GAHC010226392025

2026:GAU-AS:12168

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5859/2025

EDIFICE ENGINEERING
A REGISTERED PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE SITUATED AT 123, 124, NEW APOLLO INDUSTRIAL ESTATE PREMISES CHSL, AWADH NARAYAN TIWARI MARG, MUMBAI-4000069, MAHARASHTRA AND REPRESENTED BY ITS AUTHORISED REPRESENTATIVE PARTNER SHRI JIGAR K CHHEDA, SON OF KANTI CHHEDA, RESIDENT OF 2/64, VARMA NAGAR, OLD NAGARDAS ROAD, ANDHERI-EAST, MUMBAI, DIST- MUMBAI, MAHARASHTRA, PIN- 400069.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY, DEPARTMENT OF INDUSTRIES, COMMERCE AND PUBLIC ENTERPRISES, GOVT. OF ASSAM, DISPUR, GUWAHATI-6.

2:THE ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LIMITED
A GOVT. OF ASSAM UNDERTAKING
DEPARTMENT OF INDUSTRIES
COMMERCE AND PUBLIC ENTERPRISES
GOVT. OF ASSAM
R G BARUAH ROAD
GUWAHATI-781024
REPRESENTED BY ITS MANAGING DIRECTOR.

3:THE TENDER EVALUATION COMMITTEE
ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LIMITED
A GOVT. OF ASSAM UNDERTAKING
R. G. BARUAH ROAD
GUWAHATI-781024.

4:MSTC LIMITED

A MINI-RATNA PUBLIC SECTOR UNDERTAKING UNDER THE
ADMINISTRATIVE CONTROL OF THE MINISTRY OF STEEL
GOVT. OF INDIA AND REPRESENTED BY ITS CHIEF MANAGER
F AND A BSNL EXCHANGE BUILDING
BELTOLA
BASISTHA ROAD
WIRELESS
GUWAHATI-781038.

5:CHINAR STEEL SEGMENT CENTRE PVT. LTD.
SITUATED AT FLAT NO. 301
3RD FLOOR
CENTRAL POINT
21
HEMASNTA BASU SARANI
DALHOUSIE
KOLKATA
WEST BENGLE
PIN-700001

6:JAY ISPAT TRADERS
SITUATED AT 135/97
GIRISH GHOSH ROAD
BELUR
HOWRAH
WEST BENGL
PIN-711202

7:SYMCOM EXIM
SITUATED AT OFFICE NO.101/1
VAKRATUNDA CORPORATE PARK PREMISES CS LTD.
VILLAGE PAHADI GOREGAON EAST
MUMBAI
MUMBAI SUBURBAN
MAHARASHTRA-40006

Advocate for the Appellant : Ms. G. Goswami, Senior Advocate
Mr. R. J. Das, Advocate

Advocate for the respondents : Mr. D. Saikia, Advocate General for the
State Respondents
Mr. A. Kataki & Mr. D. Deka, Standing Counsel, AIDC.
Mr. P.S. Bhattacharya, CGC.

Date on which judgment was reserved : **02.06.2026**

Date of pronouncement of judgment : **25.08.2026**

Whether the pronouncement is of the operative part of the judgment? : NA

Whether the full judgment has been pronounced? :Yes

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

JUDGMENT & ORDER (CAV)

By filing the present writ petition, the Petitioner has sought to invoke the jurisdiction under Article 226 of the Constitution of India, challenging rejection of the Petitioner's Technical Bid, vide *e-mail* dated 25.09.2025 for the reason of submission of an expired OHSAS/ISO Certificate of the Petitioner's company, despite the updated and valid OHSAS/ISO Certificate having been resent to the tendering authority, i.e., the AIDC Ltd (herein after referred to as "AIDC").

2. The facts leading to the filing of the instant writ petition are summarised herein below: -

2.1 The Petitioner is into the business in the field of demolitions, disposal of CD waste, resizing of debris, other specialized dismantling work etc. of industrial plant and machinery, all over India;

