2026 (8) KLR 103
High Court of Kerala
Soumen Sen; CJ. & Syam Kumar V.M.; J.
W.A. No. 1566 of 2026; 10 August, 2026
Soniya David v. Indian Oil Corporation Ltd.

Partnership Act, 1932 – Section 69 – Non-registration of firm – Effect of.

Section 69 mandates that no suit to enforce a right arising from a contract or conferred by the Partnership Act can be instituted by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm, unless the firm is registered and the person suing is shown in the Register of Firms as a partner. Statutory compliance with Sections 58 and 69 is essential for establishing the legal status of a partnership firm participating in public tenders. *[Para 12]*

Administrative Law – Tender Process – Judicial Review.

Judicial review of administrative action in tender matters is intended to prevent arbitrariness, irrationality, and *mala fides*. Courts should not sit in appeal over the interpretation of tender conditions by the Tender Committee unless the decision-making process is vitiated by illegality, procedural irregularity, or impropriety. Modification or relaxation of non-essential, ancillary, or subsidiary terms by the employer is permissible if applied uniformly to all bidders, does not suggest favouritism, and is executed in the public interest. The Tendering Authority is the best entity to interpret its own documents, and courts must defer to this understanding unless it is perverse. *[Para 9, 17, 20, 23]*

The appellants challenged a tender process initiated by the Indian Oil Corporation Ltd. (IOCL) regarding the transportation of petroleum products. The core grievance was that IOCL allowed modifications/relaxations to tender conditions concerning the registration of partnership firms with the Registrar of Firms, which the appellants argued expanded eligibility criteria post-tender. The Court held that the Tender Committee's interpretation was reasonable and that there was no adjustment of the "goal posts". The decision was found to be *bona fide* and aimed at fostering wider participation to ensure better services at lower costs, which serves the public interest. Finding no evidence of arbitrariness, irrationality, or *mala fides*, the Court declined to interfere with the tender process and dismissed the appeals.

<u>*Referred Cases*</u>

1. *Prakash Asphaltings and Toll Highways v. Mandeepa Enterprises*, *AIR 2025 SC 4261*
2. *Shanti Construction Pvt. Ltd. v. State of Odisha, 2025 SCC OnLine SC 2368*
3. *Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489*
4. *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium, (2016) 8 SCC 622*
5. *Jagadish Mandal v. State of Orissa*, *(2007) 14 SCC 517*
6. *Master Marine Services Pvt. Ltd. v. Metcalfe & Hodgkinson, (2005) 6 SCC 130*
7. *Ramana Dayaram Shetty v. International Airport Authority of India*, *(1979) 3 SCC 489*

Against the Judgment dated 27.07.2026 in WP (C) No. 23713 of 2026 of High Court of Kerala

For Appellant: Advs. P. Sathisan, Kaleeswaram Raj Thulasi K. Raj, Chinnu Maria Antony Manjima & Tarun Philip

For Respondents: Advs. Vidya G. Nair & Sagith Kumar V. (C.G.C.S), Geetha Hariharan, Saiby Jose Kidangoor, Benny Antony Parel, Afsana Khan, Sreeraj S. Rajaram, Adithyan C., Anna Paul, Amal Dileep, Adarsh Padmanabhan, Saina Fathima S.R., Victor Joseph & Agnelo Aquinas D. Savio

JUDGMENT

Soumen Sen, C.J.

Both the appeals involve common questions of law and facts and are, therefore, disposed of by this common judgment.

2. The writ appellants are individuals who participated in a tender floated by the Indian Oil Corporation Ltd. (for short 'IOCL'), Marketing Division in respect of Road Transportation of Bulk Petroleum products by Top-loading Tank Trucks-ATF Ex. RCO-Cochin terminal, Irumpanam at Willingdon Island, Cochin, Kerala.

