2023:DHC:6598-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 25th August, 2023
Pronounced on: 13th September, 2023

\+ **W.P.(C) 5185/2023 & CM APPLs. 20232/2023, 25770/2023, 25823/2023, 25841/2023, 28895/2023, 29129/2023, 29133/2023, 29137/2023**

SILICA UDYOG INDIA PVT LTD ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 6064/2023**

GILL INTERNATIONAL LTD. ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 11205/2023 & CM APPLs. 43662/2023, 43663/2023**

SILICA INFOTECH PRIVATE LIMITED ..... Petitioner

versus

UNION OF INDIA & ANR. ..... Respondents

\+ **W.P.(C) 11285/2023 & CM APPLs. 43896/2023. 43897/2023**

SILICA UDYOG INDIA PVT LTD ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 11286/2023 & CM APPLs. 43898/2023, 43899/2023**

AMARPALI CYLINDERS PRIVATE LIMITED ..... Petitioner

2023:DHC:6598-DB

versus

UNION OF INDIA & ORS. ..... Respondents

For Petitioners: Mr. Parag P. Tripathi and Mr. Jayant K. Mehta, Senior Advocates with Mr. Aman Nandrajog, Mr. Sumeer Sodhi, Mr. Varun Tankha and Mr. Srinivasan Ramaswamy, Advocates in Items 15 & 30.

Mr. Umang Gupta, Mr. Tarang Gupta and Mr. Vansh Kapoor, Advocates in Item 16.

For Respondents: Mr. Sandeep Sethi and Mr. Rajshekhar Rao, Senior Advocates with Mr. T. Sundar Ramanathan, Mr. Vivek Pandey, Ms. Sukanya Viswanathan, Ms. Shreya Sethi, Mr. Vikram Singh Dalal, Ms. Riya Kumari, Mr. Dushyant Kaul, Mr. Digvijay Singh and Ms. Biyanka Bhatia, Advocates for R-3,4,5 in Items 15, 28 & 30.

Mr. Ravi Prakash, CGSC with Mr. Farman Ali, Ms. Usha Jamnal, Mr. Aman Rewaria, Mr. Yasharth Shukla and Ms. Astu Khandelwal, Advocates and Mr. Hardik Bedi, GP for R-1 & 2 in Items 15 & 30.

Mr. Vedansh Anand, GP for R-1 & 2 in Item 16.

Mr. K. D. Sharma, Advocate for R-1 & 2 in Item 16.

Mr. T. Sundar Ramanathan, Mr. Vivek Pandey, Ms. Sukanya Viswanathan and Ms. Biyanka Bhatia, Advocates for R-3,4,5 in Items 16 & 31.

Mr. Asheesh Jain, CGSC with Mr. Gaurav Kumar, Ms. Ankita Kedia, Advocates and Mr. Prajesh Vikram Srivastava, GP for R-1 & 2 in Items 28 & 31.

Mr. Raman Kapoor, Senior Advocate with Mr. Praveen Mahajan, Mr. Abhinav and Mr. Kunal, Advocates for Intervenors in Item 15.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

CM APPLs. 25770/2023, 25823/2023, 25841/2023 and **28895/2023 in W.P.(C) 5185/2023** *(under Order I Rule 10 r/w Section 151 of the Code of Civil Procedure, 1908 for impleadment)*

1. For the grounds and reasons stated therein, the applications are allowed and Applicants – Tirupati LPG Industries Ltd., Panam Cylinders Private Ltd., Super Technofab Pvt. Ltd., and SM LPG Cylinders Pvt. Ltd. [*collectively*, "*Intervenors*"] are arrayed as parties to W.P.(C) 5185/2023. The Intervenors were heard through their counsel and their submissions have also been considered.

