

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on 27.10.2025
Pronounced on 13.11.2025
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Whether the operative part or full
judgment is pronounced: **Full judgment**

CJ Court:

LPA No.251/2025 (O&M)

Zain Electricals and others ...Petitioner(s)/Appellant(s)

Through: Mr. Azhar-Ul-Amin, Sr. Advocate with
Mr. Hanan Hussain, Adv.

v/s

Union Territory of J&K and others Respondent(s)

Through: Mr. Faheem Nissar Shah, GA for Nos. 1 to 4
Mr. Nazir Ahmad, Adv. for No. 5

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

PER OSWAL J

1. Appellants are Micro and Small Enterprises registered under the Micro, Small and Medium Enterprises Development Act, 2006 (for short the 'MSMED Act'). Respondent No. 3 issued the following Notices Inviting Tenders(e-NITs):

- (i) E-NIT No. CE/P/KPDCL/RDSS/Kup/01 of 2024-25 dated 16.10.2014 in respect of project of Electrification of Un-Electrified left out Households (UE) of Kupwara District under Revamped Distribution Sector Scheme (RDSS);
- (ii) E-NIT No. CE/P/KPDCL/RDSS/LT-Dist-Tul-Knz/02 of 2024-25 dated 16.10.2014 in respect of project of Electrification of Un-Electrified Households for Tulail and Kanzalwar of Bandipora District under Revamped Distribution Sector Scheme (RDSS) and
- (iii) E-NIT No. CE/P/KPDCL/RDSS/RSTN-Tul/03 of 2024-25 dated 16.10.2014 in respect of project for Construction of new 33/11 KV, 1x63 MVA substation in Tulail along with

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33 KV and 11 KV Feeder Network under Revamped Distribution Sector Scheme (RDSS).

2. Aggrieved of the above mentioned e-NITs, appellants preferred a writ petition bearing WP(C) No. 2631/2024, titled, 'Zain Electricals and others vs. Union Territory of J&K and others' challenging the aforementioned e-NITs and for restraining respondent No. 3 from advertising/allotting the items reserved in terms of the MSMED Act, 2006, read with Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 (for short "the Procurement Policy of 2012") vide SO 581(E) dated 23.03.2012 for MSMEs, to the entities other than MSMEs in respect of the impugned e-NITs and for further directing respondent No. 2 to procure 25% of the items other than 358 reserved items from the appellants. A further direction was also sought to command respondent No. 2 to sever items in the impugned e-NITs, reserved in terms of Procurement Policy of 2012 for MSEs and procure the same from the appellants.
3. The challenge was thrown to the above-mentioned e-NITs on the grounds that in terms of Procurement Policy of 2012 issued by the Central Government in exercise of power conferred by section 11 of the MSMED Act, it is mandatory for the Central Government Ministries, Departments, Public Sector Undertakings (PSUs) etc. of the Government to procure minimum 25% of their annual value of goods or services from Micro and Small Enterprises. They emphasized that the impugned e-NITs include significant items, over which the appellants have statutory right to manufacture and supply in both the areas covered by the Procurement Policy of 2012. The Procurement Policy of 2012 was made applicable to the

Union Territory of Jammu and Kashmir vide order dated 11.01.2020 issued by the Finance Department, Government of J&K to all Administrative Departments including PSUs and Autonomous Bodies mandating strict adherence to the provisions contained in the Procurement Policy of 2012. It was also contended by the appellants that all Government Ministries, Departments, PSUs, and Autonomous Bodies are legally prohibited from procuring any of the 358 items from any entity/enterprise other than the Micro and Small Enterprises, as the same are exclusively reserved for them. It was urged before the learned Writ Court that 16, 10, and 10 items, included in e-NITs No. 1, 2, and 3 respectively, are exclusively reserved for MSMEs and could not have been included in the e-NITs and this inclusion along with other items was violative of long-standing practice in terms of the Policy of 2012. Besides, it was also contended that in all other contracts for procurement of goods and services other than 358 reserved items under the Procurement Policy for Micro and Small Enterprises (MSEs) Order 2012, all Government Departments, PSUs etc. are required to purchase 25% of the goods and services in terms of Clause-3 of the Procurement Policy of 2012. It was also urged that the Eligibility (Clause-1) and Qualification (Clause-2) Requirements providing for technical experience of similar works and Net Worth/Annual Turnover, have the effect of excluding the appellants from participation in the said tendering process.

