



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA  
&  
HON'BLE SHRI JUSTICE GAJENDRA SINGH**

**ON THE 2<sup>nd</sup> OF MAY, 2025**

**WRIT PETITION No. 612 of 2025**

***M/S VISHAL PHARMACEUTICAL LABORATORIES THROUGH ITS  
PARTNER HIMANSHU SHAH***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Shri Atul Kumar Gupta - advocate for the petitioner.*

*Shri Vishwajit Joshi – Add. A.G. for the respondent/ State.*

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**Reserved on : 23.04.2025**

**Pronounced on : 02.05.2025**

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**ORDER**

***Per: Justice Vivek Rusia***

The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the terms and conditions No. 7&8 contained in the tender document bearing RFP No. 4243/WCD/ICDS/2024-25 dated 20.12.2024 issued by the Department of Women and Child Development, Government of Madhya Pradesh for procurement of 97,329 medical kits for distribution to Anganwadi Centers across the State.



**THE FACTS OF THE CASE, IN SHORT, ARE AS UNDER:-**

2. The Petitioner is a duly registered partnership firm established in 1983 involved in manufacturing pharmaceutical products and possessing necessary valid licenses including GMP certification, GST Registration and Non-Conviction Certificates.

3. The case of the petitioner is that the respondents issued the impugned RFP inviting bids for the procurement of 97,329 medicine kits comprising 12 medical and surgical items. However, the tender stipulated a requirement that the bidder must be a manufacturer holding a valid drug manufacturing license and most importantly bars distributors, suppliers, and agents from participation (Clause 7). Furthermore, the tender mandated that at least 50% of the medical items (i.e., 4 out of 7 specified medicines) be manufactured by the Original Equipment Manufacturer (OEM) excluding surgical items (Clause 8). The petitioner submits that these clauses are arbitrary, discriminatory and violative of Articles 14, 19(1) (g), and 301 of the Constitution of India and have been tailored to suit specific participants to the exclusion of otherwise qualified bidders including the petitioner who had been disqualified.

4. The petitioner has submitted a representation against such tender conditions but the same has been rejected without due consideration or reasoned justification. Aggrieved, the petitioner has now approached this court for quashing or modification of the clause 7 and clause 8 of tender.

**SUBMISSIONS OF THE PETITIONER**

5. Learned counsel for the petitioner submitted that the conditions



stipulated under Clause Nos. 7 and 8 of the impugned Request for Proposal (RFP) are arbitrary, irrational, and designed to favour a particular class of participants. Learned counsel further submitted that the impugned conditions are inherently self-contradictory and impose unreasonable restrictions on participation without any rational nexus to the object of ensuring quality procurement.

6. Learned counsel also submitted that in earlier procurement exercises involving similar supplies, no such restrictive eligibility conditions were imposed and participation was permitted to a broad class of suppliers including authorized distributors, agents and stockiest. The abrupt departure from past practice without cogent justification is indicative of arbitrariness and non-application of mind.

7. Learned counsel submitted that the RFP involves procurement of a diverse set of twelve pharmaceutical and surgical products and no single manufacturer could reasonably be expected to produce all items in-house.

8. Learned counsel submitted that the impugned conditions are unjustified, especially considering that the items required in the kits - including medicines such as Paracetamol Tablets and Syrup, Zinc Tablets, ORS, and eye ointments are general items abundantly available in the market. The petitioner, being a licensed manufacturer of pharmaceutical drugs, holds valid manufacturing licenses under the Drugs and Cosmetics Act, 1940. Despite this, the firm is disqualified under the tender solely because it does not manufacture four out of the seven specified items. Learned counsel submitted such exclusion unduly narrows competition and creates an unequal playing field to the



detriment of public interest.

9. Learned counsel further submitted that the reliance placed by the respondents on the Drug Policy of 2023 is misplaced as this policy governs procurement by the Department of Public Health and Family Welfare and not the Women and Child Development Department and the mechanical application of the policy without regard to departmental distinctions is arbitrary.

