

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**WP(C) No. 317/2024**

CM No. 738/2024

a/w

**WP(C) No. 276/2024**

CM No. 664/2024

**WP(C) No. 279/2024**

CM No. 667/2024

**WP(C) No. 281/2024**

CM No. 671/2024

**WP(C) No. 319/2024**

CM No. 671/2024

**WP(C) No. 325/2024**

CM No. 749/2024

**WP(C) No. 403/2024**

CM No. 970/2024

**WP(C) No. 416/2024**

CM No. 1010/2024

HIGH COURT



OF JAMMU & KASHMIR AND LADAKH

**WP(C) No. 432/2024**

CM No. 1052/2024

**WP(C) No. 433/2024**

CM No. 1053/2024

**WP(C) No. 434/2024**

CM No. 1054/2024

**WP(C) No. 454/2024**

CM No. 1089/2024

**WP(C) No. 464/2024**

CM No. 1111/2024

**Reserved on:14.05.2024**

**Pronounced on:05.06.2024**

**WP(C) No.317/2024**

Kewal Krishan Gupta, Age 75 years  
S/O Late Hans Raj  
R/O H. No. 135 A/D Gandhi Nagar,  
Jammu.

...Petitioner(s)

Through: Mr. Gagan Basotra, Sr. Advocate  
with Mr. Sumit Moza, Adv.  
Mr. Abhimanyu Singh, Adv.  
Mr. Hamzah Hussaini, Adv.

1. UT of Jammu and Kashmir  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.
2. Excise Commissioner, Excise  
and Taxation Complex, Rail Head,  
Jammu

...Respondent(s)

Through: Mr. D. C. Raina, Advocate General  
with Mr. KDS Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.

**WP(C) No.276/2024**

Kuldeep Singh, Aged 34 years  
Son of Sh. Des Raj,  
R/O ParshallaTipri Banoon  
District Doda.

...Petitioner(s)

Through: Mr. Sunil Sethi, Senior Advocate  
with Mr. Parimoksh Seth, Adv &  
Mr. T. S. Chib, Advocate.  
Mr. Ravi Dogra, Advocate.

1. UT of Jammu and Kashmir  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.

...Respondent(s)

2. Excise Commissioner, Excise  
and Taxation Complex, Rail Head,  
Jammu.

Through: Mr. D. C. Raina, Advocate General  
with Mr. K.D.S. Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.

**WP(C) No.279/2024**

Ashish Babbar Aged 34 years  
Son of Monohar Lal Babbar,  
R/O H. No.103 Sector 5, Upper  
Roop Nagar, Jammu.

...Petitioner(s)

Through: Mr. Sunil Sethi, Senior Advocate  
with Mr. Parimoksh Seth, Adv.&  
Mr. T. S. Chib, Advocate.  
Mr. Ravi Dogra, Advocate.

1. UT of Jammu and Kashmir  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu. ...Respondent(s)
2. Excise Commissioner, Excise  
and Taxation Complex, Rail Head,  
Jammu.

Through: Mr. D. C. Raina, Advocate General  
with Mr. K.D.S. Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.

**WP(C) No.281/2024**

- Sunita Choudhary Aged 42 years  
Wife of Late Sh. Jagdish  
Choudhary,  
R/O Raipur, Satwari,  
Tehsil Jammu South, District  
Jammu. ...Petitioner(s)

Through: Mr. Sunil Sethi, Senior Advocate  
with Mr. Parimoksh Seth, Adv.&  
Mr. T. S. Chib, Advocate.  
Mr. Ravi Dogra, Advocate.  
...Respondent(s)

1. UT of Jammu and Kashmir  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.

2. Excise Commissioner, Excise  
and Taxation Complex,  
Rail Head, Jammu.

Through: Mr. D. C. Raina, Advocate General  
with Mr. K.D.S. Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.

**WP(C) No.319/2024**

- Nitin Gupta, Age 43 years  
S/O Sh. Kewal Krishan Gupta,  
R/O H. No. 135 A/D Gandhi Nagar,  
Jammu ...Petitioner(s)

Through: Mr. Sumit Moza, Adv

1. UT of Jammu and Kashmir  
Through Commissioner/ ...Respondent(s)

Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.

2. Excise Commissioner, Excise  
and Taxation Complex, Rail Head,  
Jammu.

Through: Mr. D. C. Raina, Advocate General  
with Mr. K.D.S. Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.

**WP(C) No.325/2024**

Shriya Rajput, Age 23 years,  
D/O Sh. Pritam Singh,  
Permanent R/O Village Chorli,  
Tehsil Bishnah, Distt. Jammu,  
A/p Ward No.55, Marble Market,  
Jammu.

...Petitioner(s)

Through: Mr. Rakesh Sharma, Advocate.

1. UT of Jammu and Kashmir  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.

...Respondent(s)

2. Excise Commissioner, Excise  
and Taxation Complex, Rail Head,  
Jammu.

Through: Mr. D. C. Raina, Advocate General  
with Mr. K.D.S. Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.

**WP(C) No.403/2024**

Subash Chander, Age 26 years  
S/O Sh. Titru Ram,  
R/O Blandh, Tehsil Ramanagar,  
District Udhampur

...Petitioner(s)

Through: Mr. Nitin Bhasin, Advocate.

1. UT of Jammu and Kashmir  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.

...Respondent(s)

2. Excise Commissioner, Excise and Taxation Complex, Rail Head, Jammu.

Through: Mr. D. C. Raina, Advocate General with Mr. KDS Kotwal, Dy. AG & Mr. Sumeet Bhatia, GA.

**WP(C) No.416/2024**

Amit Kumar, Age 27 years  
S/O Bodh Raj,  
R/O Village Chhandityal,  
Tehsil Hiranagar, District Kathua

...Petitioner(s)

Through: Mr. M. K. Bhardwaj, Senior Advocate with Mr. Gagan Kohli, Advocate.

1. UT of Jammu and Kashmir  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.

...Respondent(s)

2. Excise Commissioner, Excise and Taxation Complex, Rail Head, Jammu.

Through: Mr. D. C. Raina, Advocate General with Mr. KDS Kotwal, Dy. AG & Mr. Sumeet Bhatia, GA.

**WP(C) No.432/2024**

Ashok Singh Jamwal, Age 65 years  
S/O Sh. Sansar Singh Jamwal,  
R/O 27/B Karan Nagar Ext.,  
Rehari Mohalla Jammu.

...Petitioner(s)

Through: Mr. Nitin Bhasin, Advocate.

1. UT of Jammu and Kashmir  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.

...Respondent(s)

2. Excise Commissioner, Excise and Taxation Complex, Rail Head, Jammu.

Through: Mr. D. C. Raina, Advocate General with Mr. K.D.S. Kotwal, Dy. AG &

Mr. Sumeet Bhatia, GA.

**WP(C) No.433/2024**

Mohd. Sarvar Aged 33 years ...Petitioner(s)  
S/O Khadim Hussain,  
R/O, Ward No.5, village Mahra,  
Tehsil Surankote, Poonch,

Through: Mr. Sunil Sethi, Senior Advocate  
with Mr. Parimoksh Seth, Adv.&  
Mr. T. S. Chib, Advocate.

1. UT of Jammu and Kashmir ...Respondent(s)  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.

2. Excise Commissioner, Excise  
and Taxation Complex,  
Rail Head, Jammu.

Through: Mr. D. C. Raina, Advocate General  
with Mr. K.D.S. Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.

**WP(C) No.434/2024**

Sunil Kumar Age 62 years ...Petitioner(s)  
S/o Sh. Jia Lal Sharma,  
R/O House No.186, Ward No. 6  
Near Shiv Mandir, Thodhi, Jawahar  
Nagar, Rajouri-185132

Through: Mr. Anuj Sawhney, Advocate

1. UT of Jammu and Kashmir ...Respondent(s)  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.

2. Excise Commissioner, Excise  
and Taxation Complex, Rail Head,  
Jammu.

Through: Mr. D. C. Raina, Advocate General  
with Mr. K.D.S. Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.

**WP(C) No.454/2024**

1. Preety Vohra W/O Ranjeev  
Kumar Vohra R/O 221,  
KachiChawni Palace Road,  
Jammu Aged 42 years. ...Petitioner(s)
2. SanjeevGoswami S/O Ram  
Kumar R/O Shop No.16  
Parade Road, Jammu

Through: Mr. Virender Bhat, Advocate.

1. UT of Jammu and Kashmir ...Respondent(s)  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.
2. Excise Commissioner, Excise  
and Taxation Complex,  
Rail Head, Jammu.

Through: Mr. D. C. Raina, Advocate General  
with Mr. KDS Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.**WP(C) No.464/2024**

Raj Kumar, Age 30 years,  
S/O Bodh Raj  
R/O Chhandityal, Tehsil Hiranagar  
District Kathua

...Petitioner(s)

Through: Mr. M K Bhardwaj, Sr. Advocate  
with Mr. Gagan Kohli, Advocate.

1. UT of Jammu and Kashmir ...Respondent(s)  
Through Commissioner/  
Secretary, Finance Department,  
Civil Secretariat, J&K, Jammu.
2. Excise Commissioner, Excise  
and Taxation Complex,  
Rail Head, Jammu.
3. Technical Programmer/Officer,  
Excise Department, Jammu

Through: Mr. D. C. Raina, Advocate General  
with Mr. K.D.S. Kotwal, Dy. AG &  
Mr. Sumeet Bhatia, GA.

**Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**JUDGMENT**

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1. In this bunch of writ petitions, since common questions of law and facts arise for consideration, they were heard analogously and are being decided by this common judgment. For the facility of reference, brief facts from each of the petitions are being referred to as under:

**FACTS:**

**WP(C) No. 317/2024**

2. The petitioner is aggrieved of the order No.100-EC of 2024 dated 13.02.2024, whereby respondent No.2 has arbitrarily withdrawn the bid and cancelled the auction result with regard to liquor vend situated at Excise Range City North, JMC Ward No.5A. Respondent no.2 issued notice for e-auction of 305 retail liquor vend (JKEL-2) license for sale of liquor for the year 2024-25 in the UT of J&K and for Excise Range City North, JMC Ward No.5-A, three vends were proposed for auction and the petitioner participated in the bidding process, where the minimum reserve bid price was earmarked Rs.15.00 lacs and petitioner submitted his bid for Rs.15.00 lacs, and subsequently, was declared as H1. To the surprise of the petitioner, vide order impugned, the petitioner's bid among others were cancelled, due to poor response and less competition. Aggrieved whereof, the petitioner has approached this court by way of filing the instant petition.

**WP(C) No. 276/2024**

3. The facts, that emerge from the perusal of this writ petition, are that consequent upon issuance of Excise Policy, 2024-25, the Excise Commissioner

issued notice vide No.100-EC of 2024 dated 13.02.2024, for e-auction of 305 retail liquor vends (JKEL-2) licenses, including the location, Ward No.54-D in Excise Range City South. Bid document for e-auction of JKEL-2 vends for the year 2024-25 was also issued simultaneously. The Annexure appended to Bid document reveals that the minimum guaranteed revenue per shop per month for the year 2024-25 was Rs. 24.00 lacs, MGQ of J&K special whisky/country liquor/local IMFL brand per shop p.a. was 66000 and minimum reserve bid price was Rs.30.00 lacs. The petitioner participated in the e-auction process for the vend in question by submitting his bid for the location in question and was adjudged as the H1 at Rs.30.00 lacs. Accordingly, the petitioner was informed that he is the highest bidder and was advised to deposit 100% bid price within five bank workings days. Much to the dismay of the petitioner, vide impugned order dated 13.02.2024, he was informed of the cancellation of the e-auction process for the location for which he has submitted his bid. Aggrieved of the aforesaid action of the respondents, the petitioner has approached this court by way of filing the instant writ petition.

**WP(C) No.279/2024**

4. In this petition, e-auction of liquor vends for the year 2024-25 for 10 locations, including the location Panchayat Upper Dhangri in Excise Range Rajouri-Poonch for which the petitioner participated, deposited participation fee, earnest money deposit and also uploaded the requisite documents on the web site designed for conducting e-auction, has been cancelled by the respondent no.2, due to poor response and less competition, vide impugned order dated 13.02.2024, in spite of the fact that the petitioner is adjudged as highest (H1). Dissatisfied

whereof, the impugned order has been challenged by way of filing this writ petition.

**WP(C) No. 281/2024**

5. In this petition, the petitioner has challenged order No.100-EC of 2024 dated 13.02.2024 issued by respondent no.2, whereby, amongst others, e-auction of liquor vends for the year 2024-25 for 10 locations, including for the location Rajgarh Panchayat, Rajgarh in Excise Range Doda-Kishtwar-Ramban in reference to Bid document for e-auction of JKEL-2 vends for the year 2024-25 has been cancelled on the ground of poor response and less competition.

6. It is averred in the petition that the petitioner, being fully eligible with respect to terms and conditions of the notice for e-auction dated 28.03.2023 applied for participated in the e-auction process for the vend location in question and deposited participation fee, Earnest Money Deposit (EMD) and uploaded the requisite documents. The e-auction proceedings were conducted by the respondents w.e.f. 10.02.2024. The further case of the petitioner is that in Annexure appended to bid document dated 01.02.2024, location Rajgarh, Panchayat Rajgarh in Excise Range Doda-Kishtwar is shown at Serial No.23, in which Minimum guaranteed revenue per shop per month for the year 2024-25 is shown at Rs.7.00 lac, MGQ of J&K Special Whisky/country liquor/local IMFL brand per shop p.a. for the year 2024-25 is shown 42,000 and Minimum reserve bid price is fixed at Rs.15.00 lacs.

7. It is further averred in the petition that petitioner was adjudged as highest (H1) at Rs.15.00 lacs and the petitioner was informed the same by

respondent no.2 and was further advised to deposit 100% within 05 bank working days.

8. It is a matter of record that just after one day of declaration of result, respondent no.2, all of a sudden, without giving any plausible reasons, has cancelled the e-auction process for locations, including the location for which the petitioner was declared highest bidder. Hence the instant petition.

