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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 4026 of 2026

M/s Offshore Infrastructures Limited Through Its Vice President Namely Mr Mahendra Singh Rathore, S/o Govind Singh Aged About 55 Years Old, R/o Rawar, Jodhpur, Rajasthan, Having Its Registerd Office At 2nd Floor Block A, Sm-1b, Mansarovar Complex, MP Nagar, District Bhopal, Madhya Pradesh

... Petitioner

versus

- 1 - State of Chhattisgarh Through Its Secretary, Water Resources Department, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur (C.G.)
- 2 - Engineer-In-Chief Water Resources Department, Government of Chhattisgarh, Jal Sansadhan Bhawan, Raipur, District Raipur (C.G.)
- 3 - Chief Engineer Mahanadi Project, Water Resources Department, Raipur, District Raipur (C.G.)
- 4 - Executive Engineer Water Resources Division, Gariyaband, District Gariyaband (C.G.)
- 5 - Dilip Buildcon Limited Through Its Director, Having Its Registered Office At Plot No. 05, Inside Govind Narayan Singh Gate, Chuna Bhatti, Kolar Road, Bhopal Madhya Pradesh (462016)

... Respondents

(Cause-title taken from Case Information System)

For Petitioner	: Mr. Manoj Paranjpe, Senior Advocate assisted by Mr. Anshul Tiwari, Advocate
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For State/Respondents No.1 to 4	:	Mr. Vivek Sharma, Advocate General assisted by Mr. Soumya Rai, Deputy Government Advocate
For Respondent No.5	:	Mr. Naman Nagrath and Ms. Sharmila Singhai, Senior Advocates assisted by Ms. Ruchi Nagar, Mr. Kartik Katheuia and Ms. Kanchan Kalwani, Advocates

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

04.08.2026

1. Though the matter is listed today as a fresh matter for admission, considering the nature of the controversy involved, the challenge raised to the tender conditions and the consequential action taken by the respondent authorities, as also the urgency involved in view of the ongoing tender process, and since all the parties are represented through their respective learned counsel who have expressed their readiness to address the matter finally, with the consent of Mr. Manoj Paranjpe, learned Senior Counsel assisted by Mr. Anshul Tiwari, learned counsel appearing for the petitioner, Mr. Vivek Sharma, learned Advocate General assisted by Mr. Soumya Rai, learned Deputy Government Advocate appearing for the State/respondents No.1 to 4, and Mr. Naman Nagrath and Ms. Sharmila Singhai, learned Senior Counsel assisted by Ms. Ruchi Nagar, Mr. Kartik Katheuia and

Ms. Kanchan Kalwani, learned counsel appearing for respondent No.5, we proceed to hear and decide the writ petition finally at the stage of admission itself.

2. Heard Mr. Manoj Paranjpe, learned Senior Counsel assisted by Mr. Anshul Tiwari, learned counsel for the petitioner. Also heard Mr. Vivek Sharma, learned Advocate General assisted by Mr. Soumya Rai, learned Deputy Government Advocate, appearing for the State/respondents No.1 to 4 as well as Mr. Naman Nagrath and Ms. Sharmila Singhai, learned Senior Counsel assisted by Ms. Ruchi Nagar, Mr. Kartik Katheuia and Ms. Kanchan Kalwani, learned counsel appearing for respondent No.5.
3. By filing the present writ petition under Article 226 of the Constitution of India, the petitioner calls in question the legality, validity and constitutional propriety of Clause 1.3(b) of Notice Inviting Tender (NIT) No. 01/SAC/2026-27 dated 13.05.2026, the consequential action of the respondents in declaring the petitioner's technical bid disqualified vide E-mail dated 23.07.2026, the subsequent opening of the financial bid and declaration of Respondent No. 5 as L-1 on 27.07.2026, being arbitrary, unreasonable, discriminatory, violative of Article 14 of the Constitution of India, contrary to the principles governing public procurement and liable to be quashed. The petitioner has prayed for following relief(s) :-

“i. That, the Hon'ble Court may kindly be

pleased to Issue an appropriate writ, order or direction, preferably in the nature of Certiorari, quashing and setting aside Clause 1.3(b) of the Notice Inviting Tender (NIT) No. 01/SAC/2026-27 dated 13.05.2026, issued by the respondent Engineer-in-Chief, Water Resources Department, Government of Chhattisgarh, Raipur (Annexure P/2), insofar as it prescribes the requirement of an average annual turnover of not less than two times the estimated cost of the project, being arbitrary, irrational, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India.

ii. Issue an appropriate writ, order or direction, preferably in the nature of Certiorari, quashing and setting aside the proceedings/minutes of the Pre-Bid Conference dated 01.06.2026 (Annexure P/6), insofar as the respondent authorities arbitrarily rejected the objections raised by the prospective bidders against Clause 1.3(b) of the Notice Inviting Tender by merely recording that "the provision of the clause shall remain unchanged" without assigning any reasons or justification, being arbitrary, non-speaking, violative of the principles of fairness and transparency.

iii. That, this Hon'ble Court may kindly be pleased to quash and set aside the communication/e-mail dated 23.07.2026 (Annex. P / 14) issued by the Respondent Authority, namely, the Chief Engineer (Tender

Cell), Water Resources Department, Raipur, whereby the Petitioner's bid has been declared disqualified on 3 grounds, being arbitrary, illegal, unsustainable in law, and consequential to the impugned eligibility condition contained in Clause 1.3(b) of the Notice Inviting Tender (NIT) and due to non-filing of annexure-XI in prescribed format as per NIT, in the interest of justice.

iv. Issue an appropriate writ, order or direction, preferably in the nature of Mandamus, directing the respondent authorities to consider the technical bid of the petitioner in view of clause 1.3 (a) and Annexure X of the Notice Inviting Tender and without insisting clause 1.3 (b) and Annexure- XI of the tender, the petitioner may kindly be held to be technically eligible.

v. Issue an appropriate writ, order or direction quashing and setting aside the action of the Respondents whereby the Financial Bid has been opened on 27.07.2026 and another bidder has been declared as the L-1 bidder (Annex. P/1), without considering the explanation submitted by the Petitioner and further be directed to disqualify the respondent no. 05 on being ineligible on being non-compliant of clause 4 of the tender document.

vi. Issue an appropriate writ, order or direction directing the Respondents to consider and decide the Petitioner's representation/

explanation objectively and strictly in accordance with the tender conditions, after affording due consideration to the Petitioner's submissions, and thereafter proceed with the tender process in accordance with law.

vii. Any other relief, which this Hon'ble court deems, fit in the facts and circumstances may also be granted in favour of the petitioner."

