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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1508 OF 2024

SHABNOOR AYUB PATHAN
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GTI Infotel Private Limited
601 Tower A, 6th Floor,
Smart Homes, Hajipur Sector 104,
NOIDA – 201 304, Uttar Pradesh **... Petitioner**

V/s.

1. **Hindustan Petroleum Corporation Ltd**., through Chairman and Managing Director,
   Petroleum House, 17,
   Jamshedji Tata Road, Mumbai
   Maharashtra 400 020

2. **Union of India**,
   through the Secretary,
   Ministry of Petroleum & Natural Gas,
   Room No.206-A, Shastri Bhavan,
   New Delhi – 110 001

3. **Value Chain Solutions (India) Private Limited**,
   209-212, 2nd Floor, Ornet Arcade,
   Opposite AUDA Garda, Vastrapur,
   Ahmedabad, Gujarat 380 015 **... Respondents**

Mr. Zal Andhyarujina, Senior Advocate with Ms. Ishani Khanvilkar, Mr. Abhinandan Waghmare, & Mr. Yogendra Singh for the petitioner.

Mr. Zubin Behramkamdin, Senior Advocate with Mr. Vijay Purohit, Mr. Pratik Jhaveri and Mr. Samkit Jain i/by P & A Law Officers for respondent No.1–HPCL.

Mr. J.S. Saluja for respondent No.2.

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Mr. Ashish Kamat, Senior Advocate with Mr. Pradeep Mane and Mr. Huzan Bhumgara i/by Desai & Diwanji for respondent No.3.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ & AMIT BORKAR, J.

RESERVED ON : OCTOBER 16, 2024

PRONOUNCED ON : OCTOBER 25, 2024

JUDGMENT: (Per Amit Borkar, J.)

1. Challenge in this writ petition under Article 226 of the Constitution of India is to the entire tender process bearing Tender No. GeM/2023/B/3507416, which includes not only the issuance of the tender but also the consequent stages leading up to the allotment of work by P.O. No. 5200037423 dated 5th January 2024. The petitioner contends that the process has been vitiated by violations of tender conditions, and public procurement policies, specifically the Micro and Small Enterprises (MSE) policy aimed at providing preferential treatment to MSEs, which, according to the petitioner, has not been followed in its spirit or in letter.

2. Facts, as disclosed in the petition, relevant for adjudication of the present writ petition are as follows: on 30th May 2023, respondent No.1, a government entity responsible for public procurement, published a detailed bid

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document for tender designated as the E-Tender for Track and Trace along with a comprehensive scope of work on the official website of the Government E-Marketplace (GeM). The scope of work involved implementation of a sophisticated track and trace system, which required compliance with specific technical standards, including those outlined under relevant Indian Standards (IS) codes. The last date for tender submission was fixed as 20th July 2023, providing potential bidders with approximately 50 days to prepare their bids. All prospective participants were required to submit their proposals electronically, ensuring adherence to the timelines and conditions specified. The petitioner, an MSE entity, submitted its proposal on 20th July 2023, which included all necessary documents, including the MSE Registration Certificate, in compliance with the eligibility requirements stipulated in the bid document.

3. On 14th August 2023, respondent No.1 initiated further interaction by email, inviting the petitioner to discuss the technical aspects of its bid submission. This invitation was aimed at seeking clarifications on specific technical points related to the petitioner's compliance with IS standards, which was an important criterion for evaluating the technical bid.

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The physical meeting was scheduled for 16th August 2023 at the office of respondent No.1. On the designated date, the petitioner attended the meeting and gave a detailed presentation concerning its technical bid, focusing on the system's architecture, functional capabilities, and compliance with the prescribed standards. Thereafter, respondent No.1 raised queries concerning IS compliance, which were duly addressed by the petitioner with supporting documentation. Despite the petitioner's assertion that all technical criteria were satisfied, the subsequent list of technically qualified bidders, published on 18th October 2023, did not include any detailed reasoning regarding the qualification or disqualification of the bidders, raising concerns about transparency in the evaluation process.

4. On 20th October 2023, respondent No.1 opened the financial bids of the technically qualified bidders, which included the petitioner. The opening of financial bids marked the next important step in the tender process. On the same day, respondent No.1 invited the petitioner to participate in the reverse auction process, which was scheduled to commence on 21st October 2023 at 15:00 p.m. and conclude by 12:00 p.m. on 25th October 2023. The reverse auction

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process is a critical component of competitive bidding, allowing bidders to modify their financial proposals in real-time, with the ultimate aim of achieving the lowest price for the procuring entity. The petitioner actively participated in the reverse auction, wherein it revised its bid in response to the competing offers.

