HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: **11.08.2026**
Pronounced on: **21.08.2026**
Uploaded on: . **21 .08.2026**

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

WP(C) No. 2355/2026(O&M)
c/w
WP(C) No. 2426/2026(O&M)

M/s Dinesh Kumar Sharma Constructions Pvt. Ltd. th. Harsh Kumar Sharma …..Appellant(s)/Petitioner(s)

Through: Mr. D. C. Raina, Sr. Adv. with
Mr. Anuj Dewan Raina, Adv.
Mr. Mohd. Junaid, Adv.

vs

U. T. of J&K and others ….. Respondent(s)

Through: Mr. Ravinder Gupta, AAG with
Ms. Pallavi Sharma, Adv.

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

JUDGMENT

WP(C) No. 2355/2026:

1. Respondent No. 3 had issued an e-NIT No. CEJ/PMGSY/792 of 2025-26 dated 30.07.2025 for the construction and maintenance of road from L135-(Link Road) Dhyangarh to Dharan PMGSY Road KM 4th RD 900 to Namal Package No. JK20-4210, PMGSY-IV, Batch-I of 2025-26, Block-Thakrakote District Reasi (Using Waste Plastic) Length-21.300 Kms.

2. The petitioner, being fully eligible and qualified, submitted its technical as well as financial bid within the stipulated time and was declared responsive

in the Technical Evaluation Report dated 17.11.2025. One of the bidders, namely, Vikesh Kumar, was declared non-responsive on the ground that he had failed to upload the Income Tax Return (ITR) for the financial year 2023-2024, a necessary requirement as per the Clauses 4.2(III), 4.4(a)(III) and 12.2(b) (III) (b) of the Standard Bidding Document (SBD). He assailed the Technical Evaluation Report dated 17.11.2025 before this Court by way of a writ petition bearing WP(C) No. 3258/2025 and vide order dated 19.11.2025, interim relief was granted in his favour. Due to the interim order, respondent No. 3 issued updated revised summary of the technical evaluation bearing No. CEJ/PMGSY/20590 dated 10.12.2025 in respect of aforesaid work and declared the said bidder as L-1. Thereafter, the aforesaid bidder filed a CM bearing No. 309/2026 for withdrawal of the prayer part No. (a)(iii) in the writ petition bearing No. WP(C) No. 3258/2025 and vide order dated 31.01.2026 passed by the Court, the said Vikesh Kumar was allowed to withdraw the said prayer. Following the withdrawal of the prayer, interim order dated 19.11.2025 was also modified vide order dated 31.01.2026. Thereafter, on 29.05.2026, the aforesaid writ petition preferred by Vikesh Kumar was withdrawn.

3. It is stated that the said Vikesh Kumar had sought the indulgence of this Court regarding 11 number of works and had requested the Court for opening of financial bid despite having been technically declared as non-responsive, in order to stall the entire tendering process for the reason that he himself was aware that he won’t be able to secure final allotment on account of having violated the specific terms and conditions of the tender notice. The writ petition was filed by him solely with a view to cause harm

to the official respondents as well as the petitioner herein and subsequently withdrew the writ petition after the declaration of his financial bid. The petitioner has given the details of the writ petitions filed by said Vikesh Kumar in paragraph 11 of the petition.

4. Subsequently, the respondent-authorities issued communication dated 16.03.2026, thereby categorically clarifying that there existed no legal impediment in finalizing the tender process in accordance with law. The said communication specifically recorded that upon the disqualification of the earlier bidder, the L-2 bidder i.e. petitioner herein had become L-1 and having qualified both the technical as well as the financial bid, was entitled to consideration for allotment of the work.

5. After the withdrawal of the writ petition preferred by Vikesh Kumar, the respondent-authorities proceeded to finalize and allot various other works in favour of the different contractors. However, despite there being no legal impediment for the respondents, they deliberately failed to finalize the tender process in favour of the petitioner and rather decided to cancel original tendering process and proceeded to issue fresh e-NIT dated 20.07.2026 for the same work.