10. Learned counsel lastly submitted that the impugned conditions violate the principles of fairness, transparency and competition as enshrined in the Madhya Pradesh Store Purchase and Service Procurement Rules, 2015. The Representation of the petitioner seeking clarification and relaxation of the eligibility norms was rejected summarily without cogent reasoning and no changes were made to the arbitrary conditions. Thus, learned counsel prayed that such offending and arbitrary conditions be set aside as being contrary to the applicable statutory and policy framework.

11. Learned counsel in support of his submission placed reliance on the judgment of Hon'ble Apex Court in *Maharashtra Chess Association vs. Union of India* reported in (2020) 13 SCC 285; *Nawal Kishore Sharma vs. Union of India* reported in 2014 (9) SCC 329; *Tata Cellular vs. Union of India* reported in 1994 (6) SCC 651; *Kumari Shrilekha Vidyarthu vs. State of U.P.* reported in 1991 (1) SCC 212.

12. Reliance is also placed on the judgment of the Calcutta High Court in *Gurinder Jit Singh vs. Union of India* reported in 1997 SCC OnLine Cal 295 and also on the judgment given by the Jabalpur division bench of this court in *Shrishti Infrastructure Development vs.*



*State of M.P* reported in *ILR 21021 MP 1525* and on the order dated **20/01/2022** in *Sawariya Traders vs. Authorized Officer, Indian Bank in W.P. 37/2022* in Jabalpur.

**SUBMISSION OF RESPONDENTS**

13. Respondents have filed detailed replies to justify the impugned action. Learned Addl. Advocate General appearing for the respondents supported the eligibility conditions prescribed in the RFP by submitting that they are reasonable, necessary and aimed at securing quality assurance, accountability and traceability in the procurement of medical supplies intended for Anganwadi Centres. Learned counsel submitted given the sensitive nature of the supplies involving the health of infants, children and women the State is entitled to impose stringent eligibility conditions to safeguard public interest.

14. Learned Addl. Advocate General further contended that Clause No. 7 requiring bidders to be manufacturers seeks to eliminate intermediaries and middlemen ensuring that goods are sourced directly from manufacturers. Whereas Clause No. 8 which requires bidders to manufacture at least 50% of the items was contended to strike a balance ensuring that the bidder has substantial manufacturing capability while permitting flexibility to source the remaining items from other manufacturers.

15. Learned Addl. Advocate General referred the Drug Policy of 2023 on the ground that the procurement principles embodied therein emphasizing direct procurement from manufacturers and quality assurance which are equally relevant for procurements made by the Women and Child Development Department. Learned counsel submitted



in the absence of a distinct departmental policy, adoption of such standards is lawful and justified.

16. Learned Additional A.G. for respondent/State submitted that the objections raised by the petitioner were duly considered and a corrigendum was issued addressing certain concerns. The department acted within its domain in determining the eligibility criteria keeping in view the paramount interest of the beneficiaries. Learned counsel concluded by submitting that judicial review of such policy decisions is limited to cases of manifest arbitrariness or mala fides both of which have not been demonstrated in the present case and prayed that the writ petition be dismissed.

### **APPRECIATION & CONCLUSION**

17. The petitioner is mainly aggrieved by conditions Nos.7 and 8 of the Request for Proposal (RFP) for procurement of Medicinal Kit for distribution in Anganwadi Centers under the department of WCD of MP which are introduced first time by the respondents. The condition No.7 and 8 are reproduced below: -

“7. Bidder shall be

**Manufacturer having valid own manufacturing license.**

**Distributors/ Suppliers/ Agents are not eligible to participate in the Tenders** (as per MP govt Drug policy 2023-point number 4.1 & 4.2).