5. On 26th October 2023, at 11:51 a.m., the reverse auction process was concluded. The official GeM website displayed that the petitioner's bid of Rs. 27,29,52,112/- had matched the 'Current L-1 Price,' and the system reflected the petitioner's status as the lowest bidder (L-1). The results of the reverse auction were subsequently published on 21st November 2023 on the GeM platform. The petitioner's bid of Rs. 27,29,52,112/- was ranked L-1, with respondent No.3 ranked L-3, having submitted a bid amounting to Rs. 27,32,87,109/-. The petitioner claims that despite being the lowest bidder and having satisfied all technical criteria, there was undue delay in finalizing the award of the contract, which led to additional correspondence between the petitioner and respondent No.1.

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6. On 21st November 2023, respondent No.1 emailed the petitioner requesting an extension of the bid validity period from 15th December 2023 to 25th February 2024. The petitioner, while granting the extension, contends that this request was unusual given the prior completion of the tender process, including the reverse auction. The extension was accepted by the petitioner under the presumption that it was necessary to facilitate subsequent stages of the procurement process, such as obtaining requisite internal approvals and the timely issuance of the work order. However, the petitioner asserts that despite this extension, respondent No.1 failed to act with the required urgency, raising concerns of procedural lapses.

7. On 12th December 2023, respondent No.1, by email, requested the petitioner to consider a reduction in the contract price, citing the closure of their Rampur plant, which resulted in a significant decrease in the quantities outlined in the initial agreement. This reduction, according to respondent No.1, was necessary to align the contractual obligations with the new operational realities. After considering the request, the petitioner, in an email dated 15th December 2023, approved the modification of the contract price,

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acknowledging that the closure of the Rampur plant and the corresponding reduction in deliverable quantities justified such a change. This modification signified an amicable adjustment to the original contract, indicating the willingness of the petitioner to cooperate in light of unforeseen changes on the part of respondent No.1. However, despite the petitioner's cooperation, this incident marks the beginning of subsequent disputes between the parties.

8. According to the petitioner, in the first week of January 2024, the petitioner was verbally informed by the Deputy General Manager of respondent No.1 that there had been an inordinate delay in issuing the work order, attributing the delay to internal processes within respondent No.1. The Deputy General Manager assured the petitioner that the work order would be issued very soon. On 16th January 2024, the petitioner, through a formal email, requested respondent No.1 to expedite the release of the work order, emphasizing the urgency of the situation given the prior delays. However, on the same day, while checking the status of the tender on the official GeM website, the petitioner made a startling discovery. It was found that the total price bid of respondent No.1 had been modified to match the petitioner's bid price. This

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modification appeared unilateral, raising concerns of undue interference in the tender process. Consequently, on 17th January 2024, the petitioner sent a detailed letter and email to respondent No.1, requesting an immediate inquiry into how respondent No.3's bid price had been altered without prior consultation or notification to the petitioner. The petitioner highlighted the potential impropriety and favoritism that may have led to respondent No.3's bid price being unfairly adjusted to match that of the petitioner. In response, on 19th January 2024, the GeM portal, by email, provided a clarification to the petitioner's communication dated 17th January 2024, stating that the petitioner was classified as a seller under the Make in India (MII) category and not as a Micro and Small Enterprise (MSE), which the petitioner contested.

9. On 20th January 2024, dissatisfied with the developments in the tender process and the unexplained revision of respondent No.3's bid price, the petitioner made a formal representation to the Minister of Petroleum and Natural Gas. The petitioner requested a thorough inquiry into the conduct of the reverse auction process, alleging that the integrity of the bidding system had been compromised to

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favor respondent No.3. In a parallel development on the same day, respondent No.1, while invoking clause 8 of the terms and conditions of the tender, responded by asserting that respondent No.1 had actively opted for the MSE purchase preference under the policy, whereas the petitioner had not availed of such an option. Respondent No.1 claimed that the petitioner's failure to exercise this option rendered them ineligible for the MSE preference and that the system had duly recognized this distinction, which resulted in the evaluation of the petitioner’s bid as a non-MSE bidder. This communication by respondent No.1 suggested that the petitioner’s omission to select the MSE preference during the bidding process was important to the petitioner's grievances regarding the tender evaluation.

10. On 21st January 2024, the GeM official website published a notification that the bid price of respondent No.3 had been revised once again, this time to an amount of Rs.26,18,01,112/-. This second revision in a short span of time only heightened the petitioner’s suspicions regarding the transparency of the bidding process. The petitioner viewed these multiple alterations in respondent No.3’s bid price as indicative of possible manipulation within the system,

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designed to favor respondent No.3 at the cost of the petitioner’s rightful position in the tender. According to the petitioner the repeated revisions, without any legitimate explanation, severely weakened the confidence in the fairness and impartiality of the tender process.

