

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.A. No. 52 of 2025

State of Manipur; & Ors.

Appellants

Vs.

Md. Abdul Kashim (Sanayaima)

Respondent

***Clubbed with
MC (W.A.) No. 110 of 2025***

BEFORE
**HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH
(ORDER)**

(Order of the Court was made by M. Sundar, CJ)

20.11.2025

[1] This order will now dispose of the captioned Writ Appeal and the captioned Miscellaneous Case thereat.

[2] In the hearing today, Mr. Lenin Hijam, learned Advocate General for State of Manipur instructed by Ms. Thanyomi Keishing, learned State counsel for appellants and Mr. M. Devananda, learned senior counsel instructed by Ms. Jyotsana, learned counsel on record for sole respondent are before this Court.

[3] In the listing of the captioned matter on 06.11.2025, the following proceedings were made:

'06.11.2025

[1] Captioned main 'Writ Appeal' ('WA' for the sake of brevity) is an intra-court appeal assailing an 'order dated 26.09.2025 made by a Hon'ble Single Bench in W.P. (C) No. 763 of 2025 with MC [W.P. (C)] No. 707 of 2025 thereat' (hereinafter 'impugned order' for the sake of convenience and clarity).

[2] Short facts are that the 'Minor Irrigation Department of Government of Manipur' (hereinafter 'MI' for the sake of brevity, convenience and clarity) issued two Notices Inviting Tenders both dated

18.07.2025, one bearing Reference No. N0:CE/MID/NIT(SASCI)/2024-25/1 and another bearing Reference No. N0:CE/MID/NIT(SASCI)/2024-25/2; that these 'two Notices Inviting Tenders' shall be referred to as 'NITs' collectively and '1st NIT' and '2nd NIT' independently, for the sake of convenience and clarity; that the work *qua* 1st NIT is 'Construction of Floor, Protection Wall, Downstream Glacis, Slab, Culvert and Lined Canal for Mini Barrage at Kumbi Uyunghoubi'; that the work *qua* 2nd NIT is 'Construction of RCC Canal and Regulator with Extension of Protection of Wall for MI Weir at Sekmai, Imphal West'; that one 'Md. Abdul Kashim (Sanayaima)' {hereinafter 'writ petitioner' for the sake of conveniences} responded to both NITs and submitted bids; that the tender process is by way of usual two part tender *i.e.*, technical bid followed by financial bid; that the technical bids were opened on 08.08.2025; that evaluation was done on 11.09.2025; that writ petitioner was rejected *qua* the technical bid; that thereafter the financial bids were opened on 12.09.2025; that after the opening of the financial bids on 12.09.2025, writ petitioner after sending a representation dated 15.09.2025 filed W.P. (C) No. 763 of 2025 on 23.09.2025; that in this writ petition, writ petitioner *inter alia* sought writ of certiorari to quash his rejection *qua* the tender process and a further directive by way of a mandamus to consider writ petitioner's bid; that on 25.09.2025, Hon'ble Single Bench granted an interim order directing status quo to be maintained till 26.09.2025; that on 26.09.2025, Hon'ble Single Bench made the impugned order *inter alia* directing MI to include the bids of writ petitioner while considering the financial appreciation of the bids and holding that the interim order dated 25.09.2025 merges with the final order; that assailing the impugned order, State is before this Court *vide* captioned intra-court appeal *i.e.* WA before this Court.

[3] In the WA, Mr. Lenin Hijam, learned Advocate General and senior advocate, appears on behalf of Mr. O. Ratan Kumar, learned counsel on record for 'MI' (also referred to as 'State' for convenience); that writ petitioner, Mr. Md. Abdul Kashim (Sanayaima) is on caveat, caveator counsel, Ms. N. Jyotsana is before this Court and Mr. M.

Devananda, learned senior advocate appears on behalf of caveator counsel.

[4] Learned Advocate General at the outset pointed out that it is incorrect to say that the two bids of writ petitioners were rejected on the sole ground that he is not empaneled as Special Class Contractor in MI department. Learned Advocate General submitted that the rejection was on other grounds. It was also submitted by learned Advocate General that writ petitioner was fully aware of his rejection in the technical bid itself as well as the opening of financial bids as all of them were communicated to writ petitioners by way of Short Messaging Services (SMSs) *vide* NIC e-procurement portal services and in spite of being aware of the same, writ petitioner came to Court suppressing the material which were will within his knowledge.

