Judgment Reserved on:05.11.2026

Judgment Delivered on :19.11.2026

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE ACTING CHIEF JUSTICE MR. MANOJ KUMAR TIWARI

AND

THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY

Writ Petition (M/B) No.552 of 2024

M/s Kunwar Construction -----Petitioner

Versus

State of Uttarakhand and Others ----Respondents

Presence:-

Mr. Jitendra Chaudhary, learned Senior Counsel assisted by Mr. Navneet Singh, learned counsel for the petitioner.
Mr. B.S. Parihar, learned Additional Chief Standing Counsel for the State of Uttarakhand/ respondent no.1
Mr. S.S. Chauhan and Ms. Mansi Chauhan, learned counsel for respondent nos.2 to 4.

JUDGMENT : (per Mr. Subhash Upadhyay J.)

1. This writ petition has been filed by the petitioner for following reliefs:

> *i) Issue a writ, order or direction in the nature of certiorari, calling for the original record and pleased to quash the impugned technical bid rejection order dated 08-11-2024 (**Annexure-1**) qua the petitioner, passed by the respondent no. 3 through its bid evaluation committee in relation to the notice inviting tender (NIT)-08(P-III)/2024-25 dated 11/09/2024 at serial no. 5, package no. UT-09512 in respect to District Pithoragarh Circle Dharchula for construction of "MRL15-Kalika to Talla Khumti Motor Road Upgradation length 4.675 Km."*
>
> ***(i-a) -To issue a writ, order or direction in the nature of Certiorari, calling for the original record and pleased to quash the impugned complaint rejection order dated 05-12-2024 {Annexure No.7 to the writ petition} passed by the Tender Evaluation Committee of the respondent Department.***

(ii) Issue a writ order or direction in the nature of mandamus, directing and commanding the respondent department to declare the technical bid of the petitioner as responsive and successful at technical stage-I and thereafter add his name in the list of successful bidders at technical evaluation stage stage-1 and then proceed to open the financial bids stage-II and award the contract finally to the lowest bidder who is found successful during financial stage-II accordingly in relation to the notice inviting tender (NIT)-08(P-III)/2024-25 dated 11/09/2024 at serial no. 5, package no. UT-09512 in respect to District Pithoragarh Circle Dharchula for construction of "MRL15-Kalika to Talla Khumti Motor Road Upgradation length 4.675 Km."

2. Petitioner responded to E-tender Notice dated 11.09.2024 floated by the Uttarakhand Rural Roads Development Agency (URRDA) for construction of MRL-15 Kalika to Talla Khumti Motor Road Upgradation length 4.675 Km. The technical bid of petitioner was rejected by Bid Evaluation Committee on 08.11.2024 for the following reasons:

“(i) Does not comply ITB section 2 clause 4.2(c) i.e. similar nature work experience is not sufficient.

(ii) Methodology bar chart is not as per work requirement.

(iii) Affidavit regarding VTS/GPS not submitted by the bidder as per NIT foot note S.N.21.”

3. Petitioner moved a complaint before respondent no.3 for revocation of order dated 08.11.2024, whereby his technical bid was rejected, and also prayed for declaring other bidders to be technically disqualified. The said complaint was rejected on 05.12.2024 and petitioner has assailed the said order by amending writ petition.

4. Learned counsel for petitioner submitted that grounds for rejecting technical bid of petitioner are not sustainable as petitioner fulfilled all technical requirements. With respect to the first ground of rejection, that petitioner was not having experience of similar nature of work it is contended that petitioner was having sufficient experience of similar nature of work as per requirements mentioned in Instruction to Bidders (ITB) Section 2 Clause 4.2(c) and, as per the experience certificate issued by the respondent-authorities, petitioner was having experience of stage-I and II work.

5. With respect to second ground of rejection that Methodology Bar Chart was not as per the work requirement, it is contended that at page 170 of the bid document construction schedule and methodology chart was enclosed and Bid Evaluation Committee failed to notice the said document.