6. The petitioner, through the medium of present petition, has assailed e-NIT dated 20.07.2026 issued by respondent No. 3, so far as it re-tenders the work, which was the subject matter of the e-NIT dated 30.07.2025, wherein after the disqualification of one Vikesh Kumar, the petitioner had become L-I. The petitioner has also sought the quashing of corrigendum dated 16.07.2026 issued by respondent No.3, whereby the earlier e-NIT dated 30.07.2025 has been cancelled and further directions to the respondents to

bring the earlier e-NIT to its logical conclusion by awarding contract by giving effect to communication dated 16.03.2026.

7. The contention raised by the petitioner in the present writ petition is that the action of the respondents in cancelling the earlier e-NIT dated 30.07.2025 and issuance of impugned fresh e-NIT dated 20.07.2026 is clearly arbitrary coupled with legal malice, bias and *mala fide* because a non-responsive bidder, in fact, is a non-participant and his bid opened on the basis of the court directions cannot be even referred much less considered for the purpose of comparison of rates.

8. It is further contended that in normal circumstances, a tender can be cancelled by the authorities for cogent reasons and even the L-1 bidder has no right to insist upon the execution of the work but once the respondents in the same tendering process for the same set of reasons have allowed the other construction works to continue, then in that eventuality, cancelling the tendering process, is hit by Article 14 of the Constitution of India. It is also urged that the respondents have acted in complete disregard of the communication dated 16.03.2026 issued by the Public Works (R&B) Department, wherein it was categorically clarified that there was no legal impediment in finalizing the tender process and allotting the work to the bidder, who had become L-I after the disqualification of the earlier bidder.

9. The respondents have filed the response, stating therein that the tendering process remained protracted on account of successive rounds of litigation initiated by one Vikesh Kumar, resulting in expiry and repeated extension of bid validity. After withdrawal of the said litigation, the revised technical evaluation, the bid rankings and the price differential in bid amounts, were

placed before and examined in detail by the Contract Committee constituted under the Chairmanship of the Engineer-in-Chief (Secretary Technical), Public Works (R&B) Department. The Committee specifically noticed a difference of ₹6,05,12,020/- between the competing bids for the work in question, having significant financial implications for the State exchequer, and as such, unanimously resolved to cancel the tender process and invite fresh tenders in the interest of transparency, fairness and wider competition. Respondents have denied the non-application of mind, arbitrariness, bias or *mala fide*, while arriving at the above decision. It is further stated that the impugned corrigendum-IV dated 16.07.2026 and the fresh e-NIT of 2026-27 dated 20.07.2026 were issued strictly in pursuance of, and consistent with, the said *bona fide* decision of the competent Contract Committee, and not with any intention to cause prejudice to the petitioner. It is also stated by the respondents that the communication dated 16.03.2026 merely enabled the respondents to proceed with the tender process and to consider the petitioner having emerged as L-I upon disqualification of the earlier L-1 bidder. Such consideration, however, was subject to the decision of the competent authority/Contract Committee, which was competent to take an appropriate decision regarding finalization or cancellation of the tender process in accordance with the applicable rules, conditions of the tender and the larger public interest. The said communication was issued only in the context of legal impediment arising from the pending litigation. It is further stated that the finalization of certain other works, falling within the delegated financial powers of the concerned authorities proceeded with or allotted, does not take away the competence of the Contract Committee to independently examine the present tender in light of its peculiar circumstances, including the prolonged litigation, bid validity, financial implications and other relevant considerations and it does not furnish a valid reason to the petitioner under Article 14 of the Constitution to assert that he has been discriminated.