[5] Issue notice.

[6] Ms. N. Jyotsana, learned counsel who is on caveat, accepts notice for sole respondent and as already alluded to *supra*, Mr. M. Devananda, learned senior advocate, appears on her behalf.

[7] At the outset, this Court noticed that in the captioned intra-court appeal, MI/State has *vide* grounds 2.9 and 2.10 taken the stand that sufficient time was not granted to MI as the main writ petition was taken up on 26.09.2025 itself after passing an interim order on 25.09.2025 (to be noted, it was emphasized that writ petition was filed only on 23.09.2025). It was pointed out that if sufficient opportunity had been given to MI/State, various points including the points that the rejection of writ petitioner's bids were on grounds and not on the ground that he is not a Special Class Contractor *qua* MI could have been placed and material to demonstrate that writ petitioner was aware of the rejection in the technical bids stage itself as well as the opening of the financial bids could have been brought to the notice of the Hon'ble Single Bench.

[8] In the aforesaid backdrop, this Bench gave the option to learned Advocate General as well as learned senior counsel on the other side that an order of remand leaving open all questions can be made so

that the matter can be heard out by the Hon'le Single Bench *qua* all points which can be thrashed out legally. Learned Advocate General readily agreed to this course but learned senior counsel for respondent, submitted that post impugned order, MI/State has held a review meeting, made proceedings and held that the bids of writ petitioner, Md. Abdul Kashim (Sanayaima) and another bidder, RK Fortune Developers Private Limited are found to be non-responsive and therefore these two review proceedings have to be set aside before remanding the matter.

[9] As there was no consensus on an unconditional remand, the option of having the main WA heard out was given to learned counsel on both sides, learned counsel on record on both sides and on their instructions, learned Advocate General and learned senior counsel very fairly agreed/consented to have the main WA heard out. This submission made by both sides is recorded.

[10] Learned Advocate General submitted that an affidavit has been filed by State counsel on record today to bring on record some documents which are imperative for having the main WA heard out. Though learned counsel on record for respondent has been favored with advance copies, on instructions from learned counsel on record for respondent, learned senior counsel Mr. M. Devananda submitted that it is necessary for her to get instructions from respondent for having the main WA heard out but agreed to have the main WA heard out on Monday, *i.e.*, on 10.11.2025. If respondent wants to file objections to the affidavit of the State, which brings on record some documents, it is open to respondent to do so and learned senior counsel on instructions from learned counsel on record for respondent, very fairly submits that advance copy of the objections (if any) will be furnished to the State counsel by noon on Saturday (08.11.2025) so that there can be a productive hearing in the next listing on Monday.

[11] List the captioned WA and MC thereat under the caption 'FOR HEARING/PART-HEARD'.

[12] List on 10.11.2025.'

[4] Learned counsel on both sides, adverting to the aforesaid 06.11.2025 proceedings, submitted that facts as well as the trajectory the matter

has taken thus far have been correctly captured. The afore-referred 06.11.2025 proceedings shall now be read as an integral part and parcel of instant order. This also means that short forms, abbreviations and short references used in the 06.11.2025 proceedings shall continue to be used in the instant order.

[5] Be it noted that main WA was taken up and heard out with the consent of both sides.

[6] Adverting to paragraph 10 of the earlier proceedings dated 06.11.2025, it was submitted that an additional affidavit dated 06.11.2025 is on Board today, this additional affidavit has been filed along with annexures including a hard copy of the download from e-procurement system, Government of Manipur portal and this is tender summary reports. This Court is informed that the portal is managed by National Informatics Centre (NIC).

[7] Before this Court ploughs into the matter, it is deemed appropriate to remind itself of the scope of judicial review in tender matters. The lead case in this regard is **Tata Cellular Vs. Union of India** reported in **(1994) 6 SCC 651**. To be noted, **Tata Cellular** continues to be good law and has been reiterated by Hon'ble Supreme Court recently on 09.07.2024 in **AL-Can Export Private Limited Vs. Prestige H.M. Polycontainers Limited and others** reported in **(2024) 9 SCC 94** which also arises out of tender process. As regards judicial review, six postulates as set out in **Tata Cellular** are as follows:

- (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 action. 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-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.'