4. Brief facts of the case, in a nutshell are that the petitioner is a company duly incorporated under the provisions of the Companies Act, 1956 and is engaged in the execution of large-scale civil engineering and infrastructure projects throughout the country. The petitioner has been undertaking works relating to irrigation, water resources, pipeline networks, reservoirs and other allied infrastructure projects for various Government Departments, Public Sector Undertakings and statutory authorities. Being possessed of the requisite technical expertise and financial capability, the petitioner has regularly participated in Government tenders for execution of infrastructure projects.
5. The Engineer-in-Chief, Water Resources Department, Government of Chhattisgarh, Raipur issued Notice Inviting Tender (NIT) No. 01/SAC/2026-27 dated 13.05.2026 inviting online bids for the work of **"Construction of Sikasar to Kodar Reservoir Link Canal (Pipeline) under Paury Project Scheme including testing, trial & run, commissioning and operation &**

maintenance of the complete system for five years after completion of the construction work." The project pertains to construction of a pipeline link canal extending from Sikasar Reservoir in District Gariaband to Kodar Reservoir in District Mahasamund. The estimated value of the project is ₹2,54,986.22 Lakhs (exclusive of GST), with a stipulated construction period of thirty months, followed by operation and maintenance of the completed system for a further period of five years.

6. After issuance of the NIT, the respondent department issued a Corrigendum dated 25.05.2026 revising the schedule of the tender process. Thereafter, a pre-bid conference was convened on 01.06.2026, wherein various prospective bidders participated and raised several queries and objections concerning different provisions of the tender document, including the financial eligibility criteria. The respondent authorities considered the issues raised during the pre-bid meeting and thereafter published their responses to the queries raised by the participants. The petitioner, being desirous of participating in the tender process, examined the tender conditions and submitted its bid online along with all requisite documents within the prescribed time on 15.06.2026. Thereafter, the technical bids submitted by the participating bidders were taken up by the respondent authorities for scrutiny and evaluation in accordance with the terms and conditions of the tender document. During the pendency of the technical evaluation, the petitioner approached this Court by filing W.P.(C)

No. 3922 of 2026 challenging the financial eligibility condition contained in Clause 1.3(b) of the tender document.

7. During the pendency of the aforesaid writ petition, the respondent department, by an e-mail dated 23.07.2026, informed the petitioner that its technical bid had been declared disqualified. The communication recorded that the petitioner had been found ineligible on the grounds that Annexure XI (Affidavit) was not in the prescribed format, that the petitioner did not fulfil the average annual turnover requirement prescribed under Clause 1.3(b), and that it had not fulfilled the requirement relating to cumulative payments received from similar works under the said clause. Upon receipt of the aforesaid communication, the petitioner submitted a detailed representation dated 27.07.2026 responding to each of the grounds mentioned in the communication and requesting reconsideration of its technical qualification.
8. On the very same day, i.e., 27.07.2026, the respondent authorities proceeded further with the tender process by opening the financial bids of the qualified bidders and declared Respondent No. 5 as the L-1 bidder. The petitioner thereafter obtained the documents submitted by Respondent No. 5 in support of its bid and examined the same. Subsequently, W.P.(C) No. 3922 of 2026 came up for consideration before this Court on 29.07.2026. In view of the developments that had taken place after filing of the earlier writ petition, namely the petitioner's disqualification and the opening of

the financial bid resulting in declaration of Respondent No. 5 as the L-1 bidder, the petitioner sought permission to withdraw the said writ petition with liberty to challenge the subsequent developments. This Court permitted withdrawal with liberty as prayed for. Accordingly, the petitioner has instituted the present writ petition under Article 226 of the Constitution of India challenging the impugned tender condition, the rejection of its technical bid, and the subsequent actions taken by the respondent authorities in the tender process.

9. Mr. Manoj Paranjpe, learned Senior Counsel assisted by Mr. Anshul Tiwari, learned counsel appearing for the petitioner, would submit that the present writ petition raises a challenge to the legality, reasonableness and constitutional validity of Clause 1.3(b) of Notice Inviting Tender (NIT) No. 01/SAC/2026-27 dated 13.05.2026 issued by the Water Resources Department, Government of Chhattisgarh. It is submitted that the impugned clause, which mandates that a bidder must possess an average annual turnover of not less than two times the estimated cost of the project, is ex facie arbitrary, irrational and violative of Articles 14 and 19(1)(g) of the Constitution of India. Learned Senior Counsel would contend that the purpose of prescribing financial eligibility in a public tender is only to ensure that the successful bidder possesses adequate financial capability to execute the work. However, insisting upon an annual turnover of approximately ₹5,099.72 Crores for a project having an estimated

value of ₹2,549.86 Crores bears no rational nexus with the object sought to be achieved. According to him, the impugned stipulation imposes an artificial and unreasonable financial barrier which excludes a large number of experienced, technically competent and financially sound contractors from participating in the bidding process, thereby defeating the very object of competitive public procurement.

10. Learned Senior Counsel would further submit that the arbitrariness of the impugned condition becomes apparent from a conjoint reading of Clauses 1.3(a) and 1.3(b) of the tender document. It is argued that while Clause 1.3(a) itself prescribes the financial capability of a bidder on the basis of the maximum value of civil engineering works executed in any one financial year during the preceding five years and computes the required financial capacity at approximately ₹1,019.94 Crores, Clause 1.3(b), without any explanation or justification, prescribes an altogether different criterion by requiring an average annual turnover of approximately ₹5,099.72 Crores along with cumulative payments from similar works equal to the probable amount of the contract. According to learned Senior Counsel, these two clauses operate in the same field but prescribe wholly inconsistent standards, thereby creating ambiguity and rendering the eligibility criteria self-contradictory and irrational. It is submitted that even during the pre-bid conference held on 01.06.2026, several prospective bidders pointed out the inconsistency and requested

modification of the impugned clause by drawing attention to the prevailing norms followed by the Central Public Works Department, various State Water Resources Departments and other Government agencies. However, the respondent authorities rejected the objections by merely recording that "the provision of the clause shall remain unchanged" without assigning any reasons whatsoever, thereby rendering the decision arbitrary and non-speaking.

11. Learned Senior Counsel would next contend that the impugned financial criterion is completely inconsistent with the respondent department's own established tendering policy. Drawing the attention of this Court to several Notice Inviting Tenders issued by the Water Resources Department in the years 2017, 2023, 2024 and 2026, it is submitted that the respondent department has consistently prescribed financial eligibility based upon execution of civil engineering works equivalent to about 60% of the probable contract value or prescribed a reasonable net worth criterion of around 30% of the project cost. It is argued that none of the earlier tenders issued by the respondent department, nor the tenders issued by comparable departments in other States, prescribe an annual turnover equivalent to twice the estimated project cost. According to learned Senior Counsel, the sudden departure from the consistent policy of the department, without any discernible rationale, study, expert recommendation or administrative necessity, demonstrates that the impugned

condition has been framed arbitrarily. It is further submitted that the petitioner itself satisfies the financial eligibility requirement contained in Clause 1.3(a), has executed substantial civil engineering works during the relevant financial years and possesses the financial capacity to execute the project, which stands duly certified by a Chartered Accountant through the turnover certificate placed on record.

