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WP-32969-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 25th OF AUGUST, 2025

WRIT PETITION No. 32969 of 2025

SHAKAMBHARI ISPAT POWER LTD.

Versus

*MADHYA PRADESH POWER GENERALTION COMPANY LTD. AND
OTHERS*

.....
Appearance:

Shri Vivek Dalal - Advocate for Petitioner.

*Shri Arpan Pawar - Senior Advocate with Shri Akshat Arjaria - Advocate for
Respondent No.1.*

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ORDER

Per. Hon'ble Shri Justice Sanjeev Sachdeva, Chief Justice

1. Petitioner impugns the Condition No.4(b) of NIT dated 02.08.2025 issued by the respondent No.1, whereby offers were invited for dismantling and Sale of balance Retired Units No.6, 7, 8 and 9 of Satpura Thermal Power Station, Sarai (Part-II).

2. Petitioner impugns a solitary condition in the eligibility criteria which is extracted as under :

(b) Experience Criteria: - Should have successfully executed orders (including part executed) by the Buyer as a main contractor of same or similar i.e. retired Power plant with one or more units, having total installed capacity of 200 MW or above, which should essentially include dismantling and subsequent lifting of Steam Generator (Boiler), Steam Turbine, Generator and their Associated



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Auxiliaries, type of works / contracts in State Owned Power Generating Companies /Other Captive Power Utilities of PSU / NTPC / Govt. Industries or Departments / Semi Govt. Industries or Departments / Other Leading Industries / IPPs / PSUs in India placed in last 7 years ending with initial date of opening of bid; are to be uploaded. Buyers should be

Or

(i) Having one order where in work is completed or partly completed with value of the completed or partly completed work as Rs. 113.304 Crore (excluding Taxes) or above.

Or

(ii) Having two orders where in work is completed or partly completed with value of completed or partly completed work as Rs. 70.815 Crore (excluding axes) or above.

Or

(iii) Having three orders where in work is completed or partly completed with value of completed or party completed work as Rs.56.652 Crore (excluding Taxes) or above.

3. The contention of the petitioner is that it is not clear as to whether the installed capacity of entire power generation plant should be 200 MW or above or the capacity of the retired power plant should be 200 MW or above. Further, it is contended that such criteria has been prescribed to favour big players and to oust smaller players. Learned counsel for the petitioner submits that petitioner had dismantled retired power plant to the extent of 120 MW out of the complete installed capacity of 450 MW.

4. In the instant case, respondents have invited bids to dismantle and sale of balance retired four units each having an installed capacity of 200 MW. The experience criteria as required in the bid prescribes that the contractor should have experience of dismantling retired power



plant with one or more units having total installed capacity of 200 MW or above. Since the respondents seek to dismantle four retired units of 200 MW each, it is clear that they have sought participation by bidders who have experience of dismantling of at least one retired unit of installed capacity of 200 MW. Petitioner clearly does not satisfy the eligibility criteria as petitioner has dismantled a unit having an installed capacity of 120 MW. The contention of learned counsel for the petitioner that the installed capacity of 200 MW should be read as the installed capacity of the entire power plant and not the retired unit of the plant that is sought to be dismantled does not in our view have any merit for the reason that tender is for four units in question having installed capacity of 200 MW each and since the respondents are seeking dismantling of the retired power units of 200 MW each, they have in our view correctly prescribed the precondition of having experience of retiring at least one plant having installed capacity of 200 MW.

5. The contention that the said condition has been imposed to favour bigger players and to oust smaller players also does not have any merit. Keeping in view the capacity of the plant which is sought to be dismantled i.e. 200 MW each, the condition appears to be just and proper.

6. Further, we find no merit in the contention of learned counsel for the petitioner that in the past, the installed capacity was never a



criteria and the criteria was to deposit of EMD only. Said argument also does not hold any water for the reason that it is open to the employer to prescribe conditions or experience criteria as may be required for the execution of the work. Merely because somebody has the capacity to furnish the EMD but has no past work experience cannot be a ground for not prescribing an experience criteria or eligibility condition. It is common practice that while prescribing eligibility criteria, employer fixes criteria keeping in view the nature and scope of work required to be executed and prescribes a condition so that an entity who has experienced in executing similar nature of work only would be eligible and not somebody who only has the financial capacity to pay the EMD but lacks any experience.

7. We also find no merit in the contention of the learned counsel for the petitioner that the experience criteria is vague for the reason that petitioner has made self conflicting submissions. On the one hand, petitioner submits that it is not clear as to whether the installed capacity of 200 MW relates to the retired plant or the entire generating plant and on the other hand, states that 200 MW capacity has been fixed to favour bigger players and to oust smaller players. This submission clearly shows that petitioner is very clear in its mind that installed capacity of 200 MW or above refers to the installed capacity of the retired plant only and not the entire plant.

8. Reference may be had to the judgment delivered in the matter of *Michigan Rubber (India) Ltd. Vs. State of Karnataka (2012) 8 SCC 216*



which provides the scope of judicial review in the matter relating award of contracts by the State and its instrumentalities . The Supreme Court after considering the law of judicial scrutiny with respect to tender conditions, concluded in paragraph 23 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.”

9. Relying upon *Michigan Rubber (India) Ltd. (supra)*, the Supreme Court in *Airport Authority of India Vs. Centre for Aviation Policy, Safety and Research (CAPSR) & Ors. 2022 SCC OnLine SC 1334* held that the government and their undertaking must have a free hand in



setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by the bias, the Court would interfere and it is further held that Court cannot interfere with the terms of the tender prescribed by the government because it feels that some other terms in the tender would have been fair, wiser or logical.

10. Furthermore, it is settled position of law that the employer can prescribe any condition which is reasonable and there can be no challenge to experience criteria and eligibility condition imposed by the employer. We are also view that the employer in prescribing an experience criteria of dismantling a retired power plant of having install capacity of 200 MW or above does not appear to have done to favour anybody but said experience criteria has been fixed keeping in view the nature and scope of work sought to be executed by the subject tender.

11. Accordingly, we find no merit in the petition and no ground to issue notice. Petition is dismissed.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(VINAY SARAF)
JUDGE

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