[8] The afore-referred six postulates as regards tender matters, more particularly, where State is the authority inviting tenders and State is a contracting party are instructive and this Court has respectfully applied the same as touch stone for testing the issues and writing the dispositive reasoning *infra* in the instant order.

[9] Learned Advocate General appearing on behalf of counsel on record for appellants State adverting to the afore-referred download from the portal, submitted that the technical bids were opened on 08.08.2025 and thereafter the evaluation summary details were uploaded on 11.09.2025 making it clear that financial bid opening date is 12.09.2025, ultimately, the financial bid

was also opened on 12.09.2025. It is reiterated that the technical bids of the respondent were not rejected on the ground that he is not a Special Class Contractor *qua* MI and that it was other grounds. It was emphasized that writ petitioner (to be noted, we are referring to 'sole respondent' before us as 'writ petitioner' continuing the reference as in our earlier proceedings dated 06.11.2025) was fully aware of his rejection in the technical bids as well as opening of the financial bids but had chosen to file the writ petition on 23.09.2025 by making an averment to the contrary and not disclosing the facts and developments *qua* NITs which were well within the knowledge of writ petitioner. It was also submitted that writ petitioner has filed a contempt petition being CONT. CAS (C) No. 147 of 2025 alleging violation of Hon'ble Single Bench order and in the contempt petition, the submission made by the State was that the orders dated 01.10.2025 made by the Executive Engineer was in terms of paragraph 16 of the 26.09.2025 order of the Hon'ble Single Bench. What is referred to as 01.10.2025 orders is actually two communications, the same have been placed before us as Annexure-X/1 and X/2 and they are communications to the writ petitioner communicating that his bids were non-responsive *qua* ITB.

[10] As regards writ petitioner, learned senior counsel advertent to the proceedings made by the contempt Court on 16.10.2025 submitted that the State having made a submission that it is complying with the order, cannot now assail the order. According to learned senior counsel, this amounts to approbating and reprobating. In support of his contention that this is not permissible, learned senior counsel pressed into service **WORKMEN through the Joint Secretary (Welfare), Food Corporation of India, Executive Staff Union vs.**

Employer In Relation To The Management Of The Food Corporation of India and another reported in **(2023) 8 SCC 116** and **Union of India and others vs N. Murugesan and others** reported in **(2022) 2 SCC 25**.