3. For both the appellants, this is the second round of litigation. The first round of litigation was with regard to the decision of the Tender Committee to allow partnership firms duly registered with the Registrar of Firms to participate in the tender. While dismissing the writ appeals arising from an interim order, we observed that the view taken by the learned Single Judge, based on the tender conditions, did not appear to be erroneous and that a *prima facie* view could be formed in support of the conclusion reached by the learned Single Judge on the interpretation of the tender terms. Both the writ petitions were thereafter heard and disposed of by a detailed judgment.

4. Mr. Kaleeswaram Raj, learned counsel appearing for the appellant in W.A.No.1578 of 2026 has strenuously argued that there has been a variation in the tender conditions after the tender was opened, which has resulted in disqualified and ineligible entities being permitted to participate in the tender. It is submitted that by reason of such illegal and arbitrary action on the part of the IOCL, tenderers who were otherwise qualified have been deprived of the opportunity of being awarded the work under the said tender. It is submitted that the tender conditions clearly stipulated that, for a partnership firm to be eligible to participate, some conditions had to be satisfied, namely, that it should be a registered partnership firm and should also be registered with the Registrar of Firms.

5. Mr. Kaleeswaram Raj, the learned counsel, has referred to the documents required to be submitted by the participants and submitted that in case of a partnership firm, the documents required included a registered partnership deed along with registration certificate issued by the Registrar of Firms, together with all annexures containing the names of all partners of the said partnership firm.

6. It is further submitted by the learned counsel for the petitioner that the eligibility criteria clearly stipulated that an unregistered partnership firm would not be considered. The learned counsel has referred to the decision of the Hon'ble Supreme Court in ***Ramana Dayaram Shetty v. International Airport Authority of India***[1] to contend that the author of a formal tender document cannot alter or vary the tender conditions after the tender is opened and the eligibility criteria to be fulfilled by a tenderer to become eligible to participate in the tender are known to all prospective tenderers. It is submitted that had it been known to firms that registration with the Registrar of Firms would be sufficient, there could have been much larger participation in the tender.

7. Mr. P. Sathisan, learned counsel appearing for the appellant in W.A.No.1566 of 2026, while adopting the submission of Mr. Kaleeswaram Raj, the learned counsel for the appellant in W.A.No.1578 of 2026, has submitted that registration is required to enable the Tender

[1] (1979) 3 SCC 489

Committee to ascertain whether the partners who were parties to the partnership at the time of its formation had, in fact, taken a decision to participate in the tender.

8. We have carefully considered the submissions made on behalf of the writ appellants and perused the judgment under appeal.

9. A tender document is essentially a commercial document and it is always desirable to leave it to the Tender Committee to evaluate the tender terms and to interpret the tender conditions, if there is any ambiguity. It is elementary that unless there is an alteration of the essential terms of the tender or the Tender Committee has waived such essential terms during the evaluation of a tender to accommodate a disqualified bidder, the Court, while exercising judicial review, should not sit in appeal over the interpretation of the Tender Committee while accepting a tender. It is well settled that essential or mandatory conditions of a tender go to the root of the tender and cannot be varied and or altered after they have been made known to the public. Moreover, the tender conditions cannot be tailored to suit a few tenderers and deny the benefit thereof to others.

10. In a public tender, transparency must be adhered to and the action of the Tender Committee in proceeding with the tender must be tested on the anvil of fairness, as opposed to arbitrariness and if there is any illegality, procedural irregularity and impropriety in the tender process, the Court shall step in and pass appropriate orders, which may even result in the cancellation of the entire tender process.

11. However, none of the conditions referred to above arise in the instant case. If we look at the tender documents, it is made clear that the Tender Committee was essentially concerned with partnership firms duly registered with the Registrar of Firms. This is evident from the following clauses in the tender document:

"7. Tenderers are required to submit copy of <u>Registration Certificate from Registrar of Firms to establish the registered partnership firm enclosing all annexures wherein names of all the partners of the said partnership firm are mentioned or Certificate of Incorporation (as applicable)</u>.