2. Accordingly, the applications are disposed of.

W.P.(C) 5185/2023, W.P.(C) 6064/2023, W.P.(C) 11205/2023, W.P.(C) 11285/2023 and **W.P.(C) 11286/2023**

3. We are confronted with five inter-connected petitions that challenge the eligibility criteria enumerated in the Notice Inviting Tenders ["NITs"] floated by the three leading Oil Marketing Companies ["OMCs"] – Hindustan Petroleum Corporation Limited ["HPCL"], Bharat Petroleum Corporation Limited ["BPCL"], and Indian Oil Corporation Limited ["IOCL"]. The crux of the Petitioners' grievance is that the eligibility conditions unduly curtail the capacity of each manufacturing unit owned by them, to independently participate in the tender process. They assert that if

these clauses are not amended or removed, it would have dire implications for them, potentially forcing them to withdraw from the marketplace altogether. The OMCs, on the other hand, vigorously substantiate their position by underscoring their prerogative to set the terms and conditions of the tender. They further rationalize the introduction of the restrictions articulating its nexus to the broader goal of procurement optimization.

4. Given the uniformity of legal and factual issues raised in all five petitions, and the mutual endorsements of the oral arguments among counsel, we find it appropriate to address these petitions collectively through the present judgment. To streamline our discussion and facilitate comprehension, we will primarily reference the facts laid out in W.P.(C) 5185/2023.

FACTUAL BACKGROUND

5. On 01st May, 2016, the Prime Minister of India introduced the Pradhan Mantri Ujjwala Yojana ["PMUY"] as a benevolent long-term economic strategy aimed at uplifting the families belonging to backward classes, and communities categorized below poverty line. The primary objective was to transition these families, who relied on traditional fossil fuels, to cleaner energy sources. The nationwide implementation of this policy resulted in an unprecedented demand for LPG cylinders. To address this, the Government of India, in tandem with OMCs, initiated drives to engage more manufacturers from across the nation, ensuring the consistent supply of cylinders at cost-effective rates. In light of the surging demand for LPG cylinders under PMUY, the OMCs released NITs in March, 2017 calling for tenders for supply of respective quantities of LPG cylinders.

These NITs featured several innovative provisions, such as zonal distribution of markets, price band, special preference to micro and small enterprises [“MSEs”] etc., all designed to attract new manufacturers into the market to support the enormous demand.

6. Silica Udyog India Pvt. Ltd.,[1] and its sister concerns, namely, Silica InfoTech Private Limited, and Amarpali Cylinders Private Limited,[2] are recognized ‘small enterprises’ under the Micro, Small and Medium Enterprises Development Act, 2006. They are primarily involved in the business of manufacture and sale of LPG gas cylinders through distinct manufacturing units, located across the country. Notably, each of these units holds independent certifications from both the Petroleum and Explosives Safety Organization [“PESO”] and the Bureau of Indian Standards [“BIS”]. In essence, every unit operates as a self-contained factory. However, the LPG cylinders supplied by Petitioners have a restricted market; they can only be sold to the three primary OMCs in India namely, BPCL, HPCL, and IOCL. This means that the entire cylinder market is confined to these three entities.

7. The special preferences outlined in the 2017 NITs fostered a genuine expectation among potential vendors, such as the Petitioners, who anticipated that OMCs would remain consistent with their policy. Driven by this belief, Petitioners secured loans from financial institutions to establish additional manufacturing units and even secured BIS and PESO licenses for each of these units. Silica Udyog India Pvt. Ltd. was incorporated on 26th

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[1] Petitioner in W.P.(C) 5185/2023 and W.P.(C) 11285/2023.
[2] Petitioners in 11205/2023 and 11286/2023, respectively.

February, 2019 with an intent to secure supply orders under the tenders floated by OMCs. Petitioners' expectations seemed validated when in March of 2019, OMCs released NITs containing the special provisions which were initiated in 2017.

8. However, the aforesaid NITs were unexpectedly cancelled, resulting in substantial losses for the Petitioner. The ramifications were twofold: the dormancy of their newly established manufacturing units and the accumulating interest on loans procured for their establishments. Nonetheless, subsequent issuance of fresh NITs by the OMCs in November, 2019, provided some respite and Petitioners obtained contracts for production of specified number of cylinders within prescribed timeframe. Pertinently, the aforesaid NITs lacked certain preferential clauses introduced in the 2017 NITs.