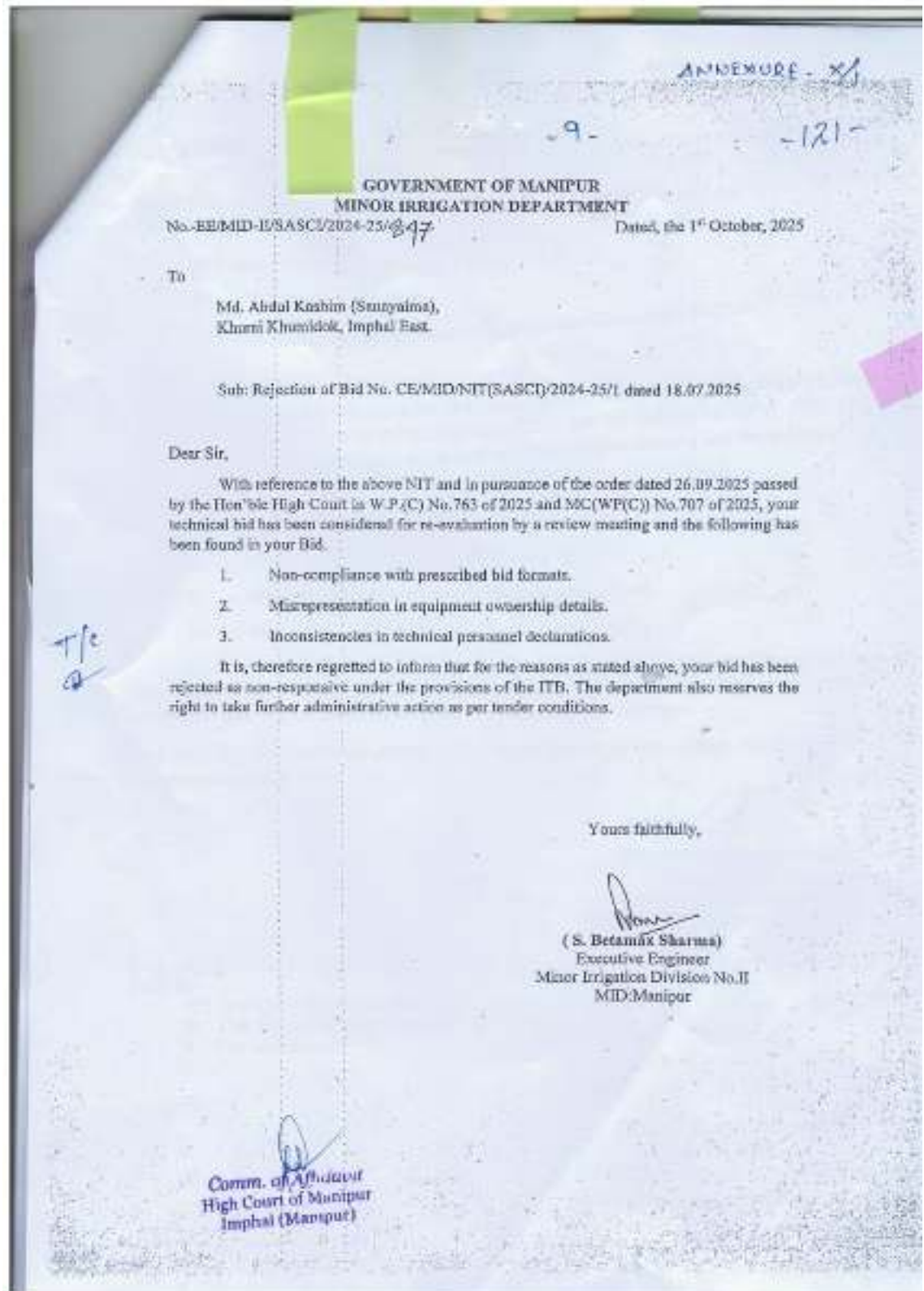
[11] At the outset, we carefully considered if it is a case of changing positions or doing a U-turn *qua* State. This court finds that the submission in the contempt court was only to the effect that the 01.10.2025 communications are in accordance with paragraph 16 and we are unable to persuade ourselves to accept the argument that State had submitted before the Contempt Court that it is complying with the order. Be that as it may, as regards **FCI Workmen** case, that was a case of reinstatement and the management had committed itself to the course of reinstatement and absorption and allowed the situation to continue for 18 long years. Thereafter, the management took a topsy-turvy position. In this context, Hon'ble Supreme Court, referring to **N. Murugesan** held that this amounts to approbation and reprobation. We find that **FCI Workmen** case does not come to the aid of writ petitioner, the reason is declaration of law made by Hon'ble Supreme Court speaking through a Constitution Bench in **Padma Sundara Rao (dead) and others Vs. State of Tamil Nadu and others reported in (2002) 3 SCC 533**. In **Padma Sundara Rao**, Constitution Bench declaration of law the manner in which a case law should be cited and referred to was set out. On facts, **Padma Sundara Rao** is a matter which arose *qua* land acquisition proceedings under Central Act (1894 Act) and the question as to whether a fresh period for declaration would be available after quashing of proceedings arose. In this context and in this factual backdrop, in **Padma**