10. Mr. D. C. Raina, learned Senior Counsel appearing for the petitioner has vehemently argued that once the petitioner was declared as L-I bidder after the disqualification of Vikesh Kumar, the respondents ought to have awarded the contract to the petitioner, but for the reasons best known to them, the respondents took into consideration the financial bid of Vikesh Kumar and cancelled the tender on the ground that there was substantial difference of amount between the bids of the petitioner and Vikesh Kumar, the course not permissible under law, because once the bidder (Vikesh Kumar) was declared non-responsive, then the rates quoted by him became inconsequential. Mr. Raina has placed reliance upon the judgment of the Hon'ble Supreme Court in **West Bengal Electricity Board v Patel Engineering Company Ltd, (2001) 2 SCC 451**, **Shanti Construction Pvt. Ltd. v. State of Odisha and others, 2025 AIR SC 5516** and the judgment of Madhya Pradesh High Court passed in WP No. 8404 of 2020, titled, **Rachna Construction Company v State of MP and others**.

11. Per Contra, Mr. Ravinder Gupta, learned AAG appearing for the respondents has vehemently argued that the respondents had a valid cause for cancelling the tender, wherein the petitioner had participated and emerged as L-1 after Vikesh Kumar was declared as non-responsive because there was substantial difference of more than six crores between the bids submitted by the petitioner and Vikesh Kumar. Taking into consideration the huge financial difference in the financial bids submitted by the petitioner and Vikesh Kumar, the Contract Committee resolved to cancel the earlier tender and retender the work issued vide e-NIT dated 30.07.2026. He has further submitted that communication dated 16.03.2026 was only to the extent of clarifying and providing that the tender process can be finalized, provided there is no legal impediment, but whether to allot the contract or not, was the sole discretion of the Contract Committee and communication dated 16.03.2026 does not confer any indefeasible right upon the petitioner to seek allotment of work pursuant to the earlier e-NIT, which was cancelled through the medium of corrigendum dated 16.07.2026 issued by the Chief Engineer, PMGSY(JKRRDA), Jammu. He has further argued that in terms of Clauses 27 and 28 of the Standard Bidding Document, the employer has reserved the right to accept or reject any bid, and to cancel bidding process and reject all bids, at any time prior to the award of contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the employer's action, as such, the petitioner had no vested right for allotment of work and once the respondents have genuine cause to cancel e-NIT wherein the petitioner had participated, the decision of the Committee does not call for any interference. He has relied upon judgments of the Supreme Court in **IndoreVikas Praadhikaran (IDA) and another vs. Shri Humud Jain Samaj Trust and another, decided on 25.11.2024, SLP(C) No. 9940 of 2022, M/s N. G. Projects Ltd. v M/s Vinod Kumar Jain and others, 2022 INSC 319, Tata Cellular v Union**

of India, 1994(6) SCC 651, M/s Michigan Rubber (India) Ltd. v State of Karnataka and others, 2012 INSC 338 and judgment of the Jammu Wing of this Court passed in WP(C) No. 357/2023, titled **M/s SPBL Energy Pvt. Ltd. v/s Jammu Power Development Corporation Ltd. and Another.**

12. Heard learned counsel for the parties and perused the record, including the Standard Bidding Document.

13. Before this Court considers the grounds raised by the petitioner, it would be appropriate to take note of the judicial precedents governing the scope of judicial review in tender/contract matters.

14. In "**Haryana Urban Development Authority Vs. Orchid Infrastructure Developers P. Ltd", AIR 2017 SUPREME COURT 882**, Hon'ble the Apex Court has held that "*It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount".* It was further observed as under:

> 25. **Thus, it is apparent that the report and recommendations of the Auction Committee consisting of 5 members, was not to accept the bids of big commercial sites as the prices fetched were on lower side which was examined by the Government at the Headquarters level. Considering the auction trends and also taking into consideration the higher prices fetched at Panipat, Panchkula and Faridabad, it was decided to reject the seven bids. Thus, there was due application of mind.**
> 26. In our opinion when it is apparent from the communication that the reports were considered and what was contained in the report was very much pleaded in the written statement, mere non-production of report was not of any significance in the instant case. **We are satisfied that the rejection of the bid by the Administrator was absolutely proper and justified and was beyond the pale of judicial scrutiny. The Administrator had the**

right to reject the bids and he had rejected it on sufficient ground, duly considering the materials on record as is apparent from the communication dated 21.9.2004. In the interest of the public, revenue of the State and in the interest of HUDA the huge property was saved from being plundered.