2.2 Assam Industrial Development Corporation Limited (AIDC), Respondent No. 2, vide EOI/ Auction Notice, as

communicated/published on the MSTC (Auction) website on 07.08.2025, had invited bids for auction of plant, machinery, demolition, disposal and clearing to ground level of all buildings and other civil structures in plant and machinery area (including intake area) along with the disposal of fixed assets inside the buildings of Cachar Paper Mills, Cachar, Assam. The Petitionerbeing into the similar business as mentioned above and being eligible and competent to participate in the said auction, submitted its bid. The last date of submission of bids was 15.09.2025 and after submission of the bids, the Technical Bidswere to be opened and evaluated. The Petitionersubmitted all relevant documents including its Occupational Health & Safety Management System (for short, 'OHSAS') certificate. However, it was transpired that the Petitionerhad submitted an expired OHSAS certificate dated 25.05.2022 along with its bids on 13.09.2025. The Petitioner was informed vide *e-mail* dated 25.09.2025 that its bid has been rejected by the AIDC, Respondent No. 2 as the OHSAS Certificate that has been submitted by the Petitionerexpired prior to the date of advertisement/ publication of notice inviting tender for the auction. Upon receipt of the information of such rejection, the Petitioner immediately resent via *e-mail* dated 26.09.2025the correct OHSAS Certificate dated 24.05.2025, valid upto 24.05.2028, issued to the Petitionerbefore the publication of the advertisement. Inspite of such submission of the aforesaid certificate, since the same was not considered, the Petitionerhas

approached this Court by filing the instant writ petition challenging the action of non-consideration of the certificate submitted by the Petitioner.

3. The instant writ petition was taken up for motion on 09.10.2025, wherein, notice was issued to the Respondents and in the interim, directed the Respondent Authorities to allow the Petitionerto participate in the auction process, which was scheduled on 13.10.2025. It was also directed that the Petitionershall be allowed to carry out the inspection of the site on 10.10.2025. It was directed that on completion of the auction, the results thereof, shall not be declared, without further leave of the Court.

4. The Respondent No.2 (AIDC) and the Respondent No. 3 (Tender Evaluation Committee of AIDC) have jointly filed an Affidavit-in-Opposition contesting the case of the Petitioner.

5. In the Affidavit-in-Opposition, the Respondents contended that the bids were invited from prospective bidders and as the process of bidding was by way of an auction, the bidders were required to submit their bids to meet the requirements as mentioned in the Auction Document. These requirements were termed as "Pre-Bid Qualification Eligibility Criteria". It is contended that in categorical terms, the Auction Document itself, provided the time-line as to how and when the bids were to be submitted, time of closure of bid submission, time to raise queries and time for technical evaluation etc. It is stated that 20 (twenty) bidders have submitted their bids for

being evaluated for Pre-Bid Qualification Criteria. The Technical Bids were evaluated in a meeting held on 24.09.2025 by the Technical Evaluation Committee and thereafter, the results were declared on 25.09.2025. It is stated that out of the 20 (twenty) Bidders, who have participated in the tender process, only 3 (three) Bidders were found to be technically responsive. It is the specific stand of the Respondent Nos. 2 & 3 that the Petitioner submitted an expired OHSAS Certificate and therefore, not eligible as per the Pre-Bid Qualification Eligibility Criteria as the Certificate was found to be inadequate. Accordingly, the Bid of the Petitioner was rejected as it did not comply with the technical requirements as per the specific terms of Auction. It is stated that in the instant Auction, without registration with MSTC, a bidder cannot participate. It is mentioned that Clause 21 of the General Terms and Conditions of e-Auction provided that notices/ communications may be sent, either by email/SMS/WhatsApp etc. and/or regular mail and it was advised to the bidders to give mobile numbers and updated e-mail IDs in the MSTC portal. It is stated that in the present case, the communication channel was *email.* It is stated that the Petitioner was duly intimated of its disqualification through a system generated *email* from admin@mstcecommerce.com on 25.09.2025 at 21:24 hours, sent to the registered *email* ID of the Petitioner clearly indicating the reason of rejection, i.e., rejected as OHSAS/ISO certificate was expired before the date of advertisement for the Auction. It is stated that as per the tender conditions, a bidder is solely responsible for uploading all requisite and valid documents before the bid submission deadline, i.e., 15.09.2025 at 17:00 Hours

and sufficient time, i.e., more than a month from the date of publication of the tender was provided to all the participants for preparation and submission of the bids. It is stated that despite such opportunity was given, the Petitioner failed to up-load the correct and valid OHSAS certificate along with its Technical Bid. Therefore, since the Petitioner has submitted an expired certificate as on the date of the advertisement for Auction, the Bid was rejected at the technical evaluation stage. It is stated that allowing submission of a fresh and corrected certificate after bid submission deadline would amount to post bid modification which is contrary to the established principles of competitive bidding.