6. With regard to third ground of rejection that affidavit regarding VTS/GPS plan was not submitted by petitioner as per NIT foot note S.N.21, it is contended that petitioner with his bid offer at page 172 and 175 submitted two affidavits which were not considered in the right perspective. It is thus contended that bid of petitioner was rejected arbitrarily to provide undue benefit to other bidders.

7. Per contra, learned counsel for respondent nos.2 to 4 submitted that experience certificate enclosed by petitioner was with respect to work of hillside cutting, construction of retaining walls, brest walls, scruppers and water bounding material (WBM) and these work related to stage-I work, whereas tender was for construction of motor road, as such, the requisite experience of stage-II work was also required. It is contended that, as per own case of petitioner, he had not submitted any experience certificate with respect to stage-II work, as such, this was in violation of particular condition of the tender notice. In this regard, attention of the Court is drawn to condition no.18 of the NIT.

8. With respect to second ground of rejection of bid, it is submitted that the Methodology Chart prepared by petitioner was not proper as the work mentioned in Item No.7 cannot be done after the work mentioned at Item No.6. With respect to third ground of rejection, it is submitted that the affidavit submitted by the petitioner was not in conformity with the requirement prescribed in foot note 21 of the Notice inviting tender.

9. It is further contended that complaint made by petitioner was considered and rejected by a speaking order on 05.12.2024 by Bid Evaluation Committee.

10. A notice inviting tender (NIT) was issued by Chief Engineer, URRDA, Dehradun for construction of a road wherein Clause 4 of Standard Bidding Document (SBD) deals with qualification of bidders. Clause 4.1, Clause 4.2(a), (b) and (c) and Clause 4.4 (A), which are relevant for considering the issue involved in present case reads as under:

> *"**4. Qualification of the Bidder***
>
> *4.1 All bidders shall provide in Section 3, Forms of Bid and Qualification information, a preliminary description of the proposed work schedule, including drawings and charts, as necessary.*
>
> *4.1.1……*
>
> *4.2 All bidders shall include the following information and documents with their bids Section 3, Qualification Information unless otherwise stated in the Appendix to ITB:*
>
> *(a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;*
>
> *(b) total monetary value of civil construction works performed for each of the last five years;*
>
> *(c) experience in works of a similar nature and size for each of the last five years, and details of works in progress or contractually committed with certificates from the concerned officer not below the rank of Executive Engineer or equivalent;"*
>
> *4.4 A. To qualify for award of the Contract, each bidder should have in the last five years*
>
> *a) Achieved in any one year, a minimum financial turnover (as certified by Chartered Accountant, and at least 50% of which is from Civil Engineering construction works) equivalent to amount given below:*
>
> *(i) 60% of amount put to bid, in case the amount put to bid is Rs. 200 lakhs and less.*
>
> *(ii) 75% of amount put to bid, in case the amount put to bid is more than Rs. 200 lakhs.*
>
> *The amount put to bid above would not include maintenance cost for 5 years and the turnover will be indexed at the rate of 8% per year.*

If the bidder has executed road works under Pradhan Mantri Gram Sadak Yojana in originally stipulated completion period, the financial turnover achieved on account of execution of road works under PMGSY shall be counted as 120% for the purpose of this sub-clause.

In Naxal/Left Wing Extremist Affected Districts, the figures of 60% and 75% in (i) and (ii) above would be replaced by 50%.

(b) Satisfactorily completed, as prime Contractor or sub-contractor at least one similar work equal in value to one-third (one-fourth in case of Naxal LWE affected districts) of the estimated cost of work (excluding maintenance cost for five years) for which the bid is invited, or such higher amount as may be specified in the Appendix to ITB. The value of road work completed by the bidder under Pradhan Mantri Gram Sadak Yojana in originally stipulated period of completion shall be counted as 120% for the purpose of this Sub-Clause.