**WP(C) No. 319/2024**

9. Facts, which give rise to throw challenge to the impugned order in this writ petition, are that the petitioner has participated in the e-auction process for location of vend situated at Excise Range City North, JMC Ward No.11. It is averred in the petition that the petitioner was adjudged as H1. Annexure annexed with bid document, shows the position for Excise Range City North, JMC Ward No.11, at Serial No.19, which would further reveals that one vend is sought to be auctioned, wherein the Minimum reserved bid price for the year 2024-25 is Rs. 15.00 lacs. The petitioner submitted his bid of Rs.15.00 lacs for the aforesaid location and eventually was declared as H1. It is averred that respondent no.2 has passed the impugned order without any rhyme and reason and the auction result for vend location JMC Ward No.11 has been cancelled in terms of Clause XXIII of bid document 2024-25, which has been challenged in the instant petition.

**WP(C) No. 325/2024**

10. Brief facts involved, in this case, succinctly summarized are that respondent no.2 issued Bid Document No.58-EC of 2024 dated 01.02.2024 of e-auctioning of retail liquor vends (JKEL-2) for different locations falling under

different Excise Ranges reflected in the Annexure, which in the instant case is for Excise Range City North, Jammu Municipal Corporation, Ward No.5C, at Sr. No.8, wherein while participating in the bid, petitioner deposited participation fee to the tune of Rs.50,000/- and EMD of Rs.10.00 lacs. It is further averred in the petition that petitioner was declared H1 bidder for the location in question and in terms of letter of acceptance was directed to deposit bid amount within seven working days and complete the requisite formalities. Subsequently, the respondent no.2, abruptly, cancelled the auction result of the petitioner by way of impugned order dated 13.02.2024, which is challenged by the medium of this writ petition.

**WP(C) No. 403/2024**

11. In this case, vide order No.100-EC of 2024 dated 13.02.2024, respondent no.2, amongst others, has cancelled the e-auction of liquor vends for the year 2024-25 for 10 locations, including for the location JMC Ward No.4-B in Excise Range City North in reference to Bid document for e-auction of JKEL-2 vends for the year 2024-25 issued vide No.58-EC of 2024 dated 01.02.2024. The petitioner is aggrieved of the aforesaid order and an Annexure appended with bid document at serial No.5 for the location of the liquor vend in question, wherein Minimum guaranteed revenue per shop per month is shown as Rs. 9 lac, MGQ of J&K Special Whisky/country liquor/local IMFL brand per shop p.a. for the year in question is shown as 30000 and Minimum reserve bid price was fixed at Rs. 15.00 lac.

12. That the petitioner submitted his bid for the location in question i.e. Ward No.4-B in Excise Range City North and was adjudged H1 at Rs.15.00 lacs.

vide e-mail dated 12.02.2024. The petitioner was informed of the same and advised to do the needful and just after one day of declaration of result declaring petitioner H1, his bid has been cancelled by the respondent no.2 vide impugned order. Hence, the instant petition.

**WP(C) No. 416/2024**

**13.** Challenge in this writ petition is to the order No.44-FD of 2024 dated 26.02.2024, to the extent it pertains to the cancellation of bid submitted by the petitioner, *qua* the location Plassi Panchayat, Excise Range Kathua. It is averred in the petition that auction process has been cancelled, in view of poor response and less competition. The petitioner has participated in the e-auction proceedings in respect of liquor vend for the location Plassi Panchayat, Excise Range Kathua, which is mentioned at Serial No. 29 of the Annexure-A appended with the bid document, wherein it is clearly reflected that number of vends sought to be auctioned is one, Minimum guaranteed revenue per shop per month for the year 2024-25 is Rs.10 lacs, MGQ of JK Special Whisky/Country Liquor/Local IMFL brand per shop p.a. for the year 2024-25 is 66000 bottles (having capacity of 750 ml each); and the Minimum reserve bid price is fixed at Rs.15 lacs.

**14.** That the bid of the petitioner has been adjudged as the highest (H1) at Rs.16.00 lacs against Minimum reserved bid price of Rs.15.00 lacs. It is averred in the petition that in spite of petitioner being H1, he did not receive any message from the respondents for depositing 100% amount and other requisite formalities. On getting no response from the respondents, the petitioner approached the authorities and was conveyed that the location Plassi Panchayat at Serial No.29 for Excise Range Kathua will be re-auctioned again due to poor

response and less competition. It is the aforesaid act of the respondents, which is being challenged by way of filing this writ petition.

**WP(C) No. 432/2024**

15. Facts which, lead to the filing of the instant petition are that the petitioner submitted his bid for the location JMC Ward No.24 B in Excise Range City North. The Annexure appended with the bid document mentioned the location in question at Sr. No.43, wherein Minimum guaranteed revenue per shop per month for the year 2024-25 is shown Rs. 13 lacs, MGQ of JK Special Whisky/Country Liquor/ Local IMFL brand per shop p.a. for the year 2024-25 (in bottles of 750 ml) is 40000; and Minimum reserve bid price in the year 2024-25 is Rs.30.00 lacs. The petitioner being fully eligible, participated in the bid process, and finally adjudged as highest bidder at Rs.30.00 lacs. However, vide order No.43-FD of 2024 dated 26.02.2024, the respondent no.2, has cancelled the e-auction of liquor vends for the year 2024-25 for 3 locations, including the location, for which the petitioner has participated i.e. JMC Ward No.24 B in Excise Range City North on the ground of poor response and less competition. The petitioner in the backdrop of the aforesaid facts of the case is aggrieved of the impugned order dated 26.02.2024, which is sought to be challenged by way of filing of this writ petition.

**WP(C) No. 433/2024**

16. The brief facts of the case are that consequent upon issuance of the Excise Policy, 2024-25, the respondent No.2 issued notice for e-auction of 305



retail liquor vends (JKEL-2) licenses under endorsement notice No.EC/Exc/e-auction/2024-25/7182 dated 01.02.2024. After that, the respondent no.2 issued bid document for e-auction of JKEL-2 vends vide No.58-EC of 2024 dated 01.02.2024. The petitioner, being fully eligible, applied for allotment of JKEL-2 license for the location Excise Range City North, JMC Ward No.36, which is mentioned at Serial No.52 of the Annexure appended to the bid document, perusal whereof, would further show that MGR per shop per month was fixed at Rs.14 lacs, MGQ of JK Special Whisky/country liquor/Local IMFL brand per shop p.a.. for the year 2024-25 was 60000; and Minimum reserve price in the year 2024-25 was 30 lacs. The petitioner deposited participation fee, Earnest Money Deposit (EMD) and also uploaded the required documents; that the e-auction proceedings were conducted w.e.f 11.02.2023 to 13.02.2024. The petitioner was ultimately declared as highest bidder at Rs.31.00 lacs; the petitioner was informed by the respondents that his bid amounting to Rs. 31.00 lacs was highest bidder for the location in question and was advised to do the needful. However, on 27.02.2024, the respondent no.2 issued order No.Ec/Exc/e-auction/2024-25/7762 dated 27.02.2024 and cancelled the auction result of locations including the location for which the petitioner has been declared highest in view of poor response and less competition. It is this order which is impugned in the present petition.

**WP(C) No. 434/2024**

17. The facts which emerge, in this case, are that petitioner has applied for participating in the e-auction process for the vend Location Poonch MC ward

No.10, which is shown at serial No.20 of the Annexure of the bid document in Excise Range Rajouri-Poonch where no. of vend is shown as 01, Minimum Guaranteed Revenue per shop per month for the year 2024-25 has been shown at Rs.12.00 Lac, MGQ of J&K Special Whisky/country liquor/local IMFL brand per shop p.a. for the year 2024-25 is shown as 40000 and Minimum reserve bid price for the year 2024-25 was fixed at Rs.15.00 lacs.

**18.** It is stated in the petition that the petitioner was adjudged as highest (H1) at Rs.15.00 lacs and was informed, accordingly, and was advised vide email dated 12.02.2024 by respondent no.2 that his bid amounting to Rs.15.00 lacs is highest for the aforesaid location and he has to deposit 100% of bid amount within 07 bank working days and also to complete the requisite formalities. After declaring the petitioner as higher bidder, the respondent no.2 has issued the impugned order No.100-EC of 2024 dated 13.02.2024, whereby the auction result of the location Poonch MC ward No.10 has been cancelled on vague grounds. Further, one more notification was issued by respondent No.2, which is impugned in this writ petition, i.e. notification No.EC/Exc/e-auction/2024-25/7762 dated 27.02.2024, wherein call is made to re-auction for retail liquor vends for the location including location of Poonch MC Ward No.10. The aforesaid two notifications/orders are made subject matter of challenge in this writ petition.

**WP(C) No. 454/2024**

**19.** The facts, which emerge in this case are that petitioners have applied for participating in the e-auction process for the vend Location JMC Ward No.15E, Jammu reflected at serial No.26 of Annexure appended to bid document

and location JMC Ward No.10D Jammu reflected at serial No.18 of the said Annexure appended to the bid document, respectively, in reference to Bid document for e-auction of JKEL-2 vends for the year 2024-25 issued vide No.58-EC of 2024 dated 01.02.2024. Petitioners, being fully eligible and qualified, applied for the aforesaid locations and deposited participation fee, EMD and uploaded the required documents. The bids submitted by the petitioners for the locations of JMC Ward No.15E and JMC Ward No.10D was adjudged as the highest at Rs.15.00 lacs and they were informed, accordingly, and were advised to deposit the 100% bid amount within 5 days.

**20.** It is stated in the petition that only after one day of declaration of the result declaring the petitioners as highest bidder for the said locations, the respondent No.2, without any power or authority has issued the order No.100-EC of 2024 dated 13.02.2024, which is impugned in the present petition.

**WP(C) No. 464/2024**

**21.** Petitioner, in this petition, is challenging the notice bearing No.EC/E-auction/2024-25/7540-47 dated 15.02.2024 to the extent it pertains to the declaring the result of the bid submitted by the petitioner for location Bann Panchayat Excise Range Kathua as inclusive due to technical glitch in the portal. The substantial bid of Rs. 32.00 lacs submitted by the petitioner for the location Bann Panchayat against minimum bid price of Rs.30.00 lacs was accepted on 9:25:05 and was declared as H1 for the aforesaid location and the bid time was closed at 9.35 a.m. The bidding process was completed successfully and the petitioner's bid was accepted as H1. The petitioner immediately informed the respondents about acceptance of the bid and extension of 5 minutes more than

the usual closing time i.e. 9.30 am in the portal and was expecting email with regard to the depositing of the bid amount. The respondents did not send the email or telephonically inform the petitioner about the cancellation of the bid of the petitioner as inconclusive due to technical glitch. Aggrieved of the aforesaid act of the respondents, the petitioner has approached this court by way of filing this writ petition.

**ARGUMENTS ON BEHALF OF MR. GAGAN BASOTRA, SR. ADVOCATE. In WP(C) No.317/2024.**

22. Mr. Gagan Basotra, learned Senior counsel submits that the executive instructions, by way of bid document, cannot be contrary to the policy decision of the Government, which has statutory force. The learned counsel has referred to the policy objectives of the said decision, a perusal whereof, reveals that it has no commercial aspect. He further submits that as per Clause 2.3.2 of the policy decision, the re-auction could have been possible only in cases where no response is received in the e-auction. This situation has not arisen in the present case and, thus, the action of the respondents by virtue of order impugned for re-auctioning, is bad in the eyes of the law. He further places reliance upon Clause 2.3.4 of the policy, a perusal whereof reveals that although the bidder can participate for number of vends but he has to pay EMD separately for each bid. Since his bid has been rejected, so grave prejudice has been caused as he has been deprived of participation for other vends.

23. He further placed reliance on Clause 2.3.8 of the said policy, a perusal whereof, makes it abundantly clear that the bidder shall make his own arrangement for the shop/premises in a specified area owned, leased or rented

and the suitability for location for vend to be ensured by the bidder. The above clause further stipulates that the bidder shall ensure that the premises selected/identified by him meet the requirements of the J&K Excise Act/Rules. The learned Senior counsel has also referred to para 4 of the reply of the Government that the order which is impugned in the present case has been issued by the Excise Commissioner on the directions of the Finance Department, Government of Jammu and Kashmir. Thus, as on date, it is not known whether the said decision, which is impugned in the present petition has been taken by the Government or by the Finance Department and what weighed with the authorities to change the decision just after 12 hours, when as per the record the bid of the petitioner was accepted on 12.02.2024 and was cancelled on 13.02.2024 by the Excise Commissioner.

**24.** He further emphasised that the Government cannot substitute the reasons by way of objections, which do not find mention in the order impugned, as the order impugned reflects that the bid of the petitioner was cancelled only on two counts i.e. poor response and less competition. However, the respondents while filing reply have added that it has been cancelled because of consequent loss to the Govt. exchequer as reflected in para 5 of the reply. The reasoning given by the respondents in the reply affidavit that it was because of the loss to the Govt. exchequer has not been spelled out in the order impugned, rather this reason has been added by virtue of objections, which according to him cannot be done.

**25.** Mr. Basotra has requested this court to summon the record of the respondents with a view to verify that what deliberations were held and what

weighed with the authorities to cancel the bid document just within 12 hours after accepting the bid of the petitioner and how there is an abrupt change of policy in a day which lead to the passing of the aforesaid order.

**26.** The learned Senior counsel has also placed reliance on clause 2.3.10 of the said policy, which talks of Minimum Guaranteed Revenue on monthly basis, which should be as per the location. Learned Senior counsel further referred to the policy in which detail figures have been specified with respect to various locations, number of vends, Minimum Guaranteed Revenue per shop per Month for the year 2024-25, Minimum Guaranteed Revenue of JK Special Whisky/Country Liquor/Local IMFL brand per shop P.A. for the year 2024-25 and Minimum Reserve Bid Price in the year 2024-25 and he figures at serial no.6 of JMC Ward No.5-A, wherein three vends have been identified and the Minimum guaranteed revenue per shop has been fixed seven lakhs and the Minimum bid price has been fixed as fifteen lakhs, which according to the learned counsel is the license fee.

