON JUDGMENT: (per Hon'ble Sri Justice Balaji Medamalli)

These Writ Appeals (W.A.Nos.939 and 941 of 2026) have been preferred under clause 15 of Letters Patent, assailing the common order dated 31.07.2026 passed in W.P.Nos.17156 & 16445 of 2026, respectively, along with the connected batch of writ petitions. Since the issues involved in both the appeals are common, they were heard together and are being disposed of by this common judgment.

2. W.P.No.17156 of 2026 is filed to declare the Memo No.564813/PROG-II/A2/2018 dated 23.03.2026 permitting Respondent No.3 to undertake centralized procurement of KGB Vidyalaya requirements, the Memo dated 20.04.2026 constituting a procurement committee, and the consequential tenders bearing Tender IDs 934945, 935035, 935066, 935069 and 935072 dated 15.05.2026 issued for supply of non-perishable items/milk/eggs to KGB Vidyalayas in the State of Andhra Pradesh, as arbitrary, illegal, colourable exercise of power and contrary to G.O.Ms.No.53, Social Welfare Department dated 31.08.2023, besides being violative of Articles 14, 19 and 21 of the Constitution of India, and consequently set aside the same and direct the respondents to follow the policy prescribed under G.O.Ms.No.53 dated 31.08.2023.

3. W.P.No.16445 of 2026 is filed to declare the Tender ID No.934945 and Notice No.KGBV Zone-I SS21021/44/2026IED and KGBVSSA dated 15.05.2026 issued for supply of non-perishable items/milk/eggs to 111 KGBV Schools in Zone-I comprising Srikakulam, Parvatipuram Manyam and Vizianagaram Districts for a period of 10 months with an estimated cost of Rs.33.94 Crores, along with corrigendum dated 17.06.2026, as arbitrary, illegal, restrictive, tailor-made, discriminatory and violative of the General Financial Rules, 2017 and Articles 14, 19 and 21 of the Constitution of India, and consequently set aside the same and direct the respondents to issue a fresh tender by removing the restrictive conditions in accordance with G.O.Ms.No.53, Social Welfare Department dated 31.08.2023

4. The brief facts leading to filing of the Writ Petitions are as follows:

(i) W.P.No.17156 of 2026:

(a) The petitioners, being suppliers of provisions, milk, vegetables, fruits and eggs to various educational institutions and hostels, contend that the impugned action is contrary to G.O.Ms.No.53, Social Welfare Department, dated 31.08.2023, which prescribes the procurement procedure through State, District and Divisional Level Purchase Committees and identifies the agencies for procurement of various items. The said Government Order does not contemplate zonal-level centralized procurement, whereas the impugned Memos have introduced a five-zone procurement system and altered the competent authority for procurement by appointing the Secretary,

School Education Department as Chairperson and respondent No.3 as Member Convenor.

(b) The impugned tender process, covering multiple districts, is contrary to the policy framework under G.O.Ms.No.53 and has adversely affected local suppliers participating in the existing district-level procurement mechanism. It is alleged that the impugned action constitutes an arbitrary and colourable exercise of power, intended to favour selected entities. G.O.Ms.No.53, issued under Article 162 of the Constitution of India, continues to remain in force and cannot be modified or overridden through executive Memos. Therefore, the impugned Memos and consequential tender proceedings are alleged to be illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India.

(ii) W.P.No.16445 of 2026:

(a) The petitioner, a sole proprietorship firm supplying non-perishable provisions to Government institutions in Vizianagaram District, has been supplying provisions to KGBVs through the District Cooperative Marketing Society since 2010. Procurement was hitherto conducted at the district level through the District Purchase Committee headed by the Joint Collector. The impugned zonal tender issued by Respondent Nos.2 and 3 for supply of non-perishable items, milk and eggs to 111 KGBVs arbitrarily combines perishable and non-perishable items without disclosing item-wise values, contrary to G.O.Ms.No.53

dated 31.08.2023. The tender conditions, including single-zone bidding, prohibition of consortium/joint ventures, restrictive eligibility criteria and brand-specific specifications, are arbitrary and restrict competition.