6. In the Affidavit-in-Opposition, it is further stated that out of total 17 (seventeen) rejected bidders, 5 (five) bidders had approached this Court between 08.09.2025 to 17.09.2025 challenging the technical evaluation results. However, 3 (three) of the bidders had withdrawn their respective petition. The instant Petitioner had participated in the Auction process on 13.10.2025 on the strength of an order dated 09.10.2025 passed by this Court in the instant writ petition on the ground that they had inadvertently uploaded the expired certificate whereas they already had a valid certificate on the date of the publication of the tender for the Auction.

7. Ms. G. Goswami, the learned Senior Counsel appearing for the Petitionersubmits that the reason for rejection was summary, mechanical and hyper technical as the defect in the bid was inadvertent and curable in nature. She submits that the expired

OHSAS certificate was submitted on 26.09.2025 inadvertently and upon coming to know about the inadvertent error, the Petitioner immediately submitted the valid OHSAS certificate which was all along with the Petitioner, issued to the Petitioner, much before the publication of the notice of Auction as well as closing date of submission of the bids. She submits that since the certificate is a historical document which was inadvertently could not be submitted by the Petitioner,should have been taken into account by the Respondent Authorities as the same could not have prejudiced any one, if was considered by the Respondent Authorities, especially, the Respondent No. 2. She submits that the Petitioner being eligible, could have presented a viable tender for the tendering authority and thereby, could have helped the Government getting the best commercial deal available. She submits that the instant Auction is a matter of public interest and more the competition, more the price, which is definitely in the interest of public and the State. She submits that no private interest would have been prejudiced if the Petitionerwould have been allowed to participate in the Auction rather than the summarily rejecting its Technical Bid only for the inadvertent error committed by the Petitioner.

8. In view of the aforesaid, the Petitioneris praying for issuance of a writ in the nature of mandamus setting aside and quashing the *email* dated 25.09.2025 rejecting the Technical Bid of the Petitionerfor the Auction No. MSTC No. MSTC/GHY/ Assam Industrial Development Corporation Limited/5/ Guwahati/25-26/25321 as invited, vide notice dated 07.08.2025 and all other evaluation orders issued by the

Respondent Nos. 2 & 3 consequent thereto.

9. In support of her aforesaid submissions, the learned Senior counsel appearing for the Petitioner has referred to the following cases: -

(i) National Highways Authority of India-vs- Gwalior-Jhansi Expressway Limited; reported in ***(2018) 8 SCC 243***;

(ii) Vice-Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Limited and Another-vs-Shishir Realty Private Limited and Others; reported in ***(2022) 16 SCC 527***;

(iii) MDC Pharmaceuticals Limited-vs-Union of Indian and Others; reported in ***2022 SCC OnLine Del 488***;

(iv) Rashmi Metaliks Ltd. & Anr -vs- Kolkata Metropolitan Development Authority & Ors (Civil Appeal No.6772 of 2013) decided by the Hon'ble Supreme Court of India on 11.09.2013.

10. *On the other hand*, Mr. D. Saikia, learned Senior Counsel as well as Advocate General, State of Assam appearing for the State Respondent Authorities has submitted that the Petitionerhas clearly failed to submit the required certificate which is a Pre-Bid Qualification Eligibility Criteria within the stipulated time and therefore, failed to submit a complete bid. He submits that thecertificate submitted by the Petitionerdoes not carry any value as the said certificate had already expired at the time of submission of the bid. He submits that OHSAS Certificate is an important document in the instant case taking into account the scope of work that has to

be carried out by the Petitioner and that is precisely the reason why such certificate was called for. He submits that in spite of getting ample opportunities of time, thePetitionerfailed to submit the required pre-qualification certificate. Therefore, there is no error in rejecting the Technical Bid of the Petitioner. He submits that the pre-qualification criterion of submission of the OHSAS certificate is a mandatory requirement taking into account the scope of the work and therefore, non-submission of such document before the closure of bid makes the bid of the Petitionerliable to be rejected.

11. In support of his submission, the learned Advocate General for the State of Assam has relied on the case of ***Glodyne Technoserve Limited-vs-State of Madhya Pradesh and Others***;reported in ***(2011) 5 SCC 103***.