**27.** With a view to substantiate his arguments, learned counsel has referred to Clause (viii) of the Conditions to be fulfilled by the successful bidder, wherein it is emphatically made clear that the bid amount shall be the license fee only and every licensee shall have to deposit the Minimum Guaranteed Revenue (MGR) on account of applicable Excise Duty/Fee as shown against each vend as per the procedure prescribed and MGRs were required to be deposited by or before 1<sup>st</sup> of every month compulsorily by the licensee which would ultimately be adjusted against the actual amount of duties accruing on the stock of the liquor lifted by the retailer.

**28.** He further submits that the Government under the garb of Clause (XXIII) of the Bid Document has cancelled the bid of the petitioner, wherein the Govt. has been given unbridled powers to add/delete/de-notify/change any of the locations/cancel the auction process in respect of all/any of the location(s) without specifying any reason at any time prior/during or after the auction process. He further submits that this clause, which has been pressed into service by the respondents while passing the order impugned was not there in the excise policy, which has statutory force and the respondents, by no stretch of imagination, could have added this clause, which gives them unbridled powers in the bidding document. The bidding document has to be in consonance with the excise policy and not in contravention to the same and, thus, the very incorporation of the aforesaid clause in the bidding document and placing reliance upon the same is contrary to law and liable to be rejected.

**29.** The learned counsel submits that since the bid of the petitioner has been cancelled, grave prejudice has been caused to him. Further, a right has accrued to the petitioner when his bid was accepted and once that right has accrued and the Government has entered into correspondence with the petitioner, then that right cannot be taken away, without following due process of law or providing an opportunity of being heard to the petitioner as the same will be violative of fundamental rights of the petitioner.

**30.** Lastly, learned senior counsel has argued that the respondents, by no stretch of imagination, could have added the ground of loss of Government exchequer the reason for cancelling the bid of the petitioner, when no such reason has been spelled out in the order impugned. The bid of the petitioner was

cancelled only in view of the poor response and less competition in the bidding and the loss of the Govt. exchequer was nowhere in the order impugned and the respondents, by no stretch of imagination, could enlarge the scope of reasoning in the objections, when no such reasoning have been spelled out in the order impugned. On this count also, the order impugned, according to him cannot sustain the test of law and is liable to be quashed.

**ARGUMENTS ON BEHALF OF MR. M K BHARDWAJ, SR. ADVOCATE IN WP(C) NO.416/2024**

31. Mr. M.K. Bhardwaj, learned Senior counsel appearing on behalf of the petitioner has argued that once the petitioner has been declared as the highest bidder, a right has accrued to him and, once the Government has entered into a correspondence with the petitioner by declaring him as the highest bidder, then that right cannot be taken away without adopting due process of law. In the present case, according to him, no such process has been followed by the respondents. Therefore, the action of the respondents in cancelling the bid of the petitioner is arbitrary, as the petitioner has not been provided any opportunity of being heard before issuance the order impugned.

32. He has laid emphasis on the issue that the only reason, which has been assigned by the respondents in rejecting the bid of the petitioner, is poor response and less competition and this ground is not available to the respondents, insofar as the case of the petitioner is concerned. He has also drawn the attention of this Court to the Government order dated 26.02.2024, which is impugned in the present petition, a perusal whereof reveals that for the vend location Plassi Panchayat Excise Range, Kathua, there were only two bids and after initiation of



the process by the respondents in conformity with the terms and conditions of the bidding document, the petitioner has been declared as the highest bidder and, thus, it does not lie in the mouth of the respondents to state that there was poor response or less competition, which could be a justifiable reason for cancelling the bid of the petitioner.

**33.** The learned Senior counsel has provided a copy of temporary license, which has been issued in favour of Sh. Prakash Chand for the location Panchayat Draman, Kathua, whereby, the said person has been declared as a successful bidder and he was the sole participant for the said vend location and yet his bid has been declared as successful and a temporary license has been issued in his favour, however, the auction of the petitioner's vend has been cancelled allegedly on the ground of poor response and less competition.

**34.** According to him, the Government, while distributing the State largesse, cannot adopt pick and choose policy, and action of the respondents, in the instant case, is an arbitrary exercise of power, where the respondents, acting on their whims and caprice, have cancelled the bid of the petitioner and, on the other hand, where there was a sole participant, has finalized the said bid. Thus, the argument of the learned counsel that the action of the respondents, in distributing the State largesse, smacks of *mala fide* considerations and the said action is an arbitrary exercise of power.

**35.** The next argument, which has been advanced by him, is that the moment petitioner has been declared as a highest bidder, he was required to deposit an amount of Rs. 10 lacs and, thus, with the said deposit, he is debarred from participating in other bids. As a consequence thereof, a grave prejudice has

been caused to the petitioner, as the petitioner has been deprived of participating for other bids. He further submits that such a right cannot be taken away, without following due process of law.

**36.** Lastly, learned senior counsel for the petitioner has drawn attention of this Court, with respect to the guidelines issued by the Ministry of Finance and also with respect to the general instructions on procurement and project management. Although, the aforesaid instructions have been issued by the Ministry of Finance with respect to the procurement and project management, yet with a view to lay emphasis that even a single bid cannot be rejected, he has placed reliance on the same. He has drawn the attention of the Court to Clause 11.8, which relates to the rejection of the single bid.

**37.** Thus, a bare perusal of the aforesaid clause reveals that the lack of competition shall not be determined solely on the basis of number of bidders and even if there is one bidder, the process should be considered valid.

**38.** Mr. M.K. Bhardwaj, learned Senior counsel for the petitioner in WP(C) No. 464/2024 submits that the petitioner, in this case, has participated for Bann Panchayat vend and the only reason, which has been given by the respondents in rejecting the bid of the petitioner for this particular vend i.e. Bann Panchayat is due to technical glitch in the portal. Consequently, the bids could not be concluded due to inability of bidders to offer incremental bids within the period of outage and, thereby, resulted in non-conclusive H1 bidder for the location, which finds mention in the order impugned dated 15.02.2024.

39. Learned Senior counsel, with a view to substantiate his claim, has drawn the attention of the Court to Annexure-III of his petition, a perusal whereof, reveals that the bid of the petitioner was uploaded well in time as the date and timing has been reflected in the aforesaid document and the said bid has also been accepted. After having accepted the said bid, the respondents have arbitrarily rejected the bid of the petitioner, by virtue of order impugned on the ground, which is factually incorrect and contrary to record. The minimum price, which has been fixed by the respondents was Rs. 30 lacs and the petitioner has offered Rs. 32 lacs, which is higher than the minimum price fixed by the Government.

**ARGUMENTS OF MR. SUNIL SETHI, LEARNED SENIOR COUNSEL APPEARING ON BEHALF OF THE PETITIONERS in WP(C) Nos.276, 279, 281 & 433/2024.**

40. As per the learned Senior counsel, Mr. Sunil Sethi, the only ground, for which the cases of the petitioners have been rejected, by virtue of the order impugned, is that there was less competition and poor response. The further argument of learned counsel for the petitioners is that the reasons, which have been spelt out in the order impugned, have no logical basis with the object sought to be achieved or based on any reasonable classification in light of the fact that once the minimum price has been fixed by the Government by way of a rational policy, then, in that eventuality, the rejection of the petitioners' bid on the ground that there is less competition has no logical basis.

41. Once the object of the Government to have a minimum price is achieved, then the rejection of the cases of the petitioners for lack of competition loses its significance. The prime concern of the Government is to have the

minimum guaranteed revenue/ minimum bid price by way of a policy, which was achieved in the instant case when the same was offered by the petitioners and despite that the Government has gone for re-auctioning by not finalizing the bid offered by the petitioners.

**42.** Thus, according to the learned counsel for the petitioners, once the object of the Government to have a minimum bid price is achieved, then the rejection of the bid of the petitioners for lack of competition is illegal and cannot sustain the test of law and liable to be set aside. As per him, what the Government is going to achieve by way of re-auction is not forthcoming from the record. Once the minimum price, which has been fixed by the Government and offered by the petitioners and later on accepted by the Government, then the Government cannot backtrack from the said promise to finalize the said bid in favour of the petitioners by assigning the reason that there was lack of competition or there was poor response.

**43.** The learned counsel has further argued that it is not a case, where the Government has not fixed the minimum price for the particular bid, where they wanted to have the maximum competition or level playing field, rather it is a case, where the Government after rationalizing the last year bid price and keeping in view all the relevant factors has fixed the minimum bid price for a particular vend, by way of a policy, then, the Government, by no stretch of imagination, can backtrack from the said policy, when the said object, which is sought to be achieved, by way of a bid, has been achieved. What laudable object the Government is going to achieve by way of re-auction is not forthcoming

from the record and the decision, which is impugned in the present petition, does not seem to be logical.

**44.** The next argument of the learned senior counsel for the petitioners is that, once the Government has entered into a correspondence with the petitioners by accepting the offer of the bid of the petitioner, then right has accrued to the petitioners, which cannot be taken away, without following the due process of law. The due process of law, in the instant case, could be issuance of notice and providing an opportunity of being heard to the petitioners, which has not been done and thus, the action of the respondents in cancelling the bid offered by the petitioners, by virtue of the order impugned, cannot sustain the test of law.

**45.** The learned counsel further submits that the Government does not have an unfettered right of cancelling the offer of bid by relying upon Clause XXIII of the bid document, which gives unbridled power to the Government to cancel the offer without assigning any reason. He points out that the said condition can be pressed into service only in case of emergency. In case, if this condition has to be pressed into service, then what is the purpose of providing the other Clauses in the tender document, as the incorporation of this clause will give arbitrary power to the Government to cancel any contract, without assigning any reason.

**46.** Lastly, learned senior counsel has argued that the law has been settled by the Hon'ble Supreme Court in various authoritative pronouncements that, in a case, where the minimum price for the bid has been fixed by the authority in the tender document, even if, there is one bid, the same cannot be rejected on the ground that there is less competition. Thus, the decision of the Government in

rejecting the case of the petitioners, after having accepting the same, is illogical and in contravention to the law laid down by the Apex Court in various authoritative pronouncements.

47. Mr. Sethi, learned senior counsel also laid emphasis that the Government is not averse with regard to the process of auction, rather the Government has objection with regard to the output of the auction, more particularly, when the initiation of the auction process is in conformity with the terms and conditions of the bid. Thus, the Government cannot reject the output of the said bid, whereby the petitioners' bid has been accepted, being the lowest. Another point, which has been raised by learned senior counsel, is that the Government cannot substitute reasons for rejection of the bid, by way of filing objections, when no such reasons are spelt out in the order impugned. In absence of any reasons, which are logical, the order impugned cannot sustain the test of law.

**ARGUMENTS OF MR. SUMIT MOZA, LEARNED COUNSEL FOR PETITIONER IN WP(C) NO. 319/2024**

48. Mr. Sumit Moza, learned counsel for the petitioner has argued that the respondents have cancelled the bid of the petitioner for poor response and less competition and also, on the ground that the same could not fetch the maximum revenue, which is not reflected in the order impugned.

49. Hefurther argued that the data, which has been placed on record, reveals that there are certain vends, which were auctioned in the previous year for a particular price, which have been reduced this year and yet, in those cases, the respondents have not cancelled their bids, rather finalized them. In the instant

case, the respondents have cancelled the bid of the petitioner, on the ground of poor response and not fetching the maximum revenue. He further submits that it is not understandable that, how this ground of not fetching the maximum revenue, is available to the respondents, when the respondents themselves have fixed the minimum price for a particular vend and if that minimum price is being offered by the participants and the Government has achieved that target in receiving that particular price, the said ground is not available to the respondents.

**50.** Thus, according to him, the rejection of the case of the respondents is palpably bad in the eyes of law and liable to be rejected.

**ARGUMENTS OF MR. VIRENDER BHAT, LEARNED COUNSEL IN WP(C) NO. 454/2024**

**51.** Mr. Virender Bhat, learned counsel for the petitioner has laid emphasis that the invitation of a bid is an offer and any bidding process comes to an end, when that process is finalized and culminates into contract. He also submits that Clause (XXIII) of the Bid Document, which gives unbridled powers to the respondents, can be exercised before the contract is complete or else before the bid is finalized and once, the bid is finalized, then the said power cannot be resorted to by the respondents.

**52.** The learned counsel further submits that once the acceptance has reached the concerned person and the offer of acceptance, although conditional, is accepted, then the contract is finalized and a right is accrued to the party, which cannot be taken away, without following due process of law or resorting to the unbridled powers, as envisaged under Clause XXIII of the bid document. After the acceptance of the bid, it is illegal and irrational, on the part of the

respondents, to resort to the aforesaid powers, which give unfettered right to the respondents to cancel the bid. There is no quarrel with respect to the aforesaid power, which can be exercised before the bid is finalized and the offer is accepted.

**53.** Learned counsel for the petitioner has drawn attention of this Court to Section 2 (a) (b) (d), Section 3 and 4 and also Section 23 of the Indian Contract Act, 1872. He submits that, whatever has been argued, has statutory backing and the learned counsel has laid emphasis that the communication of acceptance can be revoked before the same is accepted and once it is accepted, there will be a contractual obligation and the communication and the proposal get complete, when the same is accepted by the other side. For the facility of reference, Sections 3 and 4 of the Contract Act are reproduced hereunder:

***“3. Communication, acceptance and revocation of proposals.- The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.***

***4. Communication when complete.- The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.’***

***The communication of an acceptance is complete,-  
as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;  
as against the acceptor, when it comes to the knowledge of the proposer.***

***The communication of a revocation is complete.-  
as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;  
as against the person to whom it is made, when it comes to his knowledge.”***



54. Lastly, he has referred to Section 23 of the Contract Act, which reads as under:-

**“23. What considerations and objects are lawful and what not.-**

**The consideration or object of an agreement is lawful, unless-**

**it is forbidden by law; or  
is of such nature that, if permitted, it would defeat the provisions of any law;  
or**

**is fraudulent; or involves or implies injury to the person or property of another or; the Court regards it as immoral, or opposed to public policy.**

**In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.”**

A perusal of Section 23 of the Contract Act reveals that the consideration or object of an agreement is said to be unlawful and void, if the parameters enumerated in the aforesaid section are not met.

