

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Reserved on: 27-05-2025

Pronounced on: 31-07-2025

Broadcasting Petition No. 78 OF 2025

With

M.A. No.154 of 2025

M/S. Vision Corporation Limited

...Petitioner

Versus

Prasar Bharati

...Respondent

BEFORE:

**HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL
(CHAIRPERSON)**

HON'BLE MR. SUBODH KUMAR GUPTA (MEMBER)

FOR PETITIONER	FOR RESPONDENT
Mr Vibhav Srivastava, Adv. Ms Payal Kakra, Adv. Mr Shivam Mehrotra, Adv. and Mr Pranav, Adv.	Mr Rajeev Sharma Sr Adv With Ms Shreya Sharma, Adv. Mr Sahil Bhalai, Adv. Mr Nishant Kandpal, Adv. Mr Siddharth Khanna, Adv.

JUDGEMENT

Per Justice D.N. PATEL, Chairperson

1. In the Broadcasting Petition No. 78 of 2025, the Petitioner has challenged the Respondent's email communication/decision dated 12-02-2025 (Annexure P-1), through which the Respondent informed the petitioner about rejection of the Petitioner's application to participate in the 7th Annual (85th) e-auction for DD Free Dish slots for the period April 1, 2025, to March 31, 2026, on grounds of alleged incorrect and misleading genre/language particulars submitted by the Petitioner.
2. Furthermore, has also impugned the Notification No. DDFD /3(1)/2025/Platforms dated 09-01-2025, which adopted the same contested e-auction methodology as challenged in B.P. No. 184 of 2024.

3. That vide order dated 17-02-2025 in B.P. No. 78 of 2024, this Tribunal had decided that both the said cases will be heard together. However, at the time of final arguments the Counsel for the Petitioner, had stated that at present they are only pressing B.P. No. 78 of 2025.
4. That in view of the statement so made by the Ld. Counsel for Petitioner it is both expedient and in the interests of justice that the present judgement is confined only to the grounds and prayers as raised in the B.P. No. 78 of 2025 and the said are disposed of by this judgment.

5. FACTUAL MATRIX

- A. This petition, filed under Section 14 A (1) read with Section 14 (a) (ii) of the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act"), seeks to quash and set aside Respondent's email communication/decision dated 12-02-2025 (the "Impugned Communication/Decision") and Notification No. DDFD/3(1)/2025/Platforms dated 09-01-2025 (the "Impugned Notification").
- B. That the Impugned Notification pertains to the 7th Annual (85th) e-auction for the allotment of vacant MPEG-2 slots on the DD Free Dish DTH platform for the period 01-04-2025

to 31-03-2026, issued pursuant to the e-auction methodology originally notified on 27-01-2023, as amended by Notification No. DDFD/9(11)/2023/P-VII dated 13-12-2023, the validity whereof is presently sub judice before this Tribunal in Broadcasting Petition No. 184 of 2024.

- C.** That the Petitioner, to participate, submitted its application via email on 28-01-2025, along with a Demand Draft of Rs. 1,50,00,000/- and an additional fee of Rs. 25,000/-. However, on 06-02-2025, the Respondent sought clarifications via email, citing discrepancies in company names, insufficient documentation for genre/language, and unclear program content schedules for November, December 2024, and January 2025, as well as proposed schedules for April, May, and June 2025.
- D.** The Petitioner responded by clarifying the company name, submitting documents confirming "GENRE - MOVIE" and "LANGUAGE - BANGLA," and providing the requested program schedules.
- E.** Furthermore on 08-02-2025, the Respondent expressed dissatisfaction with the information submitted by the

Petitioner and demanded, that "Programme Content Title" data and "Hard Disc having Off telecast recordings" for November, December 2024, and January 2025, by 11:00 AM on 10-02-2025.

- F.** The Petitioner, via email on 10-02-2025 requested adequate time, citing the weekend receipt of the demand. It reiterated that the issue was *sub judice* in B.P. No. 184 of 2024. The Respondent, on 10-02-2025, granted time until 17:00 Hrs. on 11-02-2025, for the Petitioner to submit "*clear and unambiguous proof in support of operational status on the date of notification and Genre & Language classification of 'Movie Plus'.*"
- G.** That on 11-02-2025, the Petitioner wrote to the Respondent, stating that all requested documents had already been provided in previous years and were in the Respondent's possession, confirming its status in Bucket R1, Genre - Movie, Language - Bangla. The Petitioner also sought Login ID and Password.
- H.** Being aggrieved by the Respondent's conduct, the Petitioner filed M.A. No. 33 of 2025 in B.P. No. 184 of 2024 on 12-02-

2025, seeking directions to prevent harassment and to compel the Respondent to provide the necessary Login ID and Password for participation in the 7th Annual e-Auction.

- I.** That on 12-02-2025, the Respondent through the Impugned Communication (Annexure P-1), rejected the application of the Petitioner to participate in the e-auction, citing, submission of incorrect or misleading information regarding genre and language, (predominantly Hindi teleshopping) and ineligibility for Bucket R due to non-fulfilment of the prescribed threshold for Bangla content in the channel as per the regulatory framework.
- J.** The above decision was predicated on recordings evincing sub-60% (even sub-50%) Bangla content, e.g., 4 hours 10 minutes Bangla vs. 19 hours 49 minutes Hindi on 09-01-2025, which, showed a "majority of the telecast period" was dedicated to "Hindi advertisements/teleshopping content with miniscule Bangla movie content." Thus, the Respondent concluded that the Petitioner "deliberately furnished incorrect particulars" with intent to "apply under a subsidized bucket ('R') and to mislead the Respondent."

- K.** The Petitioner had earlier approached this Tribunal by way of M.A. No. 33 of 2025 in B.P. No. 184 of 2024, seeking reliefs, including issuance of login credentials for the auction. This Tribunal, noting the urgency and without entering into the merits, directed the Petitioner to provide the requested recordings and the Respondent to assess eligibility expeditiously.
- L.** That on 15-02-2024, the Petitioner filed the instant Broadcasting Petition No. 78 of 2025, inter-alia praying for the following relief:-
- "a) Pass appropriate/necessary directions to declare the above-said impugned Email Communication/ decision dated 12.02.2025 issued by the Respondent arbitrary, illegal, null & void, and also set aside the Notification No. DDFD/3(1)/2025/Platforms dated 09.01.2025 issued by the Respondent, in favour of the Petitioner and against the Respondent;"*
- M.** This Tribunal vide its Order dated 17.02.2025 issued notice in the present B.P. and declined interim relief for the Petitioner participation in the bidding process as the process had already concluded.
- N.** Thereafter hearing learned counsel for the parties on various dates, specifically 28.02.2025, 21.03.2025, 28.03.2025, 25.04.2025, 09.05.2025, and 21.05.2025, this Tribunal, by

order dated 27.05.2025, reserved judgment in the present matter.