11. On 24th January 2024, the petitioner formally communicated with respondent No.1, reiterating that the petitioner had submitted all requisite documents during the bid submission and evaluation stages to substantiate its status as an MSE. The petitioner emphasized that it was eligible for the benefits accorded under the MSE policy and urged respondent No.1 to reconsider its stance in light of the petitioner's documented compliance. Despite this clarification, respondent No.1, in a letter dated 24th January 2024, reaffirmed its earlier position. Respondent No.1 maintained that the petitioner had not opted to avail the benefits of purchase preference under the tender document, and as such, the system had evaluated the petitioner as a non-MSE bidder. This response further frustrated the petitioner’s attempts to resolve the issue, as it appeared that the petitioner's MSE status had been disregarded due to a technical or procedural oversight, leading to an erroneous evaluation. Respondent

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No.1’s refusal to reconsider its stance compounded the petitioner's grievances, reinforcing the need for a thorough investigation into the bidding and evaluation process. The petitioner therefore filed present petition on 12th March 2024.

12. Upon petitioner’s request, this Court, vide its order dated 21st March 2024, granted leave to amend the writ petition to include the successful bidder, i.e., respondent No.3, as a necessary party to the proceedings. This amendment also encompassed the petitioner's challenge to the work order dated 5th January 2024 issued to respondent No.3 under the tender process. The Court observed that since the work order had already been issued, it was necessary to hear the successful bidder to avoid any prejudice. The amended writ petition included detailed prayers seeking quashing of the work order and directions to respondent No.1 to reconsider the tender in light of the petitioner’s MSE status.

13. In its affidavit-in-reply filed on 12th April 2024, respondent No.1 raised a preliminary objection to the maintainability of the writ petition, contending that the entire tender process was conducted in strict compliance with the terms and conditions set forth in the bid documents.

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Respondent No.1 contended that the petitioner had ample opportunity to exercise its option for purchase preference during the bidding process but failed to do so. It further argued that the petitioner did not exhaust the available grievance redressal mechanisms as outlined in the tender document and the GeM portal, making the writ petition premature and non-maintainable. By its communication dated 13th February 2024, respondent No.1 sought clarification from GeM regarding the petitioner's eligibility for purchase preference. GeM, by email dated 15th February 2024, confirmed that the petitioner had not opted for purchase preference as an MSE during the reverse auction and, as such, respondent No.1 was bound by the outcome of the bidding process, which treated the petitioner as a regular bidder. Respondent No.1 emphasized that it could not alter the bid parameters post-auction to favor the petitioner.

14. Respondent No.1 clarified that the exemption from the payment of Earnest Money Deposit (EMD) is an independent benefit extended to various categories of bidders, including but not limited to MSEs. It was stated that exemption from EMD did not automatically translate to the petitioner being entitled to purchase preference under the MSE policy. As per

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the tender conditions, exercise of purchase preference was a separate and specific option that needed to be affirmatively selected by the bidder during the bidding process. Respondent No.1 further contended that the reverse auction concluded on 18th October 2023, and the petitioner's writ petition, filed nearly five months later on 8th March 2024, suffered from inordinate delay and laches. Moreover, respondent No.1 asserted that it had no control over the bidding process conducted on the GeM portal, which automatically classified the petitioner as a regular bidder due to its failure to select the purchase preference option. Respondent No.3, being within the 15% price band of the petitioner's bid, was lawfully awarded the benefit of purchase preference in accordance with the GeM guidelines and the terms of the tender.

15. Respondent No.3, in its affidavit-in-reply filed on 24th April 2024, echoed the contentions raised by respondent No.1. Respondent No.3 confirmed that it was issued the Letter of Intent (LoI) by respondent No.1 on 8th January 2024, in furtherance of the purchase order dated 5th January 2024. In accordance with the terms of the purchase order, respondent No.3 was required to complete the project within six months of the issuance of the LoI. Respondent No.3 highlighted that it

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promptly commenced the work and held an initial meeting with respondent No.1 on 10th January 2024 to discuss the project’s implementation. Respondent No.3 has also provided a detailed account of the project's progress, asserting that it has invested significant resources and effort into its execution.

16. Respondent No.3 further stated that it successfully completed Phase-I of the project by 7th March 2024, having implemented the pilot project in presence of respondent No.1's representatives. The minutes of the meeting held on 7th March 2024 documented successful implementation of the pilot project, marking a critical milestone in the project's execution. As of 31st March 2024, respondent No.3 claims to have completed approximately 35% of the total project, with Phase-II expected to be completed by the second week of June 2024. Respondent No.3 further elaborated that it has engaged a team of 13 skilled personnel specifically for this project and has incurred substantial financial outlays, including approximately Rs. 15 lakh towards equipment and licenses. Cumulatively, respondent No.3 has spent around Rs. 3 crore towards the project's completion. Given the advanced stage of the project and the significant costs incurred, respondent No.3 submitted that any interference by this Court

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at this juncture would cause grave prejudice to its interests and prayed for the dismissal of the writ petition on grounds of delay and substantial compliance with the tender terms.