(b) The petitioner's pre-bid objections regarding valuation, item-wise pricing, eligibility, consortium participation and other ambiguities were not addressed. The Corrigendum dated 17.06.2026 substantially altered the eligibility and experience criteria by introducing vague and irrational requirements, thereby changing the nature of the tender. The impugned conditions, particularly Clauses 3.2(g) and 3.2(h) as amended by the corrigendum, are arbitrary, tailor-made, violative of G.O.Ms.No.53 and Rules 144 and 173 of the General Financial Rules, 2017, and are liable to be set aside.

5. Learned Single Judge, by common order, dismissed the writ petitions, holding that the State has discretion in prescribing tender conditions and that no arbitrariness, bias, or malice was established, particularly when 35 tenderers participated, and found no grounds for interference in the tender process under judicial review.

6. Aggrieved by the aforesaid, **Writ Appeal No.939 of 2026** has been filled raising the following grounds:

- a. Learned Single Judge failed to appreciate that G.O.Ms.No.53, Social Welfare Department, dated 31.08.2023 governs procurement for

welfare institutions and that the impugned Memos and consequential tenders are contrary thereto and illegal.

- b. Learned Single Judge failed to appreciate that G.O.Ms.No.53, issued under Article 162 of the Constitution, cannot be overridden or modified by executive Memos dated 23.03.2026 and 20.04.2026.
- c. Learned Single Judge failed to apply the principle laid down in ***P. Tejeswari v. State of Andhra Pradesh*** (W.A.No.845 of 2022 & batch) that Memos and circulars cannot supersede Government Orders issued under Article 162.
- d. Learned Single Judge erred in permitting deviation from G.O.Ms.No.53 on the ground of administrative exigency, without any valid amendment or modification of the said Government Order.
- e. Learned Single Judge failed to appreciate that the centralized procurement of milk and eggs through the impugned committee is contrary to the procurement mechanism prescribed under G.O.Ms.No.53.
- f. Learned Single Judge failed to consider that the impugned tender conditions and corrigenda introduced restrictive and arbitrary eligibility criteria favouring select bidders, contrary to fair procurement principles.
- g. Learned Single Judge failed to consider that Clauses 3.2(g) and 3.2(h), as amended by the corrigendum, were altered to suit particular bidders, rendering the tender arbitrary and violative of the principles laid down in ***Meerut Development Authority v. Association of Management Studies***¹.
- h. Learned Single Judge erred in applying ***Vinishma Technologies Pvt. Ltd. v. State of Chhattisgarh***, as the requirement of a single

¹ (2009) 6 SCC 171

work order for 50% of Estimated Contract Value (ECV) has no rational nexus with the tender objective and excludes eligible suppliers.

- i. Learned Single Judge failed to apply the settled law that essential tender conditions cannot be altered after issuance, as held in ***Monarch Infrastructure (P) Ltd., v. Commissioner Ulhasnagar Municipal Corporation***², ***West Bengal State Electricity Board v. Patel Engineering Ltd.***³, and ***Reliance Energy Ltd., and Central Coalfields Ltd. v. SLL-SML***⁴. The corrigendum materially altered essential eligibility conditions, rendering the tender process arbitrary and illegal.
7. The following grounds are urged in the **Writ Appeal No.941 of 2026**:
- a. Learned Single Judge erred in holding that participation of 35 bids proved a competitive tender, ignoring the appellants' contention that the eligibility conditions favoured selected bidders.
 - b. Learned Single Judge failed to appreciate that Clause 3.2(g), requiring a single work order of 50% of the ECV, was arbitrary, tailor-made and excluded existing KGBV suppliers without justification.
 - c. Learned Single Judge failed to consider that retention of the same ECV despite reduction of quantities through Corrigendum dated 25.06.2026 unfairly restricted participation.
 - d. Learned Single Judge failed to appreciate that Clauses 3.2(g) and 3.2(h) and the Corrigenda introduced unreasonable conditions lacking nexus with the tender object, violating Articles 14 and 19(1)(g) of the Constitution.