6. ISSUES INVOLVED

The following issue is involved in the present Broadcasting Petition, which need due consideration of this Hon'ble Tribunal are as follows:

- I.** Whether the Respondent's rejection of the Petitioner's application for the 7th Annual (85th) e-Auction through the Impugned Communication Dated 12-02-2025, on the grounds of "incorrect and misleading details regarding the language and genre" and non-compliance with "predominantly Bangla channel" criteria, constitutes a malafide and arbitrary exercise of power ?

ARGUMENTS CANVASSED BY THE PETITIONER

- 7.** It is submitted by Learned Senior Counsel for the Petitioner that the Respondent's actions contravene Section 12 of the Prasar Bharati Act, 1990, which mandates fair and non-discriminatory conduct.
- 8.** The Respondent's conduct, as an instrumentality of the State, violates Article 14's guarantee of equality, as

expounded in *Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai*, (2004) 3 SCC 214.

- 9.** It is further submitted by Learned Counsel for the Petitioner, that the Petitioner, having previously participated in the e-auction process and expressly undertaken to comply with all future telecast criteria, had a legitimate expectation of fair and equal treatment.
- 10.** That the Respondent's failure to consider the Petitioner's undertaking, and its disregard for established norms of participatory fairness, is contrary to the doctrine of legitimate expectation as enunciated in *Union of India v. Hindustan Development Corporation* (1993) 3 SCC 499.
- 11.** It is further submitted by Learned Counsel for the Petitioner that the auction documents provide explicit remedial mechanisms for addressing any post-allotment defaults and they should have been allowed to participate in auction process.
- 12.** The Respondent's pre-emptive and absolute disqualification of the Petitioner's candidature, without testing future compliance or availing available safeguards (such as

performance guarantees), is inconsistent with the very structure of the auction process.

- 13.** Furthermore, Government agencies are bound to adhere strictly to the terms of the auction document and cannot impose conditions dehors the tender as held in *Reliance Airport Developers (P) Ltd. v. Airports Authority of India*, (2006) 10 SCC 1).
- 14.** It is further submitted by Learned Counsel for the Petitioner that the Respondent's action is grossly disproportionate to the objective sought to be achieved. The principle of proportionality mandates that any administrative measure must not exceed what is necessary to achieve the stated purpose as enunciated in the case of *Om Kumar v. Union of India*, (2001) 2 SCC 386).
- 15.** Moreover, Conditional participation or remedial measures post-allotment would have sufficed to safeguard the Respondent's interests, rendering outright disqualification excessive and unreasonable.
- 16.** It is further submitted by Learned Counsel for the Petitioner Arbitrary exclusion of a bona fide bidder, absent valid justification, undermines fair competition and may restrict

the field to a narrower set of participants, adversely impacting revenue and public interest.

- 17.** That such exclusion is antithetical to the settled jurisprudence that public tenders must foster open and transparent competition as held in the case of *Reliance Energy Ltd. v. MSRDC*, (2007) 8 SCC 1.
- 18.** It is further submitted by Learned Counsel for the Petitioner that each tender or bidding process is a separate and independent event, to be evaluated on its own terms. Past conduct, unless barred by the doctrine of res judicata or estoppel, cannot form the sole basis for disqualification where the present bid satisfies all requirements. The law favours assessment of current capacity and binding undertakings over presumed future default.
- 19.** It is submitted by the Ld. Counsel for the Petitioner that the Respondent's conduct is manifestly discriminatory and violative of Article 14 of the Constitution. The Respondent, in a wholly partisan manner, has treated the Petitioner differently from other broadcasters, not only by altering the auction methodology and unduly restricting teleshopping content, but also by withholding crucial process

communications such as login credentials only in respect of the Petitioner's bucket, thereby frustrating the Petitioner's legitimate expectation to fair and equal treatment.

20. It is submitted by the Ld. Counsel for the Petitioner that the summary rejection of the Petitioner's application for participation in the 7th Annual (85th) e-Auction was effected in patent breach of Clause 6.2 of the very Notification dated 09.01.2025, which mandates that alleged violations of declared genre or language are to be considered by a duly constituted committee, and only upon a finding of default may a show cause notice be issued, affording the broadcaster an opportunity to seek change of genre/language. In the present case, the Petitioner was denied this mandatory procedural safeguard.

21. It is further submitted by Learned Counsel for the Petitioner that in view of the above factual and legal position, the actions of the Respondent cannot be legally countenanced and thus the Impugned Communication Dated 12-02-2025 and Decision of Scrutiny Committee Dated 15-02-2025 as assailed in in Broadcasting Petitions needs to be quashed and set aside.

ARGUMENTS CANVASSED BY RESPONDENT

- 22.** Per contra the Learned Senior Counsel for the Respondent that the Impugned Communication/Decision dated 12-02-2025, rejecting the Petitioner's application for the 7th Annual e-auction, is lawful, premised on deliberate misstatements and ineligibility for Bucket R.
- 23.** That The Petitioner's Fixed Point Chart (FPC) for November 2024–January 2025 falsely claimed predominant Bangla content, while telecast records (e.g., 4 hours 10 minutes Bangla vs. 19 hours 49 minutes Hindi on 09-01-2025) confirm non-compliance with the 75% content threshold (60% excluding ads/promos) under Clause 3.8.1 of Notification dated 13-12-2023, rendering the application fraudulent and misrepresenting material facts.
- 24.** It is further submitted by counsel for respondent that the rejection of the Petitioner's application for participation in the 2025-26 e-auction, specifically for a slot in the subsidised "Bucket R" category, was both lawful and justified.
- 25.** That the factual record, including fixed point charts, off-telecast recordings, and contemporaneous correspondence,

demonstrates conclusively that the Petitioner wilfully misrepresented the genre and language content of its channel, "Movie Plus."

- 26.** Further despite categorical stipulations in the Notice Inviting Applications and repeated opportunities for compliance, the Petitioner failed to establish that its channel carried 60% or more Bangla content (exclusive of advertisements), as mandatorily required for eligibility in Bucket R.
- 27.** It is further submitted by counsel for respondent that the Respondent, as the owner and operator of a public service broadcasting platform, is fully empowered and entitled to prescribe distinct categories ("Buckets") for slot allocation, with the underlying rationale of promoting genuine regional language broadcasting.
- 28.** That the subsidised nature of Bucket R with a reserve price of merely Rs. 3 crores as opposed to Rs. 15 crores and above in other Buckets, exists to serve the objective of regional language promotion and not as an artifice for cost-avoidance by channels with predominantly non-regional content.
- 29.** The Respondent's policy of insisting on a 60% threshold for regional content is neither arbitrary nor unreasonable, but is

a legitimate and proportionate means to achieve the stated objective.