- 12.** Learned Senior Counsel would further submit that the subsequent actions of the respondent authorities in disqualifying the petitioner and proceeding with the tender process are equally arbitrary and illegal. It is submitted that during the pendency of the earlier writ petition, the petitioner was informed through e-mail dated 23.07.2026 that its technical bid stood disqualified on the ground of non-compliance with Clause 1.3(b), apart from certain objections relating to Annexure XI. Immediately thereafter, the petitioner submitted a detailed representation dated 27.07.2026 explaining its stand and requesting reconsideration of the decision. However, without considering the petitioner's explanation, the respondent authorities proceeded on the very same day to open the financial bids and declared respondent No.5 as the L-1 bidder. Learned Senior Counsel would submit that the respondents, having invited the petitioner to furnish an explanation, were under an obligation to objectively consider the same before proceeding further in the tender process. The action of opening the financial bid immediately after receipt of the

representation, particularly at about 10:18 P.M., according to learned Senior Counsel, clearly demonstrates undue haste, predetermined decision-making and an attempt to create a *fait accompli* despite being aware that the petitioner had already approached this Court.

13. Lastly, learned Senior Counsel would submit that respondent No.5 has also been wrongly declared technically eligible inasmuch as the documents furnished by it do not satisfy the mandatory eligibility requirements prescribed under Clause 4 of the tender document. It is argued that the work experience relied upon by respondent No.5 pertains to a Joint Venture wherein respondent No.5 had only a 65% share, and therefore the entire value of the work executed by the Joint Venture could not have been claimed as its individual experience. According to learned Senior Counsel, on a proper computation, the experience attributable to respondent No.5 falls substantially short of the minimum qualifying requirement prescribed under Clause 4.1 of the tender document. It is further submitted that if the petitioner had not been illegally disqualified by application of the impugned Clause 1.3(b), the petitioner's financial bid, amounting to approximately ₹2,448 Crores, would have rendered it the lowest eligible bidder. Placing reliance upon the judgment of the Hon'ble Supreme Court in ***Vinishma Technologies Pvt. Ltd. v. State of Chhattisgarh & Others, 2025 SCC OnLine SC 2119***, learned Senior Counsel would contend that although the State enjoys considerable

latitude in prescribing tender conditions, such conditions must satisfy the constitutional mandate of fairness, reasonableness and non-arbitrariness and must promote a level playing field rather than create artificial barriers to participation. It is, therefore, prayed that the impugned Clause 1.3(b), the consequential disqualification of the petitioner, the opening of the financial bid and the declaration of respondent No.5 as the L-1 bidder be quashed and appropriate consequential directions be issued in favour of the petitioner.

14. By taking the aforesaid documents on record, learned Senior Counsel further submits that the additional documents acquired by the petitioner after the institution of the present writ petition go to the very root of the controversy and furnish contemporaneous evidence demonstrating the arbitrary manner in which the impugned tender conditions have been framed. It is submitted that the petitioner, despite exercising due diligence, could not procure these documents prior to filing of the writ petition, as they became available only subsequently. Learned Senior Counsel would contend that the documents neither introduce a new cause of action nor alter the nature of the challenge; rather, they merely substantiate the grounds already urged in the writ petition and are, therefore, liable to be taken on record in the interest of complete and effective adjudication of the issues involved.

15. Learned Senior Counsel would further submit that the additional

tender documents issued by the respondent department itself on 13.05.2026, i.e., on the very same date as the impugned Notice Inviting Tender, unmistakably demonstrate that the onerous financial eligibility condition contained in Clause 1.3(b) has not been incorporated in the tenders floated for similar irrigation projects in District Raipur and District Bastar. According to learned Senior Counsel, all the tenders relate to comparable works issued by the same department under the same administrative setup and during the same period. In such circumstances, there was no justification for prescribing a drastically different and onerous financial eligibility criterion only in the impugned tender. It is submitted that the absence of Clause 1.3(b) in the contemporaneous tenders conclusively establishes that the impugned condition is neither a standard requirement nor an indispensable criterion for execution of similar projects. Learned Senior Counsel would submit that the said documents lend considerable support to the petitioner's contention that the impugned clause was inserted selectively and without any rational basis. It is further contended that the insertion of Clause 1.3(b) was not preceded by any approval of the competent authority of the Water Resources Department and is also inconsistent with the principles governing formulation of eligibility conditions contained in the guidelines issued by the Central Vigilance Commission (CVC), which require tender conditions to promote fair competition and wider participation.

- 16.** Learned Senior Counsel would next submit that the additional documents relating to the eligibility of Respondent No. 5 - Dilip Buildcon Limited conclusively establish that the experience relied upon by Respondent No. 5 pertains to a Joint Venture (DBL-SIPL JV) and not to Dilip Buildcon Limited acting in its independent capacity. Inviting the attention of this Court to the certificate dated 26.05.2026 issued by MP Jal Nigam Maryadit as well as the Letter of Acceptance dated 08.08.2022, it is submitted that both the documents unequivocally record that the contract had been awarded to DBL-SIPL (JV) and that the certificate itself was issued at the request of the Joint Venture for tendering purposes. According to learned Senior Counsel, these official documents demolish the claim of Respondent No. 5 that it independently satisfies the eligibility criteria prescribed under Clause 4 of the tender document. It is contended that the respondent department has erroneously treated the entire value of the Joint Venture work as the individual experience of Respondent No. 5, contrary to the express terms of the tender, thereby materially affecting the evaluation process and conferring an undue advantage upon Respondent No. 5.
- 17.** Learned Senior Counsel would lastly submit that these additional documents, when read together with the pleadings already on record, fortify the petitioner's case that the impugned tender process has not been conducted in a fair, transparent and non-discriminatory manner. According to him, the contemporaneous

tender documents, coupled with the material relating to the eligibility of Respondent No. 5, provide a complete factual foundation for the petitioner's allegation that the impugned eligibility condition was introduced selectively and the tender process was administered in a manner which resulted in conferring an undue benefit upon Respondent No. 5. It is, therefore, submitted that the additional documents deserve to be taken on record, as they have a direct bearing on the questions of arbitrariness, equality, transparency and fairness in public procurement and would assist this Court in effectively adjudicating the issues arising in the present writ petition.

- 18.** Mr. Vivek Sharma, learned Advocate General assisted by Mr. Soumya Rai, learned Deputy Government Advocate, appearing for the State/respondents No. 1 to 4, opposes the submissions advanced by learned Senior Counsel appearing for the petitioner and would submit that the present writ petition deserves to be dismissed at the threshold as being devoid of any merit. Learned Advocate General would contend that the petitioner is attempting to invite this Hon'ble Court to rewrite the terms of a commercial tender, which is impermissible in exercise of the power of judicial review under Article 226 of the Constitution of India. It is submitted that the eligibility conditions incorporated in the Notice Inviting Tender were consciously framed by the Tender Inviting Authority after taking into consideration the magnitude, technical complexity, financial implications and long-term operation and

maintenance obligations attached to the project. The Court, while exercising judicial review, does not sit in appeal over the wisdom of the tendering authority nor substitute its own opinion regarding what ought to be the appropriate eligibility criteria. Unless the petitioner is able to establish that the conditions are *ex facie* arbitrary, actuated by *mala fides* or tailored to favour a particular bidder, no interference is warranted. It is further submitted that there is no foundational pleading whatsoever in the writ petition alleging or demonstrating that Clause 1.3(b) was inserted without approval of the competent authority, that it is contrary to any statutory provision or binding guideline, or that it violates any mandatory Government policy. In absence of such pleadings supported by cogent material, the petitioner cannot be permitted to improve its case by way of subsequent applications or oral submissions.