17. Mr. Andhyarujina, learned Senior Advocate appearing for the petitioner, argued that the petitioner's status as an MSE was never in dispute, as the petitioner was granted exemption from the payment of EMD based on its MSE registration. He submitted that the petitioner had exercised its rights under the MSE policy by submitting the requisite MSE certificate during the tender process. According to Mr. Andhyarujina, the tender conditions did not specify a distinct or separate mechanism for exercising purchase preference, nor did the GeM portal provide any clear option for the same. He submitted that once the petitioner's MSE certificate was uploaded, it should have been automatically considered for all benefits, including purchase preference. Referring to Clause 8 of the tender document, Mr. Andhyarujina emphasized that the eligibility criteria only required the tenderer to be an MSE and to upload the MSE certificate. Therefore, the petitioner was entitled to the full benefits of the MSE policy, including purchase preference, and the denial of such benefit by respondent No.1 was arbitrary and contrary to the principles

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of equity and justice.

18. Conversely, Mr. Behramkamdin, learned Senior Advocate appearing on behalf of respondent No.1, has argued that the tender conditions expressly require that the bidder must exercise the option for purchase preference by following the specific methodology provided on the Government e-Marketplace (GeM) Portal available to MSE bidders. He elaborated that the process mandates not only uploading of the MSE certificate at the designated place but also selection of the option for purchase preference. If the bid submitted by an MSE bidder falls within 15% of the L-1 price, the GeM Portal would automatically extend an option to the MSE bidder to match the price of the L-1 bidder. According to him, despite being well aware of this process, the petitioner did not exercise the purchase preference option in its bid submission, whereas respondent No.3 duly opted for it as an MSE. After the reverse auction process, the petitioner emerged as the L-1 bidder, and respondent No.3 as the L-2 bidder. He contended that the petitioner was fully aware of the fact that it was not being recognized as an MSE due to its failure to opt for the purchase preference option when the list of qualified bidders was published on the GeM Portal on 18 October 2023.

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19. He submitted that since respondent No.3's bid was within 15% of the L-1 price and the petitioner did not opt for purchase preference, the GeM Portal only recognized respondent No.3 as an MSE and extended the option to respondent No.3 to match the price quoted by the petitioner. He emphasized that the GeM Portal operates in a pre-programmed, automated, and transparent manner, which eliminates any possibility of bias or arbitrariness in the procurement process. Had the petitioner opted for the purchase preference as an MSE, the GeM Portal would have reflected it accordingly, and the petitioner would have been given the benefit under the MSE policy.

20. Mr. Behramkamdin further submitted that GeM has categorically submitted that the petitioner did not opt for the purchase preference as an MSE. While the petitioner may have availed the benefit of an EMD exemption by uploading supporting documents, it failed to exercise the purchase preference option in the same manner on the respective page of the GeM Portal. He pointed out that the training modules and guideline videos provided by the GeM platform clearly indicate that availing the EMD exemption and availing the purchase preference option as an MSE are separate and

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distinct actions. Despite sufficient opportunity, the petitioner has failed to produce any screenshots or corroborating documents to substantiate its claim that it had opted for purchase preference. Furthermore, the contract was awarded to respondent No.3 on 8 January 2024, and in accordance with Clause 5.2 of the special terms and conditions of the tender, respondent No.3 has significantly completed the work under the contract. He added that only the warranty period of two years and the comprehensive annual maintenance contract (CAMC) for five years remain, which the petitioner is unlikely to provide considering the technical complexity involved in the execution and maintenance of the Track and Trace system.

21. Mr. Kamat, learned Senior Advocate on behalf of respondent No.3, in addition to the contentions raised on behalf of respondent No.1, submitted that on 20 July 2023, the petitioner had submitted its techno-commercial bid in response to the tender but crucially failed to specify and select the purchase preference option under the MSE policy. He pointed out that the tender documents, including the undertaking form, required bidders to make a clear and definitive choice between availing the benefits under the MSE

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policy or the Make in India (MII) preference. The petitioner, however, failed to make such a selection.He further submitted that on 18 October 2023, respondent No.1 published the list of qualified bidders on the GeM Portal, which included both the petitioner and respondent No.3. However, the status of the petitioner was not reflected as an MSE in the list. This was clear evidence that the petitioner had not exercised the MSE purchase preference option at the relevant stage of the bidding process.

22. Mr. Kamat emphasized that, as on 31 March 2024, respondent No.3 had completed approximately 35% of the project work, and Phase II of the project had been completed in its entirety. He argued that considering the nature of the Track and Trace project, which involves highly technical work requiring specific equipment, expertise, and compliance with stringent regulatory standards, it would not be feasible for the petitioner to continue or take over the remaining portion of the project. He submitted that respondent No.3 has already made substantial investments in the project, including expanding its operations, acquiring additional equipment, and securing necessary licenses. He noted that respondent No.3 has spent an approximate amount of Rs.3 crores in expanding

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its outlets and approximately Rs.15 lakhs in acquiring new equipments and licenses, further solidifying its ability to complete the project. He contended that the petitioner, having failed to avail the purchase preference option and lacking the requisite specialized knowledge and resources to complete the Track and Trace project, is not in a position to step in at this advanced stage of project completion. Any interference at this point, he argued, would not only disrupt the ongoing work but would also result in delays and financial losses that could have been avoided had the petitioner properly exercised its rights under the MSE policy from the outset. Accordingly, he submitted that the writ petition deserves to be dismissed.