- 30.** It is further submitted by counsel for respondent that judicial review of contractual or policy stipulations in a tender process is circumscribed by well-settled jurisprudence. As enunciated in *Meerut Development Authority v. Association of Management Studies* [(2009) 6 SCC 171] and *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation* [(2016) 16 SCC 818], the scope of interference is extremely narrow and is limited only to cases of demonstrable mala fides, arbitrariness, or perversity, which are conspicuously absent in the present case.
- 31.** That as the owner of the platform i.e DD FREE Dish DTH, the Respondent is the best judge of its requirements and is entitled to interpret and enforce the eligibility conditions as it deems fit, provided such action is not actuated by extraneous considerations.
- 32.** It is further submitted by counsel for respondent that the Petitioner, having accepted the terms of the auction, cannot be permitted to approbate and reprobate. The Petitioner voluntarily participated in the e-auction, submitted the

requisite undertaking regarding content, and subsequently enjoyed the benefit of slot allocation.

- 33.** That having done so, the Petitioner is estopped from turning around and challenging the very foundational stipulations of the process. The principle of estoppel, particularly in matters of public tender and contractual undertakings, operates with full vigour to bar such conduct.
- 34.** It is submitted by the Ld. Counsel for Respondent that the grievance of the Petitioner that the Respondent has treated the Petitioner differently or discriminated against it is wholly unfounded and unsupported by any material. On the contrary, the Respondent has acted fairly, provided multiple opportunities for compliance, and has, at every stage, abided by the principles of natural justice.
- 35.** It is further submitted by counsel for respondent that the Petitioner's failure to provide off-telecast recordings for November 2024–January 2025, despite requests on 06-02-2025 and 08-02-2025 and an extension until 11-02-2025 at 17:00 hours, justified rejection under Clauses 5.1.1, 5.1.4, and 6 of Annexure 1 of the Notification dated 09-01-2025, mandating documentary proof of genre/language

compliance. The Petitioner's evasive responses and reliance on prior submissions, accepted for 2024–2025, are untenable, as each auction requires fresh scrutiny.

- 36.** It is further submitted by counsel for respondent Notifications dated 13-12-2023 and 09-01-2025 are valid exercises of statutory authority under Section 12 of the Prasar Bharati Act, 1990, promoting regional languages through subsidized Bucket R slots (Rs. 3 Crore vs. Rs. 15 Crore for Bucket A+).
- 37.** The Petitioner's misrepresentation of "Movie Plus" as a Bangla channel to secure a lower-priced slot undermines this public interest objective, and its challenge is estopped by participation and acceptance of terms
- 38.** It is further submitted by counsel for respondent the Respondent adhered to due process, as Clause 6.2 of the Notification dated 09-01-2025 governs post-allotment violations, not pre-auction eligibility.
- 39.** That the Scrutiny Committee's findings on 14-02-2025, post-Petitioner's submission of recordings on 13-02-2025, confirmed consistent non-compliance (less than 4.5 hours daily Bangla content), justifying rejection without a show-

cause notice, as the application failed ab initio, reliance placed on *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation* (2016) 16 SCC 818.

- 40.** It is further submitted by counsel for respondent that allegations of discrimination, harassment, or withholding of login credentials are unfounded, as the Respondent uniformly applied eligibility criteria, granting multiple opportunities i.e. 06-02-2025, 08-02-2025 and 10-02-2025 for compliance. The retention of Rs. 1.5 Crore fees is a contractual consequence of ineligibility, not a violation of Article 14.
- 41.** That in view of the foregoing, it is submitted that the present Petition is devoid of merit and constitutes a gross abuse of the process of this Hon'ble Tribunal and the rejection of the Petitioner's application is amply justified, being predicated on wilful misrepresentation and failure to meet the eligibility criteria. Furthermore, no case of arbitrariness, discrimination or violation of contractual or constitutional norms is made out.

REASONS AND ANALYSIS

-ISSUE -

42. Whether the Respondent's rejection of the Petitioner's application for the 7th Annual (85th) e-Auction through the Impugned Communication Dated 12-02-2025, on the grounds of "incorrect and misleading details regarding the language and genre" and non-compliance with "predominantly Bangla channel" criteria, constitutes a malafide and arbitrary exercise of power ?

43. That the Petitioner asserts that the Respondent's rejection of its application for the 7th Annual (85th) e-Auction vide communication dated 12-02-2025 was a *mala fide* and arbitrary exercise of power. It is vehemently argued that the grounds cited, namely "incorrect and misleading details regarding the language and genre" and non-compliance with "predominantly Bangla channel" criteria, are unfounded.

44. That the Petitioner stated that earlier Allotment Letter dated 04-03-2024, wherein its channel "Movie Plus" was successfully allotted a Bucket R1 slot as a "Bangla Movie" channel for the previous period (01-04-2024 to 31-03-2025), stating that its genre and language declarations were previously accepted as correct.

- 45.** Furthermore, the Petitioner contends that the rejection was in patent breach of Clause 6.2 of the Notification dated 09-01-2025 (Annexure P-1), which purportedly mandates a prior committee review, issuance of a show cause notice, and an opportunity for the broadcaster to seek a change of genre/language before such a summary disqualification.
- 46.** Conversely, the Respondent asserts that the decision to reject the Petitioner's application was founded on a transparent and reasoned process. It is demonstrated from the record that the Petitioner, having applied for a subsidised slot under Bucket R1 (reserved for regional language channels), was required to establish, through clear documentary and broadcast evidence, that its channel "Movie Plus" satisfied the requisite threshold of 60% Bangla content (excluding advertisements). Despite repeated opportunities, the Petitioner failed to furnish the off-telecast recordings and programme schedules as mandated.
- 47.** That the Respondent, upon independent verification of telecast data and later data submitted by the Petitioner discovered that the actual Bangla content was consistently far below the prescribed limit, with a substantial proportion

of telecast time devoted to Hindi advertisements and teleshopping content.

48. That the Respondent further contended that the rejection is grounded in the Petitioner's wilful misstatements in its Fixed Point Chart (FPC) and ineligibility for the subsidized Bucket R1, intended for regional language promotion as well as based upon the Scrutiny Committee's findings, post-multiple opportunities (06-02-2025, 08-02-2025, 10-02-2025) along with evaluation of recordings of telecast content (e.g., 19 hours Hindi Content on 09-01-2025).