8. In case, partnership firm registration certificate is not uploaded with the bid, the tenderers shall be given one opportunity to submit the same during technical evaluation. If the tenderer fails to submit the same within stipulated time, the tender of the tenderer shall not be considered for further evaluation. However, it may be noted that the date of partnership firm registration in the certificate shall not be later than original closing date of the Tender.

xxx xxx xxx

11. xx xxx xx

To establish the business entity, the documents required to be submitted as per the table below:

SN	Types of Firm	Document(s) to establish the business entity
1.	Partnership Firm	<u>Registered Deed of Partnership along with Registration Certificate from Registrar of Firms</u> enclosing all annexures wherein names of all the partners of the said partnership firm are mentioned.
xx xxx xxxx		

<u>Note:</u>

• xx xxx xxxx

• The partnership firm / HUF should be registered. Un-registered partnership firm / HUF will not be considered.

• xx xxx xxxx

1.5 ELIGIBILITY CRITERIA:

1) xx xxx xxxx

2) The owned tank trucks offered by the tenderer should be in their name i.e. Firm or Partner or Company or Proprietor. In case of partnership firm participating in this tender, the formation of such partnership firm shall not be later than original closing date of the tender. The tender submitted by the partnership firm formed later than this date shall be rejected. <u>The partnership firm should be registered. Unregistered partnership firms will not be considered</u>."

(emphasis supplied)

12. If these clauses are read together, there cannot be any doubt that what was clearly intended was that the partnership firm should be duly registered with the Registrar of Firms. In fact, the terms and conditions of the tender would show that the Tender Committee was aware of Sections 58 and 69 of the Indian Partnership Act, 1932 and requires statutory compliance of these two sections. Section 69 of the Indian Partnership Act, 1932 deals with the effect of non-registration of a firm. The said provision stipulates that, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm, no suit to enforce a right arising from a contract or conferred by the Partnership Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm. The Partnership Act itself refers to the procedure to be followed for registration of a firm under Section 58, which reads as follows:

"“58. Application for registration.—(1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating—

(a) the firm name,

(b) the place or principal place of business of thefirm,

(c) the names of any other places where the firmcarries on business,

(d) the date when each partner joined the firm,(e) the names in full and permanent addresses of the partners, and

(f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall alsoverify it in the manner prescribed.

(3) A firm name shall not contain any of thefollowing words, namely:—'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government, except when the State Government signifies its consent to the use of such words as part of the firm name by order in writing."

13. In the instant case, there is no material available on record to show that IOCL has accepted an application from a partnership firm who was not registered with the Registrar of Firms. Moreover, it would appear from the tender document that IOCL had reserved the right to withdraw, cancel or modify the tender without assigning any reason whatsoever. This is significant in the light of the submission made by Mr. P. Sathisan, the learned counsel that that the goal posts cannot be shifted after the tender process is over. In fact, there is no adjustment of the goal post *per se.* It was only an interpretation of the clauses of the tender which, in our view, IOCL was entitled to place, having regard to the nature of the tender and also to give accountability on the part of the participating partnership firms in adhering to the terms and conditions of the tender before issuance of the work order.

14. Mr. Kaleeswaram Raj, the learned counsel for one of the writ appellants, has strongly relied upon the decision in ***Ramana Dayaram Shetty*** (supra) to show that the deviation of the essential terms of the tender is impermissible. In ***Ramana Dayaram Shetty*** (supra), the Hon’ble Supreme Court held that when the State distributes largessee, including through contracts and tenders, it cannot act arbitrarily and must be bound by norms and standards that are not arbitrary, irrational or irrelevant. The Apex Court held that if a term of an NIT is not adhered to, the State can only relax it or deviate from it in a manner that treats all similarly placed bidders equally. The principle that deviation from an essential term must apply uniformly to all bidders remains the cornerstone of the doctrine and has been followed in subsequent decisions.