12. During the course of hearing, this Court had called for the photocopies of the bids of all the 20 (twenty) bidders and the same have been submitted before this Court by the learned counsel for the Respondent, AIDC. From the Minutes of the Meeting, it is seen that as many as 9 (nine) bidders have been disqualified in the Technical Bid evaluation due to their non-submission of OHSAS certificate including that of the Petitioner. It is also seen that in cases of certain other rejected bids, in addition to the aforesaid OHSAS certificate, certain other documents were also not submitted by those rejected bidders. Therefore, it cannot be said that the Petitionerhas been singled out and disqualified due to non-submission of the OHSAS certificate, rather several other Bidders have also been disqualified

due to non-submission of the aforesaid documents. However, the case of the Petitioneris that the Petitionerwas already possessing the valid certificate issued by the concerned authority, i.e. Pyramid Certifications LLP which is valid until 23.05.2028. The Bid Documents for the auction provided Pre-Bid Qualification Eligibility Criteria. Amongst other pre-qualification criteria, the following being relevant are quoted hereinbelow:-

> (iii) **Safety Qualification Criteria for bidders:***Bidders must have OHSAS certificate and shall meet the safety requirements as per Safety Terms and Conditions attached therewith.*

13. It is seen that the tendering process was initiated, vide NIT dated 07.08.2025. Initially, the period between 07.08.2025 to 14.08.2025 was meant for raising queries and on queries having been received and considered, the Respondent Authorities had modified the Auction Documents on 25.08.2025 and date for raising queries were extended till 03.09.2025. The last date of submission of bid was fixed on 15.09.2025 upto 17.00 Hours. The Technical Bids were evaluated on 24.09.2025 by the Tender Evaluation Committee of Respondent No. 2. It is seen that on 25th September, 2025 at 09.20 PM, the Petitioner was intimated by way of an email by the MSTC about the rejection of its Technical Bid; the reasons for disqualification was provided as `*rejected as the ISO certification is expired before the Auction Advertisement date*'. Upon receipt of the aforesaid *email*, immediately, on 26.09.2025 at about 01.05 PM, the Petitionerhad responded to the *email* by sending an *email* attaching

its latest OHSAS certificate dated 25.04.2025, valid until 23.05.2028 to the Respondent Authorities; the Petitioner had requested the Respondents to consider the aforesaid OHSAS certificate as the same was already available with them and valid until 23.05.2028. On a perusal of the certificate, which was submitted by the Petitioner on 26.09.2025, it is seen that the same was issued to the Edifice Engineering, i.e. the Petitioner on 24.05.2025 and the same is valid until 23.05.2028. It may be worth mentioning that as for the validity and issuance of the Certificate is concerned, no dispute has been raised by the Respondent Authorities. Since the NIT for the instant auction was initiated only on 07.08.2025, it is clear that the Petitionerwas already holding the aforesaid ISO 45001:2018 certificate. In the aforesaid certificate, it is also seen that the certificate was issued with the scope 'Service Provider for Structural Dismantle and Demolition of Concrete Structures including Debris Management, Salvage Management and Recycling of Waste'.

14. On due consideration of the facts and disputes, it is seen that the only question that is required to be decided by this Court is as to whether non-submission of the aforesaid ISO Certificate which was already existing with the Petitioner and submission of the same after the closing date of Bid submission, the Respondent Authorities, should have allowed the Petitioner to participate in the Auction process or not.

15. It is not in dispute that in spite of there being a specific requirement of submission of a valid OHSAS certificate, the same was

not submitted before the closing date of the bids by the Petitioner. The reason cited by the Petitioner is that due to an inadvertent mistake, it had failed to submit the valid certificate in spite of possessing the same at the time of closure of submission of bids. Therefore, the question arises as to whether the Respondent Authority, i.e. the AIDC can be compelled or directed to deviate from the condition that has been mentioned in the terms and conditions of the Auction Document. The core issue in the writ petition that emerges is whether the Respondent Authority, i.e. AIDC acted perversely or arbitrarily in not considering the submission of the OHSAS certificate after opening of the Technical Bids and thereby calling for judicial review by this court and interfering with the decision of AIDC.

