**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU.**

Case No: WP(C) No. 2697/2025
CM No.6187/2025

Reserved on: 04.08.2026
Pronounced on:14.08.2026
Uploaded on:14.08.2026

Whether the operative part or full Judgment is pronounced ***:Full***

M/s Pro Health Scientific Pvt. Ltd.
Srl. No.103/25 & 103/5
Plot No. 79, Ramtekdi Industrial Estate, Hadapsar, Pune-411 013 through authorised signatory, Mr. Manoj Kumar Dadge, aged 48 years, S/O Shri Raghunathrao Ramchandrarao, R/O S.No. 3/12, Indrasprasta Society, Near Hanuman Mandir, Gadilal,
Hadapasar City, Pune-411 028.

……Petitioner(s)…..

Through: Mr. Farhan Mirza, Advocate

V/s

1. Union Territory of Jammu & Kashmir through Principal Secretary to Government, Health & Medical Education Department, Civil Secretariat, Jammu/Srinagarr.
2. Jammu & Kashmir Medical Supplies Corporation Ltd., Head Officer, Plot No.58, Friends Colony, Satyam Road, Triukuta Nagar, Jammu.
3. Managing Director, Jammu & Kashmir Medical Supplies Corporation Ltd., Head Officer, Plot No.58, Friends Colony, Satyam Road, Triukuta Nagar, Jammu.

4. General Manager (Adm.)
Jammu & Kashmir Medical
Supplies Corporation Ltd.,
Head Officer, Plot No.58,
Friends Colony, Satyam Road,
Triukuta Nagar, Jammu.
5. M/s Maverick Simulation
Solutions, 12-B, Dwarka, New
Delhi through its authorized
representative namely Shri Atul
Sharma.

Through: Mr. Raman Sharma, AAG with Ms. Saliqa Sheikh, Advocate for R- 1 to 4.
Mr. Rahul Pant, Sr. Advocate with
Mr. Dhruv Pant, Advocate for R-5.

……Respondent(s)…

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

1. The petitioner along with others participated in NIT No.NIT/JKMSCL/M&E/2025/655 dated 28.02.2025 for procurement of "Machinery & Equipment" (01 Anatomy Virtual Dissection Table). Along with other technical qualification criteria, the bidder was required to have average annual turnover for the last three financial years (2021-2022, 2022-23 and 2023-24) of the Indian Subsidiary of the Principal Manufacturer/Sole Importer, issued by the Chartered Accountant/competent authority with UDIN, for Rs. 5 crores and was also required to submit the copies of the audited balance sheet and profit loss account for last three financial years certified by Chartered Accountant of the Importer/Indian Subsidiary for 2021-22, 2022-23 and 2023-124 with UDIN.

2. The technical bids were evaluated by the Technical Evaluation/Advisory Committee on 18.08.2025 and infirmities/shortcomings noticed by the Committee were communicated to the firms including the petitioner-company whereby besides other documents, the petitioner-company was asked to submit turnover for the financial year 2021-2022 and audited balance sheet for the year financial 2021-2022. Finally, the petitioner-company was not recommended, and M/S Maverick Simulation Solution Ltd. instead was recommended vide communication dated 21.08.2025. The petitioner claims to have approached the respondents on 30.08.2025 requesting them for the relaxation of norms for start-ups and MSMEs as laid down by the Government of India, Ministry of Micro Small and Medium Enterprises in accordance with circular dated 10th March, 2016.

3. It is stated that the petitioner, being a start-up which commenced its operations only in the year 2022, could not have submitted the annual turnover for the financial year 2021-22, and as the tender was floated on 28.02.2025 and the last date for submission of bids/tenders, initially fixed as 04.04.2025, was subsequently extended up to 26.04.2025, so according to the petitioner, the last date for submission of the bids fell in the financial year 2025-26, therefore the latest financial year, i.e. 2024-25, was required to be taken into consideration. Accordingly, the petitioner submitted the annual turnover for the financial years 2022-23, 2023-24 and 2024-25, which, according to it, satisfied the prescribed turnover requirement. It is, however, alleged that the respondents considered only the annual turnover for the years 2022-23 and 2023-24 and did not take into consideration the turnover for the year 2024-25. It is further contended that the respondents failed to respond to the representation submitted by the petitioner on 30.08.2025.