9. Subsequently, on 31st March, 2023, the OMCs released fresh tenders for procurement of high tensile strength LPG cylinders weighing 14.2 kilograms [*hereinafter*, "*March 2023 NITs*"]. Under the eligibility criteria enumerated in these NITs,[3] all manufacturing units having common business ownership or management, including sister companies, must quote a single bid. Therefore, vendors such as Petitioners, have been effectively barred from submitting bids separately through each of their manufacturing units.

10. Aggrieved, Silica Udyog India Pvt. Ltd. preferred a writ petition [W.P.(C) 5185/2023] before this Court, assailing the aforesaid eligibility condition. In the said petition, while issuing notice on 24th April, 2023, as an

[3] Entailed in Clause 6(a) of Annexure-I to BPCL's tender, Clause 6.1 of the tender issued by IOCL, and in the "Conflict of Interest" clause under the head of eligibility in Techno-Commercial Bid section of HPCL's tender dated 31st March, 2023.

interim measure, subject to the final outcome, Silica Udyog India Pvt. Ltd. was permitted to partake in the tender process through all its units and related entities.

Developments post filing of W.P.(C) 5185/2023

11. Claiming parity with Silica Udyog India Pvt. Ltd., another Petitioner, Gill International Ltd., filed W.P.(C) 6064/2023, impugning the restrictive eligibility criteria entailed in the March 2023 NITs, and seeking permission to participate in the tender process through its independent manufacturing unit. In the meantime, supporting the OMCs' impugned decision, four LPG gas cylinder manufacturers sought to intervene by filing appropriate applications [CM APPLs. 25770/2023, 25823/2023, 25841/2023 and 28895/2023] in W.P.(C) 5185/2023.

12. While W.P.(C) 5185/2023 and W.P.(C) 6064/2023 were pending adjudication, the OMCs published a fresh set of NITs on 03rd August, 2023 [referred to as "*August 2023 NITs*"], reiterating the disentitlement of manufacturing units having common ownership/ management, from making separate bids for the tender.[4] This prompted the initiation of another round of litigation, where Silica Udyog Pvt. Ltd., along with the sister concerns, filed three writ petitions [W.P.(C) 11205/2023, W.P.(C) 11285/2023 and W.P.(C) 11285/2023] seeking quashing of the aforesaid eligibility criteria.

PARTIES' CONTENTIONS

On behalf of Petitioners

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[4] Entailed in Clause 12(a) of Annexure-II to BPCL's tender, Clause 6.1 of the tender issued by IOCL, and in the "Conflict of Interest" clause under the head of eligibility in Techno-Commercial Bid section of HPCL's tender dated 03rd August, 2023.

13. Mr. Parag P. Tripathi and Mr. Jayant K. Mehta, Senior Counsel representing the Petitioners, advanced the following arguments, fervently seeking directions to annul the afore-mentioned condition:

13.1. The newly introduced provisions are arbitrary and lack a thoughtful deliberation. In light of past policies set forth by the Government of India, several manufacturing units were established to support the objectives of PMUY. This was done with a well-founded expectation that there would not be abrupt policy reversals causing undue setbacks to manufacturers. Such sudden policy shifts would not only impose severe hardships on manufacturers, but could potentially drive them out of the marketplace altogether.

13.2. PESO, functioning under the Ministry of Commerce and Industry, Government of India, has meticulously deliberated upon and addressed the issue of having multiple LPG cylinder manufacturing units within the same premises, under unified ownership. Their stance resulted in the release of guidelines for the establishment of multiple LPG cylinder manufacturing units at a single location. The contested tender conditions are incongruent with PESO's guidelines, underscoring a glaring contradiction between the positions adopted by two ministries (Ministry of Petroleum and Natural Gas, overseeing PESO, and Ministry of Commerce and Industry, which regulates the OMCs).