- 19.** Learned Advocate General would further submit that the petitioner has been rightly declared technically disqualified not merely on account of non-fulfilment of Clause 1.3(b), but also because of its failure to comply with several mandatory conditions forming part of the pre-qualification document. Inviting the attention of this Court to Clause 12 of the Information and Instructions to Tenderers, learned Advocate General submits that every bidder is mandatorily required to furnish an affidavit in the prescribed format contained in Annexure XI certifying the correctness of the information furnished in Annexures I to VI. The language

employed in Clause 12 leaves no discretion either with the bidder or with the Tender Inviting Authority, inasmuch as it specifically mandates furnishing of the affidavit "in the prescribed format as per Annexure XI." Likewise, Clause 4 of the Information and Instructions expressly stipulates that all information sought in the prescribed forms must be furnished against the respective columns and specifically cautions that if information is supplied in any different format or if any alteration is made in the prescribed format, the tenderer may be summarily disqualified. Learned Advocate General submits that the petitioner consciously chose to submit an affidavit not in conformity with Annexure XI by introducing qualifications and modifications of its own, despite the tender document mandating submission in the prescribed format. According to learned Advocate General, once the tender itself declares the prescribed format to be mandatory, substantial compliance cannot substitute strict compliance, particularly in matters relating to public procurement where uniformity and equal treatment of bidders is of paramount importance.

- 20.** Learned Advocate General would further contend that the submission advanced on behalf of the petitioner that Annexure X provided an alternative route dispensing with Annexure XI is wholly misconceived and contrary to the express provisions of the tender document. It is submitted that Annexure X and Annexure XI operate in different fields. Annexure X merely specifies the documents required for establishing eligibility in certain

contingencies, whereas Annexure XI is an independent affidavit affirming the correctness and authenticity of the information furnished in Annexures I to VI. The petitioner cannot rely upon Annexure X to avoid compliance with Annexure XI, when the tender document itself specifically requires that Annexure XI be furnished in the prescribed format. Learned Advocate General submits that Envelope 'B', which contains the pre-qualification documents, specifically requires complete information in Annexures I to XII together with all supporting documents. The tender document further provides that all Annexures are required to be filled in completely and uploaded, separate papers may be attached wherever necessary, and incomplete information or deviation from the prescribed format would entail disqualification. It is submitted that the petitioner admittedly did not furnish Annexure XI in the prescribed form and, therefore, the Tender Evaluation Committee rightly held the petitioner to be non-responsive.

- 21.** Learned Advocate General would next submit that the petitioner also failed to satisfy the substantive eligibility criteria contained in Clause 1.3(b) and cannot seek judicial intervention merely because it fulfils Clause 1.3(a). According to him, Clauses 1.3(a) and 1.3(b) are cumulative and not alternative. Both conditions independently assess different aspects of financial capability. Clause 1.3(a) evaluates the bidder's capacity based on the value of civil engineering work executed during the relevant period,

whereas Clause 1.3(b) examines the overall financial strength of the bidder by prescribing average annual turnover and cumulative receipts from similar works. It is submitted that both criteria complement each other and cannot be read disjunctively merely because the petitioner satisfies one of them. Learned Advocate General would submit that the petitioner is attempting to persuade this Court to read the word "or" where none exists and thereby rewrite the eligibility conditions after having participated in the tender process with full knowledge of all terms and conditions. Such an exercise, according to him, is wholly impermissible in law.

- 22.** Learned Advocate General would further submit that the challenge laid by the petitioner to the eligibility of respondent No.5 is equally devoid of substance. Inviting attention to Clause 3.8(a) of the tender document, learned Advocate General submits that while Joint Ventures are not permitted for participating in the present tender, the clause nowhere prohibits a bidder from relying upon experience lawfully acquired in execution of earlier contracts in accordance with the applicable tender conditions. It is further submitted that Clause 4.1(i) and Clause 4.1(ii) merely require the prime contractor to have satisfactorily completed one similar work of the prescribed value or two similar works of the prescribed value within the stipulated period. According to learned Advocate General, the Tender Evaluation Committee examined all documents submitted by respondent No.5, including the work

completion certificates, Letter of Acceptance and supporting documents, and being fully satisfied that respondent No.5 fulfilled the eligibility requirements, declared it technically qualified. Such assessment of technical eligibility is within the exclusive domain of the expert Tender Evaluation Committee and cannot be re-appreciated by this Court in exercise of judicial review merely because the petitioner seeks to interpret the documents differently.

- 23.** Learned Advocate General would also submit that the tender document itself, particularly Clause 5.0 relating to Disqualification, authorises the department to reject bids where misleading, incomplete or incorrect information is furnished or where the prescribed formats are not adhered to. Clause 5.0 expressly provides that failure to furnish complete information in the prescribed format or making changes in the prescribed forms may result in summary disqualification. Similarly, the note appended to Envelope 'B' requires complete filling of Annexures I to XII, uploading of all supporting documents and production of original certificates whenever demanded by the department. It is submitted that the petitioner seeks relaxation of mandatory conditions after submission of its bid, which would itself amount to conferring an unfair advantage upon one bidder and would violate the principle of equality amongst all participants who have strictly complied with the tender conditions. The Tender Inviting Authority, therefore, rightly refused to dilute the mandatory requirements

after commencement of the evaluation process.

- 24.** Lastly, learned Advocate General would submit that the petitioner has failed to lay any factual foundation for its allegations of mala fides, favouritism or collusion. There is no specific pleading, much less any supporting material, identifying the officer against whom mala fides are alleged, the manner in which the impugned clause was allegedly introduced to favour respondent No.5, or the source from which the petitioner claims that prior approval of the competent authority was not obtained. Bald allegations of arbitrariness, unsupported by material particulars, cannot constitute a ground for judicial interference in contractual matters. It is, therefore, submitted that the petitioner, having failed to comply with the mandatory requirements contained in Clause 12, Clause 4, Clauses 3.8(a) and 3.8(b), Clause 4.1(i) and (ii), Clause 5.0, the requirements governing Envelope 'B', and the prescribed Annexures X and XI, was rightly declared technically disqualified.
- 25.** Learned Advocate General submits that the petitioner has consciously participated in the tender process with full knowledge and complete acceptance of all the terms and conditions contained in the Notice Inviting Tender, including the eligibility criteria, the pre-qualification requirements, the mandatory formats prescribed under Annexures I to XII, and the procedure prescribed for evaluation of bids. Having voluntarily participated in the tender without challenging the conditions at the threshold and having

submitted its bid subject to the tender conditions, the petitioner cannot now seek to selectively assail only those clauses under which it has been found ineligible. It is further submitted that the petitioner admittedly failed to comply with the mandatory requirement of furnishing Annexure XI in the prescribed format and also failed to satisfy the financial eligibility stipulated under Clause 1.3(b) of the NIT. The petitioner, therefore, was rightly declared technically disqualified in accordance with the terms of the tender. Learned Advocate General would contend that the Tender Evaluation Committee has merely applied the conditions uniformly to all bidders and no relaxation or concession has been extended to any participant. The allegation that the conditions were incorporated to favour respondent No.5 is wholly speculative, unsupported by any pleading or contemporaneous material, and does not satisfy the settled requirements for alleging mala fides in law. It is also submitted that the additional allegations sought to be raised during the course of arguments, namely that Clause 1.3(b) was inserted without approval of the competent authority or that it is contrary to the guidelines of the Central Vigilance Commission, do not even find place in the pleadings and, therefore, cannot be permitted to be urged in the absence of a proper factual foundation.

