

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.11002 of 2023

Decided on: 29.12.2025

Atul Sharma

....Petitioner

Versus

State of Himachal Pradesh & Others

....Respondents

Coram

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

The Hon'ble Mr. Justice Bipin C. Negi, Judge

Whether approved for reporting?¹

- For the Petitioner : Mr. Sanjeev Bhushan, Senior Advocate with Mr. Sparsh Bhushan, Advocate.
- For the Respondents : Mr. Pranay Pratap Singh, Additional Advocate General, for respondents No.1 to 4-State.
- : Mr. Dhiraj Thakur, Advocate, for respondent No.5.
- : Mr. Umesh Kanwar and Ms. Isha Thakur, Advocates, for respondent No.6.

G.S. Sandhawalia, Chief Justice (Oral).

Challenge in the present writ petition is sought for quashing and setting aside the corrigendum dated 15.11.2023 **(Annexure P-2)**, wherein the condition as such was fixed for the

¹ Whether reporters of Local Papers may be allowed to see the judgment?

Hot Mix Plant of the bidder to be at a distance of 30.00 km from the work in place where the metalling of the road was to be done.

2. The tender in question was for the work improvement/strengthening of Banethi Bagthan Rajgarh Chandol road km 7/0 to 28/0 & 48/0 to 87/0 (SH:- Providing and laying WBM-III, Bituminous Macadam, Bituminous concrete, interlocking paver blocks, PCC V-shape drain, parapets, road marking and road sign boards) under NABARD-XXVIII Scheme. The tender had been awarded on 10.11.2023 and it was opened on 23.11.2023.

3. Counsel for the petitioner has vehemently submitted that the said condition was incorporated for favouring respondent No.5 and respondent No.6 another bidder as such did not have the requisite Hot Mix Plant in existence on 18.11.2023 and therefore with a view to give undue advantage to both the respondents they were held to be qualified in the technical bid and the rejection of the candidature of the petitioner had taken place. Apparently, the petition had been filed by the petitioner on 29.12.2023 after the technical bid as such of the petitioner had been duly considered and it had been found that he did not have the qualifying criteria of Hot Mixing Plant within 30.00 km and was not qualified.

4. It has now, in subsequent pleadings, come on record that eventually the Award as such was given to respondent No.5 on 02.02.2024 and it is also stated that he has completed the Contract as such, which would be clear from the additional affidavit now filed by the respondents No.1 to 4-State.

5. It is not disputed that respondent No.5 who had been awarded the Contract as such had the necessary certificate issued by the Assistant Engineer, Rajgarh Sub-Division, HPPWD, Rajgarh on 18.11.2023 (**Annexure P-10**), wherein it has been mentioned that the Contractor had installed the Hot Mix Plant on CNYK road at RD 40/200 at 29 km away from the BBRC.

6. It is also pertinent to notice that as per the Invitation for Bids (IFB) issued itself, as per Clause 14, the necessary condition had already been incorporated. The same reads as under:-

"14. Machinery/Plant and Lab Equipment Detail proof ownership and Plant/machinery installed within 30.00 km certificate signed and issued/verified from the concerned Assistant Engineer."

7. It is thus apparent that the argument now raised that it was for a tailor made as such by way of introduction by the

corrigendum, is without any basis. It is from day one as such that the necessary requisite condition had been prescribed.

8. Counsel for respondents No.1 to 4-State has also referred to the requirement of such a Plant within easy reach, while referring to the communication dated 21.12.2023 **(Annexure R-IV)** that the work of metlling/tarring of the road of bitumen material has to be carried through road and the road was very narrow, too long and as such to carry the bitumen to a large distance and maintain to requisite temperature is very difficult. The optimum distance of 30 km has been mentioned in the tender notice and corrigendum so that the quality of work is maintained.

9. It is settled principle that the Contractors for bids are bound by the terms of the Notice Inviting Tender (NIT) and also as much as the State is bound by it. Once the Clause 14 of the Invitation for Bids (IFB) was already there and the petitioner did not admittedly himself have the said requisite conditions as his Hot Mix Plant was beyond the prescribed limit of 30.00 km, the decision to treat him ineligible is justifiable.

10. We are of the considered opinion that the challenge as such to the corrigendum is baseless. It is well-known that the issue of the bitumen as such to be maintained in the hot

temperature to be effective which the respondents-State has to consistently achieve to maintain for effecting building fresh roads especially in hilly conditions and it is a technical matter as such and therefore the said condition had not been super-imposed at a later stage to exclude anyone.

11. We are of the considered opinion that the arguments now raised that respondent No.5 did not have the said Plant as such is without any basis and there is nothing in the pleading as now argued that the earlier tender as such had been cancelled and fresh tender have now been floated to benefit respondent No.5. No official has been made a party as such while arguing on the issue of malafides to conclude that it was done for the purpose to benefit respondent No.5.

12. In the absence of any officials having been impleaded as respondents, it is settled principle that the question of malafides cannot be gone into.

13. It is apparent that the petitioner has himself competed in the said process and having been found ineligible and being beyond the prescribed kilometers as such the writ petition has been filed.

14. Reliance thus can be placed upon the judgment of the Apex Court in ***Balaji Ventures Pvt. Ltd. Vs. Maharashtra***

State Power Generation Company Ltd., and Another 2022

SCC OnLine SC 1967. The relevant paragraph reads as under:-

“9. Now so far as the impugned judgment and order passed by the High Court dismissing the writ petitions is concerned, what was challenged before the High Court was one of the tender conditions/clauses. The High Court has specifically observed and noted the justification for providing clause 1.12(V). The said clause was to be applied to all the tenderers/bidders. It cannot be said that such clause was a tailor made to suit a particular bidder. It was applicable to all. Owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is found to be arbitrary, mala fide and/or tailor made. The bidder/tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or convenient to him. As per the settled proposition of law as such it is an offer to the prospective bidder/tenderer to compete and submit the tender considering the terms and conditions mentioned in the tender document.”

15. It has been time and again held by the Apex Court that the interference by the Courts in contract or tender matters should be very limited and the Courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. The Court would not interfere in the manner in which the petition had been filed after having competed as such for the contract and having found that the petitioner is ousted on account of the conditions of Notice Inviting Tender (NIT) itself, thus this Court is

of the considered opinion that no fault can be found in Awarding the Contract to respondent No.5.

16. Accordingly, the present petition is dismissed in the aforesaid terms, so also, the pending application(s), if any, are disposed off.

(G.S. Sandhawalia)
Chief Justice

(Bipin C. Negi)
Judge

29th December, 2025
(Munish Thakur)