4. The petitioner has also relied upon a similar instance, i.e., tender floated by JKMCL/respondents vide Tender No. JKMSCL/Mach/2024/611 dated 04.01.2024, wherein a similar condition relating to average annual turnover was prescribed for the financial years 2018-19, 2019-20 and 2020-21. It is contended that, while finalizing the said tender, the respondents relaxed the said condition and considered the turnover for the financial years 2020-21, 2021-22 and 2022-23 instead of the years 2018-19, 2019-20 and 2020-21 in respect of certain participating firms, as is evident from the Minutes of Meeting dated 21.04.2025. Another instance of similar relaxation has also been cited by the petitioner to seek relaxation of the turnover criterion.

5. Aggrieved by the decision dated 21.08.2025, whereby the turnover certificate of the petitioner for the financial year 2024-25 was not taken into consideration, the petitioner has filed the present petition seeking, inter alia, quashing of the said decision. The petitioner has also sought the quashing of the meeting notice dated 20.09.2025, whereby the financial bids were scheduled to be opened on 22.09.2025 at 2:00 p.m.

6. It needs to be noted that the instant writ petition was filed on 22.09.2025. Thereafter, an application bearing CM No. 6612/2025 came to be filed, which was allowed vide order dated 31.10.2025, and M/s Maverick Simulation Solution, 12-B, Dwarka, New Delhi, came to be arrayed as respondent No. 5 in the writ petition.

7. The official respondents have filed the response stating therein that E-bid for the finalization of Rate Contract for the procurement of "Machinery and Equipments" was uploaded on 28.02.2025 and along with other technical qualification criteria, the average turnover for the last three financial years of the Indian subsidiary of the Principal Manufacturer/Sole Importer issued by the Chartered Accountant/Competent Authority with UDIN (2021-22, 2022-23 and 2023-24) was fixed at Rs.5.00 crores. The petitioner firm participated as a bidder on behalf of a manufacturer M/s Immersive Vision Technologies Pvt. Ltd (Pune, Maharashtra) and after evaluation of the technical documents uploaded by the petitioner firm dated 14.07.2025, the petitioner was asked to provide the documents found deficient as per the requirement of E-NIT. The petitioner in response to the notice, submitted the turnover certificate for the financial year 2024-25 instead of the required turnover for the financial year 2021-22 which was not part of the prescribed technical qualification criteria, and the Technical Evaluation Committee of the JKMSCL found the document not matching the qualification criteria of NIT and rejected the bid. The respondents have admitted the decision of the meeting vide No. JKMSCL/GM/2025/5032-41 dated 21.08.2025. It is also stated that circular dated 10.03.2016 issued by the Govt. of India, is merely administrative and advisory in nature and does not have any statutory force. The said circular does not confer enforceable legal right upon the petitioner to claim relaxation of tender conditions relating to prior experience or prior turnover, However, the petitioner firm is not a manufacturer registered under the MSME category and therefore cannot claim the benefits available to registered MSME on behalf of another entity as the petitioner has failed to submit the turnover details for the year 2021-22. It is further submitted that as per the applicable provisions of the MSME Notification and relevant guidelines, only manufacturers of goods and service providers engaged in rendering services are eligible to avail benefits under the MSME category, whereas the petitioner has not submitted any document to establish its registration or certification under the relevant MSME category as manufacturer or service provider. In absence of such documentary proof, the petitioner is not entitled to claim any benefit or exemption available under the MSME policy.