(emphasis added)

15. In "**Jagdish Mandal Vs. State of Orissa", AIR Online 2006 SC 645, the** Hon'ble Supreme Court has observed as under:

"19. 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 Page 0102 power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing 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."

16. In "**Air India Ltd Vs. Cochin International Airport Ltd. and others", AIR 2000 SUPREME COURT 801,** it has been held as under:

> "7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in R. D. Shetty v. International Airport Authority, (1979) 3 SCC 498 : (AIR 1979 SC 1628); Fertilizer Corporation Kamgar Union v. Union of India, (1981) 1 SCC 568 : (AIR 1981 SC 844); Asstt. Collector, Central Excise v. Dunlop India Ltd., (1985) 1 SCC 260 : (AIR 1985 SC 330); Tata Cellular v. Union of India, (1994) 6 SCC 651 : (1994 AIR SCW 3344 : AIR 1996 SC 11); Ramniklal N. Bhutta v. State of Maharashtra, (1997) 1 SCC 134 : (1997 AIR SCW 1281 : AIR 1997 SC 1236) and Raunaq International Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492 : (1999 AIR SCW 53 : AIR 1999 SC 393). The award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. **It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, is corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."**
>
> **(emphasis added)**

17. Thus, it is a settled proposition of law, fortified by an unbroken line of judicial precedents, that the lowest bidder possesses no indefeasible or vested right to the award of a contract. The tendering authority remains the sole judge of its requirements and is fully empowered to reject the lowest

bid, provided such decision is grounded in cogent and justifiable reasons. However, this administrative discretion is not absolute. The authority cannot act arbitrarily, irrationally, or with *mala fide* to extend an undue favour to any preferred bidder. Ultimately, individual commercial interest must yield to the paramount public interest.

18. Now, this Court would examine the contentions raised by the petitioner in the present petition in the light of the law laid down by the Hon'ble Supreme Court, as noticed hereinabove.

19. First, it was contended that the financial bid of Vikesh Kumar could not have been relied upon by the respondents for the purpose of cancelling the tender through the medium of corrigendum dated 16.07.2026, as the said contractor had deliberately submitted the commercially unviable bid, and that is why, he initially disputed the action of the respondents declaring his bid as non-responsive but subsequently withdrew the petition, causing loss not only to the petitioner but also to the respondents. The case of **Rachna Construction Co. (supra)**, relied upon by the petitioner, provides that once the bidder is declared as non-responsive, the rates quoted in the financial bids become irrelevant. In that case, the petitioner had challenged the declaration of its bid as non-responsive and he asserted that he had quoted rates lesser than L-1 bidder, therefore, he was entitled to allotment of contract, so that the differential amount could be used for other valuable projects. So far as the present case is concerned, the employer in its discretion, has examined the issue in detail and has arrived at the conclusion that there was substantial difference of ₹6,05,12,020/, between

the bids submitted by the petitioner and Vikesh Kumar, therefore, decided to cancel the earlier tender.

20. A perusal of the minutes of the meeting dated 10.07.2026 held in the office of Engineer-in-Chief reveals that the Committee comprising of Chief Engineer, PMGSY(JKRRDA), Jammu as well as Chief Engineer, PMGSY(JKRRDA), Kashmir, Financial Control, PMGSY(JKRRDA), J&K and Superintending Engineer, PMGSY/Circle Reasi-Udhampur, deliberated upon e-NIT dated 30.07.2025 and after detailed discussions, the Contract Committee unanimously decided to scrap the earlier e-NIT and directed fresh e-NIT be invited for the aforesaid work besides another, which is the subject matter of clubbed writ petition. The Committee noted that there was difference of amount more than six crores i.e. ₹6,05,12,020/ between the bids submitted by Vikesh Kumar and the petitioner, taking into consideration this huge difference, the aforesaid decision was arrived at. Given the substantial disparity between the bids submitted by Vikesh Kumar and the petitioner, the decision of the employer to cancel the tender process is anchored in justifiable reasons, and the same cannot be faulted. While a technically non-responsive bidder, whose financial bid happens to be the lowest acquires no indefeasible or vested right to seek the award of the contract, the tendering authority is fully justified in relying upon the substantial price gap between the non-responsive bid and the responsive bid as a cogent ground to scrap the tender altogether. This principle applies with even greater force where the financial bid of the non-responsive bidder was opened pursuant to judicial directions. Consequently, the decisions relied upon by the petitioner are clearly distinguishable on facts and

inapplicable to the present case, particularly as the technically disqualified bidder herein is not seeking the award of the contract. Therefore, this contention is rejected.