- 26.** Learned Advocate General lastly submits that the assessment of technical eligibility and evaluation of bids has been carried out strictly in accordance with the tender conditions by an Expert

Tender Evaluation Committee and such technical evaluation is not amenable to re-appreciation by this Hon'ble Court in exercise of judicial review unless the decision-making process is shown to be arbitrary, mala fide or actuated by extraneous considerations, which the petitioner has miserably failed to establish. It is, therefore, submitted that no case for interference under Article 226 of the Constitution of India is made out, and the writ petition deserves to be dismissed with costs.

- 27.** Mr. Naman Nagrath and Ms. Sharmila Singhai, learned Senior Counsel assisted by Ms. Ruchi Nagar, Mr. Kartik Katheuia and Ms. Kanchan Kalwani, learned counsel appearing for respondent No.5, while adopting the submissions advanced by the learned Advocate General on behalf of the State, further submit that the present writ petition is nothing but an attempt on the part of the petitioner to overcome its own failure to satisfy the mandatory eligibility conditions of the tender. It is submitted that the petitioner, having participated in the tender process with full knowledge of all the terms and conditions contained in the Notice Inviting Tender, cannot, after having been declared technically disqualified, seek to challenge the very conditions which governed the tender process. Learned Senior Counsel would contend that the petitioner has failed to establish any arbitrariness or illegality in the decision-making process and is in fact seeking modification and re-writing of the tender conditions by inviting this Hon'ble Court to substitute its own interpretation in place of the express

language employed by the Tender Inviting Authority. Such a course, it is submitted, is wholly impermissible in law and contrary to the settled principles governing judicial review of contractual matters.

- 28.** Learned Senior Counsel would further submit that the entire edifice of the petitioner's case is founded upon the objections allegedly raised during the Pre-Bid Conference dated 01.06.2026. However, the petitioner itself admittedly did not participate in the said pre-bid conference, nor did it raise any objection independently before the Tender Inviting Authority regarding Clause 1.3(b) or any other condition contained in the Notice Inviting Tender. It is submitted that the objections referred to by the petitioner were raised by certain other prospective bidders and not by the petitioner. Having consciously abstained from participating in the pre-bid process, the petitioner cannot now seek to appropriate objections raised by third parties and claim any benefit therefrom. Learned Senior Counsel would submit that the pre-bid conference is intended to afford intending bidders an opportunity to seek clarification or modification of tender conditions before submission of bids. The petitioner having failed to avail such opportunity cannot subsequently challenge the outcome of the pre-bid deliberations or rely upon representations made by other participants. According to learned Senior Counsel, the petitioner cannot be permitted to build its case upon objections raised by strangers to the present proceedings when it

neither participated in the deliberations nor pursued any independent objection before submission of its bid.

- 29.** Learned Senior Counsel would next submit that the petitioner has been rightly declared technically disqualified on account of its failure to comply with the mandatory requirement of submitting Annexure XI in the prescribed format. Referring to the explanation furnished by the petitioner after its disqualification, learned Senior Counsel would submit that the petitioner has virtually admitted that it deliberately altered the prescribed affidavit on the assumption that Annexure X entitled it to adopt a different format. It is submitted that such a stand is wholly misconceived and contrary to the express language of the tender document. Annexure XI specifically requires the bidder to affirm the correctness of the information furnished and to certify compliance in the exact format prescribed by the Tender Inviting Authority. The petitioner had no authority whatsoever to substitute its own understanding of the tender conditions or to redraft the affidavit according to its own convenience. Learned Senior Counsel would contend that the tender conditions do not permit any bidder to modify, qualify or rewrite the prescribed declaration merely because, in its opinion, a different interpretation of Annexure X is possible. Once the Tender Inviting Authority has prescribed a specific format, every bidder is required to adhere to the same uniformly. Permitting one bidder to alter the prescribed affidavit according to its own interpretation would destroy uniformity in the

evaluation process and defeat the very object of prescribing standardised declarations. It is, therefore, submitted that the petitioner cannot claim that its self-drafted affidavit constitutes substantial compliance with Annexure XI.

- 30.** Learned Senior Counsel would further submit that the petitioner's challenge to the eligibility of respondent No.5 is equally misconceived and proceeds on a complete misreading of the tender conditions. The petitioner has repeatedly relied upon the fact that the experience relied upon by respondent No.5 pertains to a Joint Venture. According to learned Senior Counsel, the petitioner is confusing the prohibition contained in Clause 3.8(a) with the nature of experience that may be relied upon by a bidder. Clause 3.8(a) merely prohibits submission of a bid through a Joint Venture in the present tender, and does not prohibit a bidder from relying upon experience lawfully acquired in execution of previous contracts in accordance with the applicable contractual arrangements. Respondent No.5 has participated in the present tender as an independent bidder and not as a Joint Venture. The Tender Evaluation Committee examined all documents produced by respondent No.5 and, being satisfied that the eligibility criteria stood fulfilled, declared respondent No.5 technically qualified. Learned Senior Counsel would submit that the petitioner seeks to import restrictions into the tender document which do not exist and thereby invite this Court to undertake a fresh technical evaluation, which is beyond permissible scope of judicial review.

31. Lastly, learned Senior Counsel would submit that the petitioner's conduct throughout the tender process demonstrates that it seeks to avoid the consequences of its own non-compliance with mandatory tender conditions. The petitioner neither complied with the prescribed format of Annexure XI, nor satisfied the financial eligibility under Clause 1.3(b), nor raised any independent objection before the Tender Inviting Authority at the appropriate stage. Having participated in the tender process without protest and having accepted the terms and conditions in their entirety, the petitioner cannot now contend that one condition should be ignored, another should be interpreted differently and the prescribed affidavit should be treated as optional. The terms and conditions of a tender are framed by the Tender Inviting Authority in exercise of its administrative discretion, and it is not open to a bidder to decide which clauses are mandatory, which are directory or in what manner the prescribed declarations should be worded. The petitioner cannot unilaterally substitute its own interpretation for the express language employed in the tender document and thereafter seek judicial endorsement of such interpretation. It is, therefore, submitted that the writ petition is devoid of merit, the technical disqualification of the petitioner has been made strictly in accordance with the tender conditions, and respondent No.5 has been rightly declared technically qualified and subsequently found to be the successful bidder. Accordingly, the writ petition deserves to be dismissed with exemplary costs.