**8. At least 50% of the items being manufactured by the O.E.M. except surgical items”.**

18. The tender has been floated by the respondents for the procurement of 97329 medicine kits at the price of Rs. 1,500/- per kit. The specifications of medicine kits and their total quantity are as under:-



**\* Specifications of Medicine Kit – 97329 (Total Quantity)**

S. No	Name of Drug	Packing	Quantity
1	Paracetamol Tab. IP 500 Mg.	10x10 Aluminum foil strips/ blisters with Aluminum foil back, in cartoon	40 strips
2.	Paracetamol Syrup in IP 125 mg.	60 ml. Bottle	4 bottles
3.	Zinc Tablet 20 mg DT	10x10 Aluminum foil strips/ blisters with Aluminum foil back	10 Strip
4.	Chloramphenicol eye ointment IP 1 @w/w (soft geletine eye applicaps)	Applicaps in Amber coloured glass bottle	1 bottle
5.	Povidone Iodine ointment 5% USP (Available Iodine 0.5%)	15 gm. Tube with cartoon	5 tubes
6.	Gamma Benzene Hexachloride	100 ml. bottle	4 bottles
7.	Oral Rehydration Salt IP (WHO Citrate Formulate with anhydrous dextrose)	20.5 gms Sachet	20 pouches
8.	Absorbent cotton wool IP	400 gms roll	1 bundle
9.	Rolled Bandage as per schedule F II of Drug & Cosmetic Act	5 cm x 4 mtr Roll	12 rolls
10.	The medicated pad contains Benzalkonium Chloride Solution I.P. Equivalent to Benzalkonium Chloride 0.5% w/w	One strip size App/19 mm x 70 mm in glassine	20 Pieces
11.	Toilet Soap Liquid Conforming to IS standard IS 4199.2001 (with upto date amendments)	Packed with the dispensing system	4 bottles
12.	Hand Sanitizer Isopropyl Rubbing alcohol IP Isopropyl alcohol IP 70% v/v	Packed in Hip top plastic bottle	4 bottles

19. It is clear from the aforesaid list, that items like Paracetamol, Zinc, Eye ointment, ORS, Cotton wool, Bandage, Toilet Soap Hand Sanitizer etc are easily available in the drug shops in the local market area. It is like a First Aid Kit to be kept in an Anganwadi Center for giving immediate medical treatment by the Anganwadi workers or the



Assistants. It is also an admitted position that there can't be one manufacturer who manufactures all these twelve items. According to the respondents, the distributor, agent are being debarred from participating in this tender in order to reduce the price of the medicine kit by cutting the commission, and percentage of the distributor and supplier or agent. However the method of evaluation is L-1-based evaluation, therefore, even the distributor, supplier or agent can quote the lowest rates. If OEMs are permitted to participate in the tender, then small traders, distributors and MSMEs could be debarred from participating in the tender process. The department of MSME, Bhopal vide its letter dated 13.01.2023 has circulated M.P. Store Purchase and Service Procurement Rules, 2015 framed for the purchase of regular items by various government departments. In these Rules, there is a specific provision for the participation and encouragement of MSME enterprises in government supply. If the value of purchase items and services is more than 2.5 lacs, then it is mandatory to follow the E-tendering process and GEM. MSMEs and Startup have been exempted from payment of earnest money, therefore, conditions No.7 and 8 are detrimental to the interest of MSME enterprises.

20. The next objection of the respondents is that condition No.8 which is under challenge says that at least 50% of the items being manufactured by the original manufacturer. This condition has been imposed for pharma companies which manufacture at least 50% of four items out of the seven items. This condition is not arbitrary but to ensure the quality of material supplied and the accountability for the same. Even if the distributors, dealers and agents are permitted to participate in





the tender process and certainly they will procure the medicines from licensed OEMs and there would be a guarantee for the quality of the material and accountability for the same. It is important to take note that these medicines are easily available in the drug shops and pharmaceutical shops. Therefore, there is no purpose is going to be achieved by only inviting OEMs to participate in the tender when the process of tender is based on L-1.