49. That it is pertinent to reproduce the relevant clauses and annexure from the Notification dated 09.01.2025 (Annexure P-1) inviting applications for 7th Annual (85th) e-Auction for allotment of TV Channel slots and the same reads as under:

- 8. Before, starting filling up of online application, please ensure that copies of all documents provided in Annexure-1, including participation fee RTGS detail/ Demand Draft, are available in PDF Format, not exceeding 1.0 MB, for uploading.*
- 9. Satellite TV Channels participating in e-auction shall be required to furnish an undertaking in the prescribed formats as per Annexure-2.*
- 10. The applicant company desirous of participating in the e-auction will be***

required to submit a duly filled and signed Integrity Pact, in the format provided in Annexure-4.

16. *For details like e-auction process, terms & condition and payment schedule please refer to E-auction Methodology 2025 available on the website <http://prasarbharti.gov.in>.*
17. *Prasar Bharti reserves the rights to accept/reject/cancel/amend the e-Auction/Slots at any time during the e-Auction or after e-Auction.*

X-X-X-

Annexure-1

5. *Documents in support of Genre and Language classification of channel:*
 - 5.1 *Documents to be provided by already operational channels on the date of Notification. for Genre and Language classification.*
 - 5.1.1 *Documentary evidence for presence of channel on MSO/DTH platforms and Genre and Language in which channel has been placed in those platforms (Certificate from DTH Operator/ MSO on their Letter Head).
Or*
 - 5.1.2 *Additionally any documentary evidence from regulatory/Govt. authorities (TRAI, MIB) that could clearly establish the Genre & Language classification. if any.
Or*
 - 5.1.3 *Documentary evidence from Television Rating Agency (eg: BARC) that could clearly establish their Genre & Language classification, if any.*

5.1.4 Channels applying for Bucket R in e-Auction for MPEG-2 Slots need to mandatorily provide documentary evidence for presence of channel on MSO/DTH platforms and Genre and Language in which channel has been placed in those platforms (Certificate from DTH Operator/ MSO on their Letter Head).

6. In addition to 5.1 or 5.2 above (whichever is applicable) the applicant channel has to submit the Programme Content Schedule/ Fixed Point Chart of the channel for past three months (Nov. & Dec. 2024 & Jan 2025) (for channels falling under 5.1 above) and Proposed Content Schedule / Fixed Point Chart for April, May & June 2025 (for both Channels falling under 5.1 or 5.2 above) consistent with Genre and Language declared.

X-X-X-

Annexure-2

We also undertake that the channel shall carry content predominantly of declared Genre and Language of the channel during period of allotment of DD Free Dish slot.

Here '**Predominantly means, 76 percent of content telecast on channel shall be in Genre and Language (audio), as declared above, excluding the limit of advertisements /promos on the channel as prescribed under rule (7) sub-rule (ii) of Cable Television Networks (Regulation) Act, 1995 across a month.**

*This means that the content of declared Genre and Language of a Channel **shall not be less than 60 percent of the entire content of the channel in a month.***

We further confirm that the information contained in the bidder registration form or any part thereof, including its exhibits, and other documents and instruments delivered to Prasar Bharati /Doordarshan are true, accurate, verifiable and complete. This response includes all information necessary to ensure that the statements therein. do not, in whole or in part, mislead the department in its allotment process.

X-X-X

Annexure-4

Integrity Pact

1. PREVIOUS TRANSGRESSION IF ANY OF THE CHANNEL PROVIDER:

- A. **The CHANNEL PROVIDER. declares that no previous transgression has occurred during the last three years immediately preceding the signing of this INTEGRITY PACT,** with any other entity in any country in respect of any corrupt practices envisaged here under, or with any Public Sector Enterprise in India, or any Government Department in India that will justify CHANNEL PROVIDER's exclusion from the TENDER/e-auction process.
- B. **The CHANNEL PROVIDER agrees that if it makes any false declaration as referred to in the immediately preceding para, it may be disqualified from e-auction process,** and if selected, such e-auction may be declared by Prasar Bharti as

null and void. As a natural consequences, an agreement for carrying TV Channel(s) on DD Free Dish, if already entered into, may be terminated on such grounds.

2. SANCTIONS FOR VIOLATIONS

Any breach by the CHANNEL PROVIDER of any provision contained in clauses 3 and 4, or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the CHANNEL PROVIDER) shall entitle PRASAR BHARATI to take all or any one of the following actions, wherever required:

a. To immediately disqualify the CHANNEL PROVIDER for participation in the e-auction process without assigning any reason or giving any compensation. The e-auction process with other applicants shall continue.

b. The Participation fee /Security Deposit shall stand forfeited either fully or partially, as decided by PRASAR BHARATI and PRASAR BHARATI shall not be required to assign any reason there for.

-X-X-X-

(Emphasis Supplied)

50. The present issue arises from the rejection of the Petitioner's application to participate in the 7th Annual

(85th) e-Auction for a DD Free Dish slot under Bucket R, communicated by the Respondent via its email dated 12-02-2025. The reasons cited by the Respondent are twofold: first, the Petitioner's alleged submission of false and misleading particulars regarding the declared genre and language of its channel 'Movie Plus'; and second, the ineligibility of the Petitioner's channel for Bucket R due to non-compliance with the prescribed content criteria. The Petitioner has impugned this decision as being arbitrary, malafide, and in breach of the principles of natural justice and fairness.

- 51.** At the outset, the regulatory framework governing the allotment of slots on DD Free Dish, and specifically the criteria for participation in the e-auction for Bucket R, is clear and unambiguous. The Notice Inviting Applications dated 09.01.2025, read with Annexures 1 and 2, mandates that a channel seeking a slot in Bucket R must be operational and available in the concerned regional language on the date of notification, and must provide documentary proof, including off-telecast recordings and a Fixed Point Chart (FPC), to establish that at least 75%

of the content telecast on the channel is in the declared genre and language (or 60% exclusive of advertisements).

- 52.** The record reveals that the Petitioner, in its application dated 28.01.2025, represented 'Movie Plus' as a Bangla movie channel and submitted documents, including a FPC, purporting to show compliance with the content threshold. Upon scrutiny, the Respondent found that the FPC was generic and lacked specificity, as it did not provide actual titles or timings for the Bangla content, but rather made omnibus statements.
- 53.** That when called upon to submit further details, including the off-telecast recordings for the relevant months (November 2024, December 2024, and January 2025), the Petitioner initially failed to comply and, when it did so belatedly only upon the directions of this Tribunal in M.A. No. 33 of 2025, the submitted materials were subjected to a detailed analysis by the Respondent's Scrutiny Committee.
- 54.** That as per the Respondents Counter affidavit, the analysis of the off-telecast recordings revealed a repeated

pattern on each day under review, that the Petitioner's channel carried less than 4.5 hours of Bangla content out of 24 hours, with the overwhelming majority of the broadcast consisting of Hindi advertisements and teleshopping programming.