13.3. The LPG cylinder market is characterized by an oligopsony, wherein only three buyers wield significant influence over procurement prices. LPG manufacturers cannot compete on price since any bid below the set floor rate, renders them automatically ineligible. As a consequence, their bids must adhere to the price band fixed by the OMCs. Given the buyercontrolled tender process, bidders like the Petitioners cannot influence the price. Instead, competition hinges on the volume of orders allocated to each bidder. This arrangement in the LPG cylinder market was also recognized by the Supreme Court in ***Rajasthan Cylinders and Containers Ltd. v. Union of India and Anr.***,[5] wherein it was observed that insertion of tender conditions on a mere apprehension of anti-competitive practices, is impermissible.

13.4. The OMCs' policy of zonal distribution of market incentivized the establishment of multiple manufacturing units, as seen with entities like the Petitioners. The contentious provisions now risk rendering these units non-viable due to shared ownership constraints. New market entrants, who set up multiple units on loan-based investments, might find it challenging to achieve profitability through a single unit. The rationale behind the zonal division policy was extensively deliberated upon by this Court in ***Tirupati Cylinders Pvt. Ltd. and Anr v. Indian Oil Corporation Limited & Anr.***[6] The actions of the OMCs do not align with any discernible public interest and seem disproportionate to the stated objective. Limiting bid participation based on shared directorship or shareholders, compromises the efficiency of the procurement process, potentially slashing the pool of eligible bidders by half.

13.5. The introduction of the disputed provisions presents anti-competitive barriers, hindering the entry of new manufacturers and thus, is legally untenable. In their response dated 19th April, 2023 to the Petitioners'

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[5] (2020) 16 SCC 615.

[6] 2017 SCC OnLine Del 10606.

objection to the impugned tender condition, BPCL referred to the Model Tender Document issued on 29th October, 2021, which contained a similar 'conflict of interest' clause. However, this clause found mention in Manual for Procurement of Goods, 2017 as well, but was conveniently disregarded in the NITs issued in 2019. Considering the unique nature of the gas cylinder market and the holding in ***Rajasthan Cylinders*** *(Supra)*, this restriction on units with common shareholding should not be pressed.

13.6. The action of the OMCs, being unreasonable, irrational, and arbitrary, infringe Article 14 of the Constitution of India, 1950. It defeats the idea of fair competition and promotes anti-competitive trade practices.

13.7. The impugned condition seems to disadvantage smaller or emerging manufacturers, seemingly favouring major market players, which may lead to undue benefits for the latter. If the intent was to evenly distribute the quantity to be supplied, as portrayed by the OMCs, they could have introduced capacity-based restrictions for entities having multiple manufacturing units, rather than excluding them from the tender process altogether. Considering that August 2023 NITs do not encompass price discovery, and all participating entities would bid within the determined price band, the argument of 'concentration of power' does not hold good.

On behalf of the OMCs and Intervenors

14. Mr. Sandeep Sethi and Mr. Rajshekhar Rao, Senior Counsel, vehemently defended the OMCs' decisions by advancing the following arguments:

14.1. *Market driven policy adjustments*: The underlying impetus for the impugned tender conditions is the marked disparity between excess supply and deficit demand in the current market. To optimize procurement and ensure equitable opportunities for all manufacturing units, the condition that restricts each unit from individual bidding was introduced. Given that manufacturing entities are cognizant of the decreasing need for LPG cylinders, Petitioners' assertion of 'legitimate expectation' lacks merit. They cannot compel the OMCs to perpetually adhere to an earlier policy, especially when procurement strategies evolve in response to market dynamics.

14.2. *Distinct procurement specifications under the 2023 NITs*: The March and August 2023 NITs pertain to procurement of 'high tensity steel'/ 'high strength steel conforming to IS 15914 standards', as opposed to earlier tenders which called for supply of regular steel in large quantities. The PESO and BIS licensing process for high tensile steel is more rigorous than the steel required under NITs issued in 2017 and 2019. Further, unlike the previous tenders, the March 2023 NITs encompassed price discovery on the basis of bids presented. Thus, to ensure best possible price, induce fair competition, and prevent bid-rigging/ collusion by related units, the OMCs prescribed the impugned condition.