21. It was next contended by the petitioner that having been declared as L-1 bidder, after the withdrawal of the litigation, the petitioner ought to have been awarded the contract, more particularly in the light of communication dated 16.03.2026. In this context, it would be appropriate to take note of the Clauses 27 and 28 of the Standard Bidding Document, the same are extracted as under:

> **"27. Award Criteria**
> **27.1** Subject to Clause 30 of ITB, the Employer will award the Contract to the Bidder whose Bid has been determined:
>
> (i) to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of Clause 3 of ITB, and (b) qualified in accordance with the provisions of Clause 4 of ITB; and
> (ii) to be within the available bid capacity adjusted to account for his bid price which is evaluated the lowest in any of the packages opened earlier than the one under consideration.
>
> **28 Employer's Right to Accept any Bid and to Reject any or all Bids**
>
> **28.1** Notwithstanding Clause 27 above, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action."

22. A perusal of Clause 27 of the Standard Bidding Document reveals that while the Employer may award the contract to the bidder, whose bid is found to be substantially responsive and who offers the lowest evaluated bid price, Clause 28 thereof contains an explicit non-obstante clause. In terms of Clause 28, notwithstanding anything contained in Clause 27, the

Employer reserves the absolute right to accept or reject any bid, or to cancel the bidding process altogether at any time prior to the award of the contract, without incurring any liability towards the affected bidder(s) or any obligation to inform him/them of the grounds for such action.

23. Consequently, the contention advanced by the petitioner that despite being declared the L-1 bidder and in the light of communication dated 16.03.2026, the contract ought to have been awarded to it, is wholly misconceived. Merely being designated as the lowest bidder confers no indefeasible or vested right upon the petitioner to seek the award of the contract, particularly when the Employer has advanced cogent and justifiable reasons for cancelling the tender process.

24. The other contention of the petitioner is that, in light of the communication dated 16.03.2026, the petitioner is entitled to the award of the contract upon being declared as L-1 bidder. The communication dated 16.03.2026 was only clarificatory in nature that there was no legal impediment to finalizing the tender process in favour of the L-1 bidder. Nonetheless, the decision as to whether or not to award the contract to the petitioner continued to remain within the domain of the competent authority, to be exercised in accordance with law and the applicable tender conditions. This contention is also without any force and the same is rejected.

25. Lastly, it was contended that, under similar circumstances, contracts under other tenders have been awarded to various bidders, including the petitioner. However, it must be noted that with respect to the present tender, the Contract Committee recorded cogent and justifiable reasons involving substantial financial implications for the public exchequer. Conversely, the

petitioner has placed nothing on record to demonstrate that in those other tenders where contracts were awarded, a similar price disparity existed between the financial bids. Consequently, the petitioner cannot claim parity with those cases. Otherwise also, it is submitted by the respondents that the contracts were awarded by different authorities.

26. For all what has been said, analyzed and discussed hereinabove, there is no merit in this petition. As such, the same is dismissed.

WP(C) No. 2426/2026

27. The present petition involves and raises the issues identical to that arising in the writ petition bearing **WP(C) No. 2355/2026**. The only difference between the two cases is that in the present case, the bid was reduced by the petitioner. In view of the detailed reasoning recorded in the aforesaid writ petition, which is equally applicable to the issues raised in the present petition, the present petition is also **dismissed.**

(RAJNESH OSWAL)
JUDGE

Jammu
21.08.2026
Rakesh PS

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No