² (2000) 4 SCC 287

³ (2001) 2 SCC 451

⁴ (2016) 8 SCC 622

e. Learned Single Judge failed to consider that vague requirements relating to “food items” and brand-specific specifications were contrary to Rule 144 of the General Financial Rules, 2017.

f. Learned Single Judge failed to appreciate that G.O.Ms.No.53 dated 31.08.2023 governs procurement for KGBVs and cannot be overridden by executive Memos introducing zonal centralized procurement.

g. Learned Single Judge failed to appreciate that the impugned Memos and tender conditions are contrary to the principles laid down in the judgments cited at sl.No.2 to 4.

8. Heard Mr. P. Veera Reddy, learned Senior Counsel with Mr. Phani Viswanath Challa, learned counsel for appellants in W.A.No.939 of 2026, Mr.O.Manohar Reddy, learned Senior Counsel with Mr. Abhay Siddhanth Mootha, learned counsel for appellants in W.A.No.941 of 2026, Mr. G.Rama Chandra Rao, learned Government Pleader for School Education, Mr.Kalamata Raghu Babu, learned Standing Counsel for Samagra Shiksha Abhiyan, Mr. K.S. Murthy, learned Senior Counsel with Mr. P. Hemachandra, learned counsel for Respondent No.4 in W.A.No.941 of 2026 and Mr. Ravi Teja Padiri, learned counsel for Mr.Pilla Yaswani, learned counsel for respondent No.5 in W.A.No.941 of 2026.

9. Sri P. Veera Reddy, learned senior counsel appearing for appellants in W.A.No.939 of 2026, submitted that respondents had introduced zone-wise procurement in terms of executive instructions only to facilitate the participation of bidders of their choice and to exclude other eligible suppliers.

He further contended that the corrigendum was issued subsequent to the pre-meeting and, in effect altered the procurement requirements. Such alteration was intended only to facilitate the participation of the bidders of the respondents' choice and to exclude the others, which is impermissible in matters of state procurement. The said action of the respondents had resulted in restricting participation of several prospective bidders and had consequently reduced the competitiveness of the price bids. Due to the action of the respondents only, 12 bidders have participated, out of which, four were qualified. This itself indicates the lack of effective and adequate participation in the tender process. As such, the policy adopted for zone-wise procurement had effectively prevented several eligible bidders from participating in the tender process and that the procurement policy had been a tailor-made to facilitate the selection of the bidders of the respondents' choice. Thus, the memo dated 23.03.2026 issued by the respondent No.1 according permission to the respondent No.3 for centralized procurement for KGB Vidyalayas requirements at the State / Zonal / District levels, and the memo dated 20.04.2026 constituting a committee for centralized procurement, are tainted with mala fides.

10. Learned senior counsel further submitted that G.O.Ms.No.53, dated 31.08.2023, issued by the Social Welfare Department, prescribes the procedure for procurement of provisions, dietary items, and student amenities for boarders of hostels and residential schools, which mandates the procurement of non-perishable items from the A.P. State Civil Supplies

Corporation / Girijana Co-operative Corporation, through a centralized tender process and procurement of perishable items from an approved agency under the Mid-Day Meal schemes. Contrary to the said prescribed procedure, the official respondents introduced a centralized tender system, allegedly to favour bidders of their choice. It is further contended that the corrigendum dated 25.06.2026, revising the quantities without reduction in the Estimated Contract Value (ECV), would cause prejudice and excludes the other participating bidders.

11. Learned senior counsel further submits that the respondents' contention that the implementation of G.O.Ms.No.53 is impracticable cannot, by itself, constitute a ground to deviate from the existing policy. Unless the said policy is duly superseded or a new policy is framed by the competent authority in accordance with law, the same cannot be altered or overridden by executive instructions issued in the form of a memo. An executive memo cannot override a government order.