- 55.** These findings were documented, cross-checked against the FPC, and were communicated to the Petitioner in a reasoned speaking order dated 14.02.2025 contained in Annexure R-3 to the memo of the Reply of Respondent to the Petition of Petitioner in B.P. No. 78 of 2025, the relevant portions of which reads as under:

"In pursuance to the directions passed by the Hon'ble TDSAT on 13.02.2025 in the MA 33/2025 in BP 184/2024, the channel Movie Plus has furnished, today on 14.02.2025 at around 10.00 AM, the recordings of programme telecast from the month of Nov 2024 to Jan 2025.

Accordingly as per the direction of the Hon'ble Tribunal the 5TH Meeting of Scrutiny Committee was held on 14.02.2025 from 16.15Hrs to examine the video recordings submitted by Movie Plus for the month of Jan 2025.

The Committee has gone through the recordings provided by the channel for the entire month of Jan 2025. It is once again established that the channel has submitted incorrect and misleading details regarding

the language and genre of Movie Plus channel. In the Programme Content Schedule / Fixed Point Chart (FPC) for the month of January 2025 submitted by the channel in its application for annual e-auction , it has claimed that the channel was showing 'Bangla Movie and some advertisements. The verification of the telecast recordings provided by the channel for the Month of Jan 2025 has shown that for a majority of the telecast period, channel has telecast Hindi content/advertisements/promos/teleshopping content with miniscule Bangla Movie content.

3. In view of the above, Committee recommends that:

A bidder is expected to furnish true and correct information with its application for participating in the e-Auction. From the above, it is seen that the channel has deliberately furnished incorrect documents / information regarding the program content being carried on the channel. This is obviously with intent to apply under a subsidized bucket ('R').

Hence, the application is recommended to be rejected on the ground of the channel 'Movie Plus' being not eligible to participate in e-Auction under Bucket R as the claim of the channel being a predominant Bangla Movie is incorrect as evident from the recordings provided it. The recordings also establish that the information contained in the FPC provided by the channel at the time of application was also willfully incorrect and misleading. Hence application is also recommended to be rejected on the ground of willfully furnishing false/incorrect information and documents."

- 56.** Much has been argued by the Petitioner by placing reliance on the Judgement of the Hon'ble Supreme Court in the case of *Maneka Gandhi v. Union of India* (Supra), on the aspect of violation of principle of Natural Justice.
- 57.** In that regard it would be pertinent to denote that in *Maneka Gandhi's Case*, the Hon'ble Supreme Court laid down the seminal principle that the observance of natural justice, particularly the right of hearing, is an essential requirement of fairness in administrative action.
- 58.** However, the Hon'ble Supreme Court also recognised that, in appropriate cases, a post-decisional hearing whereby an affected party is subsequently afforded a meaningful opportunity to present its case may cure the defect of initial procedural omission, provided such hearing is real and not illusory, and the authorities act with openness of mind.
- 59.** That applying this principle to the facts at hand, it is evident that although the initial rejection of the Petitioner's application for participation in the 7th Annual (85th) e-auction was communicated by the Respondent

via the impugned communication dated 12-02-2025, the matter did not rest at that stage.

60. Pursuant to the intervention of this Tribunal in M.A. No. 33 of 2025, the Petitioner was afforded an ample opportunity to submit its reply along with supporting documentation. The materials so supplied were duly placed before the Scrutiny Committee of the Respondent, which, after careful examination and application of mind to the relevant eligibility criteria under the e-auction Notification, passed a reasoned order dated 14-02-2025, rejecting the Petitioner's candidature.

61. This process, in our considered view, satisfies the requirements of procedural fairness and cures any initial deficiency, as contemplated in *Maneka Gandhi* (supra). The Petitioner, thus, cannot legitimately allege a violation of natural justice when, in effect, it was provided a full and fair hearing at a subsequent stage before an informed and reasoned decision was taken.

62. Turning to the substance of the Petitioner's grievance, it is pertinent to note that the Petitioner seeks to simultaneously approbate and reprobate, especially

considering the judgement of the Hon'ble Supreme Court in the case of "**Air Line Pilots' Assn. of India v. DGCA**", (2011) 5 SCC 435, wherein the Hon'ble Court discussed the principle of "approbation and reprobation" in relation to changing one's stand in a legal proceeding. This doctrine of election prohibits a party from adopting inconsistent positions in the same proceeding. The relevant observations are contained in Paragraphs 11 & 12 and reads as under:

"11. *In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683 : AIR 1993 SC 352] this Court observed as under : (SCC pp. 687-88, para 10)*

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'."

12. *The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is*

*a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. **Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.** [Vide Babu Ram v. Indra Pal Singh [(1998) 6 SCC 358], P.R. Deshpande v. Maruti Balaram Haibatti [(1998) 6 SCC 507] and Mumbai International Airport (P) Ltd. v. Golden Chariot Airport [(2010) 10 SCC 422 : (2010) 4 SCC (Civ) 195].”*

- 63.** On the one hand, the Petitioner challenges the regulatory notifications amending the bucket classification and imposing a 75% content requirement for Bucket R1 channels, asserting that these are arbitrary and ought to be supplanted by a lower BARC standard.
- 64.** On the other hand, the Petitioner does not, either expressly or by necessary implication, dispute the core factual assertion that, on critical dates such as 08-01-2025 and 09-01-2025, its channel telecast nearly 19 hours of Hindi advertisements and teleshopping content on a channel claimed to be a Bangla regional language channel. That such a conduct is directly antithetical to the

letter and spirit of the undertaking furnished by the Petitioner in terms of Annexure-2 of the applicable policy of E-auction, the breach whereof had previously invited show cause proceedings.

- 65.** Rather than denying the breach, the Petitioner's rejoinder especially Paragraph 'P' of the Rejoinder is founded on a technical plea that teleshopping programming is not to be equated with advertisements under the Cable Television Networks (Regulation) Act, 1995 and related policy guidelines, and that the Respondent has erroneously conflated the two categories.
- 66.** This contention is unpersuasive and contradictory. The relevant eligibility criteria and content thresholds under the e-auction Notification require the channel to maintain a specified quantum of regional language content, exclusive of advertisements and teleshopping, as a proportion of the total programming.
- 67.** That the regulatory intent is to promote authentic regional content and prevent subsidised slots from being exploited for unrelated commercial purposes, regardless of how the

non-qualifying content is internally labelled by the broadcaster.