4. Respondent Nos. 1 to 4 filed the response to the writ petition before the Writ Court stating therein that e-NITs impugned in the petition have been issued under the Centrally Government Sponsored Scheme-Revamped

Distribution Sector Scheme (CSS RDSS), a Pan India Scheme launched by the Ministry of Power, Government of India, with sole purpose of upliftment of electrical distribution network, reduction in A T&C losses and to provide 24x7 quality power supply to consumers. The said e-NITs were formulated in strict consonance with the guidelines of CSS RDSS, standard bidding documents formulated and circulated for adherence by the nodal agency appointed by the Ministry of Power, viz Rural Electrification Corporation Ltd. As the Projects in question are Supply, Installation, Testing (SIT) type, they are outside purview of the MSMED Act and the Procurement Policy of 2012. The Central Sponsored Scheme for Restructured Distribution Sector Scheme focuses on the operational and financial sustainability of the electricity distribution companies in India and the MSMED Act is not directly applicable to this scheme. It was asserted by the respondents that the Public Procurement Policy pertains to procurement of “goods and services” and not to projects under CSS-RDSS, which are SIT type including supply, installation, testing, commissioning and coverage of defects liability period of 24 months. It was further stated that the order from the Department of Finance addressed to all the Administrative Secretaries, PSUs and Autonomous Bodies etc. pertains only to procurement of goods and not the projects, which are SIT type. It was also stated in their response that there are two wings of KPDCL i.e. Planning and Procurement Wing KPDCL and Projects KPDCL. The former is a dedicated wing mandated for procurement of electrical material and equipment, whereas the latter is dedicated to the implementation of work

contracts, approved and sponsored by the Central Ministry of Power. The scope of former being limited only to procurement, as such, adherence to MSMED Act is strictly required, whereas the Projects Wing of KPDCL being involved in SIT Projects, in particular is outside the domain of the MSMED Act.

5. Respondent No. 5 has also filed the response thereby stating that procurement Policy of 2012 is meant for procurement of only goods produced and services rendered by MSEs, however, traders/distributors/sole agent/work contracts are excluded from the purview of Public Procurement Policy of 2012.
6. The learned Writ Court after hearing the parties, dismissed the writ petition preferred by the appellants vide judgment dated 12.08.2015. Aggrieved thereof, the appellants have filed this Letters Patent Appeal, thereby assailing the judgment impugned, on the grounds that:
 - a. That the learned Writ Court has erred in holding that the impugned e-NITs being SIT contracts are indivisible and composite in nature, thus, would fall beyond the scope of MSMED Act, 2006 and reservation policy framed thereunder. As a matter of fact, the e-NITs are predominately procurement contracts and installation is minor or insignificant part of the contract, and the contract could have been easily split in a manner to achieve the object of MSMED Act and the Procurement Policy of 2012.
 - b. That the question that fell for consideration was not as to whether the appellants being MSEs sought preferences over the other contractors in works contracts but was as to whether the procurement policy could be defeated by diverting procurement to the open market, in respect of goods or services predominately covered under the MSMED Act and the policy framed thereunder.

- c. That the doctrine of Legitimate Expectation was not at all considered by the learned Writ Court as in the past so-called composite projects were structured to accommodate MSEs through the Centralized Procurement Policy for procuring key materials through Government stores without any distinction between State Sponsored Schemes or Centrally Sponsored Schemes. In the recent past the “Saubhagya Scheme” a centrally sponsored scheme also followed this practice, ensuring that MSEs received a guaranteed share of supplies.
 - d. That the learned Writ Court has wrongly arrived at the conclusion that MSMED Act, 2006 and the Policy of 2012 are applicable only to stand alone procurement contracts and not to SITs in all circumstances.
 - e. The learned Writ Court has erred in dismissing the writ petition on the ground of *locus* on account of non-participation of the appellants in the tendering process as the appellants were not at all eligible in terms of Clauses 1 and 2 of the NITs.
7. Mr. Azhar Ul Amin, learned Senior Counsel for the appellants, has vehemently argued that the contracts, which form subject matter of the e-NITs were, in fact, the procurement contracts predominately and installation was only a minor and insignificant part of the contract, therefore, the respondents were under obligation to follow the mandate of MSMED Act and Procurement Policy of 2012, but the learned Writ Court has not rightly considered this aspect of the case and in fact, the learned Writ Court ought to have segregated the different components of the contract so as to ensure the compliance of the MSMED Act and procurement Policy of 2012, in its letter and spirit. Mr. Azhar Ul Amin, learned senior counsel has further argued that framing of issue No. 3 was not warranted at all, as the appellants admittedly were lacking the eligibility

to participate in the tendering process and once the appellants were not eligible to participate in the tendering process, their writ petition could not have been dismissed on the ground that they lacked *locus standi* to challenge the e-NITs because of non-participation in the tendering process. He has placed reliance upon the judgment of Kerala High Court in “**Kalloor Electronics and Lightings Pvt. Ltd. Vs. State of Kerala & Ors., 2021 SCC OnLine Ker 3863.**