12. Sri O. Manohar Reddy, learned Senior Counsel appearing for appellants in W.A.No.941 of 2026, submits that, contrary to the regular procedure of inviting tenders at the district level by the District Level Purchase Committee headed by the Joint Collector, respondents Nos.2 and 3 issued the impugned tender for procurement and supply of non-perishable items, milk and eggs to 111 KGBV schools in Zone-I for a period of ten months. He submits that, in the pre-bid meeting held on 19.05.2026, about 37 items were included in the tender and that Clauses 2.3, 3.1.5 and 3.1.7 of the tender

conditions are under challenge, as the same are unreasonable and have been designed to exclude proprietary concerns from participating in the tender process.

13. Learned senior counsel further submits that the clause 3.2(d) of the tender document mandates the bidder to have an annual turnover equivalent to 100% of the estimated contract value in any one of the last three financial years i.e., 2023-24 to 2025-26. Clause 3.2(g) prescribes experience criteria, requiring, in the case of super markets, a chain of at least ten super markets with regular supply of Fast Moving Consumer Goods (FMCG) to at least 50 delivery points of State / Central / Quasi Government / Private Institutions during the preceding three years, while wholesale suppliers are required to have supplied FMCG to at least 100 quantities to any State/Central/Quasi Government/Private Institution. Clause 3.2(h) further requires the bidder to have supplied at least 50% of the total items and achieved 50% of the estimated contract value under a single work. He further submits that although the appellants participated in the pre-bid meeting and requested that the perishable items be separated from the other items and that a joint-vendor / consortium system be permitted for supply of such items, besides seeking certain clarifications, the same were not considered. The estimated contract value was exaggerated without specifying the item-wise cost. While extending the last date for submission of tenders to 26.06.2026, corrigendum dated 17.06.2026 was issued, amending various provisions of the tender document and thereby revising the tender conditions, allegedly with an intent to exclude

the appellants and facilitate the participation of bidders of the choice of respondents No.2 and 3. He further submits that respondent No.2 revised the tender conditions with an ulterior object of facilitating the award of the contract to its preferred bidders and that the revised conditions are tailor-made to suit the convenience of the official respondents and are intended to favour the bidder of their choice.

14. Per contra, Sri Gurram Rama Chandra Rao, learned Government Pleader, submits that none of the petitioners participated in the tender process, despite sufficient time having been granted by the respondents and this Court. G.O.Ms.No.53, Social Welfare (Edu.II) Department, dated 31.08.2023, was issued, for procurement and supply of provisions, dietary items and student amenities to the boarders of hostels and residential schools, and specifies only 21 non-perishable items. However, the present requirement involves procurement of additional items which are not covered by the said G.O. He further submits that the authorities formulated the present policy under the memo with a view to securing better bargaining capacity, procuring better brands and quality, and obtaining supplies in larger quantities. Under the revised policy contained in the impugned memo, procurement has been structured at the State / Zonal level. Since G.O.Ms.No.53 provides only for 21 items specified therein, there is no provision under the said G.O., for procurement of the additional items presently required.

15. Learned Government Pleader contended that the aforesaid G.O., has no application to the present procurement, as it pertains to the requirements of

students and hostels under the Social Welfare Department. With a view to establishing a comprehensive supply system, ensuring quality products and meeting the required quantities, the present procurement system was evolved and tenders were accordingly invited, with an enhanced tender value. The modalities for centralized procurement of Type-III and Type-IV KGBVs and other KGBV requirements at the zonal and district levels were finalized in the meeting held on 13.05.2026, chaired by the Secretary, School Education Department, and the Project Director, A.P.S.S., along with other members. Therefore, the impugned tender process was formulated pursuant to the said deliberations and in accordance with the requirements of the State.

16. With regard to amendment concerned, Clause 3.7 of the tender document provides for clarification and amendment of the RFB document. Insofar as the past performance of the bidder is concerned, the tender condition stipulated that the bidder must have supplied at least 50% of the total items i.e., 37 items, and achieved 50% of the estimated cost value (ECV) under a single work order issued by any State / Central / Quasi Government / Private Institution in any one of the three years preceding the bid opening date. Thus, the condition is required to be satisfied in only one of the preceding three years.