55. Lastly, learned counsel for the petitioner has submitted that once the offer is accepted and revoked thereafter, the said revocation will be void and illegal, as the same will be in derogation to the mandate and spirit of Section 3 and 4 of the Contract Act.

**ARGUMENTS OF MR. RAKESH SHARMA, LEARNED COUNSEL IN WP(C) NO. 325/2024**

56. Mr. Rakesh Sharma, learned counsel for the petitioner submits that the petitioner has already deposited an amount of Rs. 10 lacs as an earnest money and Rs.50,000/- as registration fee before participating in the bid process. It is submitted that the respondents, despite fully knowing the fact that there was only one bidder in the bidding process, declared the petitioner as successful bidder.

Therefore, it does not lie in the mouth of the respondents to agitate that there was only one bidder or there was poor response.

57. After having prior knowledge with respect to number of participating bidders, the respondents proceeded with the bidding process and thus the respondents by, no stretch of imagination, can cancel the bid on the ground of poor response.

58. Lastly, learned counsel for the petitioner has laid emphasis on the fact that the excise policy has come into force w.e.f. 01.04.2024 and will continue to remain in force till 31.03.2025, which is evident from a bare perusal of the notification issued by the Government of Jammu & Kashmir in the Finance Department. He further submits that because of the issuance of the order impugned, much time has squandered and even the license ought to have commenced from 1<sup>st</sup> April and one month has already lapsed. The loss, which has been suffered by the petitioner, is liable to be compensated by the respondents, if the petition is allowed, as she has been deprived of her accrued right for no fault of her.

**ARGUMENTS OF MR. NITIN BHASIN, LEARNED COUNSEL IN WP(C) NO. 403/2024**

59. Mr. Nitin Bhasin, learned counsel for the petitioner has argued that the conditions, which have been pressed into service in the order impugned are arbitrary and could not be applied to the case of the petitioner. He has further argued that once the government has achieved the minimum target, which has been fixed in the bidding process, then the condition of having poor response for not having maximum competition pales into insignificance. Thus, the rejection

of the case of the petitioner for poor response and subsequently objection raised by the respondents that e-auction could not fetch maximum revenue, is not sustainable in the eyes of law and liable to be rejected.

60. Learned counsel for the petitioner further submits that if the Government wanted maximum competition, in that eventuality, the Government could have reduced the price of the bidding process further to have maximum competition, which has not happened in the instant case.

**ARGUMENTS OF MR. D. C. RAINA, LEARNED ADVOCATE GENERAL ON BEHALF OF THE STATE:**

61. It has been argued by the learned Advocate General that the liquor trade does not vest any right on the petitioners and it is an absolute privilege of the Government to part with such privilege and nobody has an unfettered right of having such a privilege. He further submits that the liquor trade is a privilege, which the Government parts and, the scope of interference by courts in fiscal matters is minimal as compared to normal contractual obligations.

62. The learned Advocate General has further argued that even the highest bidder has no right till the license is issued and before that stage, it is up to the Government to withdraw the said process and no one has an unfettered right of challenging the same. He further argued that the parameters of judicial interference in economic and contractual matters are different from other ordinary matters. He has even gone to the extent of submitting that it is the privilege and right of the Government to withdraw the policy, till this process is finalized, and one of the laudable objects in the economic matters is to generate more revenue, which is the basis of the excise policy.

**63.** The learned Advocate General has further argued that in absence of any *malafide* or bias or arbitrariness, in any of the writ petitions, the issue, which has been projected, and relief, which has been sought in these petitions, cannot be gone into.

**64.** The learned Advocate General has further laid emphasis that principle of natural justice has no role in contractual and fiscal matters. He has further argued that once the petitioners have participated in the bidding process, knowing fully well the terms and conditions of the bidding document, in which, Clause XXIII gives an unfettered right to the Government, then perhaps, it is not right of the petitioners to agitate that the said clause was not in consonance with the excise policy, more particularly, when the petitioners have participated in the bidding process without demur and eyes wide open. After having participated in the bidding process, which is in conformity with the terms and conditions of the bidding document, the petitioners are estopped in law to question the same, at this belated stage.

**65.** Mr. Raina, has further laid emphasis that the Government has more latitude, insofar as, the economic matters are concerned and grant of license to the manufactures / sale of liquor would essentially be a matter of economic policy, where it is settled law that the Courts normally do not intervene. However, this Court is not precluded to test the action of the respondents, if the same is arbitrary, irrational or *malafide*. Since there is no allegation of arbitrariness or *malafide* or foundation laid down in the petition, the action of the respondents cannot be tested in the present petitions.

66. The learned Advocate General has further laid emphasis that the power of the judicial review will not be permitted to be invoked to protect the private interest, at the cost of the public interest, or to decide the contractual dispute. In the instant case, as per him, the unsuccessful bidders have imaginary grievances and thus, the Court cannot interfere, either at the initial or at the final stage, as there is no public interest involved.

67. The learned Advocate General has laid stress on the principle that, insofar as, the trade of liquor is concerned, no one has legal or fundamental right to trade in liquor and the matters relating to the policy decision governing the commercial / economic aspects are to be treated differently than the normal contractual matters. In absence of any motive, malafide or gross arbitrariness, the judicial interference is minimal. With a view to fortify his contention, the learned Advocate General has placed reliance in the *Tata Cellular vs. Union of India* reported in (1994) 6 SCC 651.

68. The perusal of the aforesaid judgment shows that the Government has freedom of contracts, which can only be decided by the application of Wednesbury principle of reasonableness and the same must be free from arbitrariness not affected of bias or actuated by *mala fides*. In absence of any such allegation, the said decision of the Government to go for re-auction cannot be gone into. The law, according to the learned Advocate General, is settled that evaluating tenders of awarding contracts are essential commercial functions and thus, principles of equity and natural justice, have to be kept at bay.

69. The learned Advocate General has further argued that the Court does not sit as a Court of appeal in fiscal matters, as the authority floating the tenders

is the best judge of its requirement. Therefore, according to him, the Courts' interference should be minimal. He further laid emphasis that the authority, which floats the tender and the tender document is the best judge as to how the documents have to be interpreted/drafted. Even, law has been settled to this extent that, if there are two interpretations which are possible, then the interpretation of the author must be accepted and the Courts can only interfere to prevent the arbitrariness, irrationality, bias, *mala fide* or perversity. The learned Advocate General has also drawn the attention of the Court to the excise policy with particular reference to Clause 1.3 which reads as under:-

***“1.3 To rationalize the number of taxes/duties and other levies to optimize revenues for common good”***

70. Thus, from perusal of the aforesaid objective of the excise policy, the learned Advocate General submits that the same is to optimise revenue and to use that revenue for common good. He also laid emphasis on Clause 1.7 of the excise policy, which is reproduced hereunder:

***“1.7. Tapping of full potential of existing liquor industry to promote ancillary industries and raising new avenues of employment.”***

71. The learned Advocate General has also drawn attention of the Court to the relevant provision of the Excise Act and the rules framed there under with particular reference to the definition clause of the 'Excise Revenue' as laid down in Section 3(I), which reads as under:-

***3. Interpretation. – In this Act, unless there be something repugnant in the subject or context,---***

***(1)“Excise Revenue” – “Excise Revenue” means revenue derived or derivable from any duty, fee, tax, fine or confiscation imposed or ordered under the provisions of this Act or of any other law for the time being in force relating to liquor or intoxicating drugs.***

72. The learned Advocate General has also referred to Section 15 of the Excise Act, which deals with the exclusive privileges of manufacture etc. may be granted, which is reproduced as under:

***“15. Exclusive privileges of manufacture etc may be granted.- It shall be lawful for the Government to grant to any person or persons, on such conditions and for such period as may seem fit, the exclusive or other privilege-***

***(i) of manufacturing or supplying by wholesale, or***

***(ii) of selling by retail, or***

***(iii) of manufacturing or supplying by wholesale and selling by retail, any country liquor or intoxic drug within any local area.***

***No grantee of any privilege other this section shall exercise the same until he has received a license in that behalf from the Commissioner.”***

73. The learned Advocate General has further referred to the law laid down by the Apex Court in the case of ***Har Shanker &ors. v. Deputy Excise & Taxation Commissioner***, reported in ***AIR 1975 Supreme Court 1121***, wherein the Apex Court has held that while considering the applicability of Article 14 in such a case with particular reference to the trade or business in liquor, the Court must be slow to interfere with respect to the policy laid down by the Government for grant of license for manufacture and sale of liquor and, in such like situation, the Court would allow a large measure of latitude to the Government to determine its policy for regulating manufacture and trade of liquor, as the grant of license for manufacture and sale of liquor would essentially fall in the realm of economic policy.

74. He further submits that the policy decisions of the Government are not susceptible to judicial review. The learned Advocate General has laid emphasis that there is no applicability of Article 14 or the equality clause, insofar as, the

economic matters or the liquor vends are concerned and as each vend is different so, different yardstick will apply.

75. He further submits that, in the instant case, the private party has been pitted against the Government and huge public interest is involved and, thus, the decision to going for re-auction has been taken in consultation with the Finance Department as well as the Excise Department. The private commercial interest has to give way to larger public interest.

### **ARGUMENTS IN REBUTTAL**

76. Heard M/S Sunil Sethi, & Gagan Basotra, Sr. Advocates and Varinder Bhat, Advocate by way of rebuttal to the arguments advanced by Mr. D.C. Raina, learned Advocate General.

77. Mr. Gagan Basotra, learned Senior counsel, by way of rebuttal, submits that once the Government has framed a policy, then the respondents have to take a decision strictly in accordance with the said policy and the Government cannot discriminate amongst the bidders. Learned senior counsel has placed reliance upon Sections 14-A & 15 of the Excise Act, which provide as under:-

***“14-A Regulation of the sale of liquor in the State—(1) Notwithstanding anything to the contrary contained in any other law, rule, order, agreement or any other instrument or any order, judgment or decree of any court, the government shall regulate the sale of country liquor in the State “by auctioning or operating departmental vends,” the country liquor shops on such conditions and for such period as it may deem fit;***

***Provided that the departmental shops existing for the sale of country liquor at the time of first auction shall continue to run at such places and for such period as may be specified by the Government by a special or general order.***

***15. Exclusive privileges of manufacture, etc. may be granted.— It shall be lawful for the Government to grant to any person or***



*persons, on such conditions and for such period as may seem fit the exclusive or other privilege,--*

- (1) of manufacturing or supplying by wholesale, or*
- (2) of selling by retail, or*
- (3) of manufacturing or supplying by wholesale and selling by retail any country liquor or intoxicating drug within any local area.*

*No grantee of any privilege under this Section shall exercise the same until he has received a license in that behalf from the Commissioner.”*

78. In support of his submissions, learned senior counsel has also placed reliance upon the judgment of the Apex Court rendered in case titled, “*Gwalior Distilleries Pvt. Ltd. Vs. The State of Madhya Pradesh and ors.* reported in *2020 (12) SCC 690*”, wherein he submits that there is no quarrel with regard to proposition of law that no one can claim as a matter of right to trade in liquor, as against the State, who has the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decided to grant such right or privilege to others, then the State cannot escape the rigor of Article 14 of the Indian Constitution. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor.

79. Mr. Basotra, also submits that once the bid of the petitioners has been accepted, then a right is accrued to the petitioners and that right cannot be taken away without following due process of law and the State, in that eventuality, cannot escape the rigour of Article 14. He has also placed reliance upon the Constitutional Bench judgment of the Apex Court rendered in case titled, “*Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi and ors.*, reported in *1978 (1) SCC 405*” with particular reference to para-8, which

deals with the proposition that the State cannot substitute an opinion of rejection or reasons, which does not find any mention in the order of rejection. The reasons cannot be supplemented by filing reply and in the instant case also, the ground of fetching revenue has not been laid down in the order of rejection and instead, the same has been reflected in the reply filed by the State.

**80.** He further submits that the point, which has been canvassed by the learned Advocate General while filing reply and rejecting the case of the petitioners, on the ground of not fetching maximum revenue, perhaps, is not available to the Government, in light of the fact that the same is not the laudable object which is sought to be achieved by the Government in light of the policy so framed. From the bare perusal of the Policy Objectives, fetching more revenue is not the avowed object in the said policy.

**81.** Mr. Varinder Bhat, learned counsel for the petitioners has argued that the regulations are subservient to the policy framed by the Government in this regard and any condition, which overrides policy which is statutory in force, cannot be relied upon, as any regulation cannot be larger than the policy. He further submits that once a process is issued, it can be cancelled only if there is any violation of law or the same is faulty and not otherwise.

**82.** With a view to fortify his claim, learned counsel has relied upon Section 3 of the Contract Act, which deals with the communication, acceptance and revocation of proposals. He further submits that the communication of a proposal is complete when it comes to the knowledge of a person, to whom it is made. He further submits that the revocation of the proposal and acceptance has

been laid down in Section 5 of the Contract Act, which provides that a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

**83.** Learned counsel further submits that once the said proposal has been accepted, the revocation could be made only in the following four eventualities, which have been laid down in Section 6 of the Contract Act, which provides as under:-

***“6. Revocation how made.—A proposal is revoked—***  
***(1) by the communication of notice of revocation by the proposer to the other party;***  
***(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;***  
***(3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or***  
***(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.”***

**84.** Thus, according to him, the decision of the Government in going for re-auction is in derogation to the mandate and spirit of the provisions of the Contract Act with particular reference to Sections 3, 4, 5 and 6 of the Act. He further submits that any regulatory provision, on which the reliance has been placed by Government under Section 23 of the Contract Act cannot be in derogation and mandate of the Excise Policy, which has statutory force and cannot override the other statutory provision.