- 32.** We have heard learned counsel for the parties at length, considered their rival submissions with due care and perused the pleadings and documents available on record.
- 33.** We have heard Mr. Manoj Paranjpe, learned Senior Counsel assisted by Mr. Anshul Tiwari, learned counsel appearing for the petitioner, Mr. Vivek Sharma, learned Advocate General assisted by Mr. Soumya Rai, learned Deputy Government Advocate appearing for the State/Respondents No.1 to 4, and Mr. Naman Nagrath and Ms. Sharmila Singhai, learned Senior Counsel assisted by Ms. Ruchi Nagar, Mr. Kartik Katheuia and Ms. Kanchan Kalwani, learned counsel appearing for Respondent No.5, at considerable length. We have also perused the pleadings, documents brought on record, the original tender documents as well as the relevant clauses governing the tender process.
- 34.** Before proceeding further, we deem it appropriate to notice certain material provisions contained in the Notice Inviting Tender itself, as the controversy raised in the present writ petition revolves around the interpretation and application thereof. Clause **4** of the Information and Instructions to Tenderers specifically provides that every bidder shall furnish complete information in the prescribed forms against each respective column and further cautions that *"not giving complete information called for in the application, in the format required or making any change in the prescribed*

format may result in the tenderer being summarily disqualified."

Likewise, Clause **12** expressly mandates that *"an affidavit in the prescribed format as per Annexure-XI should be furnished by the Tenderer regarding correctness of the information furnished at Annexure I to Annexure VI."* The tender document further stipulates under the Note appended to **Envelope 'B'** that **Annexures I to XII are required to be completely filled in**, accompanied by all supporting documents, failing which the bidder exposes itself to the consequences envisaged under the tender conditions. Clause **5.0**, dealing with disqualification, further authorises the Tender Inviting Authority to disqualify a bidder who furnishes incomplete information, makes false or misleading declarations, or fails to furnish the requisite information in the prescribed manner. Equally significant is Clause **3.8(a)**, which categorically stipulates that **Joint Venture is not permitted in the present tender**, while Clause **4.1(i) and 4.1(ii)** prescribe the technical experience required to be possessed by the prime contractor in its own name and style. These provisions, read conjointly, unmistakably demonstrate that the employer consciously intended strict compliance with the eligibility conditions and prescribed formats and did not contemplate any relaxation or deviation therefrom.

- 35.** The law governing judicial review in contractual and tender matters is no longer res integra. Beginning with ***Tata Cellular v. Union of India, (1994) 6 SCC 651***, followed by ***Raunaq***

International Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492, Air India Ltd. v. Cochin International Airport Ltd., (2000) 2 SCC 617, Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517, Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216, Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818, Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489, N.G. Projects Ltd. v. Vinod Kumar Jain, (2022) 6 SCC 127, and National High Speed Rail Corporation Ltd. v. Montecarlo Ltd., (2022) 6 SCC 401, the Hon'ble Supreme Court has consistently held that the constitutional courts exercise only a limited power of judicial review in matters relating to award of public contracts. The Court is not expected to sit as an appellate authority over commercial decisions of the employer nor is it required to examine whether another condition could have been wiser, fairer or commercially more prudent. The author of the tender document is the best judge of its requirements, and unless the decision-making process is shown to be arbitrary, irrational, actuated by mala fides or intended to favour a particular bidder in violation of Article 14 of the Constitution, judicial interference is wholly unwarranted.

36. Very recently, the Apex Court, in the matter of ***Banshidhar Construction Pvt. Ltd. v. Bharat Coking Coal Ltd. & Others, {Civil Appeal No. 11005 OF 2024, decided on 04.10.2024}***, taking note of the decisions rendered in various other celebrated

judgments, observed as under:-

“21. There cannot be any disagreement to the legal proposition propounded in catena of decisions of this Court relied upon by the learned counsels for the Respondents to the effect that the Court does not sit as a Court of Appeal in the matter of award of contracts and it merely reviews the manner in which the decision was made; and that the Government and its instrumentalities must have a freedom of entering into the contracts. However, it is equally well settled that the decision of the government/ its instrumentalities must be free from arbitrariness and must not be affected by any bias or actuated by malafides. Government bodies being public authorities are expected to uphold fairness, equality and public interest even while dealing with contractual matters. Right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process and that the entire bidding process is carried out in absolutely transparent manner.

22. At this juncture, we may reiterate the well-established tenets of law pertaining to the scope of judicial intervention in Government Contracts.

23. In *Sterling Computers Limited vs. M/s. M & N Publications Limited and Others*¹,

¹ (1993) 1 SCC 445

this Court while dealing with the scope of judicial review of award of contracts held: -

“18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the “decision making process”. In this connection reference may be made to the case of Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141] where it was said that: (p. 144a)

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court.”

By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141] the courts can certainly examine whether “decision-making process” was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.”

24. In ***Tata Cellular vs. Union of India***², this Court had laid down certain principles for the judicial review of administrative action.

“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-

² (1994) 6 SCC 651

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. Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

25. It has also been held in *ABL International Limited and Another vs. Export Credit Guarantee Corporation of India Limited and Others*³, as under: -

“53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution.”

26. In *Jagdish Mandal vs. State of Orissa and Others*⁴, this Court after discussing number of judgments laid down two tests to determine the extent of judicial interference in

3 (2004) 3 SCC 553

4 (2007) 14 SCC 517

tender matters. They are: -

“22. (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. If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

27. In *Mihan India Ltd. vs. GMR Airports Ltd. and Others*⁵, while observing that the government contracts granted by the government bodies must uphold fairness, equality and rule of law while dealing with the contractual matters, it was observed in Para 50 as under: -

“50. In view of the above, it is apparent that in government contracts, if granted by the government bodies, it is expected to uphold fairness, equality and rule of law while

5 (2022) SCC OnLine SC 574

dealing with contractual matters. Right to equality under Article 14 of the Constitution of India abhors arbitrariness. The transparent bidding process is favoured by the Court to ensure that constitutional requirements are satisfied. It is said that the constitutional guarantee as provided under Article 14 of the Constitution of India demands the State to act in a fair and reasonable manner unless public interest demands otherwise. It is expedient that the degree of compromise of any private legitimate interest must correspond proportionately to the public interest.”

28. It was sought to be submitted by the learned Counsels for the Respondents relying upon the observations made in **Central Coalfields Limited and Another vs. SLL-SML (Joint Venture Consortium) and Others⁶**, that whether a term of NIT is essential or not is a decision taken by the employer which should be respected. However, in the said judgment also it is observed that if the employer has exercised the inherent authority to deviate from the essential term, such deviation has to be made applicable to all the bidders and potential bidders. It was observed in Para 47 and 48 as under:-

“47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only

6 (2016) 8 SCC 622

from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] there must be judicial restraint in interfering with administrative action. 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. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in Jagdish Mandal [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] followed in Michigan Rubber [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216].

48. Therefore, whether a term of NIT is essential or not is a decision 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 as held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] . However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.”