14.3. *Preventing market monopolization*: Given the pronounced supply-demand imbalance, permitting bidders to represent each of their units separately might result in an oversaturation of participants. This could potentially facilitate a handful of cylinder manufacturers, especially those with multiple operational units, to monopolize a disproportionate share of orders, undermining the very essence of a competitive tender process.

14.4. *Alignment with governmental guidelines and constitutional principles*: The State, under Article 39(c) of the Constitution, is dutybound to safeguard the economic system by preventing concentration of means of production and wealth. The procurement stipulations align seamlessly with the directives issued by the Government of India, and are a policy consideration that commonly find mention in several public tenders, including the Model Tender Document.

14.5. *Judicial restraint in tender interference*: The Court's purview in matters concerning tender conditions and policies is inherently limited. Barring instances of manifest arbitrariness, blatant illegality, or evident malice, the Court should typically refrain from intervening in such policy decisions.[7]

15. Counsel for Intervenors supported the afore-noted contentions advanced on behalf of the OMCs. In addition, they highlighted that Silica Udyog India Pvt. Ltd. lacks the requisite PESO and BIS approvals for manufacturing high tensile strength steel LPG cylinders and therefore, possesses no *locus standi* to challenge the eligibility criteria.

ANALYSIS AND FINDINGS

16. Having carefully weighed the arguments presented by both sides, we now turn our attention to the clauses under dispute. The impugned condition being nearly identical across all NITs, for convenience, the stipulation contained in Clause 6(a) of BPCL's March 2023 NIT is reproduced below:

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[7] Reliance was placed upon:
(a) ***Maa Binda Express Carrier v. North East Frontier Railway***, (2014) 3 SCC 760.
(b) ***Meerut Development Authority v. Association of Management Studies,*** (2009) 6 SCC 171.
(c) ***Directorate of Education v. Educomp Datamatics Ltd*.,** (2004) 4 SCC 19.
(d) ***Galaxy Transport Agencies v. New J.K. Roadways***, 2020 SCC OnLine SC 1035**.**
(e) ***Jagdish Mandal v. State of Orissa,*** (2007) 14 SCC 517**.**
(f) ***Silpi Constructions Contractors v. Union of India,*** 2019 SCC OnLine SC 1133**.**

"(a) PRICE BID SUBMISSION:

The definition of bidder is as the entity, which has unique PAN.

A Bidder shall submit only one bid in a particular bidding process.

In case of a holding company having more than one independent manufacturing units or more than one unit having common business ownership / management, only one unit should quote.

Similar restrictions shall apply to closely related sister companies. Bidder's sister/ Associated/ Allied concern(s) participating or applying against the same tender, shall lead to disqualification of Bidders.

A Bidder who submits more than one bid will cause all the proposals submitted in the particular bid to be disqualified.

In relation to the above, a person will include firm(s) of Proprietorship / Partnership Firm / Limited Liability Partnership / Private Limited / Limited company / Society registered under Society's Act / Statutory Bodies / any other legal entity, as the case maybe, & will be deemed to have submitted multiple bids in a particular bid if a person bids in any of the two formats given below:

I. individual or proprietorship format and/or
II. a partnership or association of persons format and/or
III. a company format

Whereby,

- *A company shall for this purpose include any artificial person whether constituted under the Indian laws or of any other country.*

- *A person shall be deemed to have bid in a partnership format or in association of persons format if he is a partner of the firm which has submitted the bid or is a member of any association of persons which has submitted a bid.*

- *A person shall be deemed to have bid in a company format if the person holds:*
    - *i. more than 10% (ten percent) of the voting share capital of the company which has submitted a bid, or*
    - *ii. is a director and / or Key Managerial Personnel of the company which has submitted a bid, or*
    - *iii. holds more than 10% (ten percent) of voting share capital in and/or is a director and / or Key Managerial Personnel of a holding company of that company which has submitted the bid.*

> *In case requisite licenses, i.e. PESO approval or BIS license is cancelled by the respective statutory authorities then the contract with the bidder will stand cancelled with immediate effect."*

[Emphasis Supplied]

Decreasing demand for LPG cylinders

17. The primary tenet of any public procurement process is to ensure fair competition. The impugned clause, aimed at levelling the playing field, does not bar any entity from participating; instead, it limits the number of bids that they can submit. These restrictions seek to prevent a single entity or entities with common ownership or management from unduly benefiting by submitting multiple bids and thus, monopolizing the market.