16. In the case of ***G.J. Fernandez***–vs-***State of Karnataka***, reported in ***(1990) 2 SCC 488***, the Hon'ble Apex Court held that the party issuing the tender (the employer) has the right to punctiliously and rigidly enforce the terms of the tender. If a party approaches a court for an order restraining the employer from strict enforcement of the terms of the tender, the court would decline to do so. It was also held that the employer could deviate from the terms and conditions of the tender if the changes affected all intending applicants alike and were not objectionable. Therefore, a deviation from the terms and conditions can be permissible so long as the level playing field is maintained and it does not result in any arbitrariness or discrimination to others.Therefore, the court is required to see whether any deviation could be allowed taking into the facts and circumstances of

each case. In the instant case, it is seen that as many as 9 (Nine) bidders including the Petitionerhave been rejected due to non-submission of valid OHSAS certificate.Therefore, it has to be seen whether the Respondent Authority, i.e. the AIDC could give leverage to the Petitioneralone by accepting the OHSAS certificate after the Technical Bidswere opened. This is due to the fact that other rejected Bidders as well as non-participating bidders could have also legally participated, if there is such deviation.

17. In a string of cases, the Hon'ble Supreme Court cautioned judicial interference in contractual matters. It has been laid down that the Courts will not countenance interference with the decisions at the behest of an unsuccessful bidder in respect of a technical or procedural violation. In the case of ***Jagdish Mandal***–vs-***State of Orissa***, reported in ***(2007) 14 SCC 517***, the Hon'ble Apex Court at Paragraph 22 observed as follows:

> *"22. 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, the courts will not, in exercise of 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. A 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 interference 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".

18. Therefore, a Court before interfering in tender or contractual matters in exercise of power under judicial review should pose itself the following questions: (i) whether the process adopted or decision made by the authorities is mala fide or intended to favour someone; (ii) whether the process adopted or decision made is so arbitrary and irrational, the Court can say: "the decision is such that no responsible authorities acting reasonably and in accordance with relevant law could have reached; (iii) whether the public interest is affected. If the answersare in negative, there should be no interference under Article

226 of the Constitution of India.

19. In another case of ***Afcons Infrastructure Limited***-vs. ***Nagpur Metro Rail Corporation Ltd. & Another***; reported in ***(2016) 16 SCC 818***, the Hon'ble Apex Court reiterated the proposition that the words used in the tender documents cannot be ignored or treated as redundant or superfluous. It was held that those terms and conditions must be given due meaning and their necessary importance. The issuer of a tender document who has authored the same is the best person to understand and appreciate its requirements and is the best person to interpret its documents. Therefore, the Court must refrain from giving a different meaning to what is intended in the documents, unless there is allegation of mala fides or perversity in understanding or appreciation or in the application of the terms of the tender documents. It is also true that at certain times, the opinion or view taken by the issuer or the employer of the tender may not be acceptable to the Court but the same cannot itself be a reason for interfering in the interpretation given by the issuer of the tender or the employer. Observations of the Hon'ble Apex Court at Paragraph of 13 of the ***Afcons Infrastructure Limited (Supra)*** are quoted hereinbelow:

> "*13. …….In other words, a mere disagreement with the decision making process or the decision of the administrative authority has no reason for a constitutional court to interfere".*

20. The threshold of mala fide intention to favour someone or arbitrariness, irrationality or perversity must be made out, before the Constitutional Court, interferes with the decision making process or the decision.

21. Therefore, when a pre-qualification condition has been included in the tender document, whether the term isessential or not is something which has to be decided by the employer or issuer of the tender and such decision in absence of any arbitrariness or mala fide should be respected.Though, in certain situations, the issue of essential or mandatory conditions do crop up, however, whether the condition is an essential condition or an ancillary condition that should be decided by the employer or the issuer of the document. In this connection, the case of ***Central Coalfields Limited and Another–vs-SSSL-SML (Joint Venture Consortium) and Others***, reported in ***(2016) 8 SCC 622***, being relevant is referred to.In this case, while dealing with the issue of interference by a Constitutional Court in the matters of commercial contracts, the Hon'ble Apex Court held in paragraph 48 as follows:

> *"48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty. However, if the term is held by the employer to be ancillary or*

subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot."

22. In a recent decision of the Hon'ble Supreme Court in the case of ***Prakash Asphaltings and Toll Highways (India) Limited***–vs-***Mandeepa Enterprises and Others***, reported in ***(2026) 4 SCC 310***, the Hon'ble Apex Court at paragraph 47 held as follows:

"47. While judicial review is not excluded to assail administrative decisions even in matters of tenders and contract, the long line of consistent judicial pronouncements tells us that constitutional courts should exercise utmost restraint in interfering with a tender process unless the threshold of judicial review are met, as explained in Jagdish Mandal (supra) and in Afcons Infrastructure Limited (Supra)".