8. *Per contra*, Mr. Faheem Ahmed Shah, learned Govt. Advocate appearing for respondent Nos. 1 to 4 has argued that as per the guidelines of the Revamped Distribution Sector Scheme (RDSS), the contracts in question do not fall under the Procurement Policy of 2012. Rather, contracts require strict compliance with the scheme's guidelines, the Standard Bid Documents, and all other orders of Rural Electrification Corporation Limited, a nodal agency appointed by the Ministry of Power, Government of India. He contended strongly that the agreements are not merely procurement contracts but belong to the SIT project category. Their execution will inherently require the procurement of goods, installation, and ongoing maintenance. He has drawn the attention of this Court towards Clause 4.4.2 of the RDSS, which provides that the project shall be implemented normally on Turnkey basis and Turnkey means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract. He has further argued that all the three contracts have been

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allotted to the successful bidders and in two cases, even the work has already commenced after the allotment of the contracts.

9. Heard learned counsel for the parties and perused the record.
10. Though this appeal has been rendered infructuous, because the reliefs sought by the appellants cannot be granted to them as the contracts stand already allotted in favour of the successful bidders and the appellants have not chosen to assail the same. However, Mr. Azhar Ul Amin, learned Senior Counsel for the appellants argued that their primary concern is the adjudication of the legal issues involved in this appeal, and therefore, the instant appeal should be decided on its merits. It is under these circumstances that we propose to adjudicate the issues raised by the appellants in this appeal.
11. A perusal of the judgment impugned in this appeal reveals that the learned Writ Court has framed the following three issues:
 - i. Whether the Public Procurement Policy for Micro and Small Enterprises (MSEs), issued vide S.O. 581(E) dated 23.03.2012, framed under Section 11 of the MSMED Act, 2006, is applicable to composite contracts involving Supply, Installation, and Testing (SIT)?
 - ii. Whether Clause 3 and Clause 11 of the said Procurement Policy impose a binding obligation on Government departments and PSUs to procure all items including those forming part of SIT projects exclusively from MSEs?
 - iii. Whether the petitioner, who did not participate in the tender process, has the requisite locus standi to challenge the tender notifications in question?
12. The grievance of the appellants is in respect of the floating of composite e-NITs in respect of the three works as mentioned above. As a matter of fact, the appellants, in the writ petition stated that the items reserved under

Clause 11 of the procurement Policy of 2012 have been illegally incorporated in the NITs rendering these e-NITs non-compliant with the MSMED Act, 2006 and the procurement Policy of 2012. Therefore, the respondents were/are under obligation to segregate the items reserved in terms of procurement Policy of 2012 and procure the same from the appellants.

13. As a matter of fact, appellants sought the Writ Court's intervention to scrutinize and segregate the different components of e-NITs floated by the respondents so that the respondents could procure the items reserved under MSMED Act from the appellants, which would have led to the compliance of MSMED Act and the procurement Policy of 2012.
14. Before arriving at any conclusion, we will first consider the judicial precedents, in respect of essentials of composite contracts. In ***Kone Elevator India (P) Ltd. v. State of T.N., (2014) 7 SCC 1***, the Hon'ble Supreme Court of India has observed as under:

“56.4. The aforesaid decisions cannot be taken aid of to come to a conclusion that installation is assembling and, in the ultimate eventuate, it is a part of the manufacturing process. We are disposed to think so as there is a fundamental fallacy in the submission as far as installation of the lift is concerned. It is not a plant which is erected at the site. It is not a different item like coffee which comes into the market after processing. It is also not like a “weighbridge” as is understood under the excise law. It has to be understood in the conceptual context of the manufacture and installation of a lift in a building. **The lift basically comprises components like lift car, motors, ropes, rails, etc. having their own identity even prior to installation. Without installation, the lift cannot be mechanically functional because it is a permanent fixture of the building having been so designed. These aspects have been elaborately discussed in *Otis Elevator [Otis Elevator Co. (India) Ltd. v. State of Maharashtra, (1969) 24 STC 525 (Bom)]* by the High Court of Bombay. Therefore, the installation of a lift in a building cannot be regarded as a transfer of a chattel or goods but a composite contract.**

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Hence, we unhesitatingly hold that the said decisions are not of much help to the learned Senior Counsel for the State of Orissa.
(emphasis added)