***(Amended Provision)** The similar work for tender shall be any of the following: 1-Bituminous concrete (BC) work. Or 2 Semi Dense Bituminous Concrete (SDBC) work. Or 3-Mixed Seal Surfacing (MSS) work. Or 4-Open Graded Premix Carpet (OGPC) work."*

11. NIT dated 11.09.2024 at point no.17 and 18 deals with experience required by a bidder with regard to a work of similar nature. Point no.17 and 18 of NIT dated 11.09.2024 reads as under:

"17. Experience of Similar Nature Work as required in SBD Section-2 (ITB) Clause-4.2(c) & 4.4A(b) will only be considered for the works completed before the publication date of NIT.

18. In Stage-I&II works, experience of single similar nature prime work of Stage-I&II is required as per SBD Section-2 (ITB) Clausc-4.2(c) & 4.4A (B). However if the experience of Stage-II prime work is given, additional separate experience of Stage-I work will also be required."

12. A conjoint reading of point no.17 and 18 of the NIT and Clause 4 of the SBD makes it clear that the bidder was required to submit experience certificate for stage-I and II work. Following submissions has been made in paragraph

no.15 (b) of the petition to contend that petitioner was having experience of stage-II work also. Paragraph no.15 (b) of the petition reads as under:

> "15. (b) That from perusal of documentary proof of similar nature of work experience annexed at page no.117 of bid offer from the hands of the petitioner, it is made clear that with S.E. PWD 3rd Circle Pithoragarh vide agreement no.14/SE-dated 14/09/2018, the petitioner had experience of hill side cutting, Retaining Wall, Brest Wall and scupper construction activities and all these works jointly called as stage-I work experience. Further apart from aforesaid stage-I experience, the petitioner was also having experience of WBM (Water Bounding Material) which is a stage-II work experience therefore in view of the matter, the petitioner was having stage-I & II both work experience of similar nature in last five years i.e. upto FY 2022-23. Therefore the petitioner was fulfilling said condition very well.

13. Thus, it is contended that petitioner was having experience of stage-I and II, as such, his bid was rejected in an arbitrary manner. We are not inclined to accept the said contention of petitioner as the term Water Bounding Material

(WBM) does not figure in Clause 4.4(a) & (b) of the SBD wherein it has been specified that the similar work for tender shall be any of the following:1-Bituminous concrete (BC) work; or 2-Semi Dense Bituminous Concrete (SDBC) work; or 3-Mixed Seal Surfacing (MS8) work or 4-Open Graded Premix Carpet (OGPC) work. The Bid Evaluation Committee in its order dated 05.12.2024 has, as such, rightly observed that the experience certificate enclosed by the petitioner did not include the experience of Bituminous Concrete (BC) work which is a stage-II work.

14. With regard to second and third ground of rejection of the technical bid also, we are of the considered opinion that the said grounds of rejection do not suffer from any illegality. The Technical Bid Evaluation Committee in its order dated 05.12.2024 has given cogent reason for rejecting the bid. The Committee took into consideration Note no.21 of NIT, which reads as under:

> *"21 For each PMGSY III work, an affidavit must be submitted by the participating bidders, stating that they will install the Vehicle Tracking System (VTS) (GPS) provided by the URRDA/PIU vendor on all their equipment (as per the bid data sheet) throughout the construction of the work. The bidder must ensure the security of the equipment also. In case the GPS stops working, they must inform the concerned PIU immediately."*

15. An affidavit, as required under note 21 of the NIT, was not submitted by petitioner and contention of petitioner that contents of the affidavit submitted with the bid must be

read to mean that note 21 of the NIT was complied with cannot be accepted.