17. Learned Government Pleader also submits that 35 bids were received from 11 bidders, of which four bids were accepted. There is no illegality or irregularity in acceptance of the successful bids and that the grounds raised by the learned counsel for the appellants are imaginary. No material has been

placed to establish any mala fides in the bidding process. He, therefore, prays for dismissal of the appeals.

18. Mr. K.S. Murthy, learned Senior Counsel appearing for unofficial respondent No.4, submits that, though allegations of mala fides have been levelled against the authorities and certain individual entities participating in the tender process, neither the concerned authorities nor the individuals against whom such allegations are made have been impleaded as parties. In the absence of impleading the persons against whom specific allegations of mala fides are made, the writ petitions, and consequently the present appeals, are not maintainable in law. He, therefore, prays for dismissal of the appeals.

19. Learned Senior Counsel further submits that participation in the pre-bid meeting constitutes participation in the tender process. Having participated therein and satisfied themselves with the tender conditions, the appellants cannot, at a later stage, question their eligibility or raise allegations against the authorities and seek to interdict the tender process. Having approached the Court in such circumstances, they are not entitled to any relief, much less the relief sought for in the present writ appeals.

20. Learned Senior Counsel further submits that the tenders issued by the Social Welfare Department for procurement of the items were not issued under G.O.Ms.No.53, nor was the said G.O., followed in the present procurement, as its provisions were not practicably viable and did not cover the procurement requirements. Therefore, the said G.O., cannot be insisted

upon in the present case, as it would attract the doctrine of impossibility. He further submits that the existing district-wise procurement system was not meeting the requirements in terms of quantity and quality and, therefore, the State Government resorted to a centralized tender process at the State/Zonal level. He submits that complaints were received against some of the petitioners/appellants, who were suppliers under the earlier district-wise procurement system, alleging deficiencies in the quantity and quality of supplies. The fact that the petitioners/appellants are challenging the present procurement process, while the earlier system itself was found inadequate, does not advance their case. The allegation that the respondents were hand in glove with certain agencies amounts to an allegation of mala fides against the concerned authorities and agencies, who have not been impleaded as parties. On this ground alone, the writ petitions and the consequential writ appeals are liable to be dismissed.

21. Learned Senior Counsel finally submits that the appellants have not stated how they are prejudiced or prevented from participating in the tender process by the action of the authorities, despite being otherwise eligible. He further submits that G.O.Ms.No.53 was not implemented even in the previous procurement, in which some of the writ petitioners/appellants participated and were awarded district-level procurement contracts. Having availed the benefit of such non-implementation and participated in the process, they cannot now challenge the present procurement on the ground that the said G.O. was not implemented.

22. Mr. Ravi Teja Padiri, learned counsel appearing for some of the successful bidders, submits that some of the petitioners are existing district-level suppliers and have initiated the present proceedings with a view to protract the litigation and delay finalization of the bids, thereby continuing their existing supplies. He further submits that zonal-level procurement would enable the authorities to procure quality and branded products at competitive prices, owing to the larger quantities and enhanced bargaining capacity, thereby reducing expenditure and benefiting the public exchequer. The grievances raised by the writ petitioners/appellants are, therefore, not genuine but are intended to delay the tender process. He, therefore, prays for dismissal of the writ appeals.

23. Learned senior counsel appearing for appellants in W.A.No.939 of 2026 placed reliance on the judgments of this Court in W.A.No.845 of 2022 and batch (P. Tejeswari and Ors., V. The State of AP and Ors.), ***State of Andhra Pradesh and Ors. V. K. Abhimanyudu***⁵, ***K. Sampath V. State of Tamil Nadu***⁶ and ***K.V.Rama Rao V. Government of Andhra Pradesh***⁷, in support of the proposition that Government Orders issued by the State Government in exercise of its executive power under Article 162 of the Constitution of India cannot be superseded or overridden by departmental memos issued by the respondents.