18. Let us now analyse the underlying rationale for the impugned decision of the OMCs. Their contention is that these clauses are designed to balance supply and demand dynamics, prevent market monopolization by entities possessing multiple manufacturing units, and ensure diversified participation. This perspective signifies that the decision is a proactive measure to ensure equitable distribution of market opportunities. They have also furnished specific context to demonstrate decline of demand for LPG gas cylinders through the following historical data: in 2017, a tender for 5.5 crore units of cylinders fetched bids offering 17.54 crore units. Similarly, NITs issued in 2019 for 3.16 crore units attracted bids for 23.80 crore units. In stark contrast, the March 2023 NITs called for a comparatively modest 10 lakh units, even as the broader market assessments indicate a demand in the vicinity of 1.8 crores for 14.2 kilograms cylinders. For ease of understanding, the salient figures exhibiting the supply-demand ratio are encapsulated in the following tabulation:

Year-wise Procurement of LPG Cylinders (in lakhs)

OMCs	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23 (Projected)	2023-24 (Projected)
IOCL	107.4	113.36	138.82	146.75	190.47	188.32	205.04	244.4	95.6	82.7	101.44	60.77	80
BPCL	46.36	50.91	50.91	83.2	76.95	143.44	103.76	134.64	76.93	45.53	57.6	55	55
HPCL	64.34	51.07	51.07	75.34	85.35	109.05	126.84	130.53	85.98	54.76	60.57	24.97	45
Total Demand	218.1	215.34	215.34	305.29	352.77	440.81	435.64	509.57	258.51	182.99	219.61	140.74	180

19. The data presented above undeniably underscores a dwindling demand for LPG cylinders over recent years. This decline is particularly highlighted by the disparity between the number of units tendered and the bids actually received, painting a clear picture of an oversupply situation. Moreover, given the lifespan of an LPG cylinder - typically ranging between 15 to 20 years - it stands to reason that the need for new cylinders will continue to decline as the existing stock remains in circulation. This waning demand provides crucial context for the introduction of the 'conflict of interest' clause in the March and August 2023 NITs. It would potentially mitigate the risk of market monopolization by entities capable of inundating the tender process with multiple bids from distinct manufacturing units or affiliated entities. With supply overshadowing demand and the potential for an even greater imbalance in the future due to the long lifespan of LPG cylinders, it is crucial to manage the procurement process carefully. In such a situation, if multiple units under the same ownership or management were allowed to bid separately, it could disproportionately benefit them, thereby defeating the principles of fair competition and equitable distribution. The impugned clause, in essence, safeguards the interests of the market as a whole, rather than a select few entities. This approach aligns with the

broader principle of maintaining market integrity and ensuring the welfare of all participants. There is thus, considerable merit in the OMCs decision to introduce the restriction.

Oligopsony and market dynamics

20. The Petitioners have highlighted the oligopsonistic characteristics of the LPG cylinder market, which is essentially concentrated around three primary buyers – HPCL, BPCL, and IOCL. Although this market structure presents its own set of challenges, it is pertinent to note that the conditions laid down in the March and August 2023 NITs appear to be motivated not by a desire to suppress competition, but to prevent undue concentration of market power in the hands of a single manufacturer. The aim of fostering a diverse supplier base can serve as a counterbalance to the intrinsic challenges posed by an oligopsonistic market. By discouraging market domination by a single entity, the tender conditions seem designed to mitigate the risks associated with limited buyer options, thereby creating a more level playing field for all market participants.