23. For the purpose of adjudicating contentions raised by the parties, it is necessary to extract relevant tender conditions, which are as under:

> *"Instructions to Bidders*
>
> *1.* ***Vendors are advised to submit their bids taking full notice of all the pre-qualification criteria(BOC), technical specifications, terms and conditions.*** *Bidders are to note that this tender is on GeM platform and hence the interested bidders can participate in the tender (Techno-Commercial and Price Bids) only through the internet. Response in any other form shall not be accepted.*
>
> *2. Eligible Bidders are required to submit their offer in two parts – Techno Commercial bid (Unpriced bid) and Price Bid. The Techno Commercial as well as Price Bid shall both be*

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submitted online along with the documents as required in this tender.

4. Submission of Bids:

…

vi. All details, revisions, clarifications, corrigenda, addenda, time extensions, etc., to the tender will be hosted only on this website. ***Bidders should regularly visit this website to keep themselves updated.***

vii. ***Bidders are advised to study all the Tender the Documents carefully and understand Tender/Contract Conditions, Specifications etc., before quoting.*** *If there are any doubts, they should get clarification in writing but this shall not be a justification for late submission of tender or extension of opening date.* ***Tender should be strictly in accordance with Terms & Conditions, Specifications.***

viii. The offer from the tenderer should he strictly in accordance with Terms & Conditions of the tender, Specifications.

ix. ***All the enclosed Tender documents along with the covering letter will form part of the tender***

…

15. ***The Corporation reserves the right to reject any and or every tender without assigning any reason whatsoever and/or place order on any tenderer and their decision in this regard will be final. No disputes could be raised by any tenderer (s) whose tender has been rejected.***

…

38. Miscellaneous:

…

h. ***In case of any dispute in the interpretation of the terms and conditions of the tender, the decision of the Corporation shall be final and binding.***

…

"8. Purchase preference to Micro and Small Enterprises (MSEs): Purchase preference will be given to MSEs and

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defined in Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 dated 23.03.2012 issued by Ministry of Micro, Small and Medium Enterprises and its subsequent Orders/Notifications issued by concerned Ministry. ***If the bidder wants to avail the Purchase preference, the bidder must be the manufacturer of the offered product in case of bid for supply of goods.*** *Traders are excluded from the purview of Public Procurement Policy for Micro and Small Enterprises. In respect of bid for Services, the bidder must be the Service provider of the offered Service. Relevant documentary evidence in this regard shall be uploaded along with the bid in respect of the offered product or service.* ***If L-1 is not an MSE and MSE Seller (s) has/have quoted price within L-1+ 15% of margin of purchase preference / price band defined in relevant policy, such Seller shall be given opportunity to match L-1 price and contract will be awarded for percentage of 100% of total value.***

(Emphasis Supplied)"

"Undertaking ***Attachment -1***

Tender no._____dated_____

We, M/s_____ ***(Name of Bidder)*** *hereby confirm that purchase preference may be extended as per the provisions of Purchase Preference under* ***Public Procurement Policy for MSE / Purchase Preference (linked with Local Content),*** *(retain whichever is applicable and remove the other option) for our bid submitted against the above mentioned tender.*

||Note (Only for the information of bidders and not be included in the final declaration) :

(i) In case a bidder is eligible to seek benefit under MII policy as well as PPP for MSE 2012, then the bidder should categorically seek benefits against any one of the two policies i.e., either MII or MSE policy.

(ii) In case a MSE bidder opts for purchase preference based on MII, he shall not be entitled to claim purchase preference benefit available to MSE Bidders under PPP for MSE 2012. However, the exemptions from furnishing Bidding Document fee and Bid security/EMD

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shall continue to be available to MSE Bidders.

(iii) The option once exercised, cannot be modified subsequently.

(iv) In case PPP – MSE option is selected, then the bidder can delete the balance portion of this declaration. In case, MII option is selected, then the bidder has to submit the balance portion of this declaration, without which, the purchase preference under applicable MII Policy is not liable to be extended.||"

"Purchase Preference – MSE

In case the bidder is a Micro or Small Enterprises registered with District Industries Centers (DICs) or Khadi and Village Industries Commission (KVIC) or Khadi and Village Industries Board (KVIB) or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro and Small Enterprises (MoMSME), the bidder shall be entitled for benefits under the Public Procurement Policy as per the details mentioned below:

i. Issue of Tender Documents free of cost.

ii. Exemption from payment of EMD.

iii. Micro and Small Enterprises quoting price within price band of L1 + 15% shall be allowed to supply a portion of requirement by matching the price of L1, if L1 is other than MSE, upto 25% of the total tendered value.

iv. Only Manufacturing Enterprises qualify as MSEs. Traders and Agents shall not be allowed to avail the benefits extended under PP Policy.

v. In case of availability of more than one Micro and Small Enterprises within the price band of L1 + 15%, 25% of the tender value shall be shared equally amongst the eligible MSEs, subject to matching the L1 price.

vi. Further, out of above 25%, 4% shall be from MSEs owned by SC/ST entrepreneurs and 3% from MSEs owned by Women Entrepreneurs. This quota is to be transferred to other MSEs in case of non-availability of MSEs owned by SC/ST entrepreneurs

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or Women Entrepreneurs."