15. The learned Single Judge has taken note of the affidavit filed by IOCL, wherein IOCL has clearly explained that, out of the 17 partnership firms that participated in the tender process, all except one were unable to produce the registered partnership deed. Apparently, this fact prompted the authorities to have a re-look at the matter upon realising that, insofar as the registration of a partnership is concerned, production of a registered partnership deed is not a mandatory requirement under the statute. It was in those circumstances that the modification/relaxation was made only to the extent of not insisting upon a registered partnership deed for the participants. IOCL had reiterated that what was intended to be insisted upon as a qualification of the partnership firm was that the partnership firm must be registered in tune with the legal requirements. The relevant legal requirements are engrafted in Section 58 read with Section 69 of the Indian Partnership Act, 1932.

16. The learned Single Judge, in our view, has rightly referred to the decision of the Hon'ble Supreme Court in ***Master Marine Services Pvt. Ltd. v. Metcalfe & Hodgkinson (P) Ltd.***[2], particularly paragraph 59 thereof, to arrive at the conclusion that acceptance of the tenders of partnership firms duly registered with the Registrar of Firms even if could be considered a relaxation of the tender conditions, in absence of any arbitrariness or *mala fides* on the part of the Tender Committee, the process initiated by the IOCL, which culminated in the award of the contract, does not call for any interference. In other words if the relaxations are granted for *bona fide* reasons and if Tender Committee permits such relaxation, the Court, in a judicial review, shall not interfere with such decision.

17. The scope of judicial review has also been lucidly explained in ***Jagadish Mandal v. State of Orissa***[3], a decision relied upon by the learned Single Judge. At paragraph 21 of the judgment, the learned Single Judge has referred to the said decision. The relevant observations in paragraph 22 thereof read as follows.

[2] (2005) 6 SCC 130
[3] (2007) 14 SCC 517 P.382

“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. 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"; (ii) Whether public interest is affected”

In the instant case, the decision of the Tender Committee does not fall foul of any of the aforesaid tests.

18. We agree with the observation of the learned Single Judge that the tendering authority should be allowed to have a free play in its joints and that interference is required only in cases where, it is warranted in the larger public interest or where the actions are found to be arbitrary. The writ petitioners were expecting their selection which, however, suffered a setback due to the decision of the Tender Committee to permit the partnership firms duly registered with the Registrar of Firms to participate in the tender. The said argument, insofar as the writ appellants are concerned, is self-defeating, as their grievance appeared to be that, by accepting the offers from the partnership firms duly registered with the Registrar of Firms, the scope of the tender has been expanded, which had adversely affected the writ appellants, as if such conditions had not been relaxed, then there could have been a fair chance of the writ appellants, who are proprietorship concerns, being awarded the contract along with the other successful bidders. Such expectations are fanciful, far-fetched and without any legal basis.

19. This decision to expand the horizon of eligibility is questioned in the writ petition.

20. We have already held that the decision of the Tender Committee to allow partnership firms to be registered with the Registrar of Firms is not a variation and a relaxation of essential terms of the tender and in any event no one has challenged that they were similarly placed, as that of the registered partnership firms whose offers have been rejected due to absence of registration with the Registrar of Firms. It is trite law that if an administrative decision, such as a deviation in the terms of NIT is not arbitrary, irrational, unreasonable, *mala fide* or biased, the courts will not judicially review the decision taken. Similarly, the

courts will not countenance interference with the decision at the behest of an unsuccessful bidder in respect of a technical or procedural violation. Evaluating tenders and awarding contracts are essentially commercial functions. 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 would 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. It cannot be doubted that an essential term of the tender document could not be deviated from but an ancillary or subsidiary or non-essential term could be deviated from, and that the deviation could be without any reference to potential bidders. The issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. Whether a term of NIT is essential or not is a decision to be taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders. [See ***Central Coalfields Ltd. and Another v. SLL-SML (Joint Venture Consortium and Others***[4]]. The employer could deviate from the terms and conditions of the tender if the change has affected all intending applicants alike and were not objectionable. The contention of the appellants is that, if the decision of the Tender Committee was to accept applications from the partnership firms duly registered with the Registrar of Firms, there could have been a larger participation and there may have been persons who could have willingly participated in the bidding process, in other words, by rearranging the goal posts, such persons were denied the privilege of participation.