8. The respondent No. 5 has also filed its response, broadly on the same lines as the response submitted by the official respondents. It is stated that respondent No. 5 is the direct importer of the machines in question from M/s Anatomage Inc., USA, and that the machine in question, namely, the **"Anatomy Virtual Dissection Table"**, is a time-tested machine. It is further stated that the petitioner had participated in the tendering process initiated by Shri Mata Vaishno Devi Shrine Board; however, the technical bid submitted by the petitioner was rejected. It is stated that in the NIT issued on 04.01.2024, the last three financial years would be 2020-21, 2021-22 and 2022-23 and it was because of the mistake annual turnover for the years 2018-19, 2019-20 and 2020-21 was mentioned, but subsequently rectified by the respondents. In the NIT dated 17.05.2023 also inadvertently the annual turnover of the financial years was mentioned as 2019-20 2020-21 and 2021-22 which was subsequently rectified by the respondents.

9. Learned counsel for the petitioner has submitted that, in terms of the circular dated 10.03.2016, the petitioner is entitled to relaxation in the requirement relating to prior annual turnover. He has further submitted that, with the exclusion of the petitioner from the tender process, only one bidder would remain in the fray, thereby defeating the objective of ensuring healthy competition. He has further contended that, in the NITs referred to in paragraphs 11 and 12 of the writ petition, the respondents had relaxed the condition relating to the average annual turnover and, therefore, the petitioner is also entitled to similar relaxation on the principle of parity.

10. *Per contra,* Mr. Raman Sharma, learned AAG appearing for the official respondents has stated that as per the tender conditions, the average annual turnover statement for the last three financial years i.e., 2021-22, 2022-23 and 2023-24 was required of Indian subsidiary of the Principal Manufacturer/Sole Importer issued by the Chartered Accountant/Competent Authority with UDIN and also the copies of audited balance sheets and profit and loss account statements for the above years were required. When this mandatory condition was not complied with by the petitioner, the petitioner was not further recommended. He has further argued that once the petitioner had participated in the tendering process, being aware of the essential terms and conditions, the petitioner cannot subsequently file the writ petition seeking relaxation of the conditions.

11. Learned Senior counsel, Mr. Rahul Pant, appearing for the private respondent has reiterated the submission made by Mr. Raman Sharma, learned AAG.

12. Heard learned counsel appearing for the parties and perused the record.

13. The requirements contained in Clauses 12 and 13 of the Technical Bid Submission Sheet are extracted hereunder:-

<u>Technical Bid Submission Sheeet</u>

S.No.	Item	Particular	
12.	Average Annual Turnover Statement for last 3 financial years of the Indian Subsidiary of Principal Manufacturer/Sole Importer issued by Chartered Accountant/competent authority with UDIN (2021-22, 2022-23 and 2023-24). **In case of foreign manufacturer the turnover of Indian Subsidiary/Sole Importer only shall be considered and not of the original manufacturer.**	Annexure-VII	
13.	Copies of audited balance sheet and profit loss account for last three financial years certified by Chartered Accountant of the Importer/India Subsidiary for 2021-22, 2022-23 and 2023-124 with UDIN. **In case of foreign manufacturer the balance sheets of Indian Subsidiary/Sole Importer only shall be considered.**		

14. Thus, in terms of the Clauses 12 and 13(supra), the bidder was required to submit the average annual turnover statement for last 3 financial years of the Indian Subsidiary of the Principal Manufacturer/Sole Importer issued by Chartered

Accountant/Competent Authority with UDIN and the copies of audited balance sheet and profit loss account for last three financial years as mentioned above.