⁵ 2009 (6) ALD 636

⁶ 2006 SCC OnLine Mad 1765

⁷ 2001(4) ALD 852

24. Learned Government Pleader submits that the ratio laid down in the decisions relied upon by the appellants is not applicable to the present case. However, G.O.Ms.53, dated 31.08.2023, pertains to a distinct procurement policy and does not govern the present procurement policy, which involves different and wider requirements. As the said G.O., does not cover all the products required herein, the State Government, after due deliberation under the chairmanship of the Principal Secretary, School Education Department, evolved the present system of procurement at the State and Zonal levels to ensure quality and quantity at competitive prices through enhanced bargaining capacity. The present procurement process, therefore, does not run contrary to G.O.Ms.No.53, which has no application to the present situation.

25. Learned Government Pleader placed reliance on the Judgment of the Hon'ble Supreme Court in ***Prakash Asphaltings & Toll Highways (India) Ltd. v. Mandeepa Enterprises***⁸, wherein it held that:

38.1. This Court in Patel Engg. Co. Ltd. [W.B. SEB v. Patel Engg. Co. Ltd., (2001) 2 SCC 451] also held that tenders are invited on the basis of competitive bidding. On the one hand, it offers a fair opportunity to all those who are interested in competing for the contract and on the other hand, it affords the authority a choice to select the best of competitors on a competitive price without prejudice to the quality of the work. Above all, it eliminates favouritism and discrimination in allotting public works to contractors. While benefit to the public exchequer is certainly an important criteria in award of contract, it is equally in public interest to adhere to the rules and conditions subject to which bids are invited.

40. Afcons Infrastructure [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] is a case where this Court reiterated the proposition that the words used in the tender documents cannot be ignored or treated as redundant or superfluous: they must be given the due

⁸ (2026) 4 SCC 310

meaning and their necessary significance. The owner or an employer of a project having authored the tender documents is the best person to understand and appreciate its requirements and interpret its documents. Constitutional Courts must defer to this understanding and appreciation of the tender documents unless there is mala fides or perversity in the understanding or appreciation or in the application of the terms of the tender documents. It is possible that the view taken by the owner or the employer may not be acceptable to the Constitutional Courts, but that by itself is not a reason for interfering with the interpretation given. This Court held as follows: (SCC p. 825, para 13)

“13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a Constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the Constitutional Court interferes with the decision-making process or the decision.”

26. By placing reliance on the aforesaid, learned Government Pleader submits that the authorities for the purpose of getting competitive price without prejudice to the quality would benefit the public exchequer while providing a fair opportunity to all those who are interested in the bidding process. Unless the decision is tainted with mala fides, an intention to favour someone, arbitrariness, irrationality or perversity, the Court would not interfere with the decision of the authorities. In the instant case, no such mala fides are attributed and, as such, no interference is warranted.

27. Mr. K.S.Murthy, learned senior counsel, appearing some of the successful bidders, placed reliance on the judgment of the Hon'ble Supreme Court in ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.***⁹, in support of the same proposition advanced by the learned Government Pleader, wherein the Hon'ble Supreme Court held as follows:

⁹ (2016) 16 SCC 818

18. Before we conclude, it is necessary to point out that the High Court was of the opinion that the eligible bidders were not entitled to be either impleaded in the petition filed in the High Court by the ineligible bidder GYT-TPL JV or were not entitled to be heard. With respect, this is not the appropriate view to take in matters such as the present. There are several reasons for this, one of them being that there could be occasions (as in the present appeals) where an eligible bidder could bring to the notice of the owner or employer of the project that the ineligible bidder was ineligible for additional reasons or reasons that were not within the contemplation of the owner or employer of the project. It was brought to our notice by Afcons Infrastructure in these appeals that GYT-TPL JV did not have any experience in the construction of a viaduct by the segmental construction method and that the translations of documents in Mandarin language filed in the High Court were not true English translations. Submissions made by the learned counsel for Afcons Infrastructure in this regard are important and would have had a bearing on the decision in the writ petition filed in the High Court but since Afcons Infrastructure was not a party in the High Court, it could not agitate these issues in the writ petition but did so in the review petition which was not entertained. It is to avoid such a situation that it would be more appropriate for the constitutional courts to insist on all eligible bidders being made parties to the proceedings filed by an unsuccessful or ineligible bidder.