21. In ***Shanti Construction Pvt. Ltd. v. State of Odisha and Others***[5], the Hon'ble Supreme Court has considered the nature of the public tender and the obligation of the Tendering Authority in accepting and rejecting a bid. On consideration of the authorities on these issues, the Apex Court held as under:

> *"10. A public tender is not a private bargain. It is instrument of governance, a mechanism through which the State discharges its solemn duty as trustee of public wealth. Its purpose is not merely procedural compliance, but maximisation of public value through a process i.e. fair, transparent and competitive. <u>The obligation of the Tendering Authority is therefore twofold, namely, to interpret its own terms with consistency and to ensure that such interpretation advances, not defeats, the object of tender. The court must intervene in a case of demonstrable misconstruction of a tender condition or irrationality which affects the public interest</u>. When an interpretation of a tender condition narrows competition and excludes the highest bidder on a ground unsupported by law, the decision making process is vitiated. The interpretation of the terms of tender must, therefore, serve the object and purpose of the tender mainly to maximise the revenue to the State, when it deals with a natural resource."*

(emphasis supplied)

22. The judicial review of Government contracts is permissible, provided it is *mala fide*, arbitrary or an attempt to favour a bidder. Courts have been cautioned in ***Silppi Constructions Contractors v. Union of India and Another***[6] while exercising their discretionary powers in interfering with the tenders. The Hon'ble Supreme Court observed

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[4] (2016) 8 SCC 622
[5] 2025 SCC OnLine SC 2368
[6] (2020) 16 SCC 489

that the Constitutional Courts should exercise their discretionary powers only in furtherance of public interest and not merely on making out a legal point. 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. [See ***Silppi Constructions Contractors*** (supra) paragraph 13].

23. In the instant case, IOCL has acted reasonably, fairly and in public interest in accepting the bids from partnership firms which are duly registered and there is a justification for acceptance of the bids. The justification for such acceptance, apart from being clearly visible from the different clauses of the tender documents as mentioned above, does not smack of any favouritism or could be considered unreasonable. Moreover, the employer having authored the tender documents is the best person to understand and appreciate its requirements and interpret its documents. The Constitutional Courts must defer to this understanding and appreciation of the tender documents unless there is *mala fides* or perversity in the understanding or appreciation or in the application of the terms of the tender documents. It is possible that the view taken by the owner or the employer may not be acceptable to the Constitutional Courts, but that by itself is not a reason for interfering with the interpretation given. [See, Per **Justice Ujjal Bhuyan** in ***Prakash Asphaltings and Toll Highways (India) Limited v. Mandeepa Enterprises***[7]]

24. In a tender of this nature, wider public participation is necessary. The interpretation of the Tender Committee, in our view, is in consonance with the statute, and there has been no unfairness on the part of IOCL in accepting the partnership firms duly registered with the Registrar of Firms.

25. The ultimate object of the work is to ensure that proper services are rendered to the public at lesser expense with better quality, for which greater competition would have to be ensured. Here, as rightly observed by the learned Single Judge, the major consequence of the modification / relaxation of the condition, if at all it is to be considered as such, made by IOC was to provide an opportunity to more participants to participate in the tender process. By infusing greater competition into the tender process, without permitting entry to any unqualified persons, the IOCL was only protecting the interests of the beneficiaries, the sellers and the buyers. Such consideration, in our view, does not warrant any interference with the judgment passed by the learned Single Judge.

26. The writ appeals stand dismissed. There shall be no order as to costs.

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[7] 2025 SCC OnLine SC 1959; AIR 2025 SC 4261, (2026) 4 SCC 310; AIR OnLine 2025 SC 851; 2025 KLT OnLine 2886