15. So far as SIT contracts are concerned, they cover supply, installation and testing, and would include the procurement of goods as well, whereas in terms of Section 11 of the MSMED Act, the Central Government or the State Government, as the case may be, may notify the policies in respect of the “procurement of goods and services” produced and provided by Micro and Small Enterprises. To fulfill the legislative intent, the Procurement Policy of 2012 was formulated and implemented. Clause 3 of the said Policy makes it mandatory for Ministries, Departments and Public Sectors Undertakings to procure a minimum of 25% of the total annual purchases of goods produced and the services rendered by Micro and Small Enterprises, whereas Clause 11 of the said policy specifically reserves 358 items to be procured exclusively from the Micro and Small Enterprises.
16. The applicability of the MSMED Act, 2006, is focused on the procurement of goods and services. The project under the RDSS (Revamped Distribution Sector Scheme) is structured as a turnkey contract, which by definition requires a single contractor to assume comprehensive responsibility for all phases, from initial design and procurement to final commissioning. The employer's core mandate is the successful delivery of electrification to all remaining unelectrified homes. This scope is intrinsically linked to and necessarily covers the large-scale purchase, supply, and installation of all essential electrical equipment and materials, a composite activity. In view of

the above, we are of the considered opinion that the e-NITs in question are in respect of composite contracts involving supply, installation and testing.

17. The next point for examination is whether the various components of the e-NITs can be segregated, as requested by the appellants/writ petitioners. Clause 6.5.1 of the RDSS Scheme establishes DISCOM's responsibility and accountability for ensuring quality in all scheme works. To achieve this, the clause mandates that the Quality Assurance (QA) and Inspection plan must be an integral part of the contract agreement with the turnkey contractor or the equipment supplier/erection agency, as applicable. Given that the contracts in question already encompass procurement, installation, and quality testing, the Scheme therefore requires DISCOMs to ensure that the entire 'quality assurance and inspection' process is an integral and inseparable component of that single contract. Accordingly, we hold that the contracts under reference are composite, incorporating supply, installation, and testing as integral components, therefore in severable.
18. Even otherwise, it is impermissible for the Court to segregate the various components of the contract in question merely to ensure compliance with the MSMED Act and the Procurement Policy of 2012. The Hon'ble Apex Court has consistently advised that Courts should not interfere with the employer's prerogative in formulating tender conditions and awarding contracts. This right falls within the employer's exclusive domain, barring evidence of malice or misuse of statutory powers. In this context, it is deemed appropriate to take note of the judgment of the Apex Court in "**M/s**

Michigan Rubber(I) Limited v State of Karnataka and others, (2012) 8

SCC 216, wherein it has been held as under:

23. From the above decisions, the following principles emerge:
- (a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
 - (b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;
 - (c) **In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;**
 - (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and
 - (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.
- (emphasis added)**

19. Further, the Hon'ble Apex Court in **Airport Authority of India v Centre for Aviation Policy and Safety Research(CAPSR) and others, 2022 SCC Online 1334** has held that the 'tender terms' are within the domain of the tenderer and not open to judicial scrutiny unless arbitrary, discriminatory or *mala fide* and rather the Government must have a free hand in settling the terms. In the aforesaid judgment, the following principles have been culled out by the Apex Court in respect of the scope of interference in the tender matters and consequent allotment of contract:

- a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the

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heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

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

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

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

20. In view of the foregoing discussion and analysis, we are of the considered opinion that the appellants have failed to establish that the respondents have acted in an arbitrary and capricious manner while issuing the composite e-NITs. Rather, we find that the terms and conditions of the e-NITs are in accordance with Revamped Distribution Sector Scheme (RDSS). The arguments advanced by the appellants, drawing a parallel with the Central Government's Saubhagya Scheme, constitutes a new plea raised for the first time in this appellate stage. As the appellants have failed to lay down the factual foundation in this regard before the learned writ court and have not demonstrated similarity between the two schemes, this new ground is

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inadmissible and cannot be considered at this juncture. Judgment of High Court of Kerala, relied on by learned Senior Counsel for the appellants, is not applicable in the present facts and circumstances of the case.

21. We have examined the judgment rendered by the learned Writ Court. While we concur with the findings of the learned Writ Court that MSMED Act would have no application in the questioned e-NITS, but at the same time, we find that the framing of issue No. 3 was not warranted at all, because the appellants could not have participated in the e-NITS due to their ineligibility, and the writ petition preferred by them could not have been dismissed merely on account of their non-participation in the tendering process.
22. Be that as it may, we do not find any reason to show indulgence and accordingly dismiss the instant appeal being bereft of any merit.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

JAMMU
13.11.2025
Rakesh PS

Whether the judgment is speaking: Yes
Whether the judgment is reportable: Yes