28. Relying on the aforesaid, learned senior counsel submitted that the eligible bidders are necessary parties to the litigation, as the contracts have already been awarded in their favour and cannot be interfered with without impleading them as parties.

29. Mr. Ravi Teja Padiri, learned counsel appearing for respondent No.5 in W.A.No.941 of 2026, placed reliance on the judgment of the High Court of Delhi in ***Maisur Projects Pvt Ltd V. State of Nct of Delhi And Ors.***¹⁰, wherein it was held that:

18. In any event, the Court is not inclined to accept the contention of the petitioner, in light of the fact that they did not participate in the tender process.

¹⁰ 2025 Supreme(Online)(Del) 4162

19. At this juncture, it may be apposite to refer to the decision of the Supreme Court in *NHAI v. Gwalior-Jhansi Expressway Ltd.*, [(2018) 8 SCC 243], wherein the Court opined that a person who does not participate in the tender process, cannot object to the same, especially when the validity of the underlying W.P. (C) 5133/2024 Page 3 of 6 terms of the tender documents has not been challenged:

“20. While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent forum. Going by the terms and conditions in the tender documents, as already alluded to in para 10 above, there is no tittle of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money. The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was to participate in the bidding process, it shall be deemed to fulfil all the requirements of the tender Clauses 3 to 6 of RFP, being the existing concessionaire of the project, does not exempt the respondent from participating in the tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered as a responsive bidder, along with others. Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the W.P. (C) 5133/2024 Page 4 of 6 non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the

basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.

30. Relying on the aforesaid, learned counsel for the respondent No.5 in W.A.No.941 of 2025 submitted that a person has not participated in the tender process has no locus to challenge the tender conditions after completion of the tender process and award of contracts in favour of the unofficial respondents. Hence, the writ petitions and the consequent writ appeals cannot be entertained.

31. Considered the submissions advanced by the learned counsel appearing for the respective parties, perused the material on record and also the case laws relied upon by the learned counsel for the respective parties.

32. The grievance of the petitioners/appellants is that the respondents have failed to adhere to the procedure contemplated under G.O.Ms.No.53, dated 31.08.2023 and issued tenders contrary to the procurement policy stipulated in the above said G.O., which contemplates procurement at the District or Division level, the respondents have adopted a centralized procurement policy at the Zonal level. Consequently, the petitioners have been excluded from participating in the tender process. The further contention of the appellants/petitioners is that though the items in the tender were revised, the estimated cost of the tender was kept high without reducing the tender value and this was done with a view to prevent the appellants from participating in the tender process and facilitating the participation of certain

agencies of the choice of respondents No.2 and 3, and that the tender process was tailor-made to favour such agencies and, consequently, the same is vitiated for non-adherence to the procurement policy as contemplated under G.O.Ms.No.53.

33. The further contention was that the memo issued by the Government proposing a procurement policy was not followed while procuring the items required for the KGBV's and, in effect, sought to supersede the G.O., already issued. A memo issued by the executive authorities cannot override or prevail over a Government Order. In view of the settled principles laid down by the Hon'ble Apex Court and this Court, the scope of judicial review in tender matters is limited and interference is warranted only where the decision-making process is vitiated by mala fides, arbitrariness or other legal infirmity. As regards the indication of brand names, the same was intended only to ensure the supply of quality products at competitive prices and to prevent the supply of inferior-quality products intended for consumption by the children. Therefore, merely indicating brand names for ensuring the quality of the products cannot, by itself, be said to be illegal or warrant judicial interference

34. With regard to the allegations of mala fides, arbitrariness and tailor-made conditions in the tender process, except for making such allegations, no material has been placed on record by the petitioners in support thereof. As rightly submitted by the learned counsel for respondents, when allegations of mala fides are made against any particular person, authority or agency, such person, authority or agency ought to be impleaded *eo nomine* so as to afford

an opportunity to answer the allegations. In the absence of such impleadment and supporting material, the said allegations cannot be sustained.