**85.** He has further submitted that the Government can withdraw the proposal only in the eventuality, if the petitioners fail to fulfill the conditions, as laid down in the said proposal. Lastly, he has argued that once a scheme has been

laid down and the procedure has been provided for inviting the bids, then the process and game have to be completed strictly in four corners of the rules of the game and not otherwise.

**86.** Mr. Sunil Sethi, learned senior counsel, by way of rebuttal, has relied upon Clause XXIII of the bidding document and has laid emphasis that once the absolute power is there in terms of the aforesaid clause, this power is subject to certain restrictions and parameters, which are that this exercise of power should not be arbitrary, unreasonable or *mala fide*. He further submits that what should be known to the petitioners is the mind of the authority while rejecting the cases of the petitioners, which has been made known by virtue of the rejection order and not the mind of the learned Advocate General, which finds mention by virtue of a detailed reply filed by him, wherein the reason for not fetching more revenue has been assigned.

**87.** Thus, according to the learned Senior counsel, the Government by, no stretch of imagination, can substitute an opinion while filing reply and not assigning those reasons in the order of rejection, wherein only two reasons have been specified while going for re-auction, i.e., less competition and poor response. Even the ground of not fetching the maximum revenue *vis-à-vis* last year revenue is not available, as there was no rider imposed in bidding document or the excise policy that the bid value has to be higher than the last year bid. The Government, by virtue of a comprehensive policy, has worked out the revenue of each and every bid by taking all the components into consideration, including fetching the revenue last year. After having considered all the relevant

parameters, a comprehensive policy has been evolved by the Government, which is the excise policy for the current year and in pursuance to which, the bidding process has been initiated, then the rejection of the bid of the petitioners on the ground of not fetching maximum revenue, after having been accepted, is not available to the respondents, more particularly, when the minimum bid has been fixed by the Government.

**88.** It is not a case, where petitioners are not willing to fulfill the requisite formalities after their bid has been accepted, rather the Government on its own just after twelve hours, has unilaterally gone for re-auction, on the ground of poor response and less competition, more particularly, when the bid, which was offered has been accepted by the Government.

**89.** The learned Senior counsel has placed on record the detailed data of various bids of different financial years, which leads to an irresistible conclusion that the bid price, which has been offered in various years varies and in some cases, if the bid price of last year is compared with the bid price of this year, there is a huge difference and this aspect of the matter has already been worked out by the respondents while formulating a detailed comprehensive policy by keeping in mind the relevant factors, such as, the number of bids in a particular area and the price component for the last year. After having worked on all the components, a detailed comprehensive excise policy has been formulated, wherein the minimum guaranteed revenue per month for a particular year and MGQ of J&K Special Whisky/country liquor/local IMFL brand per shop for the year has also been worked out, besides fixing the minimum bid price in a particular area, then in that eventuality, what weighed with the authority to

change the aforesaid policy just after twelve hours after having accepted the bid price of the petitioners. Learned senior counsel submits that in view of the aforesaid submissions, the impugned order No.100-EC of 2024 dated 13.02.2024 be quashed and respondents be directed that they shall allow the petitioners to open and run the duly allotted liquor vends by amending the letter of acceptance of bid or by issuing fresh letter of acceptance.

### **Legal Analysis**

90. From rival contentions, the short controversy which falls for consideration before this Court appears to be that the petitioners in the case at hand, who were H-1 Bidders in the auction, are aggrieved of the subsequent cancellation of auction based on the grounds of poor response and less competition.

91. The petitioners, *inter alia*, contend that once they were declared as the highest bidder by virtue of the Government entering into correspondence with them, a right was accrued to the them, which cannot be taken away without adopting due process of law especially, when the moment a bidder is declared as the highest bidder, he/she is required to deposit an amount of ₹10 lakhs and is also barred from participating in other bids.

### **A. Scope of judicial review in matters of tenders/auctions**

92. In the case at hand, the petitioners, *inter alia*, have challenged the cancellation of auction as arbitrary, *mala fide* and unreasonable. Before proceeding to examine the case on its merits, at the cost of repetition for the umpteenth time, it would be apposite to remind ourselves of the scope of judicial review available to courts in matters of contracts and tenders conducted by

public authorities. In the landmark decision of *Tata Cellular v. Union of India*, (1994) 6 SCC 651, having reviewed the law on award of public contracts, the Supreme Court laid down the following guiding principles:

*“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. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*

*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 sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free arbitrariness not affected by bias or actuated by mala fides.*

*6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”*

93. This view has been further considered by the Supreme Court in *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517 , wherein it was observed as under:

*“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold.”*

94. Subsequently, in *Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8SCC216, the Supreme Court noted:

*“Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:  
(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or 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”; and*

*(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226.”*

95. The Supreme Court in a recent judgment in *Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489 held as under :

*“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”*

96. While there are a catena of decisions of the Hon'ble Supreme Court on this issue, the law on this point is rather well settled to merit any further discussion. From the aforesaid legal position, it is clear that the scope of judicial review in tender/auction process is extremely limited. Admittedly, the Court cannot adjudge the soundness of a decision and it must concern itself only with the manner in which the decision was made. The Government and other public

authorities have the freedom of contract and in the absence of manifest unreasonableness, patent arbitrariness or clear *mala fides*, the Court should show due deference to the decision of the public authority. Consequently, the scope of interference by the Court in matters like these is exceptionally minimal.

**B. Whether a vested right has been accrued to the petitioners by virtue of being notified as highest bidders?**

97. In the aforementioned backdrop, let us examine the question *whether a vested right has been accrued to the petitioners by virtue of being notified as H-1 bidders.*

98. In *State of Punjab v. Mehar Din*, (2022) 5 SCC 648, a similar question arose, wherein, the Hon'ble Apex Court reiterated the settled position that even the highest bidder has no vested right to have the auction concluded in his favour especially in light of the limited scope of judicial review under Article 226. The relevant extract from the judgment is as under :

*“19. This Court has examined right of the highest bidder at public auctions in umpteen number of cases and it was repeatedly pointed out that the State or authority which can be held to be State within the meaning of Article 12 of the Constitution, is not bound to accept the highest tender of bid. The acceptance of the highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions in which the auction has been held. In the present case, no right had accrued to the respondent even on the basis of statutory provisions as being contemplated under Rule 8(1)(h) of Chapter III of the Scheme of the 1976 Rules, and in terms of the conditions of auction notice notified for public auction.*

*27. This being a settled law that the highest bidder has no vested right to have the auction concluded in his favour and in the given circumstances under the limited scope of judicial review under Article 226 of the Constitution, the High Court was not supposed to interfere in the opinion of the executive who were dealing on the subject, unless the decision is totally arbitrary or unreasonable, and it was not open for the High Court to sit like a court of appeal over the decision of the competent authority and particularly in the matters where the authority competent of floating the tender is the best judge of its requirements, therefore, the interference otherwise has to be very minimal.*

*28. To the contrary, the limited scope of judicial review for which interference could have been permissible to prevent arbitrariness, irrationality, bias, mala fides or perversity, if any, in the approach of the authority while dealing with the auction proceedings, was never the case of the respondent at any stage. The High Court has recorded a finding to the contrary that the appellants have failed to show any irregularity or illegality in the auction proceedings and in the absence whereof, the auction proceedings could not be held to be vitiated. The premise on which the High Court has proceeded in recording a finding, particularly, in the matters of auction of public properties is unsustainable in law and that apart, it is also not in conformity with the scheme of auction of public properties as defined under Chapter III of the 1976 Rules.”*

99. Thus, from the aforesaid enunciation of the law, it becomes clear that acceptance of the highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context of different conditions in which the auction has been held.

**100.** Consequently, even the highest bidder has no vested right to have the auction concluded in his favour and owing to the circumstance of a limited scope of judicial review under Article 226, unless a decision is totally *arbitrary* or *unreasonable*, there is no occasion for the Court to interfere in the action of calling for a re-auction.

**101.** In the facts of the present case, a perusal of the communication issued by the Excise Department to the successful bidders via e-mail reveals that the same was provisional in nature and subject to the fulfilment of certain conditions. The communication, thus, only declared the highest bidder and in light of the law laid down by the Hon'ble Supreme Court, such bidder has no vested right to have the auction concluded in his/her favour.

**102.** In addition to the aforementioned, there is nothing in the communication to suggest that a binding obligation has come into existence in favour of a bidder by virtue of being declared as the successful bidder. The communication is *ex-facie* of a provisional nature as it only declares that the bid in question is highest for the auction and subsequently, lays down the procedure and conditions to be followed for the grant of temporary/regular license in terms of Rule 30 (8) of the J&K Liquor License and Sale Rules, 1984. Thus, the basic conditions for the emergence of vested rights through offers or conditions made and accepted appear to be wanting in this case. At this stage of acceptance at least, the essentials of a binding agreement and the mutuality of obligations are found to be absent in the case at hand.

**C. Whether the exclusive privilege of the Government in sale/manufacture of liquor grant any higher degree of fair play in the joints to the Government in executive decisions concerning the same?**

103. It is not out of place to mention that this Court finds force in the argument made by the learned Advocate General that the special character of the liquor trade vests the UT Administration with the power to grant the exclusive privilege to carry on trade in the manufacture and sale of liquor and consequently, does not vest any right on the petitioners.

104. This Court is fortified by the view taken by the Hon'ble Supreme Court in *Lakhanlal v. State of Orissa*, (1976) 4 SCC 660, wherein, the position that the mere acceptance of a bid at an auction does not create binding obligations on part of the Government, especially, when such acceptance is tentative and subject to the fulfilment of certain conditions. Additionally, the Court also concluded that such auctions which pertain to the grant of exclusive privileges of the Government because they relate to the sale or manufacture of liquor are not ordinary auctions, where binding agreements could be deemed to be concluded at the fall of the hammer, thereby, creating mutually enforceable obligations. The relevant extract from the judgement is reproduced hereunder:

*“22. The High Court has held that after the acceptance of the bid all that remained was to issue a license and that the Collector committed an illegality in ordering a reauction under the directions of the State Government. Such a view presupposes that a binding obligation had come into existence in favour of the bidder by accepting a deposit from him even though this was done on the express condition that it was tentative and was not an acceptance of his bid. We do not think that what the High Court held to be an “acceptance of the bid” at the*

*“auction”, even after the announcement of an express condition attached to it that the knocking down of the bid would not really be an acceptance of it by the Government, could be an acceptance of the bid at all. In the peculiar facts and circumstances of the auction, the bids were, apparently, nothing more than offers in response to invitation to make tenders, and such auctions were the mode of ascertaining the highest offers. The basic conditions for the emergence of rights through offers or conditions made and accepted, and acted upon, by paying any specified or agreed price as consideration, were thus wanting in this case. In fact the express and advertised terms of the auction made it clear that the money tendered was to be deemed to be deposited tentatively, pending the acceptance of the bid. So what we have before us are neither offers nor acceptance by the Government. There were only offers by the bidders to purchase the rights, subject expressly to their acceptance or rejection by the State Government. The essentials of any agreement and the mutuality of obligations were thus absent altogether.*

*23. Moreover it was not an ordinary auction where binding agreement could be deemed to be concluded at the fall of the hammer, creating mutually enforceable obligations. Those were only so called auctions, adopted as means for ascertaining the highest offers for the exclusive privileges which the Government alone could grant for carrying on a trade or business considered noxious, under the law, and which, because of its special character, could be regulated in any way, or even prohibited altogether, by the Government. This special character of the trade or business would appear from the power of the State Government to grant the exclusive privilege to carry on trade in the manufacture and sale of liquor. It will be recalled that Section 22(1) provides that the State Government “may grant to any person, on such conditions and for such periods as it may think fit, the exclusive privilege” in question. Sub-section (2) of Section 22 enacts that a grantee of such a privilege shall not exercise it “unless or until he has received a license in that behalf from the Collector or the Excise Commissioner”.*

105. The same principle was reiterated in *Laxmikant v. Satyawan*, (1996) 4

SCC 208. The relevant part of the judgment is reproduced hereunder:

*“4. ...From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bidder at public auctions in the cases of *Trilochan Mishra v. State of Orissa* [(1971) 3 SCC 153], *State of Orissa v. Harinarayan Jaiswal* [(1972) 2 SCC 36], *Union of India v. Bhim Sen Walaiti Ram* [(1969) 3 SCC 146 : (1970) 2 SCR 594] and *State of U.P. v. Vijay Bahadur Singh* [(1982) 2 SCC 365]. It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held.”*

106. Again, in *Rajasthan Housing Board v. G.S. Investments*, (2007) 1

SCC 477 : 2006 SCC OnLine SC 1127, the Apex Court noted as under:

*“8. The auction notice dated 3-2-2002 contained a condition to the effect that the Chairman of the Housing Board shall have the final authority regarding acceptance of the bid. The second auction notice issued on 19-2-2002 mentioned that the conditions of the auction will be same as mentioned in the earlier auction notice. In view of this condition in auction notice it is obvious that a person who had made the highest bid in the auction did not acquire any right to have the auction*

*concluded in his favour until the Chairman of the Housing Board had passed an order to that effect. Of course the Chairman of the Housing Board could not exercise his power in an arbitrary manner but so long as an order regarding final acceptance of the bid had not been passed by the Chairman, the highest bidder acquired no vested right to have the auction concluded in his favour and the auction proceedings could always be cancelled. What are the rights of an auction bidder has been considered in several decisions of this Court. However, we will refer to only one such decision viz. Laxmikant v. Satyawar [(1996) 4 SCC 208] which is almost identical on facts as it related to auction of a plot by the Nagpur Improvement Trust. The auction notice in this case contained a condition that the acceptance of the highest bid shall depend upon the Board of Trustees and further the person making the highest bid shall have no right to take back his bid and the decision of the Chairman of the Board of Trustees regarding acceptance or rejection of the bid shall be binding on the said person. After taking note of the aforesaid conditions it was held: (SCC pp. 211-12, para 4)*