24. In light of the facts and circumstances mentioned above, and upon considering the decisions in ***Jagdish Mandal v. State of Orissa*** **[(2007) 14 SCC 517]** and ***Tata Motors Ltd. v. Brihanmumbai Electric Supply & Transport (BEST)*** **[(2023) 3 SCC 646]**, it is imperative to evaluate whether judicial interference in the tender process would be justified.

25. The judgment in ***Jagdish Mandal(Supra)*** laid down clear parameters for judicial interference in tender matters, limiting it to cases where the process is arbitrary, irrational, or discriminatory; the decision is mala fide or in violation of statutory provisions; public interest is adversely affected by the tender decision.

26. The Court in ***Jagdish Mandal(Supra)*** emphasized that interference by courts is not warranted unless these factors are met. Courts should not act as an appellate authority over administrative decisions unless there is a clear breach of constitutional or statutory provisions.

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27. The decision in ***Tata Motors(Supra)*** further refined the scope of judicial review in tender matters. It highlighted that while courts can review tenders for fairness, transparency, and reasonableness, they must do so sparingly and with great caution, particularly in matters involving technical expertise. It reaffirmed the principle that unless there is manifest arbitrariness or a violation of statutory norms, courts should refrain from interfering in contractual and commercial decisions taken by government authorities.

28. If the facts and arguments pleaded by the respective parties in these writ petition are analysed on the anvil of the law laid down by Hon'ble Supreme Court, what we need to determine firstly is as to whether the tender document had a specific requirement for bidders to select the purchase preference option during the bidding process. Respondent No.1 contended that the petitioner failed to opt for this preference on the Government E-Marketplace (GeM) portal, leading the system to treat the petitioner as a non-MSE bidder for the purpose of awarding the tender. The petitioner, however, claims that there was no separate option for exercising purchase preference during the bid submission stage and that the submission of the MSE registration

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certificate should have sufficed.

29. For the purpose of determining whether there existed a separate option for exercising purchase preference during the bid submission stage, it is necessary to consider the relevant tender conditions which have been extracted above. Sub-clause (vii) of Clause (4) of the Instructions to Bidders required bidders to carefully study all the tender documents and fully understand the tender/contract conditions before quoting their bid. This places an obligation on the bidder to be fully aware of all requirements, including the exercise of purchase preference. Additionally, Sub-clause (iii) of Clause (4) clarified that all the enclosed tender documents, along with the covering letter, would form part of the tender and were binding on the bidders. Furthermore, Sub-clause (h) of Clause (38) of the tender conditions granted finality to the decision of the Corporation in case of any dispute regarding the interpretation of the terms and conditions of the tender. This reinforces the need for bidders to strictly comply with the tender conditions to avoid any ambiguity.

30. The form of undertaking annexed to the tender document, attached with Form-I, specifically required bidders

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to confirm their selection of the purchase preference option as per the Public Procurement Policy for MSE or the Purchase Preference (linked with Local Content) policy. The bracketed portion in the undertaking made it obligatory for the bidder to retain the applicable option and remove the other, ensuring clarity in the selection. The note appended to the undertaking further emphasized that if the bidder sought to claim benefits under both the Make in India (MII) policy and the Public Procurement Policy for MSE (PPE for MSE 2012), the bidder must categorically choose to claim benefits under only one of these policies. Note (ii) in particular clarified that if an MSE bidder opted for purchase preference under the MII policy, such a bidder would not be entitled to the purchase preference benefits available to MSE bidders under the PPE for MSE 2012. However, the exemption from Earnest Money Deposit (EMD) would continue to be available to all MSE bidders, even if they selected the MII policy.

31. Moreover, the screenshot referred to by the GeM official in the communication dated 15 February 2024 further indicates the existence of a specific option on the GeM Portal, which requires the bidder to answer whether it is availing the benefits under the MSE policy. This option expressly allows

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bidders to upload their MSE certificate under the category for MSE bidders. This feature emphasises the clear and distinct requirement for MSE bidders to separately indicate their preference for purchase preference during the bid submission process.

32. We are, therefore, of the considered opinion that a separate option for exercising purchase preference during the bid submission stage was clearly available to all bidders, including the petitioner, on the GeM Portal. The structure of the tender conditions, as well as the provisions of the GeM Portal, provided an explicit and transparent mechanism for bidders to exercise their purchase preference rights as MSEs, should they wish to avail them.