- 68.** In the absence of a categorical and fact based denial of the content violation and in the face of clear data demonstrating a persistent and substantial shortfall in regional language content the Petitioner cannot invoke the doctrine of natural justice or procedural fairness to shield what is, in essence, a substantive non-compliance with the contractual and regulatory framework.
- 69.** The eligibility criteria and the content requirements under the e-auction Notification are unambiguous and what is germane is the actual quantum of regional language content as a proportion of total telecast material, regardless of how non-qualifying content is internally classified.
- 70.** The Petitioner's failure to rebut the substantive allegation, coupled with an admission that the Respondent's analysis is incorrect only to the extent of categorisation but not on quantum, leads inexorably to the conclusion that the 60% content threshold was not met.

- 71.** This Tribunal is also unable to accept the Petitioner's argument that it is being singled out or subjected to unequal treatment. The record discloses that the same criteria have been applied uniformly to all applicants for Bucket R slots, and that the subsidized nature of such slots (with a reserve price of ₹3 crores as against ₹15 crores for other buckets) necessarily requires strict scrutiny of compliance.
- 72.** The Petitioner's prior conduct, including the airing of predominantly non-Bangla content on dates such as 08.01.2025 and 09.01.2025, cannot be countenanced as trivial or technical breaches, **but**, are substantive and go to the heart of eligibility. There is no evidence on record of malafides, bias, or extraneous considerations animating the Respondent's decision.
- 73.** That this Tribunal also finds no merit in the Petitioner's plea that the rejection of its application was pre-determined or in bad faith. On the contrary, the record reveals that the Respondent granted multiple opportunities for compliance, extended timelines upon request, and only arrived at its decision after repeated

failures by the Petitioner to meet clear eligibility requirements.

- 74.** That the Scrutiny Committee's rejection of the application is based on an evidence-based comparison of the Petitioner's submissions with the actual broadcast content and is supported by contemporaneous records, including the Petitioner's own FPC and submitted tapes.
- 75.** Consequently, it cannot be said that the Respondent's action in rejecting the Petitioner's candidature constitutes arbitrariness, mala fides, or a breach of natural justice. The Tribunal, therefore, finds no merit in the Petitioner's contentions, and is unable to fault the Respondent's decision on touchstone of limited window of judicial review.
- 76.** The Petitioner has also sought to invoke the doctrine of legitimate expectation, contending that by virtue of having duly submitted the application form, deposited the requisite participation fee and incidental charges, and having previously been allotted an R1 slot in the preceding year's e-auction on the strength of similar documentation, it was entitled, at the very least, to be considered for

participation in the current e-auction and allowed to bid thereunder.

- 77.** The Petitioner further submits that the mere act of acceptance of its application and remittance of the prescribed fees should give rise to a legitimate expectation of inclusion in the auction process.
- 78.** We are not persuaded by this submission, inasmuch as a party in flagrant violation of the express terms of the contract governing the e-auction, particularly the Integrity Pact enshrined in Annexure 4 of the e-auction notice dated 09-01-2025, cannot invoke the doctrine of legitimate expectation to cloak its own contractual delinquencies.
- 79.** The Integrity Pact is binding upon all applicants, mandates the submission of true, accurate, and verifiable information, with the explicit caveat that any misleading or conflicting particulars shall result in disqualification from the auction process or cancellation of allotment, coupled with forfeiture of fees.
- 80.** The Petitioner's reliance on prior allotment in the previous e-auction is equally misplaced, for each e-auction

constitutes a fresh and independent process governed by its own terms and conditions, and prior participation or allotment does not ipso facto vest any vested right or continuing expectation, especially where the governing norms have since been amended.

- 81.** That in the present case, it is an admitted position that the Petitioner, in the year preceding the impugned auction, was an applicant under Bucket A, being a category permitting teleshopping. Upon the issuance of Notification No. DDFD/9(11)/2023/P-VII dated 13-12-2023, teleshopping channels were expressly excluded from Bucket A, and the classification for participation in Bucket R was tightened to require genuine regional language content.
- 82.** Notwithstanding this, the Petitioner sought to participate under the subsidized Bucket R, reserved exclusively for regional language channels, by representing its channel as a Bangla movie channel, despite contemporaneous records, including content logs and off-telecast recordings, demonstrating that its broadcasts consisted overwhelmingly of Hindi advertisements and teleshopping

content, which is in stark breach of the express eligibility criteria and the undertakings required under Annexure 2 of the e-auction notice.

- 83.** That the earlier show-cause notice dated 04-06-2024, which was later withdrawn without prejudice to rights of the Respondent was predicated on April 2024 telecast data evincing only 48.56% Bangla content.
- 84.** Further the ultimate rejection of the candidature of the Petitioner on 12-02-2025 following the Scrutiny Committee's analysis, which were affirmed on 14-02-2025 post-submission of recordings for the month of January 2025 as per this Tribunal's order dated 13-02-2025 in B.P. No. 184 of 2025, were not capricious but a direct consequence of the Petitioner's misrepresentation.
- 85.** The Tribunal is unable to countenance any plea of legitimate expectation in favour of a party that has, by its own deliberate acts, sought to subvert the integrity of the auction process and the very object of the regulatory regime. The doctrine of legitimate expectation cannot be used as a shield to protect conduct that is manifestly in breach of contractual obligations or statutory stipulations.

- 86.** That it is trite law that no expectation, however legitimate, can override the terms of a contract or be pressed into service to require a public authority to act ultra vires or in derogation of its duty to enforce transparency and fairness in public procurement or resource allocation.
- 87.** It is pertinent to note that, having accepted the amended regulatory framework and voluntarily submitted to the revised eligibility criteria, the Petitioner cannot now turn around and assert a right to be included in the auction process, particularly when its own conduct, which both in terms of non-compliance with the content threshold and the submission of misleading particulars, stands in direct contravention of the terms and undertakings forming the bedrock of the auction process.
- 88.** That such a conduct is antithetical to the doctrine of legitimate expectation, which is founded upon good faith, transparency, and consistency. This Tribunal, therefore, is not persuaded by the Petitioner's invocation of the doctrine of legitimate expectation.
- 89.** That the right to participate in the e-auction is contingent upon strict compliance with the eligibility conditions, and

mere participation in the previous year or payment of fees does not create any vested or enforceable right in the absence of conformity with the express regulatory requirements for the relevant auction year.