On arbitrariness and unreasonableness of the impugned eligibility condition

21. The cornerstone of any legal analysis is to determine whether the action or clause in question is arbitrary. The impugned clause, although a departure from previous policies, is not arbitrary or unreasonable. Its intent is to promote fair competition and ensure diversified participation in the bidding process, while adapting to the current market dynamics. This eligibility condition is a protective measure for newer and smaller manufacturers. By restricting larger entities with multiple manufacturing units from flooding the tender with numerous bids, the clause provides

newer entities a fair shot at securing the tender. This scenario may be perceived, and turns out to be, onerous for a few, such as the Petitioners, it does not single out a particular entity; rather, it applies universally to all bidders who fit the specified criteria. In fact the Model Tender Document for Procurement of Goods released by the Ministry of Finance, Government of India on 29th October, 2021, also prescribes a similar 'conflict of interest' clause to be incorporated in NITs. This reinforces the impugned condition's objective of ensuring fair competition. Therefore, we do not find it to be unreasonable or arbitrary.

22. The judgement in ***Rajasthan Cylinder*** (*Supra*), which discussed the concept of oligopsony in the LPG cylinder market, is more focused on collusion and bid-rigging in the context of cartelization, which is not the subject matter of the present petitions and thus, the observations of the Apex Court, rendered in a different contextual background, would not aid the Petitioners' case. In examining the legality of the impugned clause, the Court must weigh the broader public and market interests against the specific commercial interests of entities like the Petitioners.

Doctrine of legitimate expectation

23. The principle of 'legitimate expectation' embodies the notion that when a public authority establishes a certain promise or practice, a reasonable anticipation is generated among affected parties that this promise or practice will continue. This expectation becomes particularly salient in the business context, where enterprises often depend on the stability and predictability of public policy to make long-term investments and strategic decisions. However, it is crucial to recognize that the doctrine of legitimate

expectation does not operate in a vacuum. It must be judiciously weighed against the overarching imperatives of public interest. In the context of the ongoing dispute, it is important to consider prevailing market conditions, specifically, the noticeable shift in market dynamics, which includes a declining demand for LPG cylinders. Coupled with the ever-present risk of market monopolization, these factors provide a compelling rationale for OMCs to adapt and evolve their existing policy frameworks. While it is true that business entities benefit from a stable and consistent policy environment, it is important to understand that policy frameworks are not immutable constructs. Rather, they are designed to be flexible and adaptive to accommodate changes in the socio-economic landscape or to tackle newly emerging issues that were not initially anticipated. This inherent flexibility ensures that policy frameworks remain attuned not only to the interests of a particular segment of stakeholders, but also to the well-being of the broader community.

Dynamic nature of administrative policies and the doctrine of non-interference in tender decisions

24. Courts have traditionally exercised restraint when it comes to reviewing or intervening in policy decisions of administrative authorities. Such policy decisions are often rooted in the expert understanding and specialized knowledge of those authorities. Unless there is evidence of malfeasance or abuse of power, the courts tend to respect the wisdom and discretion of the policy-making body. The doctrine of legitimate expectation does not bind administrative bodies from changing their policies, especially if these changes are in the larger public interest. Policies can be dynamic,

adapting to new circumstances and realities. Administrative decisions, especially those related to public procurement, carry with them a presumption of regularity. Such decisions are assumed to be taken after thorough deliberation, considering the broader public good. The Court can only intervene when this presumption is convincingly rebutted, which is not the case here.

24.1. *Judicial restraint in economic matters:* The scope of judicial intervention in decisions related to economic policies is limited. Courts do not act as appellate authorities over administrative decisions, but only intervene when conditions are manifestly whimsical, capricious, or specifically tailored to benefit a certain entity. In ***R.K. Garg v. Union of India***,[8] the Supreme Court reiterated that in examining their legality, economic matters require more leeway and flexibility due to their complex nature. When legislating or making decisions concerning economic issues, the body in charge needs to have room to adapt and respond to intricate challenges that do not necessarily have clear-cut solutions. In such cases, the Courts with their "*meagre and uninterpreted experience*", should be more inclined to defer to legislative or administrative judgment, which is grounded in empiric understanding.[9] The judgements in ***BALCO Employees' Union (Regd.) v. Union of India and Ors.***,[10] and ***Sri Sitaram Sugar Company Limited and Anr. v Union of India and Ors.***,[11] acknowledge the prerogative of the rule framing authority to cause a change in the economic policies which may detriment certain invested persons, and

[8] (1981) 4 SCC 675.
[9] *See:* Paragraph 8 of ***RK Garg*** *(Supra).*
[10] (2002) 2 SCC 333.

affirm the idea that courts should generally refrain from interfering with economic policies, unless there is a clear violation of rights or principles.