23. From the aforesaid judicial pronouncements of the Hon'ble Apex Court, it is clear that in a commercial contract, the bidders are usually persons with sufficient experiences and they are expected to be vigilant enough to comply with the terms and conditionsprovided in a tender document.The decision of the issuer of the tender or the

employer regarding the interpretation of the tender document as well as of the requirements in the tender, normally cannot be interfered by a Constitutional Court in absence of arbitrariness, bias and mala fide action on the part of the issuer of the tender or the employer. A Constitutional Court has limited jurisdiction to review the decision of the employer or the issuer of the tender. Though the decision may not have been a sound decision, the Court is required to review only the decision-making process of the employer or issuer of the tender and not always the decision and if there is no wrong committed by taking a bias or arbitrary decision, the decision of the employer or the issuer of the tender cannot be interfered with. A Constitutional Court cannot compel or direct the issuer of the tender or the employer to deviate from its own terms and conditions which it has created for its own requirement, taking into account the essential conditions that are required to be fulfilled by a bidder. A Court, while a decision being challenged by an unsuccessful bidder, cannot rewrite the contract document or the Tender Document and thereby, force the writer of the document, i.e. the issuer of the Tender or the employer to deviate from its own terms and conditions.If the terms and conditions of the Contract are un-challenged due to their perversity or having no connection to the object of the Tender, the Constitutional Court cannot direct the employer or issuer of the Tender to deviate from such terms and conditions.

24. Another aspect comes in as to whether the employer or the issuer of the tender is required to strictly adhere to its terms and conditions provided in the tender documents or it can deviate from its

terms and conditions, if so required. In this connection, the Hon'ble Apex Court at Paragraph-52 of the case of ***Central Coalfields Limited (supra)*** held as follows:-

> *"52. There is a wholesome principle that the courts have been following for a very long time and which was articulated in Nazir Ahmad-vs- King Emperor, AIR 1936 PC 253, namely:…"where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden." There is no valid reason to give up this salutary principle or not to apply it mutatis mutandis to bid documents. This principle deserves to be applied in contractual disputes, particularly in commercial contracts or bids leading up to commercial contracts, where there is stiff competition. It must follow from the application of the principle laid down in Nazir Ahmad that if the employer prescribes a particular format of the bank guarantee to be furnished, then a bidder ought to submit the bank guarantee in that particular format only and not in any other format. However, as mentioned above, there is no inflexibility in this regard and an employer could deviate from the terms of the bid document but only within the parameters mentioned above".*

25. From the above principles laid down in the case of ***Nazir Ahmed (Supra)***which has been reaffirmed in the case of ***Central***

Coal Limited (Supra), it is clear that when a tender document is issued, the employer or the issuer of the tender must follow the terms and conditions provided in the tender and in general, should not deviate from that and in case of any deviation,the same should not affect others who are in the prey or who may have been in the prey. This is due to the reasonthat in case of deviation to favour a particular bidder, that action should not infringe the right of the other bidders in terms of equality under Article 14 of the Constitution of India.

26. Having said so, coming back to the facts of the instant case, the learned Senior Counsel appearing for the Petitionerin support of her argument, has referred to the case of ***Vice-Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Limited*** **(supra)**, wherein the Hon'ble Apex Court held that being governed under rule of law, every action of the State or instrumentality while exercising its executive power must not abuse the discretion granted to the Petitioneror its instrumentalities. Paragraph-27 of the aforesaid case is quoted hereinbelow:

> *"27 Being governed under "rule of law" every action of the State or its instrumentality while exercising its executive powers must meet the aforesaid requirements. While recognising the existing principle of freedom to enter or not enter into contracts by the State and its instrumentalities, the manner, method and motive behind the aforesaid decision can be subjected to judicial review*

on the touchstone of equality, fairness, proportionality and natural justice. The decision of the executive must strike a balance with the alleged violation with that of the penalty imposed".

27. The learned Senior Counsel appearing for the Petitioner has referred to the case of ***National Highway Authority of India (Supra)***, wherein, the Hon'ble Supreme Court held that the objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money.The principles laid down in the aforesaid two cases are well settled and well recognized. However, in the instant factual matrix of the case, since the Petitionerhas failed to meet the pre-qualification criterion set down by the Respondent authority, i.e. AIDC and therefore, the Technical Bid of the Petitioner was rejected. Though, subsequently after completion of the opening of the Technical Bids, the Petitioner submitted a valid OHSAS certificate before the Respondent Authorities, the same was not considered by the Respondent, AIDC. The action of the Respondent Authority, i.e. AIDC shows that it had stuck to its terms and conditions, without allowing any deviation from the terms and conditions. Therefore, the principles laid down in the aforesaid two cases as referred to by the learned Senior Counsel seem to have been duly followed by the Respondent Authority, i.e. AIDC, in the instant case and accordingly, the ratios do not seem to help her arguments.