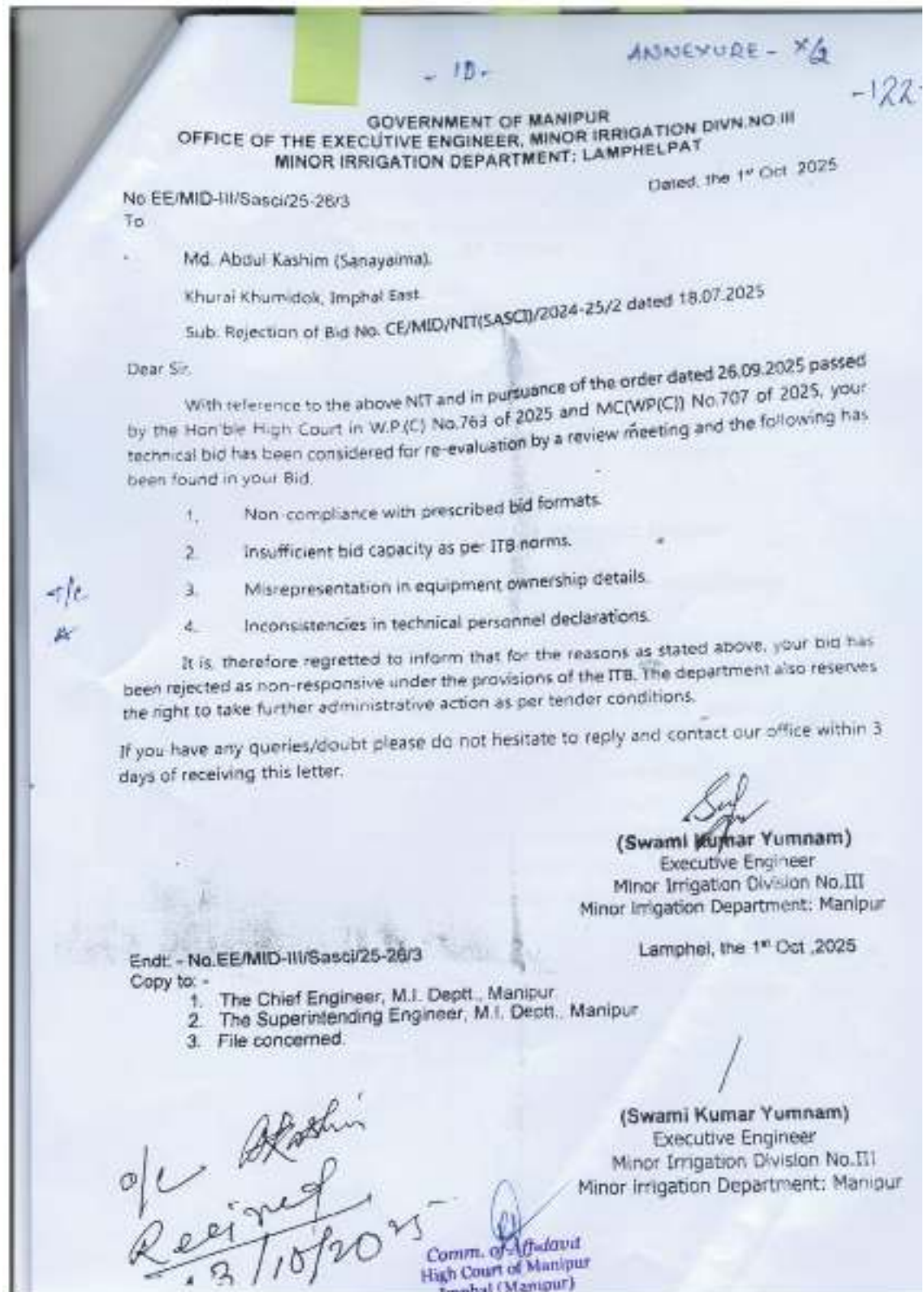
Sundara Rao Hon'ble Supreme Court held that there is peril in treating words of speech or judgments as though they were in a legislative enactment and it was made clear that judicial utterances are made in the fact setting of a case and one additional or different fact can make a world of difference between conclusions in two cases. To be noted, relevant paragraph in **Padma Sundara Rao** is paragraph No. 9 and the same reads as follows:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

[12] Reverting to the rejection of technical bids, it is seen that the same is on grounds that writ petitioner (bidder) has not submitted the bid as per the specified format *qua* page 65 of ITB and there is misinformation in the degree certificate, quantity of survey. It was also pointed out that in the affidavit, it is mentioned he had passed degree in 2019 whereas in the certificate, it is mentioned that he had passed in 2021. There is also mention about misrepresentation in equipment ownership details. These grounds have been set out in the 01.10.2025 communications adverted to *supra* and the 01.10.2025

communications are from the Executive Engineer of MI to writ petitioner and scanned reproduction of the same are as follows:





[13] Reverting to non-compliance *qua* conditions, we would respectfully refer to six postulates *qua* judicial review in tender matters an adumbration of

which has been set out *supra*. The crux and gravamen, put pithily is, judicial review can only be on grounds of illegality, irrationality or procedural impropriety. In the light of the narrative thus far, we find that these three grounds are not attracted, they do not aid the writ petitioner and the decision making process does not smack of irregularity warranting any interference. On the contrary, writ petitioner coming to this Court by filing a writ petition on 23.09.2025 after the rejection of technical bids and the reasons as well as the financial bid opening summary having been uploaded (as is evident from the NIC Management download) leaves this Court with the impression that writ petitioner has not come to Court with complete disclosure which obviously has resulted in the impugned order being made by the Hon'ble Single Bench as it proceeds on the basis that writ petitioner's bids have been rejected on the sole ground that writ petitioner was not empaneled as a Special Class Contractor *qua* MI. Though the captioned matter could have been held against writ petitioner on this sole ground, we had refrained from doing so and this Court has tested the matter on merits by advertng to the postulates laid down in **Tata Cellular** which continues to be good law and which governs the field. Nothing illegal in the process warranting interference in judicial review drill has been demonstrated. The lone point before the Hon'ble Single Bench, *i.e.*, the point that writ petitioner's bids were rejected on the sole ground that writ petitioner was not empaneled as a special contractor *qua* MI, has now become a non-starter as that is not the ground on which writ petitioner's bids (technical bids) have been rejected. This means that the impugned order Hon'ble Single Bench has to be interfered with and dislodged. As regards the other grounds on which writ petitioner's bids (technical bids) have

been rejected *viz.* (a) non-compliance with prescribed bid formats, (b) insufficient bid capacity as per ITB norms, (c) misrepresentation *qua* equipment ownership details and (d) inconsistencies in technical personal declarations, are all NIT (to be noted, 'NIT' denotes 'Notice Inviting Tender') which is invitation to tender terms within the meaning of postulate No. 4 *qua* **Tata cellular** *supra* and they are in the realm of contract if postulate No. 4 of **Tata Cellular** *supra* is applied. It is also governed by postulate No. 5 of Tata Cellular as it is in the realm of freedom of Government to contract. This Court will not sit as a court of appeal and at the highest only the manner in which the decision has been made can be reviewed (to be noted, this is postulate No. 2 of **Tata Cellular**). Considering the facts and circumstances of the case, the nature of the work, the tender quantum *qua* this State Exchequer, postulate No. 6 of **Tata Cellular** which talks about administrative burden and increased/unbudgeted expenditure also comes into play. Therefore, seen from any point of view, this Court has no hesitation in writing that there is absolutely no ground which warrants interference *vide* the judicial review drill at hand. This coupled with the position that we have already held that impugned order of Hon'ble Single Bench has to be interfered with and dislodged, it is end of the road for writ petitioner and axiomatically State appeal succeeds.

[14] Before concluding, for completion of facts and the trajectory the matter has taken, it is necessary to make it clear that even as on 06.11.2025, this Bench gave the option of a remand to the Single Bench, as would be evident from paragraph 7, 8 & 9 of the 06.11.2025 proceedings, while State accepted the option, writ petitioner contended that there cannot be an unconditional

remand leaving open all questions and remand, if any, should be only by setting aside the proceedings where it was held that bids of writ petitioner are non responsive (about which there is allusion *supra* elsewhere in this order) thereafter, both sides agreed to have the main WA heard out on merits and it is in this context that this Bench has now heard out the main WA on merits. In this scenario, today, in the hearing, this Court is informed that respondent has filed another writ petition being W.P. (C) No. 911 of 2025 (this writ petition has been e-filed on 18.11.2025) and in this writ petition, the proceedings rejecting the technical bids being proceedings dated 11.09.2025 have been assailed. This Court is informed that this writ petition is pending. This submission is recorded on the basis of oral submission made by learned senior counsel for writ petitioner in the Court as we do not have the benefit of papers in W.P. (C) No. 911 of 2025 before us.

[15] In the light of the narrative, discussion and dispositive reasoning thus far, this Court is left with the conclusion that the captioned writ appeal deserves to be allowed and the impugned order being order dated 26.09.2025 made in W.P. (C) No. 763 of 2025 together in MC [W.P. (C)] No. 707 of 2025 thereat deserves to be set aside. We do so.

[16] Apropos, the sum sequitur is, State appeal succeeds, impugned order is set aside, writ appeal is allowed. Consequently, captioned MC thereat is disposed of as closed. We refrained ourselves from imposing costs.

JUDGE

Sandeep

CHIEF JUSTICE