- 37.** Keeping the aforesaid settled principles in view, we have carefully examined the challenge mounted by the petitioner to Clause 1.3(b) of the Notice Inviting Tender. In our considered opinion, the entire challenge proceeds on the premise that the financial criterion prescribed therein ought to have been different from what has been stipulated by the employer. Such an exercise is clearly beyond the permissible limits of judicial review. The formulation of eligibility conditions is a matter falling within the exclusive domain of the Tender Inviting Authority, which is expected to possess the necessary technical expertise regarding the nature of work, financial exposure, execution schedule, project risks and long-term obligations under the contract. Merely because another employer or even the same department in another project has

prescribed a different financial benchmark does not ipso facto render the impugned condition unconstitutional. Every public project has its own technical specifications, engineering challenges, execution methodology and financial implications. It is neither permissible nor desirable for this Court to undertake a comparative analysis of different tenders and substitute its own perception of what the eligibility criteria ought to have been.

38. We also find that the petitioner has failed to lay any factual foundation demonstrating that Clause 1.3(b) is arbitrary in the constitutional sense. There is no material to establish that the condition is impossible of compliance, incapable of being achieved by competent contractors or designed solely to exclude the petitioner. The allegation that the clause was inserted only to favour respondent No.5 remains a mere assertion unsupported by any contemporaneous material. It is trite that allegations of mala fides are amongst the most serious allegations known to law and cannot be accepted on conjectures, suspicion or inference. No officer has been impleaded against whom mala fides are attributed. No document has been placed on record to demonstrate that the impugned clause was inserted at the instance of respondent No.5 or for conferring an undue advantage upon it. In absence of foundational pleadings and cogent evidence, such allegations deserve outright rejection.

39. Another aspect which persuades us against granting relief is the

admitted conduct of the petitioner. The petitioner admittedly downloaded the tender document, accepted all the terms and conditions contained therein, submitted its technical bid, participated in the tender process and only after having been declared technically disqualified has chosen to assail the very conditions governing the tender. The law is equally well settled that a bidder who participates in the tender process with full knowledge of the conditions cannot subsequently challenge those very conditions merely because the outcome has gone against him. The doctrine of approbation and reprobation squarely applies. A participant cannot be permitted to take a chance in the bidding process and thereafter, upon failure, seek judicial intervention to invalidate the rules of the game.

- 40.** The submission advanced on behalf of the petitioner regarding Annexure XI also does not impress us. Clause 12 specifically mandates furnishing of an affidavit in the prescribed format. Clause 4 simultaneously warns every bidder that any deviation from the prescribed format may result in summary disqualification. The explanation subsequently furnished by the petitioner itself demonstrates that it consciously altered the prescribed affidavit on the assumption that Annexure X entitled it to adopt a different declaration. Such an interpretation cannot be accepted. The tender conditions nowhere authorise an individual bidder to modify the prescribed format according to its own understanding. Acceptance of such a plea would lead to complete uncertainty in

the tender process, as every bidder would then be entitled to rewrite the prescribed declarations according to its own perception of the tender conditions. Uniformity in public procurement necessarily requires strict adherence to the prescribed forms, and the Tender Evaluation Committee cannot be faulted for insisting upon compliance with the tender document as it stood.

- 41.** Equally untenable is the submission that Clauses 1.3(a) and 1.3(b) are mutually destructive. A plain reading of the tender document does not indicate that either clause is intended to operate as an alternative to the other. On the contrary, the eligibility criteria have been structured to evaluate different aspects of the bidder's financial capability. It is not for this Court to rewrite the tender by reading into it an alternative which the employer has consciously not provided. Such an exercise would amount to redrafting the commercial terms of the contract, which is wholly impermissible in exercise of powers under Article 226 of the Constitution.
- 42.** The challenge to the eligibility of respondent No.5 also does not merit acceptance. The entire argument is founded upon the petitioner's interpretation of the experience certificate and the effect of Clause 3.8(a). The Tender Evaluation Committee, comprising technical experts, examined the documents submitted by respondent No.5 and found the same to be in conformity with

the eligibility requirements. It is settled that the constitutional court does not substitute its own interpretation for that of the expert committee unless the decision is shown to be perverse or contrary to the express stipulations of the tender. No such perversity has been demonstrated before us.

- 43.** We also cannot lose sight of the fact that the petitioner admittedly did not participate in the pre-bid meeting where intending bidders were invited to seek clarifications regarding the tender conditions. The objections now heavily relied upon by the petitioner were admittedly raised by some other bidders. Having consciously chosen not to participate in the pre-bid process, the petitioner cannot now seek to derive benefit from objections raised by third parties or contend that the rejection thereof furnishes a cause of action in its favour.
- 44.** Before recording our final conclusion, it would also be necessary to notice certain undisputed factual aspects emerging from the record, which, in our considered opinion, have a material bearing on the maintainability as well as the merits of the present challenge. Firstly, the petitioner admittedly did not participate in the Pre-Bid Conference convened by the respondent authorities on 01.06.2026, which was specifically intended to enable prospective bidders to seek clarifications and raise objections regarding the eligibility conditions and other stipulations contained in the Notice Inviting Tender. The objections now sought to be

relied upon by the petitioner were admittedly raised by certain other prospective bidders and not by the petitioner itself. The petitioner, therefore, cannot be permitted to derive advantage from objections raised by third parties after consciously abstaining from participating in the consultative process provided by the employer. Having elected not to avail the opportunity expressly made available under the tender process, the petitioner cannot subsequently contend that the rejection of objections raised by others furnishes an independent cause of action in its favour.

- 45.** Secondly, the pleadings themselves reveal that the petitioner accepted the tender conditions in their entirety, uploaded its bid, submitted all requisite documents and participated in the competitive bidding process without any contemporaneous protest. The challenge to Clause 1.3(b), Annexure XI and other eligibility conditions has acquired prominence only after the petitioner was declared technically disqualified. It is well settled that a bidder who consciously participates in a tender process with full knowledge of the terms and conditions governing the same cannot, after being declared unsuccessful, seek to invalidate those very conditions merely because the outcome has gone against him. Such conduct is clearly hit by the principle that a party cannot approbate and reprobate simultaneously. The petitioner cannot be permitted to accept the tender conditions when they suit its commercial interest and thereafter question their validity only upon suffering an adverse consequence.

46. Thirdly, insofar as the challenge relating to respondent No.5 is concerned, we find that the petitioner seeks to invite this Court to undertake a detailed factual examination regarding the experience certificates submitted by respondent No.5 and the effect of the Joint Venture through which the previous work was executed. However, Clause 3.8(a) of the tender merely stipulates that **Joint Venture is not permissible for participation in the present tender**. The said clause regulates the manner in which bids are to be submitted in the present procurement process. Whether the previous experience relied upon by a bidder satisfies Clause 4.1(i) or 4.1(ii) is essentially a matter falling within the domain of the Tender Evaluation Committee, which consists of technical experts entrusted with examining the documents submitted by the bidders. Unless the decision of such expert body is demonstrated to be ex facie perverse, arbitrary or contrary to the express language of the tender conditions, this Court would not substitute its own interpretation in exercise of judicial review under Article 226 of the Constitution of India. We find no such perversity established in the present case.
47. Fourthly, we also find considerable substance in the submission advanced on behalf of the respondents that the petitioner has not laid the requisite foundational pleadings to sustain several of the allegations sought to be urged during the course of arguments. Serious allegations of mala fides, favouritism, tailoring of tender conditions and collusion between the official respondents and

respondent No.5 have been advanced. However, except making broad and general averments, the writ petition neither discloses the material particulars constituting such allegations nor impleads any individual officer against whom mala fides are specifically attributed. It is trite that allegations of mala fides cannot be founded upon suspicion, conjectures or surmises and must be supported by clear pleadings and cogent material. In the absence of such foundational facts, this Court cannot embark upon an enquiry into disputed allegations of favouritism or collusion.