15. The petitioner admittedly entered into the business in the year 2022 and as such does not possess the requisite qualification to participate in the tendering process and despite being aware of the terms and conditions of the bid sheet, the petitioner participated in the tendering process. The petitioner, despite being aware of its lack of qualification, still took a chance to participate in the bidding process. It is a settled proposition of law that where a bidder fails to satisfy any of the essential conditions stipulated in the tender floated by the employer, the bid is liable to be rejected. In "**Silppi Construction Contractors Vs. Union Of India", AIROnline 2019 SC 2430,** the Hon'ble Apex Court has held as under:

> **19**. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clearcut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. **The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As**

laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

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

(emphasis added)

16. If the contention of the petitioner that the respondents ought to have considered its bid for the annual turnover for the financial year 2024-25 then this Court would be rewriting the terms and conditions of the tender, which is beyond the scope of power of judicial review under Article 226 of the Constitution of India, therefore, there is no force in this contention of the petitioner that the respondents ought to have considered the average annual turnover for the financial year 2024-25 for the purpose of evaluating the technical bid of the petitioner instead of financial year 2020-21. Needless to say, the employer is the best judge to determine the responsiveness of the bidder and the courts should be loath to interfere with the decision of employer until or unless it suffers from the vice of arbitrariness, bias and mala fides. Accordingly, this contention is rejected.

17. It was next contended that the petitioner was entitled to relaxation in terms of Circular dated 10.03.2016. A perusal of the said Circular reveals that it has been addressed to all Central Ministries/Departments/CPSUs/All concerned, wherein it has been stated that the Central Ministries/Departments/Central Public Sector Undertakings may relax the conditions relating to prior turnover and prior experience in respect of Micro and Small Enterprises in all public procurements, subject to fulfilment of the prescribed quality and technical specifications. The said Circular has been issued by the Government of India, Ministry of Micro, Small and Medium Enterprises, and is applicable to Central Ministries/ Departments/CPSUs and other concerned entities and, therefore, cannot be said to be applicable to the Union Territory of Jammu and Kashmir or its authorities. Moreover, the Circular (supra) merely enables and confers discretion upon the concerned procuring entities to relax the conditions relating to prior turnover and prior experience in respect of Micro and Small Enterprises. It does not create or vest any enforceable right in the petitioner to claim such relaxation from the official respondents. The petitioner, therefore, cannot seek issuance of a writ commanding the respondents to exercise such discretion in its favour. Apart from the above, having participated in the tendering process and having been declared technically non-responsive, the petitioner cannot, at this stage, seek a direction for extending to it the benefit of relaxation under the Circular (supra), particularly when no such relaxation is contemplated or envisaged under the terms and conditions of the NIT. The plea raised by the petitioner, therefore, is devoid of merit and is accordingly rejected. Reliance is placed upon the decision of Hon'ble Apex Court in **"Jagdish Mandal vs. State of Orissa and Others, (2007) 14 SCC 517**, where in it has been held as under:

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

18. Lastly, it was contended by the petitioner that, in two earlier tenders, as referred to in paragraphs 11 and 12 of the writ petition, the respondents had granted relaxation in respect of the requirement of average annual turnover. The private respondent, in its response, has stated that the said tenders were issued in January, 2024 and May, 2023, respectively, and due to mistake, reference therein was made to the earlier financial years, which was subsequently rectified by the official respondents. The petitioner cannot claim parity with the said instances for the purpose of seeking relaxation. The circumstances relied upon by the petitioner are evidently distinguishable, inasmuch as the reference to the earlier financial years in the said tenders was an apparent inadvertent error on the part of the official respondents, which was subsequently rectified. The correction of such an error cannot be construed as a relaxation of the tender condition so as to confer a corresponding right upon the petitioner to seek similar relaxation in the present tendering process. The contention, therefore, is devoid of merit and is accordingly rejected.

19. In view of the foregoing discussion, this petition is found to be devoid of merit and is, accordingly, **dismissed**. The connected CM(s), if any, shall also stand dismissed.

(Rajnesh Oswal)
Judge

Jammu
14.08.2026
Madan Verma-Secy

Whether order is speaking? **Yes.**
Whether order is reportable**?** **No.**