33. Secondly, the dispute involved is whether the petitioner exercised purchase preference on the Government e-Marketplace (GeM) portal claiming benefit of its status as MSE. To prove said fact the petitioner could have produced material such as the order summary, bid submission details, or any confirmation screenshots from the GeM portal reflecting whether the purchase preference option for Micro and Small Enterprises (MSEs) was selected during the bid

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submission process or GeM transaction logs or system-generated records indicating the actions taken by the petitioner when submitting the bid, including timestamps and specific selections (such as opting for MSE preference). Petitioner could have produced correspondence between the petitioner and GeM portal authorities or the procuring entity about the application of purchase preference to clarify the petitioner's intent of opting purchase preference as MSE. Any official notifications, emails, or alerts from the GeM portal indicating the status of the petitioner's preference selection could have served as evidence. The petitioner could have presented screenshots of the bid submission interface on the GeM portal, specifically showing that the purchase preference option for MSEs was selected.

34. The petitioner, however, has failed to produce crucial evidence, such as screenshot from the GeM Portal, to indicate that it had selected the purchase preference option for MSE during the bid submission stage. Furthermore, no system-generated records have been produced by the petitioner to substantiate its claim of having exercised the purchase preference as an MSE. On the other hand, the documents submitted by the petitioner, including the MSE registration

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certificate, only serve to establish the petitioner's entitlement to an EMD exemption, but not the exercise of purchase preference under the MSE policy.

35. In contrast, respondent No.3 had clearly submitted an MSE category certificate, and has demonstrated both, the exercise of purchase preference under the MSE policy and the entitlement to EMD exemption.

36. Additionally, the list of documents uploaded by the petitioner reveals that the petitioner had uploaded documents under the Make in India (MII) policy, specifically under Class-I/Class-II categories, and had not uploaded any document to claim purchase preference under the MSE policy. The distinction between the documents submitted by the petitioner and those submitted by respondent No.3 is significant which indicates that the petitioner did not properly exercise its option for MSE purchase preference.

37. It is important to note that the tender process on the GeM Portal is system-driven and automated. Unless the bidder explicitly selects the MSE purchase preference option, the system will automatically treat the bidder as a non-MSE bidder for the purpose of awarding purchase preference.

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38. Moreover the correspondence between the petitioner and respondent No.1 shows that the issue of the petitioner's MSE status arose after the reverse auction process had concluded. The petitioner had repeatedly communicated its MSE status and sought clarification on how respondent No.3 was able to match the petitioner's bid price. In response, respondent No.1 and GeM clarified that the petitioner did not select the purchase preference option during the bidding process, and this clarification was further corroborated by the email from GeM on 15th February 2024. Despite this, the petitioner continued to assert that it should have been treated as an MSE for purchase preference based on the submission of the MSE registration certificate alone. However, the documents provided by respondent No.1 indicates that the GeM portal evaluated the petitioner as a regular bidder and not as an MSE due to the petitioner's failure to opt for purchase preference.

39. The tender document governing MSEs and purchase preference require definitive action by the bidder to opt for purchase preference during the bidding process. In this case, the system was designed to automatically extend the purchase preference to eligible bidders who had selected this

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option and met the necessary criteria. Since the system did not extend purchase preference to the petitioner, it indicates that the petitioner failed to fulfill this procedural requirement.

40. While the exemption from EMD may be a benefit granted to MSEs, it does not automatically imply that the petitioner exercised the purchase preference option. The fact that the petitioner was treated as an MSE for the limited purpose of EMD exemption does not establish that it had opted for purchase preference in the bid process, as these are two distinct benefits under the MSE policy. The note appended to the undertaking emphasized that exemption from Earnest Money Deposit (EMD) would continue to be available to all MSE bidders, even if they selected the MII policy.

41. In light of the foregoing discussion, we are of the considered opinion that the petitioner has failed to establish that it had selected or exercised the MSE purchase preference option during the bid submission stage. The absence of supporting documentation or system-generated records confirming the petitioner's selection of the MSE purchase preference option, coupled with the petitioner's submission of documents under the MII policy, leads to the conclusion that

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the petitioner did not meet the tender requirements to claim purchase preference as an MSE.

42. In this case, if the petitioner did not explicitly opt for purchase preference despite being an MSE, the court finds it difficult to interfere with the tender process on this ground, particularly given the established principle that judicial review of tender conditions is limited to examining arbitrariness or unreasonableness. There is no evidence to suggest that respondent No.1 acted arbitrarily in not extending purchase preference to the petitioner, as the decision was based on the petitioner’s failure to opt for it.