- 90.** That the Respondent's decision to reject the Petitioner's application, in these circumstances, is not only justified but is compelled by the overarching public interest in ensuring that subsidized resources are reserved for genuine regional content and are not misappropriated by channels pursuing a commercial agenda under a false pretext.
- 91.** The Petitioner further argues that the auction documents provided for post-allotment remedial mechanisms and that pre-emptive disqualification was unwarranted. This contention does not withstand scrutiny in light of the clear language of the Notice Inviting Applications and the accompanying undertakings.
- 92.** It must be understood that the determination of eligibility, by its nature, must be conducted at the threshold, which before allotment, so as to preserve the integrity of the process and ensure that subsidized slots are not

wrongfully usurped by ineligible or misrepresenting parties.

- 93.** That the Petitioner's reliance on Clause 6 and related provisions of the Notice clearly empower the Respondent to seek verification of genre and language through submission of past programme schedules and off-telecast recordings.
- 94.** But as in present case, where an applicant is found to have provided misleading or false particulars, rejection of the application is not only warranted but required to safeguard public resources and fairness.
- 95.** The Petitioner has cited *Om Kumar v. Union of India* [(2001) 2 SCC 386] and argued that the measure adopted was disproportionate and a more moderate remedial course was available.
- 96.** However, this Tribunal is satisfied that the impugned decision was proportionate to the mischief sought to be prevented. The subsidized Bucket R slots are intended solely for genuine regional language channels, and the eligibility criteria of 75% content in the declared language, as verified by fixed point charts and recordings are neither

excessive nor unreasonable, but are rationally designed to advance this object.

- 97.** The Petitioner, having failed to satisfy these threshold requirements, cannot seek refuge under proportionality to evade the consequences of its own non-compliance. The process adopted by the Respondent was open, transparent, and allowed the Petitioner ample opportunity to clarify and supplement its case.
- 98.** Moreover, the argument that the Respondent's decision is anti-competitive and restricts fair participation is likewise untenable. The essence of fair competition in public tenders lies in adherence to declared eligibility and process norms, not in the indiscriminate widening of the field to ineligible parties.
- 99.** That by permitting a channel that demonstrably fails the regional language content requirement to participate in a subsidized category would itself be anti-competitive, distorting the level playing field for genuinely eligible broadcasters and undermining the object of the regulatory scheme.

- 100.** While the Petitioner seeks to distinguish between past and present conduct, the eligibility criteria themselves required verification of the channel's recent programming content (for three months preceding the application and for proposed months).
- 101.** Thus, the Respondent's reliance on this contemporaneous record was entirely justified. There is no evidence that the Petitioner had restructured, improved, or altered its programming profile to satisfy the regional language requirement; indeed, all evidence pointed to continued non-compliance. The submission that each bidding process is independent cannot justify ignoring current facts that bear directly on eligibility for the relevant slot in the present auction cycle.
- 102.** Further there is no material on record to indicate that the Petitioner was treated differently from other similarly situated applicants, or that any other non-qualifying channel was admitted to the auction process. The record reflects that the eligibility norms were enforced uniformly and the Petitioner's application was considered in accordance with the same.

- 103.** At this juncture, it is pertinent to undertake the assessment of the jurisprudence on the exercise of power of Judicial Review in the matters governing Tender in realm of Contractual obligations and Commercial Agreement involving State or its instrumentalities and Private company or entity.
- 104.** That the Hon'ble Supreme Court in the case of ***Reliance Telecom Ltd. v. Union of India, (2017) 4 SCC 269,*** while deliberating on the issue of Judicial Review and its interplay with Government tender and contract, observed in **Paragraph Nos. 35, 39 & 40** and held as follows:

"35. *"In Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] , a three-Judge Bench, after extensive consideration of the earlier decisions in the matter of judicial review and its scope of applicability to government contracts and tenders, ruled that the modern trend points to judicial restraint in administrative action and the court does not sit as a court of appeal but merely reviews the manner in which the decision was made. It further opined that the court does not have the expertise to correct the administrative decision and 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. The Court further expressed that the terms of the invitation to tender cannot be open to*

judicial scrutiny because the invitation to tender is in the realm of contract and the Government must be allowed to have a fair play in the joints as it is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. It was also observed that the decision must not only be tested by the application of *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] principle of reasonableness but must also be free from arbitrariness and must not be affected by bias or actuated by *mala fides* and while quashing decisions, heavy administrative burden on the administration and increase on expenditure have to be kept in view.

39. *In Union of India v. International Trading Co.* [*Union of India v. International Trading Co.*, (2003) 5 SCC 437], this Court held that non-renewal of permit by the Government to a private party on the ground of change in its policy cannot be faulted if such change is founded on reasonableness and is otherwise not arbitrary, irrational and perverse. It was observed that if the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies and the ultimate test is whether, on the touchstone of reasonableness, the policy decision comes out unscathed. It further ruled that reasonableness of restriction is to be determined in an objective manner and from the standpoint of the interests of the general public and not from the standpoint of the interests of the persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved, the nature of the right

alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition and the prevailing condition at the relevant time enter into the judicial verdict. The Court further held that the reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question and canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country.

40. *In Directorate of Education v. Educomp Datamatics Ltd. [Directorate of Education v. Educomp Datamatics Ltd., (2004) 4 SCC 19] , this Court, applying the principles enunciated in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] and Monarch Infrastructure (P) Ltd. [Monarch Infrastructure (P) Ltd. v. Ulhasnagar Municipal Corpn., (2000) 5 SCC 287] , held that (SCC p. 24, para 12) the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract; that the Government must have a free hand in setting the terms of the tender; that it must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere and the courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias and the courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."*

(Emphasis Supplied)

105. That the above is further strengthened by the authoritative pronouncement of Hon'ble Supreme Court in the case of ***Tata Cellular v. Union of India, (1994) 6 SCC 651***, on the issue of Judicial Review in contractual matters, wherein the Hon'ble Court under **Paragraph Nos. 69, 70, 77, 92 & 94** has observed as follows:

"69. *A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender:*

- 1. It must be unconditional.*
- 2. Must be made at the proper place.*
- 3. Must conform to the terms of obligation.*
- 4. Must be made at the proper time.*
- 5. Must be made in the proper form.*
- 6. The person by whom the tender is made must be able and willing to perform his obligations.*
- 7. There must be reasonable opportunity for inspection.*
- 8. Tender must be made to the proper person.*
- 9. It must be of full amount.*

70. *It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest*

or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.

The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) *Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*

- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

92. *In Sterling Computers Limited v. M&N Publications Ltd. [(1993) 1 SCC 445] this Court observed thus: (SCC p. 455, para 12)*

"In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into

contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of 'play in the joints' to the executive."

