ITEM NO.24 COURT NO.5 SECTION IV-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).38731/2026

[Arising out of impugned final judgment and order dated 29-09-2026 in WP No. 40472/2026 passed by the High Court of Madhya Pradesh Principal Seat at Jabalpur]

M/S SAMDARIYA BUILDERS PRIVATE LIMITED Petitioner(s)

VERSUS

MADHYA PRADESH HOUSING AND INFRASTRUCTURE DEVELOPMENT BOARD & ANR. Respondent(s)

FOR ADMISSION
IA No. 341369/2026 - EXEMPTION FROM FILING O.T.

Date : 17-11-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) :Mr. Maninder Singh, Sr. Adv.
Mr. Devadatt Kamat, Sr. Adv.
Mr. Harsh Pandey, Adv.
Ms. Devyani Gupta- 3482, AOR
Ms. Tanya Aggarwal, Adv.
Mr. Amarpal Singh Dua, Adv.
Mr. Rajesh Mohan Bhandari, Adv.

For Respondent(s) :

UPON hearing the counsel, the Court made the following

O R D E R

1. The petitioner, a Company, applied under a Request For Proposal (RFP) dated 30.07.2026 issued by the Madhya Pradesh Housing & Infrastructure Development Board (MPHIDB) upon which they were found disqualified under the Special Eligibility Criteria at Sr. No.19 of the bid summary. The technical bid having failed, the petitioner approached the High Court of Madhya Pradesh at Jabalpur with a petition

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Date: 2026.11.20 13:14:23 IST
Reason:

under Article 226 of the Constitution of India for evaluating the technical bid and consider the price bid along with the technically qualified bidders. The impugned judgment rejected the prayer and hence the instant Special Leave Petition.

2. The RFP is found at Annexure P17, and the subject Clause reads as under: -

> **"Special Eligibility Criteria:**
> **If bidder has completed any project of MPHIDB, with a delay of more than 1 year attributable to bidder; bidder shall be disqualified."**

3. Admittedly, the petitioner had participated in the Rewa re-densification project for construction of Government Printing Press, which though awarded to the petitioner and agreement executed on 08.09.2016 with a period of completion of 24 months, there was considerable delay due to the estimated cost requiring revision. Eventually, the Printing Press was completed and on applying for a final completion certificate, the Executive Engineer attributed two years' delay to the petitioner and imposed a penalty of Rs.7,30,000/-. The petitioner admittedly on 12.03.2024 deposited Rs.27,88,442/- including the penalty to facilitate the final measurement and valuation a*lbeit* without admitting liability. The penalty was imposed, as is evident, based on Clause 4.1.3, Annexure P2, Construction and Development Contract with respect to the earlier project. This obviously disqualified the petitioner from the instant RFP brought out

by the MPHIDB for densification of the Bhopal Collectorate. The petitioner did not challenge the Clause under the RFP and applied under the same, resulting in the technical disqualification, which is a foregone conclusion, as per the RFP issued.

4. Mr. Maninder Singh, learned Senior Counsel appearing for the petitioner submits that there was no provision in the earlier agreement that delay would result in a disqualification forever. Reference is also made to Annexure P18 which was a communication dated 21.09.2026, disqualifying the petitioner in the technical bid based on Clause 19, Special Eligibility Criteria. It is urged that such unconscionable provision, debarring a contractor forever due to delay occasioned, cannot be sustained in law.

5. Admittedly, the petitioner succumbed to the order of penalty issued under the earlier agreement and paid the amounts to the MPHIDB. When the RFP was issued, the petitioner could have challenged the clause bringing in a special eligibility criteria, but they chose to submit their tender without a challenge to the clause. The provision, as seen from the RFP applies only to the present RFP. Even in Annexure P18 the disqualification is only in respect to the said RFP. It cannot be said that there is a disqualification forever.

6. We find absolutely no reason to permit the technical bid of the petitioner or the financial bid to be opened insofar as the instant RFP is concerned.

7. However, it is a matter of concern that the petitioner would be disqualified forever if the MPHIDB intends to bring in such a provision in every RFP it brings out hereafter. Hence, the petitioner would be entitled to file a representation before the MPHIDB to absolve the petitioner from the disqualification hereinafter or at least confine it to a period.

8. We direct the MPHIDB also to consider the representation on its own merits and ensure that a disqualification in the light of the Special Eligibility Criteria be brought in, only with respect to a specified prior period; failing which it could be termed unconscionable.

9. With the above observations and liberty, the Special Leave Petition stands disposed of.

10. Pending application(s), if any, shall stand disposed of.

(HARPREET KAUR)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)