*“From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bidder at public auctions in Trilochan Mishra v. State of Orissa [(1971) 3 SCC 153] , State of Orissa v. Harinarayan Jaiswal [(1972) 2 SCC 36] , Union of India v. Bhim Sen Walaiti Ram [(1969) 3 SCC 146] and State of U.P. v. Vijay Bahadur Singh [(1982) 2 SCC 365] . It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such*



*auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held.”*

*9. This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court.”*

107. More recently, in 2022, the Supreme Court has again settled this position in *Municipal Committee, Barwala vs Jai Narayan and Company, 2022 SCC OnLine SC 376*. The relevant paragraph of the judgment is reproduced hereunder:

*“11. Therefore, no concluded contract ever came into force. Reference may be made to the judgment of this Court reported as Haryana Urban Development Authority v. Orchid Infrastructure Developers Private Limited<sup>5</sup>, wherein this Court held as under:*

*“13. Firstly, we examine the question whether there being no concluded contract in the absence of acceptance of bid and issuance of allotment letter, the suit could be said to be maintainable for the declaratory relief and mandatory injunction sought by the plaintiff. The plaintiff has prayed for a declaration that rejection of the bid was illegal. Merely by that, plaintiff could not have become entitled for consequential mandatory injunction for issuance of formal letter of allotment.*

*Court while exercising judicial review could not have accepted the bid. The bid had never been accepted by concerned authorities. It was not a case of cancellation of bid after being accepted. Thus even assuming as per plaintiff's case that the Administrator was not equipped with the power and the Chief Administrator had the power to accept or refuse the bid, there had been no decision by the Chief Administrator. Thus, merely by declaration that rejection of the bid by the Administrator was illegal, the plaintiff could not have become entitled to consequential relief of issuance of allotment letter. Thus the suit, in the form it was filed, was not maintainable for relief sought in view of the fact that there was no concluded contract in the absence of allotment letter being issued to the plaintiff, which was a sine qua non for filing the civil suit.*

*14. It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount. As per Regulation 6(2) of the Regulations of 1978, allotment letter has to be issued on acceptance of the bid by the Chief Administrator and within 30 days thereof, the successful bidder has to deposit another 15% of the bid amount. In the instant case allotment letter has*

*never been issued to the petitioner as per Regulation 6(2) in view of non-acceptance of the bid. Thus there was no concluded contract....”*

**108.** The Hon’ble Supreme Court has effectively settled the law on the aspect that owing to the exclusive privilege of the State in the sale and manufacture of liquor, a greater degree of latitude must be afforded to it in administrative decisions concerning the same. In *Har Shankar v. Excise & Taxation Commr.*, (1975) 1 SCC 737, the Apex Court noted as under:

*53. In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in Balsara case [1951 SCC 860 : AIR 1951 SC 318 : 1951 SCR 682 : 52 Cri LJ 1361] , Cooverjee case [AIR 1954 SC 220 : 1954 SCR 873] , Kidwai case [AIR 1957 SC 414 : 1957 SCR 295] , Nagendra Nath case [AIR 1958 SC 398 : 1958 SCR 1240] , Amar Chakraborty case [(1972) 2 SCC 442 : (1973) 1 SCR 533] and the R.M.D.C. case [AIR 1957 SC 699 : 1957 SCR 874] , as interpreted in Harinarayan Jaiswal case [(1972) 2 SCC 36 : (1972) 3 SCR 784] and Nashirwar case [(1975) 1 SCC 29] . There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants — its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In American Jurisprudence, Vol. 30 it is stated that while engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to governmental control (p. 538). This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime (pp. 539, 540, 541).*

109. Clarifying the law in this regard further, in *State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566, the Apex Court noted that when the State decides to grant such right or privilege to others, the State cannot escape the rigour of Article 14. However, bearing in mind the nature of the liquor trade, the Court would be slow to interfere with the policy laid down by the State as it is essentially a matter of economic policy which should be viewed with greater

latitude. Consequently, it emerges that the Court while adjudging the validity of an executive decision relating to economic matters must grant a certain measure of freedom or play in the joints to the executive. The relevant part of the judgment is extracted hereunder:

*“33. But, before we do so, we may at this stage conveniently refer to a contention of a preliminary nature advanced on behalf of the State Government and Respondents 5 to 11 against the applicability of Article 14 in a case dealing with the grant of liquor licences. The contention was that trade or business in liquor is so inherently pernicious that no one can claim any fundamental right in respect of it and Article 14 cannot therefore be invoked by the petitioners. Now, it is true, and it is well settled by several decisions of this Court including the decision in Har Shanker v. Deputy Excise & Taxation Commissioner [(1975) 1 SCC 737 : AIR 1975 SC 1121 : (1975) 3 SCR 254] that there is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants — its manufacture, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention of the State Government and Respondents 5 to 11 that Article 14 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that article.*

*34. But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in R.K. Garg v. Union of India [(1981) 4 SCC 675 : 1982 SCC (Tax) 30 : AIR 1981 SC 2138 : (1982) 1 SCR 947]. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter, J. in Morey v. Dond [354 US 457] :*

*“In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by*

*events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.”*

*What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment insofar as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call “trial and error method” and, therefore, its validity cannot be tested on any rigid a priori considerations or on the application of any strait jacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or “play in the joints” to the executive. “The problem of Government” as pointed out by the Supreme Court of the United States in *Metropolis Theatre Co. v. State of Chicago* [57 L Ed 730] ”*

*“are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void.”*

*The Government, as was said in *Permian Basin Area Rate cases* [20 L Ed (2d) 312] is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution.*

110. Viewed thus, it emerges that while adjudicating upon the validity of an executive decision, owing to the exclusive privilege of the State in the sale/manufacture of liquor, the State must be allowed a greater degree of latitude or play in the joints. The Court, in its power of judicial review must be conscious of the complexity of economic matters of which, of course, it is not an expert. As a consequence thereof, the validity of such decisions cannot and must not be tested on any rigid *a priori* considerations or on the application of any strait-jacket formula. The scope of judicial review, therefore, is not that the Court should strike down a policy decision taken by the State merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. It is only the palpably arbitrary, discriminatory or *male fide* exercise which can be declared as void.

**D. Whether the guarantee of a minimum revenue per vend/minimum reserve bid price render the decision to cancel the auction on the basis of poor response and less competition as arbitrary?**

111. In this context, it is apposite to examine the argument made by learned senior counsels and other counsels for the petitioners in unison that once, the Minimum Guaranteed Revenue per vend/Minimum Reserve bid price was fixed by the Government by way of a policy, then, in that eventuality, the rejection of the petitioners' bid on the ground that there is less competition or poor response to the bid, is arbitrary and irrational.

112. Before dealing with this question on its merits, it becomes imperative to delineate that the Court can only interfere when there is a strong foundation in the writ petitions with respect to the allegations of *mala fide*, favouritism, or arbitrariness in the procedure for re-auction. The court cannot interfere with the

policy decision of re-auctioning on the premise that another course of action would have been fairer, wiser or more logical. In other words, the Court cannot interfere with the soundness of the decision but can only examine the manner in which such decision was made. In its limited power of judicial review, it is not for this Court to examine what object the Government is achieving by re-auctioning, once, the Minimum Guaranteed Revenue/Minimum Reserve Bid is already fixed as it would tantamount to encroaching upon the latitude and fair play in the joints accorded to the Government, especially in matters affecting economic policy. This view is further reinforced in light of the fact that the present case pertains to the realm of sale/manufacture of liquor, which is an *exclusive privilege* of the Government, and consequently, there exists a greater degree of freedom for the Government in taking administrative decisions in this regard.

**113.** Even otherwise, the mere fact that the policy postulated a provision for minimum guaranteed revenue does not disentitle the Government from cancelling the auction on the basis of poor response and less competition. Thus, it can safely be concluded that the mere fixation of the minimum guaranteed revenue / minimum reserve bid price for a particular vend does not take away the power of the Government to cancel the said auction process on the ground of poor response and less competition as not only the Government is empowered to do so under Clause XXIII of the Bid document but even after examination of the original record and note file the rationale behind the decision of the Government cannot be termed as arbitrary, *mala fide* or unreasonable.



**E. Whether the decision to cancel the auction and the subsequent order for re-auctioning is arbitrary, discriminatory, or mala fide so as to warrant judicial interference?**

114. The petitioners have been unable to establish any palpably arbitrary, discriminatory, or *mala fide* exercise of power in the process of re-auctioning. The learned Advocate General has argued that the rationale for calling re-auction was poor response in the auction and less competition. It follows that the logic behind the subsequent action was to allow more bidders to participate in the auction process, which would lead to greater competition and in turn, help in securing a more favourable deal to the respondent Government. In this regard, the Hon'ble Supreme Court of India in *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 104, held that:

*“In the field of contracts, the State and its instrumentalities should design their activities in a manner which would ensure competition and not discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods.”*

115. Subsequently, in *Natural Resources Allocation, In Re : Special Reference No. 1 of 2012*, (2012) 10 SCC 1, after reviewing a number of its previous decisions, including those in *Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh*, (2011) 5 SCC 29 and *Sachidanand Pandey v. State of West Bengal*, (1987) 2 SCC 295, the Hon'ble Supreme Court held as under:

*“On a reading of the above paragraphs, it can be noticed that the doctrine of equality; larger public good, adoption of a transparent and fair method, opportunity of competition; and avoidance of any occasion to scuttle*

*the claim of similarly situated applicants were emphasized upon.”*

116. The importance of tendering authorities promoting healthy competition while inviting tenders was also emphasized in *Union of India v. Hindustan Development Corporation*, (1993) 3 SCC 499, wherein the Supreme Court has observed as under:

*“In our earlier order we indicated that these big manufacturers formed a different category namely that they may be in a position to supply at that rate as is evident from their own commitment but to apply the same price which is much lower than the reasonable and workable price fixed by the Tender Committee to other smaller manufacturers would again result in ending the competition between the big and the small which ultimately would result in monopoly of the market by the three big manufacturers. That is a very important consideration from the point of view of public interest.”*

117. On the appreciation of the law laid down by the Hon'ble Supreme Court in this regard, it would be apposite to conclude that in tenders/auctions, the authority must strive to ensure that there is greater competition amongst the prospective bidders as it would aid the authority in securing a better deal for itself and resultantly, be in furtherance of public interest. It can be reasonably deduced that the objective of promoting competition in the award of a license/contract is both legitimate and in public interest.

118. Thus, in so far as the reasoning behind cancellation of the auction based on poor response and less competition of the auction, the same does not seem implausible or *mala fide*, as suggested by the counsels for the petitioners

more so, when it is a fact on record that the some of the vends under auction did in fact receive a single bid. In these circumstances, this Court discerns no arbitrariness or irrationality in the decision of the Government. Therefore, this Court holds that the decision of the respondent Government cannot be faulted with.

**119.** This Court has summoned and examined the original record, in detail, which led to the passing of the order impugned and a perusal whereof, reveals that the decision to re-auction was not loathed with any *mala fide* consideration or arbitrariness, rather, the same was taken with a view to have maximum and healthy competition in lieu of the poor response to the bids in question. Even otherwise, it has already been discussed and decided in the preceding paragraphs that the petitioners did not have any vested right in the outcome of the auction simply by virtue of being declared as the highest bidder.

**120.** In addition to the aforesaid, even the excise policy formulated by the Government postulates rationalizing the revenues as a stated objective, which may be done by ushering healthy competition. The relevant part of the policy is reproduced here under: -

***1. Policy Objectives-***

- 1.1 To bring about greater social consciousness and awareness about the harmful effects of consumption of alcoholic beverages and drug abuse;***
- 1.2 To encourage transition from high to low alcoholic content beverages;***
- 1.3 To rationalize the number of taxes/duties and other levies to optimize revenues for common good;***
- 1.4 To check bootlegging/smuggling of liquor and narcotic drugs in the Union Territory of Jammu and Kashmir from neighbouring States/Union Territories;***
- 1.5 To provide choice of liquor brands and places for consumption to its consumers and a level playing field to all the stakeholders;***

- 1.6 *To rationalize the production and sale of JK Special Whisky and JK Country liquor to curb illicit distillation;*
- 1.7 *Tapping of full potential of existing liquor industry to promote ancillary industries and raising new avenues of employment; and*
- 1.8 *Complete digitalization in liquor manufacturing, distribution and sale from production till retail consumption.*

Thus, the reasoning relied upon by the Government is in line with the stated objectives of the policy and does not appear to be manifestly arbitrary or unreasonable. The order issued by the Excise Commissioner was on the directions of the Finance Department, Government of Jammu & Kashmir, and the same was confirmed by the Government in the Finance Department vide No.FD-ET/122/2021-03 dated 14.02.2024.

121. This Court is fortified by the view taken by the Supreme Court in *Lakhanlal v. State of Orissa, (1976) 4 SCC 660*, wherein, it was held that in the absence of any vested right of the highest bidder, it could not be said that the Government was acting unreasonably or in a *mala fide* manner by issuing directions for re-auction when it found that the bids at the auction were unsatisfactory in nature. The relevant extract of the judgment is reproduced below:

***“24. The powers of the Government to reject a bid were thus reserved both under the provisions of law and by the express declarations made before the auction. At any rate we do not find any basis for the creation of a right merely by making a bid. The extent of the powers of the government in such matters has been indicated by this Court in State of Orissa v. Harinarayan Jaiswal. So long as these powers are not used in an unreasonable or mala fide manner, their exercise cannot be questioned. In the cases before us, it could not be said that either the Government or any of its officers abused the power by***

*acting either unreasonably or in a mala fide manner, and we find no justification for the argument that it was not permissible for the State Government to issue the directions for re-auction even when it found that the bids at the auction were unsatisfactory.”*

122. The learned counsel for the petitioners has placed reliance on *Eva Agro Feeds Private Limited vs Punjab National Bank, 2023 INSC 809* to submit that the liquidator cannot cancel a valid auction on the mere expectation of fetching a higher price. Consequently, they have argued that there exists no unfettered discretion to cancel the auction process.