43. The petitioner's grievance also revolves around the alleged arbitrary modification of respondent No.3's bid price after the reverse auction process had concluded. He raises concerns about the transparency of the process. However, respondent No.1 has explained the price modification after the L-1 price match due to the reduction in the scope of work on account of the closure of its Lube Plant at Rampur, which was originally part of the tender. This reduction in the scope of work resulted in a corresponding reduction in the quantity of work, which necessitated a proportional adjustment in the

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price quoted by the L-1 bidder. Respondent No.1 has emphasized that this adjustment was made in accordance with the tender conditions, which allow for such modifications in the event of changes to the scope of the project. The reduction in scope and corresponding price adjustment were implemented transparently, ensuring that the revised price remained consistent with the proportionate reduction in the workload.

44. Respondent No.1 further explained that after the proportional reduction of the quantity of work to the quoted L-1 price, it called upon the petitioner to match the reduced L-1 price, as required by the terms of the tender. In parallel, an opportunity was also extended to respondent No.3, who, as an MSE bidder having opted for purchase preference, was entitled to match the reduced L-1 price under the Public Procurement Policy for MSE. Respondent No.3 agreed to match the reduced L-1 price, and accordingly, its price bid was revised in line with the reduced scope of work and the reduced L-1 price.

45. The record indicates that the price revision was not an arbitrary modification, but rather a procedural adjustment

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necessitated by the change in the scope of the project and carried out in accordance with the tender provisions. Respondent No.1 has provided detailed justification for the price revision, which was communicated to both the petitioner and respondent No.3, ensuring transparency in the process. Respondent No.3's agreement to match the revised L-1 price as part of its MSE purchase preference was in line with the tender's provisions on purchase preference and price matching.

46. Therefore, in our opinion, the petitioner's grievance regarding the alleged arbitrary modification of respondent No.3's bid price is without merit. The modification of the bid price was a necessary and proportionate response to the reduction in the scope of work, and respondent No.1 followed due process in seeking price adjustments from both, the petitioner and the respondent No.3. The opportunity for respondent No.3 to match the revised L-1 price was in compliance with the purchase preference provisions under the MSE policy, and no arbitrariness or favoritism can be inferred from the actions of respondent No.1 in this regard.

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47. Moreover, price reduction permitted by respondent no.1 can, at the most, be termed as procedural irregularity in the tender process which does not outweigh the public interest in completing the project. Given that the tender pertains to an essential service involving the national petroleum supply chain, the public interest in ensuring the swift completion of this project is considerable. Unless the petitioner can demonstrate clear mala fides, arbitrariness, or a breach of statutory duties, judicial intervention may not be justified.

48. In the context of tender matters, the continuation of the procurement process for "Track and Trace" services by HPCL can be termed as serving public interest. The system is aimed at enhancing operational efficiency, ensuring transparency, and safeguarding national resources, all of which are closely tied to public welfare. By implementing a "Track and Trace" system, HPCL aims at acting in the interest of ensuring accountability and reducing the scope for fraud, which further strengthens the argument that the continuation of this procurement process serves the public interest. The public interest is also served by ensuring that such services are procured efficiently and in a cost-effective manner. Delays or procedural inefficiencies in the tender process could lead to

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higher costs or even derailment of the project, which in turn would have negative implications for the public. Therefore, unless there is a manifest and serious irregularity in the tender process, judicial restraint is advisable, as the public interest in this case outweighs any procedural concerns raised by the petitioner.

49. Since 35% of the work has already been completed by the end March 2024, the exercise of the purchase preference option, at this stage, could disrupt the project, particularly if the MSE is unable to maintain the same quality, standards, or timeline. The nature of *Track and Trace* services often involve intricate processes that demand continuity and technical expertise. Any significant change in contractors at this stage may affect the seamless integration of the remaining project components with what has already been done. The Court is often reluctant to halt or reverse procurement processes once substantial implementation has occurred, as this could lead to wastage of resources and delay in project completion, ultimately impacting public welfare.

50. The petitioner filed the writ petition on 12th March 2024, nearly five months after the reverse auction process

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concluded, and after substantial work had already been undertaken by respondent No.3 under the project. Courts have often denied relief where there is an undue delay in challenging tender decisions, particularly when the successful bidder has already commenced substantial work. In this case, respondent No.3 had completed 35% of the project by the end of March 2024, incurring substantial costs and engaging significant resources. The delay in filing the petition, coupled with the petitioner's failure to establish that it exercised the purchase preference, weakens the petitioner's case for relief.

51. Based on the foregoing analysis, it is apparent that the petitioner has utterly failed to successfully establish that it had exercised the purchase preference as an MSE. The failure to explicitly opt for purchase preference during the bidding process, as required by the tender conditions, resulted in the petitioner being treated as a non-MSE bidder. The court is, therefore, of the opinion that the petitioner's claim for purchase preference cannot be sustained. Moreover, the delay in filing the writ petition, coupled with the fact that substantial work has already been completed by respondent No.3, further diminishes the petitioner's case for judicial intervention.

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52. For the aforesaid discussions made herein above, the writ petition deserves to be dismissed, which, resultantly, is hereby dismissed.

(AMIT BORKAR, J.) **(CHIEF JUSTICE)**

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