35. That apart, the petitioners' inability to satisfy the terms of the contract or the eligibility criteria cannot be a ground to challenge the tender conditions or seek cancellation of the tender on the allegation that the conditions were framed to exclude them. The tender conditions are prescribed by the Employer based on its requirements, including the quantity and quality of the items to be procured and the proper execution of the work. Therefore, only those who can meet the prescribed requirements will participate in the tender process. The petitioners' inability to meet such requirements cannot be a ground to challenge the ECV or the quantity, quality or specifications of the items to be procured.

36. As regards the contention regarding non-adherence to G.O.Ms.No.53, the said G.O., prescribes 21 non-perishable items, whereas 37 items are required to meet the requirements under the contract. Therefore, the State has evolved a new procurement policy under the impugned memo, which cannot be said to override the G.O.Ms.53, as the requirements under the new scheme are different than that of the above said G.O. The Zonal-level procurement, as submitted by the learned Government Pleader, appearing for the official respondents, is intended to ensure procurement of quality items in larger quantities and at competitive price. The method adopted by the respondent authorities cannot be faulted unless it is shown to be mala fide, arbitrary or intended to exclude the petitioners. Though such an allegation has

been made, no material has been placed on record to substantiate the same. Further, the officers against whom the allegations of mala fides are attributed, particularly respondents No.2 and 3, have not been made as party respondents *eo nomine*. Hence, the said contention cannot be countenanced.

37. As stated above, procurement at the Zonal level would enhance the bargaining capacity of the authorities and enable procurement of better-quality products at competitive prices, thereby benefiting the exchequer. The procurement process is also intended to ensure the supply of quality products for the benefit of the student community. Therefore, the exercise undertaken by the authorities cannot be faulted, and no mala fides can be attributed.

38. With regard to the amendment/corrigendum issued after the pre-bid meeting, the State has extended the time for submission of tenders to enable the bidders to take note of the corrigendum and participate in the tender process. It is not the case of the petitioners that, on account of the corrigendum, they were prevented from participating in the tender process. Further, the tender document itself provides for issuance of such clarifications and amendments. Therefore, no illegality or irregularity can be attributed to the issuance of the corrigendum.

39. As stated above, some of the petitioners participated in the pre-bid meeting but, having realized that they did not satisfy the eligibility criteria for the final bidding process, chose to remain silent. Some of the appellants did not participate in the tender process at all and have now raised these pleas to

seek interference with the tender process. In our considered view, such a course cannot be permitted. As submitted by the learned counsel appearing for the successful bidders, some of the appellants were suppliers under the earlier District-level procurement process and are now litigating the matter in a manner to delay the award of contract for procurement and consequently benefit the existing tenderers to continue to supply.

40. In view of the foregoing discussion, we do not find any circumstance warranting interference with the order passed by the learned Single Judge. Accordingly, the Writ Appeals fail and are hereby ***dismissed***. No order as to costs.

Interim orders, if any, granted earlier shall stand vacated, and all pending miscellaneous petitions, if any, shall stand closed.

LISA GILL, CJ

JUSTICE BALAJI MEDAMALLI

SAK

Whether the order is:

Speaking	☒	Reasoned	☒
Reportable	☒	Non-reportable	

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HONOURABLE MRS. JUSTICE LISA GILL, CHIEF JUSTICE
&
HONOURABLE MR. JUSTICE BALAJI MEDAMALLI

WRIT APPEAL NO: 939 of 2026 along with
WRIT APPEAL NO: 941 of 2026

Date: 25.08.2026

SAK