21. The Apex court in the case of ***Nagar Nigam v. Al Faheem Meat Exports (P) Ltd., reported in (2006) 13 SCC 382*** retreated the scope of judicial intervention in government contract matters:-

“12. In this case, however, we are concerned with a different question. It is now a well-settled principle of law that having regard to the provisions of Article 14 of the Constitution of India, a State within the meaning of Article 12 thereof cannot distribute its largesse at its own sweet will, vide *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489: AIR 1979 SC 1628]. The court can ensure that the statutory functions are not carried out at the whims and caprices of the officers of the Government/local body in an arbitrary manner. But the court cannot itself take over these functions”.

22. It is correct that the government is free to impose any condition in the tender but the law is that it should not be an arbitrary or favoring special class of persons. For the supply and installation of certain items, there could be justification for inviting the original manufacturer to participate in the tender process for obvious reasons like that they are required to maintain the same or they can easily arrange the parts of the big machine, or provide annual maintenance services etc. But for these small items like medicines, bandages, sanitizer & soap etc. there is no justification for procuring these items by original manufacturers. If only



the original manufacturers are permitted to participate, then small traders, suppliers and agents will not get any work of the supplies in the Government departments, and this would amount to “*big fish eat the small fish*”.

23. A similar issue came up for consideration before this Court in the case of ***Bharti Engineering vs. Union of India*** reported in (2020) 20 SCC OnLine MP 3119, in which the Division Bench in para 10 to 19 has held that:-

“10. The sole contention of the respondents is that the Railway Board has approved the instructions by reiterating that the eligibility criteria of the need-based contract of DG sets should be decided by the concerned PEME's of Zonal Railways depending upon local conditions without compromising the quality of maintenance. The respondents have only enclosed a copy of the communication dated 8.1.2019 written by the Director, Elect. Engg. (G), Railway Board to all Principal Chief Mechanical Engineers, but the Board's letter dated 28.3.2018 which has reference in it has not been produced before this Court. In all fairness, the respondents ought to have produced the said letter of the Board which was enclosed by the Director, Elect. Engg. along with a letter dated 8.1.2019. It is not clear before us as to whether the Railway Board has specifically directed all the Zonal Railways to issue a contract of maintenance of DG Sets only to OEM or its authorised dealers. The respondents have not produced any material to show as to what are the local conditions in the Zonal Railways which require maintenance of DG Sets only by the OEM or authorized dealers. The respondents have stated in the return that if the DG Sets are installed by a good company and if the maintenance done by another vendor is not up to the mark quality or the vendor does not have registered technical staff or the vendor does not have genuine original parts, then the maintenance will be difficult. The respondents have not produced any material before this Court that any such problem has ever been faced by the Railways by giving the contract to non-OEM or authorized dealers like petitioners. Only based on apprehension, the respondents have put such a tailor-made condition in the NIT to debar the small/medium enterprises from participation in the NIT. In our considered view, such an action on the part of the respondents is unreasonable and amounts to debarring the lower category of contractors, especially micro, small and medium enterprises would enable the big fish to eat small fish, therefore, the same is unsustainable



and suffers from arbitrariness.

11. We are conscious of the limitation of judicial interference by the High Court in tender/government contracts matters. In the case of ***Tata Cellular V/s. Union of India : (1994) 6 SCC 651***, Hon'ble the Apex Court emphasized the need to find the right balance between administrative discretion to decide matters on the one hand and the need to remedy any unfairness on the other and observed:

- “(1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative, decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative or quasi- administrative sphere. However, the decision can be tested by the application of the "Wednesbury principle" of reasonableness and the decision should be free from arbitrariness, not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose a heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

12. In the case of ***Raunag International Ltd. V/s. IVR Construction Ltd & others : (1999) 1 SCC 492***, again the Apex Court reiterated the principle governing the process of judicial review and held that the Writ Court would not be justified in interfering with commercial transactions in which the State is one of the parties to the same except where there is substantial public interest involved and in cases where the transaction is mala fide.