123. However, this Court is of the view that the aforementioned judgment is distinguishable with the present case, both on law and facts. Firstly, the said decision was rendered in a completely different context, wherein, the exclusive privilege of the Government in the sale/trade of liquor was not in question as the case pertained to the cancellation of an auction by the liquidator, under the auspices of the Insolvency and Bankruptcy Code, 2016. Secondly, in this decision, *no reasons at all* were assigned by the liquidator for the cancellation of auction, which is admittedly, not the case before hand. Thus, it was the total non-application of mind and non-disclosure of reasons and not the sufficiency of reasons so relied upon for cancelling the auction, which was in question in *Eva Agro Feeds Private Limited (Supra)*. To substantiate the distinction between the case relied upon by the petitioners, and the instant case, the relevant extract from *Eva Agro Feeds Private Limited (Supra)* is reproduced as under: -

*50. From the aforesaid, we find that no reasons were assigned by the Liquidator for cancellation of the e-auction held on 20-7-2021. The appellant was simply*

*informed that the e-auction was cancelled in terms of Clause 3(k) of the E-Auction Process Information Document. Clause 3(k) as discussed above only declares that the Liquidator has absolute right to accept or reject any or all bids or adjourn/postpone/cancel the e-auction, etc. at any stage without assigning any reason therefor. We will advert to this clause a little later.*

*71. A conjoint reading of the aforesaid provisions would make it clear that while the highest bidder has no indefeasible right to demand acceptance of his bid, the Liquidator if he does not want to accept the bid of the highest bidder has to apply his mind to the relevant factors. Such application of mind must be visible or manifest in the rejection order itself. As this Court has emphasised the importance and necessity of furnishing reasons while taking a decision affecting the rights of parties, it is incomprehensible that an administrative authority can take a decision without disclosing the reasons for taking such a decision.*

Resultantly, the reliance placed by the learned counsel for the petitioners on this judgment does not come to their aid and is distinguishable.

**124.** Reliance was also placed on the Division Bench decision of the Delhi High Court in *PKF Sridhar Santhanam vs Airports Economic Regulatory Authority of India* 2022 SCC OnLine Del 122, by the learned counsel for the petitioners to submit that even when the clause stipulates that the authority may not assign reasons for not accepting any bid, or rejecting the bid, it does not mean that they should not have any valid reasons to justify their conduct. However, even in this case, this Court fails to see how the aforementioned judgment advances the case of the petitioners. Firstly, in the present case, the respondents have disclosed reasons for the cancellation of auction, which, as discussed previously, do not appear insufficient or implausible to this Court.

Secondly, in the case cited by the petitioners, the Delhi High Court in order to ascertain the validity of reasons relied upon by the authority to cancel the tender, directed them to produce the original record. After examining the record, the Delhi High Court concluded as under: -

*“20. From the above, it appears to us that the decision taken by the respondent in cancelling the tendering process in question, wherein the petitioner emerged as the L-1 bidder cannot be said to be unreasonable or arbitrary. The respondent could not be expected to accept high rates, which are not commensurate with the rates prevailing in the industry. Since, the respondent itself has invited the other tenders, and it is an organisation dealing with the aspect of fixation of tariffs for grant of airport services, the respondent is aware of the rates prevalent in the industry. The decision taken by the respondent, therefore, appears to be an informed decision and founded upon germane considerations.*

*21. We have taken note of the fact that the rates received by the respondent in the subsequent tendering process or the same assignment have, in fact, turned out to be more competitive. This, in our view, validates the decision of the respondent to cancel the tender in question and to re-invite the same.*

*23. For the aforesaid reasons, we do not find any merit in this petition and dismiss the same, leaving the parties to bear their respective costs.”*

125. Similarly, in the present case, this Court directed the respondents to produce the original record, so that it could satisfy itself as to whether the respondent had any justifiable reason for the cancellation of the auction in question, after inviting the bid, wherein, the petitioners had emerged as H-1 bidders. It was on the examination of the original record, as discussed previously, which led this Court to conclude that the decision to cancel the

auction cannot be said to be unreasonable or arbitrary and it appears to be an informed decision and founded upon germane considerations.

**126.** For facility of reference, the paras 113, 114 & 170 of the note sheets of the Original File of the Excise Department regarding e-auction of JKEL-2 vends for the year 2024-25, which led to the passing of the order impugned is reproduced as under: -

*“113. May kindly peruse Government Order No.43-FD of 2024 and Order No.44-FD of 2024 both dated 26.02.2024 received from the Finance Department, Civil Secretariat, J&K wherein the Government in view of poor response and less competition in bidding at 06 locations in the e-auction of liquor vends for the year 2024-25 issued vide e-auction Notice No.EC/Exc/e-auction/2024-25/7182 dated 01.02.2024, the auction results of the below mentioned 06 locations are hereby cancelled in terms of para XXIII of the bid document 2024-25 issued vide No.58-EC of 2024 dated 01.02.2024:-*

S. No.	Excise Range	Area/MC/District	Vend Location	Number of Bids
1.	Udhampur-Reasi	Reasi	Kanthan- Arnas, Pyt. Arnas	2
2.	City North Jammu	Jammu	JMC Ward No.24B	1
3.			JMC Ward No.36	2
4.	Kathua	Kathua	Galak Panchayat	2
5.			Najote (Nan Gala)	1
6.			Plassi Panchayat	2

*114. Further, it is submitted that vide this office Order No.100-EC of 2024 dated 13.02.2024, this office has already cancelled the e-auction of following 10 locations in view of poor response and less competition in bidding in the e-auction of liquor vends for the year 2024-25 issued vide e-auction Notice No.EC/Exc/e-auction/2024-25/7182 dated 01.02.2024, the auction results at these 10 locations, are hereby cancelled in terms of para XXIII of the Bid Document 2024-25 issued vide No.58-EC of 2024 dated 01.02.2024.*

S. No.	Excise Range	Area/MC/District	Vend Location	Number of Bids
1.	Doda-Kishtwar-Ramban	Ramban	Rajgarh Panchayat	1
2.	Rajouri-Poonch	Rajouri	Panchayat Upper Dhangri	1
3.		Poonch	MC Ward No.10	1



4.	City North, Jammu	Jammu	JMC Ward No.4-B	1
5.			JMC Ward No.5-A	1
6.			JMC Ward No.5-C	1
7.			JMC Ward No.10-D	1
8.			JMC Ward No.11	1
9.			JMC Ward No.15-E	1
10.	City South, Jammu		JMC Ward No.54-D	1

**170.** Further, 26 locations were cancelled due to low/poor response/technical glitch and no bid received at 12 locations. Status of the e-auction during the 1<sup>st</sup> round is tabulated below:

S. No.	Particulars	No. of vends
1.	No. of vends put to e-auction	305
2.	Result declared with (H1)	267
3.	Result not declared due to technical glitch	10
4.	Bids cancelled due to poor response and low bidding	16
5.	No bids received	12
	TOTAL of serial No.3 to 5	38
	Grand Total	305

**127.** Further perusal of the original file of the Finance Department containing various decision making steps taken by the Finance Department in the cancellation of less competitive/poor bids with substantial decrease in the bid amount during e-auction of JKEL-2 vends for the year 2024-25, what transpires from the record is reproduced hereunder:

*“(1) Finance Department has received letter No.EC/Exc/e-auction/2024-25 /7486 dated 13.02.2024 wherein they have stated that it is submitted that poor response has been received (only 1 bid) at 10 locations and substantial decrease in the bid amount has been observed while comparing the bid amount received during the year 2023-24. In order to have fair and healthy competition at these locations and also for any such future instances, the reference from para XXIII of the Bid Document 2024-25 is desired in the matter. As desired and*

*discussed, the department has initiated the process for cancellation and subsequent re-auction at these 10 locations. However, formal approval of the Government is required in terms of ibid para of the Bid Document for which the present proposal has been submitted for seeking kind confirmation of*

*the action taken to make it legally tenable. The para XXIII is reproduced as under:*

*XXIII. The Government reserved the right to add/delete/de-notify/change any of the locations/cancel the auction process in respect of all/ any of the location(s) without specifying any reason at any time prior/during or after the auction process.*

*(2) Further stated that as per precedents of the excise e-auctions, the Highest Bidder (H1) is notified upon bid closure about their successful bid, accompanied by system generated email notifying the bidder to deposit the quoted bid amount and documents in consonance with the J&K Excise Policy requisites. If any action on cancellation of bids at such locations with poor response, is to be taken, first and foremost action on the part of the department (with the approval of the Government) is to issue notification regarding cancellation of the auction results at these locations forthwith informing these H1 bidders through emails about the cancellation of their bid at such locations before they proceed in terms of earlier emails in depositing the bid amount. However, in order to avoid any litigation, there is a requirement of confirmation /approval of the Government for cancellation of bids in terms of para XXIII of the Bid Document issued vide No.58-EC of 2024 dated 01.02.2024.*

*(3) Excise Commissioner has issued a Cancellation Order for these bids in terms of Para XXIII of the Bid Document vide No.100-EC of 2024 dated 13.02.2024 under Endorsement No.EC/Exc/e-auction/2024-25/7481-85 dated 13.02.2024, the Excise Commissioner has requested for confirmation and also approval for future such instances where poor response (in the form of only one bid) is received so that the same is incorporated in the e-auction notice to be issued in future.*

*(4) Comparative Bid Price along with number of bids at these 10 locations is as below:-*

**Comparison of Vends with 1-2 bids received**

S. No.	Area/MC/District	Vend Location	Bid Price 2023-24	Bid Price 2024-25	Number of Bids
<b>Excise Range Doda-Kishtwar-Ramban</b>					
1	Ramban	RajgarhPyt. Rajgarh	2500000	1500000	1
<b>Excise Range Rajouri-Poonch</b>					
2.	Rajouri	Pyt. Upper Dhangri	5150000	3000000	1
3.	Poonch	MC Ward No.10	3800000	1500000	1

<b>Excise Range City North</b>					
4.		JMC Ward No.4-B	4200000	1500000	1
5.		JMC Ward No.5-A	2700000	1500000	1
6.		JMC Ward No.5-C	2500000	1500000	1
7.		JMC Ward No.10-D	2800000	1500000	1
8.		JMC Ward No.11	1950000	1500000	1
9.		JMC Ward No.15-E	2650000	1500000	1
<b>Excise Range City South</b>					
10.		JMC Ward-54-D	7500000	3000000	1

XXXX

(8) *The Excise Commissioner has already issued the cancellation order for the 10 locations mentioned at Note Para above vide No.100-EC of 2024 dated 13.02.2024 under Endorsement No.EC/Exc/e-auction /2024-25/7481-85 dated 13.02.2024 (page 55/CF) in terms of aforementioned Para XXIII of the Bid Document 2024-25 wherein the Government reserve the right to cancel the auction process in respect of all/any of the location(s) without specifying any reason at any time prior /during or after the auction process.*

(9) *In view of above and as per the request of the Excise Commissioner, we may, if approved, convey Administrative confirmation to the order No.100-EC of 2024 dated 13.02.2024 under Endorsement No.EC/Exc/e-auction /2024-25/7481-85 dated 13.02.2024 issued by Excise Commissioner regarding cancellation of bids for liquor vends at 10 locations with poor response and for subsequent re-auction thereof.*

*(Under Secretary)*

(25) *Clause XXIII is the enabling Clause for cancellation of auction process. Poor response and substantial decrease in the bid amount are substantial grounds for cancellation of auction process. Excise Commissioner in his communication dated 13.02.2024 has communicated that the cancellation order of the bids has already been issued in terms of relevant Clause referred above which provides for cancellation of auction process by the Government. As such, the action taken by the Excise Commissioner for cancellation of Bid process may be required to be confirmed by the Government and may be approved by Principal Secretary, Finance.*

*(Law Secretary)”.*

128. The decision of the Law Department, which has been relied upon in these case, has been reproduced as under:

**“Note 148.**

***Returned: In terms of Para XXIII of the Bid Document the Government reserves its right to add/delete/re-notify/change any of the locations/cancel the auction process in respect of all/any of the location(s) without specifying any reason at any time prior/during or after the auction process. Perusal of the DNF reveals that there are two set of cases, in one case (i) where the Minimum Reserve Bid Amount is on lower side, and in the other set of cases (ii) where the Minimum Reserve Bid Amount is either equivalent or on higher side than the Minimum Reserve Bid Amount. In the former case, the Government has got a valid reason, though not required (in terms of Para XXIII of the Bid Document) to invoke cancellation clause however, in the later the Government after considering all the relevant factors has to satisfy itself that there was poor response which has resulted in substantial decrease of the bid amount while comparing the same with previous year 2023-24 and the cancellation and its re-auction will generate more revenue as that of the previous years.***

***The Government may as such in view of the above take an administrative policy decision in the matter in light of the facts and circumstances of the case. There may not be any bar for taking appropriate decision in the matter with the approval of competent authority.***



***(Shafiq Hussain Mircha)  
Deputy Legal Remembrancer  
Department of Law, Justice & P.A.”***

**129.** Reliance has also been placed by the learned counsel for the petitioners on General Instructions on procurement and project management issued vide Notification F.1/1/2021-PPD dated 29th October, 2021 by the Government of India, Ministry of Finance, Department of Expenditure, Procurement Policy Division, New Delhi. In the said instructions, the issue of rejection of single bid has been dealt with and certain guidelines/instructions have been issued. The relevant clause 11.8 is reproduced hereunder: -

***“11.8 Rejection of Single Bid: It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not***

*acceptable and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly the actual costs of re tendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid. Lack of competition shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process should be considered valid provided following conditions are satisfied: the procurement was satisfactorily advertised and sufficient time was given for submission of bids; (i) the qualification criteria were not unduly restrictive; and (iii) prices are reasonable in comparison to market values.”*

130. Subsequently, the learned counsel for the petitioners have submitted that after the issuance of the aforementioned general instructions, the Financial Commissioner, UT of Jammu and Kashmir issued a circular dated 10.11.2021 whereby, all the departments were advised to adhere to the aforesaid instructions. In addition to the abovementioned, as per the learned counsel for the petitioners, clause 5.6.7 of the manual for procurement of works issued by the Government of India, Ministry of Finance, similar guidelines concerning retendering process in the eventuality of lack of competition have been issued. There relevant clause is reproduced hereunder: -

***“5.6.7 Consideration of Lack of Competition***

*Sometimes, against advertised/ limited tender cases, the procuring entity may not receive a sufficient number of bids and/ or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. As per Rule 21 of DFPR (explanation sub-para), such situation of ‘Single Offer’ is to be treated as Single Tender. The contract may be placed on the ‘Single Offer’ bidder provided the quoted price is reasonable.*

*However restricted powers of Single tender mode of procurement would apply. Before retendering, the procuring entity is first to check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly specification, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for retender as a safe course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the process may be considered valid provided following conditions are satisfied: i) The procurement was satisfactorily advertised and sufficient time was given for submission of bids; ii) The qualification criteria were not unduly restrictive; and iii) Prices are reasonable in comparison to market values. However restricted powers of Single tender mode of procurement would apply. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable. Unsolicited offers against LTEs should be ignored, however Ministries/ Departments should evolve a system by which interested firms can enlist and bid in next round of tendering.”*

131. Accordingly, the submission of the counsel for the petitioners in unison is that the order dated 13.02.2024 which cancelled the auction runs contrary to the Notification and Circular issued by the Government of India and Financial Commissioner, UT of J&K, respectively, and as a consequence, the impugned order deserves to be quashed.