24.2. *The contours of non-interference:* Multiple cases such as ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd***.,[12] ***Uflex Ltd. v. Government of Tamil Nadu and Ors.,***[13] and ***Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) and Ors.***,[14] emphasise the need for judicial deference to the expertise of Governmental and other specialized bodies in authoring the tender conditions keeping in view the prevailing economic scenario, except in instances of arbitrariness, irrationality, favouritism etc. In ***Tirupati Cylinders Pvt. Ltd.*** *(Supra)*, a case specifically related to LPG cylinder procurement, the Court did not intervene when policies changed, emphasizing that a perceived reduction in business or profits does not automatically make State decisions unreasonable. In our opinion, economic shifts, policy changes, and varied business risks are common in a dynamic economy like India, and businesses need to be prepared for such contingencies. The mere fact that the Petitioners might face some hardships or potential reduction in profits does not warrant overturning the impugned decision. As emphasized in ***Tirupati Cylinders Pvt Ltd.*** *(Supra)*, while the Constitution of India guarantees the right to conduct business under Article 19(1)(g), it does not ensure a 'right to profit'.

Alternative proposals and their merit

25. The Petitioners' proposition to cap allotments as a means of ensuring

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[11] (1990) 3 SCC 223.
[12] (2016) 16 SCC 818.
[13] (2022) 1 SCC 165.
[14] (2016) 8 SCC 622.

equitable distribution presents perhaps another viable alternative. However, it is crucial to recognize that achieving equity in market participation can be accomplished through various mechanisms. The approach chosen by the OMCs here is the product of their nuanced understanding of market conditions, informed by historical data and considerations of future challenges. It is not within the purview of this Court to substitute its judgment for that of the OMCs unless their decision is found to be arbitrary or capricious. The intricacies of framing tender conditions - especially in a specialized market like that of LPG cylinders - are best left to those with subject-matter expertise. The OMCs, who are the architects of the tender, are well-positioned to understand the nuances and implications of potential market monopolization and flooding of bids. Therefore, unless proven otherwise, it is for the OMCs to establish the conditions under which the tendering process operates, ensuring that it remains competitive, efficient, and resilient against potential market cornering by a limited set of major players.

CONCLUSION

26. Economic and policy decisions, especially those related to public procurement, must be guided by broader welfare and fairness principles. In this context, the ‘conflict of interest’ clause does seem to have a rational basis rooted in the realities of the LPG cylinder market. Given the overarching objective of equitable distribution in the face of plummeting demand, the introduction of the impugned clause does not appear to be arbitrary or unreasonable. Instead, it seems to be a calibrated measure to adapt to the changing dynamics of the market while ensuring fairness and

broad-based participation. The challenges faced by the Petitioners in adapting to these changes do not constitute sufficient grounds for the Court to intervene. While alternative mechanisms might exist to achieve the intended objective, the choice of mechanism, in this case, the introduction of the 'conflict of interest' clause by the OMCs, appears reasoned and informed. The introduction of this clause took into account market realities and the broader aim of ensuring equitable distribution among suppliers, including MSEs. Given that there is no evidence to suggest that the clause is arbitrary, discriminatory, or introduced with *malafide* intent, there is no compelling reason for judicial interference in this matter. In essence, the principle reaffirmed here is that courts should exhibit restraint and deference to administrative discretion in matters pertaining to tenders and policy decisions unless there is an apparent breach of established legal norms or principles.

27. For the foregoing reasons, the present petitions are dismissed along with pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 13, 2023
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