94. *The principles deducible from the above are:*

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 from 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."

(Emphasis Supplied)

106. Furthermore, in yet another judgement of the Hon'ble Supreme Court, in the matter of ***Air India Ltd. v. Cochin International Airport Ltd., (2000) 2 SCC 617***, while examining the scope of judicial review in relation to government tenders and contracts under **Paragraph No. 7** has held as follows:

"7. *The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] , Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India [(1981) 1 SCC 568], CCE v. Dunlop India Ltd. [(1985) 1 SCC 260: 1985 SCC (Tax) 75], Tata Cellular v. Union of India [(1994) 6 SCC 651], Ramniklal N. Bhutta v. State of Maharashtra [(1997) 1 SCC 134] and Raunaq International Ltd. v. I.V.R. Construction Ltd. [(1999) 1 SCC 492] **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 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.**”

(Emphasis Supplied)

107. That following from the above it is pertinent to notice another judgement of the Hon'ble Supreme Court, in ***Directorate of Education v. Educomp Datamatics Ltd., (2004) 4 SCC 19***, wherein, the Hon'ble Court discussed the contours of judicial scrutiny vis-à-vis terms of the governmental tenders and contractual arrangements, in **Paragraph Nos. 11 & 12** has held as follows:

"11. *This principle was again restated by this Court in Monarch Infrastructure (P) Ltd. v. Commr., Ulhasnagar Municipal Corpn. [(2000) 5 SCC 287] It was held that the terms and **conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the courts to say whether the conditions prescribed in the tender under consideration were better than the ones prescribed in the earlier tender invitations.***

12. *It has clearly been held in these **decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the***

administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. *It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."*

(Emphasis Supplied)

108. Finally, the Hon'ble Supreme Court in the case of ***B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd., (2006) 11 SCC 548***, while deliberating on the extent and scope of judicial review in tender and auction matters involving instrumentality of state under **Paragraph Nos. 58, 61, 66 and 69**, has held as follows:

"58. *In Jagdish Swarup's Constitution of India, 2nd Edn., p. 286, it is stated:*

*"It is equally true that even in contractual matters, a public authority does not have an unfettered decision to ignore the norms recognised by the courts, but at the same time **if a decision has been taken by a public authority in a bona fide manner, although not strictly following the norms laid down by the courts, such decision is upheld on the principle that the courts, while judging the constitutional validity of executing decisions, must grant a certain measure of freedom of 'play in the joints' to the executive.**"*

61. *Law on the similar term has been laid down in Poddar Steel Corpn. v. Ganesh Engg. Works [(1991) 3 SCC 273] in the following terms: (SCC p. 276, para 6)*

"6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories — those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance with the condition in appropriate cases."

66. *We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarised as under:*

*(i) **if there are essential conditions, the same must be adhered to;***

- (ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;*
- (iii) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;*
- (iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;*
- (v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;**
- (vi) the contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority;*

(vii) where a decision has been taken purely on public interest, the court ordinarily should exercise judicial restraint.

69. *While saying so, however, we would like to observe that having regard to the fact that huge public money is involved, a public sector undertaking in view of the principles of good corporate governance may accept such tenders which are economically beneficial to it. **It may be true that essential terms of the contract were required to be fulfilled. If a party failed and/or neglected to comply with the requisite conditions which were essential for consideration of its case by the employer, it cannot supply the details at a later stage or quote a lower rate upon ascertaining the rate quoted by others.** Whether an employer has power of relaxation must be found out not only from the terms of the notice inviting tender but also the general practice prevailing in India. For the said purpose, the court may consider the practice prevailing in the past. Keeping in view a particular object, if in effect and substance it is found that the offer made by one of the bidders substantially satisfies the requirements of the conditions of notice inviting tender, the employer may be said to have a general power of relaxation in that behalf. Once such a power is exercised, one of the questions which would arise for consideration by the superior courts would be as to whether exercise of such power was fair, reasonable and bona fide. If the answer thereto is not in the negative, save and except for sufficient and cogent reasons, the writ courts would be well advised to refrain themselves in exercise of their discretionary jurisdiction.”*

(Emphasis Supplied)

109. Thus, in view of the aforesaid facts, reasons and judicial pronouncements, we find no merit in the assertions advanced by the Petitioner, as the grounds raised are unsupported by the factual record and do not disclose any arbitrariness or illegality in the decision of the Respondent and the decision of respondent does not warrants any interference.

110. In view of the foregoing facts, the material on record, and the analysis hereinabove, this Tribunal finds no reason to interfere with or quash the impugned communication dated 12-02-2025, as contained in Annexure P-1 of the memo of this Petition.

111. The decisions taken by the Respondent are free from illegality or procedural impropriety, and no grounds have been established to warrant judicial intervention. Therefore, having regard to the foregoing analysis and discussion, we are unable to countenance any plea advanced by the Petitioner against the decision of Respondent Prasar Bharati.

112. The Petitioner's further contention that the impugned decision violates Section 12 of the **Prasar Bharati Act, 1990**, is equally unsustainable. For proper appreciation, it

is necessary to reproduce the *relevant portion* of Section 12 of the **Prasar Bharati Act, 1990**, which delineates the statutory objectives and powers of the Corporation and the same reads as follows:

“12. Functions and powers of Corporation.

- 1. Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.*
- 2. The Corporation shall, in the discharge of its functions, be guided by the following objectives, namely: —*

(d). providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes;

113. That a plain and purposive reading of Section 12 (1) & (2) (d) makes it clear that the objectives and functions of Prasar Bharati are directed towards balanced and inclusive development of broadcasting, with particular emphasis on linguistic and cultural diversity.

114. The Notification dated 09-01-2025, which sets forth the policy framework for the e-auction, does not contravene the mandate of Section 12. On the contrary, it is consistent with and furthers the statutory aims envisaged by the legislature under the Prasar Bharati Act, 1990. Thus, there is no

violation, either express or implied, of Section 12 as alleged by the Petitioner.

115. Accordingly, **the present Issue** is answered in the **negative**. The challenge to the Respondent's rejection of the Petitioner's application is repelled as the same has failed on account of facts, grounds and limited window of judicial review involved in the e-auction process due to absence of any arbitrariness or bias in the decision making process and as a natural corollary to the same, the **Petition stands dismissed**. In view of the final disposal of this Broadcasting Petition, **M.A. No.154 of 2025** is also hereby disposed of.

116. There shall be no order as to costs.

(JUSTICE D. N. PATEL)
CHAIRPERSON

(SUBODH KUMAR GUPTA)
MEMBER

/NS/