**132.** This Court is unable to accept this argument advanced by the learned counsels for the petitioners for the reason that the aforementioned Notification, Circular as well as the Manual comprise of broad guidelines which are recommendatory in nature. The mere recommendations made by these guidelines/manual do not disentitle the Government to make any decision in the economic domain, particularly in a case concerning the exclusive privilege of the Government, depending upon the peculiarities and circumstances of each case. In any event, the Court must refrain from interfering with such a decision merely on the premise that any other decision would have been fairer, wiser or better.

**133.** A submission was made by Mr. Gagan Basotra, learned Senior counsel that that the executive instructions and terms of the bid document, cannot be contrary to the policy decision of the Government, which has statutory force. However, this Court is unable to accept this submission as well for the reason that it is now well settled that the terms of the invitation to tender are not open to judicial scrutiny and the courts cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice. To support this view, reliance is placed on *Global Energy Ltd. v. Adani Exports Ltd.*, (2005) 4 SCC 435, the relevant paragraph of which is reproduced hereunder: -

*“10. The principle is, therefore, well settled that the terms of the invitation to tender are not open to judicial scrutiny and the courts cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice. This being the position of law, settled by a catena of decisions of this Court, it is rather surprising that the learned Single Judge passed an interim*

*direction on the very first day of admission hearing of the writ petition and allowed the appellants to deposit the earnest money by furnishing a bank guarantee or a bankers' cheque till three days after the actual date of opening of the tender. The order of the learned Single Judge being wholly illegal, was, therefore, rightly set aside by the Division Bench.”*

134. The second limb of argument advanced by the learned Senior counsel is that Clause XXIII of the Bid Document, which has been pressed into service by the respondents while passing the order impugned, was not there in the excise policy which has statutory force. Therefore, as per him, the respondents, by no stretch of imagination, could have added this clause which gives them unbridled powers in the bidding process. However, in the view of this Court, this ground is not available to the petitioners after having gladly and voluntarily participated in the bidding process without any grouse. It does not lie in the mouth of petitioners to now agitate, at this belated stage, that the terms and conditions of the bid document are not in consonance with the excise policy, particularly when, they have participated in the bidding process without any demur. The petitioners, being fully aware of the said auction conditions participated in the same and after having participated in the auction, cannot turn around and challenge or impugn the said auction condition. It is settled law that after participating in a tender/auction process, the bidder cannot turn around and challenge the conditions in the bid document.

135. The Court is fortified by the view taken by the Division Bench of the Delhi High Court in *M/s. Opaque Infrastructure Pvt. Ltd. vs Union of India &Anr.*, 2015 SCC OnLine Del 8396, wherein it was observed as under: -



*“21. There is no merit in the contention of the counsel for the petitioner that the respondents could not have qualified the NSIC certificate by making it restricted to the items covered by the tender and NSIC certificate should have been treated as valid for all items. The tender document itself stipulated that the certificate must cover the items tendered. The petitioner, being aware of the said tender conditions participated in the tender and having participated in the tender, cannot challenge or impugn the tender condition. The petitioner having participated in the tender process can only expect equality and fair treatment in the matter of evaluation of competitive bids. The petitioner cannot be permitted to challenge the terms and conditions of the tender after he had participated in the same.”*

136. This view was further reiterated in *Poorvanchal Caterers v. Indian Railway Catering and Tourism Corpn. Ltd.*, 2009 SCC OnLine Del 1012, wherein, the Division bench of the Delhi High Court on the strength of the decision of the Hon'ble Supreme Court in *Tafcon Projects (I) (P) Ltd. v. Union of India*, (2004) 13 SCC 788, observed as under:

*“21. Learned Counsel for IRCTC has brought to our notice a decision of the Supreme Court in Tafcon Projects (I) (P) Ltd. v. Union of India, (2004) 13 SCC 788. Insofar as this decision is concerned, it has been observed in paragraph 16 of the Report that where a person has given a bid in response to a tender notice and participated in the proceedings, it cannot then challenge the tender notice on the ground that it is vague. In our view, the observation of the Supreme Court squarely applies to the present case. The Petitioner participated in the tender process and after having lost, it cannot now turn around and claim a different interpretation to the second part of paragraph 6.2(vi) of the Catering Policy. The Petitioner participated in the tender process with its eyes wide open and not having succeeded, it is estopped from challenging the tender process.”*

137. In view of the facts of the present case and the aforesaid settled legal position, the argument advanced by the learned Senior counsel cannot be accepted and is accordingly, rejected.

138. In so far as the power of the Government to cancel the auction process *ab initio* is concerned, it is imperative to first reproduce the clause (XXIII) of the bid document relied upon by the respondents to carry out the said action. For facility of reference, the clause XIII is reproduced hereunder:

***“XXIII. The Government reserves the right to add/delete/de-notify/ change any of the locations/cancel the auction process in respect of all/any of the location(s) without specifying any reason at any time prior/during or after the auction process.”***

139. A perusal of the aforementioned clause establishes the right of the Government to cancel the auction process in respect to all/any of the locations without specifying any reason at any time prior/during or after the auction process. Resultantly, it is clear that in terms of the bid document, the respondent reserves the discretion to cancel the auction. Indisputably, this discretion emerges from the express terms of the bid document, and this court would not interfere with the exercise of such discretion, unless it is exercised in a discriminatory or arbitrary manner. As already stated, the reasons for exercise of this clause do not appear *mala fide* or discriminatory and as such, in the limited power of judicial review, courts must show restraint in interfering with decisions like these.

140. In *Air India Ltd. v. Cochin International Airport*, (2000) 2 SCC 617,

the Supreme Court on the issue of the State's discretion in conducting a public tender process, held as under:

*“The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.”*

**141.** In transactions of commercial nature, like in the present case, the Government/State is at liberty to fix the terms of the bid document or notice inviting tender as they are motivated by commercial considerations, which are beyond the pale of judicial review. Therefore, the challenge made by the petitioners to the insertion of such a clause in the bid document is ill-founded as it is based on commercial considerations and is well within the power of the Government in such like matters. The Court can examine the decision making process and interfere if it is found to be vitiated by the vice of *mala fides*, unreasonableness and arbitrariness, which is not the case in the present matter.

**142.** Importantly, even if a case for interference is made out, the Hon'ble Supreme Court has sounded a *caveat* that courts should always keep the larger public interest in mind in order to decide whether an intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene. Public interest, if at all, appears to be in fostering healthy competition amongst the bidders which was the rationale behind the decision of cancelling the auction and not in the cause projected by the petitioners. Thus, the challenge thrown by the petitioners to the order impugned is ill founded and devoid of any merit.

**F. Whether the order of cancelling the auction process is sought to be justified by way of fresh reasons?**

**143.** Another argument made by the counsel for the petitioners is that the Government cannot substitute the reasons, which do not find mention in the

order impugned, by way of objections as the order impugned reflects that the bid of the petitioner was cancelled only on two counts i.e. poor response and less competition. However, the respondents while filing reply have added that it has been cancelled because of consequent loss to the Government exchequer as reflected in the reply.

**144.** In the landmark decision of *Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405, the Apex Court has observed as under: -

*“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may herewith draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :*

*“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.*

*Orders are not like old wine becoming better as they grow older a caveat”*

**145.** The proposition that the validity of an order must be adjudged on the basis of reasons so mentioned and cannot be supplemented by fresh reasons in

the shape of an affidavit or objections cannot be disputed with. However, with a view to clinch the controversy in question, the relevant extract of the reply of the Government is reproduced as under: -

***“4. That the Excise Department issued the e-auction Notice vide No.EC/Exc/e-auction/2024-25/7182 dated 01.02.2024 for allotment of vends at 305 Locations in UT of J&K in a fair and transparent manner through e-auction. The petitioner took part in a e-auction for the Location at JMC Ward No.5-A in City Excise Range Jammu North. Since, only the petitioner participated in the vend and in view of auto-generated mail that is created upon completion of the end time of the bidding by the e-auction portal/system, the petitioner was declared as H1 bidder by the system generated mail after the end time of bidding. As there was no other bidder who participated for this location for which petitioner participated hence there was poor response and less competition in bidding for this location including 9 other locations which were cancelled by the department to give fair chance to other bidders to participate in the re-auction besides increasing the revenue potential of the vend.”***

The relevant extract of the reply on behalf of Government in WP(C)

No. 317/2024 is reproduced as under:

***“7. That from the e-auction results from these locations, there is also apprehensions that some of the bidders unitedly and in collusive and collaborative manner decided to bid for particular locations including the Location at JMC Ward No.5-A in City Excise Range Jammu North and others had agreed to not bid for these locations to take the bid at low price, which are substantially low than the previous year’s bid, if these bidders will be allowed to get the license, it will be huge loss in Government revenue.***

xxx

***6.b. With regard to ground ‘b’ of the writ petition, it is submitted that mere fixation of minimum bid price would not guarantee the allotment of liquor vend in favour of petitioner, the Government has to take other parameters also especially the Government revenue before allotting the liquor vends in favour of auctioneers.”***

**146.** A holistic view of the reply makes it clear that the Government has not sought to supplement existing reasons with completely fresh reasons. What the Government has mentioned in its reply is nothing but a necessary and logical corollary of poor response and less competition in the bidding process. It only logically follows that once there is poor response and less competition in the bidding process, it would have the propensity of causing loss to the State exchequer. It does not appear to this Court that by taking such a stand, the Government has sought to defend its stand on the basis of completely fresh reasons. In any event, even if it were to be assumed that this constitutes a fresh reason, it would be immaterial as this Court, while adjudicating on the validity of the Governmental action has only based its conclusion on the basis of reasons, explicitly mentioned in the order, namely the lack of competition and the poor response to the bids.

**147.** Resultantly, the aforesaid submission of the learned counsels for the petitioners does not come to the aid of the petitioners.

### **Conclusion**

**148.** This Court hereby summarizes its conclusions and findings as follows: -

- I. In view of the exclusive privilege of the Government in sale/manufacture of liquor, the scope of judicial review in administrative decisions concerning same is extremely limited.**
- II. No vested right is accrued to a bidder simply by virtue of the fact that he/she has been declared as the highest bidder provisionally and subject to fulfillment of certain conditions in a given auction.**

- III. Bearing in mind the nature of the liquor trade, this Court, being a constitutional court, should be slow in interfering with the executive decisions taken by the State as they are essentially a matter of economic policy in which the Government must be afforded a greater latitude and fair play in the joints.
- IV. The mere existence of a provision for Minimum Guaranteed Revenue or Minimum Reserve Bid Price in the Excise policy 2024-25, vide SO 85, does not disentitle the Government from cancelling the auction/re-auctioning on germane considerations having a logical nexus with the policy objectives.
- V. The decision to cancel the auction and the subsequent order for re-auctioning cannot be termed as arbitrary, discriminatory, or *mala fide* so as to warrant judicial interference.
- VI. In any event, this Court cannot interfere with an administrative decision, merely on the premise that any other decision would have been fairer, wiser, or more logical especially, when it relates to the Excise policy.
- VII. The cause projected by the petitioners does not subserve an overwhelming public interest, which must be borne in mind to decide whether judicial intervention is called for or not.
- VIII. The petitioners, being fully aware of the said auction conditions participated in the same without any demur and after having participated in the auction, cannot turn around and challenge or impugn an auction condition unless there is a foundation of



**manifest arbitrariness or *mala fide*, which is conspicuously absent in the instant case.**

**IX. The reasoning provided by the Government for cancelling the auction cannot be termed as unreasonable or arbitrary and, after examining the original record, it appears to be an informed decision based upon germane considerations.**

**149.** In conclusion, this bunch of writ petitions, which are devoid of any merit, fail and are dismissed along with all connected applications. As a necessary corollary, the interim orders passed by this Court stand vacated in all these petitions. Accordingly, the Government is at liberty to proceed with the re-auction of various liquor vends, which are subject matter of the instant petitions pertaining to different ranges, in accordance with law.

**150.** These petitions are dismissed in the manner indicated above.

**(Wasim Sadiq Nargal)**  
**Judge**

Jammu:  
05.06.2024  
Raj Kumar

**Whether the judgment is reportable?: Yes.**

**Whether the judgment is speaking?: Yes.**