- 48.** We also cannot lose sight of the fact that the petitioner has not challenged several mandatory stipulations contained in the tender document, including the cautionary provisions contained in **Clause 4, Clause 12, Clause 5.0**, the requirements prescribed for **Envelope 'B'**, or the stipulation requiring complete furnishing of information in **Annexures I to XII** in the prescribed format. The petitioner has confined its challenge principally to Clause 1.3(b) while simultaneously seeking a declaration that its deviation from the prescribed format of **Annexure XI** ought to have been accepted on the basis of its own interpretation of **Annexure X**. Such a course is wholly impermissible. The tender conditions constitute an integrated code and cannot be dissected or selectively applied at the instance of an individual bidder. A bidder is required either to comply with the tender conditions as framed by the employer or challenge them before participating in the process. It is not open to a bidder to rewrite the prescribed

formats, substitute its own declarations, interpret the eligibility conditions according to its convenience and thereafter seek judicial approval of such deviations.

- 49.** It is equally significant that the petitioner seeks, in substance, a direction from this Court to evaluate its eligibility by ignoring Clause **1.3(b)**, treating Clause **1.3(a)** as an alternative condition, overlooking the deviation in **Annexure XI**, and simultaneously disqualifying respondent No.5 by re-appreciating the technical evaluation undertaken by the Tender Evaluation Committee. Granting such relief would necessarily require this Court to rewrite the tender conditions, re-evaluate technical documents, reassess the experience certificates submitted by competing bidders and substitute the commercial and technical assessment of the expert authority with its own opinion. Such an exercise is plainly beyond the permissible limits of judicial review consistently delineated by the Hon'ble Supreme Court in matters of public procurement.
- 50.** Having bestowed our anxious consideration to the rival submissions advanced at the Bar, having carefully examined the pleadings, the tender documents, the records produced by the parties and the settled principles governing judicial review in contractual matters, we are of the considered opinion that the petitioner has failed to make out any case warranting interference under Article 226 of the Constitution of India. The petitioner has been unable to demonstrate that the decision-making process

adopted by the respondent authorities suffers from arbitrariness, irrationality, mala fides, procedural impropriety or violation of any statutory or constitutional mandate. The challenge raised by the petitioner is, in substance, an invitation to this Court to rewrite the eligibility conditions of the tender by treating Clause 1.3(a) as an alternative to Clause 1.3(b), to ignore the mandatory requirement of furnishing Annexure XI in the prescribed format despite the express stipulations contained in Clause 4, Clause 12 and Clause 5.0 of the tender document, and to substitute the interpretation placed by the Tender Evaluation Committee with the interpretation suggested by the petitioner. Such an exercise is wholly impermissible in the limited scope of judicial review available in matters relating to public procurement.

- 51.** The record further reveals that the petitioner consciously participated in the tender process after accepting all the terms and conditions of the Notice Inviting Tender without any contemporaneous protest. Admittedly, the petitioner neither participated in the Pre-Bid Conference held on 01.06.2026 nor raised any objection before the Tender Inviting Authority regarding the impugned clauses. The petitioner now seeks to rely upon objections allegedly raised by other prospective bidders and attempts to derive advantage therefrom after having suffered disqualification in the technical evaluation. Such conduct cannot be countenanced in law. Equally, the petitioner admittedly altered the prescribed format of Annexure XI on its own understanding of

Annexure X, though the tender document unequivocally required submission of the affidavit in the prescribed format and expressly cautioned that deviation from the prescribed format could result in summary disqualification. It was not open to the petitioner to modify the prescribed declaration according to its own interpretation and thereafter contend that such deviation ought to have been accepted by the Tender Evaluation Committee.

- 52.** The challenge to the eligibility of respondent No.5 also does not persuade us to exercise our extraordinary jurisdiction. Clause 3.8(a) merely prohibits participation through a Joint Venture in the present tender. The question whether the experience certificates produced by respondent No.5 satisfied the requirements contained in Clause 4.1(i) or Clause 4.1(ii) was examined by the expert Tender Evaluation Committee, which found respondent No.5 to be technically qualified. In the absence of any demonstrable perversity, patent illegality or violation of the express provisions of the tender document, this Court would not sit in appeal over the technical assessment made by the expert committee. Significantly, the petitioner has also failed to lay the necessary foundational pleadings or produce cogent material to substantiate the serious allegations of mala fides, favouritism, tailoring of tender conditions or collusion levelled against the respondents. Mere suspicion, however strong, cannot take the place of legal proof.

53. Viewed from any angle, the grievance projected by the petitioner essentially questions the commercial wisdom of the employer in prescribing eligibility criteria and seeks judicial substitution of the employer's decision by that of the Court. Such a course is expressly impermissible in view of the consistent line of authorities rendered by the Hon'ble Supreme Court in ***Banshidhar Construction Pvt. Ltd.*** (supra), wherein while dealing with ***Tata Cellular, Michigan Rubber, Afcons Infrastructure, Silppi Constructions, National High Speed Rail Corporation*** and ***N.G. Projects Ltd.*** (supra), it has repeatedly been held that the author of the tender document is the best judge of its requirements and that constitutional courts ought not to interfere unless the decision-making process is shown to be arbitrary, discriminatory, actuated by mala fides or so irrational that no reasonable authority could have arrived at such a decision. None of these exceptional circumstances exist in the present case. Acceptance of the petitioner's contentions would necessarily entail rewriting the tender conditions, relaxing mandatory eligibility requirements in favour of one bidder, re-evaluating the technical bids of competing bidders and substituting the commercial and technical assessment of the expert Tender Evaluation Committee with the opinion of this Court, which is wholly beyond the permissible contours of judicial review under Article 226 of the Constitution.
54. For all the aforesaid reasons, we do not find any merit in the

present writ petition. The same is, accordingly, **dismissed**.

55. As a consequence thereof, all interlocutory applications, if any, also stand disposed of.

56. There shall be no order as to costs.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Anu

Head-Note

The Tender Inviting Authority is the best judge of its commercial requirements and the eligibility criteria governing the tender process. Judicial review under Article 226 is confined to examining the legality of the decision-making process and not the merits of the commercial decision. Interference is warranted only where the tender conditions or the decision-making process are shown to be arbitrary, irrational, discriminatory, mala fide or violative of Article 14 of the Constitution; mere disagreement with the commercial wisdom of the employer or the prescribed eligibility criteria is no ground for judicial interference.