16. Law is well settled that author of the tender document is the best person to interpret the tender condition. Even otherwise also, in such matters, scope of judicial review is very limited. In the case of ***Central Coalfields Limited & another vs. SLL-SML (Joint Venture Consortium) & others, reported as (2016) 8 SCC 622*** it was held that decision making process of the employer or owner of the project in accepting or rejecting the bid of a project tender should not be interfered with and interference would be permissible only if the decision making process is mala fide or intended to favour someone. It was further held that the decision should not be interfered with unless it is so arbitrary or irrational that the court can say that the decision is one which no responsible authority acting reasonably and in accordance with relevant law could have reached.

17. In the case of **Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another,** reported as **(2016) 16 SCC 818,** the Hon'ble Apex Court in para 13 and 15 of said judgment held as under:

> *"13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to*

favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.

15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."

18. In **Raunaq International Ltd vs I.V.R. Construction Ltd. And Ors reported as (1999) 1 SCC 492,** Hon'ble Supreme Court held as under:-

"11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.

12. …..

13. Hence before entertaining a writ petition and passing any interim orders in such petitions, the court must carefully weigh conflicting public interests. Only when it comes to a conclusion that there is an overwhelming public interest in entertaining the petition, the court should intervene.

14. Where there is an allegation of mala fides or an allegation that the contract has been entered into for collateral purposes and the court is satisfied on the material before it that the allegation needs further examination, the court would be entitled to entertain the petition. But even

here, the court must weigh the consequences in balance before granting interim orders.

15. Where the decision-making process has been structured and the tender conditions set out the requirements, the court is entitled to examine whether these requirements have been considered. However, if any relaxation is granted for bona fide reasons, the tender conditions permit such relaxation and the decision is arrived at for legitimate reasons after a fair consideration of all offers, the court should hesitate to intervene."

19. In the case of **Air India Ltd. v. Cochin International Airport Ltd. and others, reported as (2000) 2 SCC 617,** Hon'ble Supreme Court 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 Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] , Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India [(1981) 1 SCC 568] , CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] , Tata Cellular v. Union of India [(1994) 6 SCC 651] , Ramniklal N. Bhutta v. State of Maharashtra [(1997) 1 SCC 134] and Raunaq International Ltd. v. I.V.R. Construction Ltd. [(1999) 1 SCC 492] The award of a 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 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, its 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."

20. Hon'ble Supreme Court in the case of **M/s N.G. Projects Ltd. vs. Vinod Kumar Jain & others, reported as (2022) 6 SCC 127** has held that the constitutional Courts should refrain from interfering with tender process for infrastructure projects, as interference in such matters stalls projects of national importance and results in cost overrun. Paragraph nos. 21 to 23 of the said judgment are extracted below:-

"21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the writ court while exercising its jurisdiction under Article 226 of the Constitution of India.

22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e. not satisfying the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.

23. In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving

> *technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work."*

21. In the case of **Tata Motors Ltd. Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and others, reported as (2023) 19 SCC 1**, Hon'ble Supreme Court reiterated that ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. Para 55 of the said judgment is reproduced below:

> *"55. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in Assn. of Registration Plates v. Union of India [Assn. of Registration Plates v. Union of India, (2005) 1 SCC 679]."*

22. In the present case the Bid Evaluation Committee rejected the technical bid of the petitioner taking into consideration the stipulations made in the Notice Inviting Tender and the Standard Bidding Document. The complaint made by the petitioner was considered and rejected by the Bid Evaluation Committee by a speaking order providing adequate reasons. The decision making process is in accordance with the procedure prescribed by the tender conditions.

23. Thus, we are of the considered view that the grounds mentioned in the rejection of the technical bid of the petitioner and the decision of the Bid Evaluation Committee dated 05.12.2024 whereby the complaint made by the petitioner was rejected does not suffer from any infirmity.

24. The writ petition fails and the same is, accordingly, dismissed.

25. Pending application, if any, also stands disposed of.

(MANOJ KUMAR TIWARI, A. C. J.)

(SUBHASH UPADHYAY, J.)

Dated: 19.11.2026
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