13. In the case of ***Reliance Airport Developers (P) Ltd. V/s. Airports Authority of India & others: (2006) 10 SCC 1***, the Apex Court held that while judicial review cannot be denied in contractual matters or matters in which the Government exercises its contractual powers, such review is intended to prevent arbitrariness and must be exercised in the larger public interest.

14. In the case of ***Sterling Computers Ltd. V/s. M & N Publication Ltd. : (1993) 1 SCC 445*** the Supreme Court of India held that power of judicial review in respect of contracts entered into on behalf of the State primarily involves the examination of the question whether there was any infirmity in the decision-making process if such process was reasonable, rational and non-arbitrary, the Court would not interfere with the



decision.

15. In the decision of the Supreme Court of India in ***Master Marine Services (P) Ltd. V/s. Metcalfe & Hodgkinson (P) Ltd. & others. : (2005) 6 SCC 138*** following tests for judicial interference in exercise of the power of judicial review of administrative action have been laid down:

The High Court before interfering in tender or contractual matters in the exercise of the power of judicial review should keep the following questions in mind :

- (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.
- (ii) Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'
- (iii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226.”

16. In the case of ***Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70*** Hon'ble the Apex Court has held as under:-

14. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.

17. In the case of ***Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71***, Hon'ble the Apex Court has held as under:-

7. In the contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the



grounds of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

18. In the case of *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672 Hon'ble the Apex Court has held as under:-

90. Article 14 contains a guarantee of equality before the law to all persons and a protection to them against discrimination by any law. Sub-clause (a) of clause (3) of Article 13 defines law as follows:

“law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.”

What Article 14 forbids is discrimination by law, that is, treating persons similarly circumstanced differently or treating those not similarly circumstanced in the same way or, as has been pithily put, treating equals as unequals and unequals as equals. Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation. The propositions deducible from decisions of this Court on this point have been set out in the form of thirteen propositions in the judgment of Chandrachud, C.J., in *In re Special Courts Bill*, 1978. The first of these propositions which describes the nature of the two parts of Article 14 has been extracted earlier. We are not concerned in these appeals and writ petitions with the other propositions set out in that judgment. In early days, this Court was concerned with discriminatory and hostile class legislation and it was to this aspect of Article 14 that its attention was directed. As fresh thinking began to take place on the scope and ambit of Article 14, new dimensions to this guarantee of equality before the law and of the equal protection of the laws emerged and were recognized by this Court. It was realized that to treat one person differently from another when there was no rational basis for doing so would be arbitrary and thus discriminatory. Arbitrariness can take many forms and shapes but whatever form or shape it takes, it is nonetheless discrimination. It also became apparent that to treat a person or a class of persons unfairly would be an arbitrary act amounting to discrimination forbidden by Article 14. Similarly, this Court, recognized that to treat a person in violation of the principles of natural justice would amount to arbitrary and discriminatory treatment and would violate the guarantee given by Article 14.

19. In view of the foregoing discussion and keeping in the aforesaid verdict of the Apex Court, we find that condition no 2 being discriminatory and the result of an arbitrary action of the respondent no.2 and 3 is not liable to be sustained, hence this petition deserves to be and is hereby allowed, and impugned Condition No.2 in NIT dated 1.6.2020 is hereby quashed the petitioner is also permitted to participate in the tender process. No order as to costs.



24. In view of the above discussion, the terms and conditions No. 7 & 8 contained in the tender document bearing RFP No. 4243/WCD/ICDS/2024-25 dated 20.12.2024 issued by the Department of Women and Child Development, Government of Madhya Pradesh for procurement of 97,329 medical kits for distribution to Anganwadi Centers across the State are hereby quashed.

25. The writ petition is **allowed** with the cost of Rs. 10,000.00/- (**Rupees Ten Thousand Only**) payable to the petitioner by the respondents.

**(VIVEK RUSIA)**  
**JUDGE**

**(GAJENDRA SINGH)**  
**JUDGE**

Vatan