28. The learned Senior Counsel for the Petitionerhas also referred to the case of ***MDC Pharmaceuticals Limited(supra)***, wherein a Division Bench of the Hon'ble Delhi High Court held that the purpose of tenders is to get maximum participation and not to stump the bidders on hyper-technical grounds. It has been referred by the Senior Counsel to support her argument that the Petitionerwas having the required OHSAS Certificate and the same being a historical document, the submission of the same after opening of the Technical Bid cannot be termed as a deviation of the tender conditions.

29. In the instant case, the Petitionerhad submitted an expired OHSAS certificate, which does not carry any value. The certificate had become invalid due to the fact that the term mentioned therein had already expired. It is well settled that an expired document, which was issued for a particular period, after its expiry becomes invalid. Therefore, it becomes no-nest in the eye of law. What the Respondent Authority, i.e. AIDC wanted was a valid and active OHSAS certificate, which the Petitionerfailed to produce in due time, i.e. before the closing date of the bid submission. Therefore, the case referred to by the Senior Counsel will not help the cause of the Petitioner in the instant case.

30. Lastly, the learned Senior Counsel referred to the case of ***Rashmi Metaliks Ltd. (supra)***, wherein the Hon'ble Apex Court held at paragraph 18 as follows:

"*18 We think that the income tax return would have*

assumed the character of an essential term if one of qualification was either the gross income or the net income on which tax was attracted. In many cases, there is a salutary stipulation since it is indicative of the commercial standing and reliability of tendering entity, this feature being absent, we think that filing of latest income tax return was a collateral term, and accordingly, the tendering authority ought to have brought the discrepancy to the notice of the appellant-company and if even thereafter, no rectification had been carried out, the position may have been appreciably different".

The case of ***Rashmi Metaliks Ltd.(supra)*** has been discussed in the case of ***Central Coalfields Limited (supra)***, wherein, the Hon'ble Supreme Court held as follows:

"*Essentially, therefore, this Court substituted its view for that of the employer who interpreted this term of NIT to be mandatory for compliance.* ***Rashmi Metaliks Ltd (2013) 10 SCC 95,*** *followed* ***Poddar Steel, (1191) 3 SCC 273*** *and apparently over-looked the dictum laid down in* ***Ramana Dayarama Shetty (1979) 3 SCC 489****;* ***G.J. Fernandez*** *–vs-* ***State of Karnataka****,* ***(1990) 2 SCC 488, Tata Cellular (1994) 6 SCC 651*** *and* ***Jagdish Mandal (2007) 14 SCC 517*** *and must be confined to its own peculiar facts. In any manner, this decision does not advance the case of any of the parties*

before us".

Therefore, the principle laid down in the case of ***Rashmi Metaliks(supra)*** will not be of any help to the Petitioner as in the instant case, there was no argument or submission made as to whether the pre-qualification condition involved in the instant case can be termed as an essential condition or an ancillary condition.

31. From the above discussions, it is clear that though judicial review is allowed in Commercial Contracts, the same has to be done with lot of caution. The Hon'ble Apex Court consistently held that judicial review is permitted to assail the administrative decisions in the matters of tenders, only in the case of apparent arbitrariness or bias or mala fide of the employer or the tender issuing authority. It is clear that the authority which issues the tender document is the best person to understand the terms and conditions and their requirements. If the authority is of the opinion that a condition is required to be made and accordingly, the contract document provides for so, in judicial review, the Court should not interfere with such a requirement of the employer or the issuing authority. However, if the employer or the issuing authority goes beyond the terms and conditions laid down in the contract document, then the issue can be different. If the authority in terms of the contract document requires a pre-qualification, the authority is the best person to see whether the requirement is mandatory or not. This aspect can be reviewed by a Constitutional Court if there are specific allegations about mala fide, extraneous consideration and the contract document has not laid

down in specific terms about such requirements.

32. In the instant case, the pre-qualification criterion has been clearly laid down in the Auction Document issued by the Respondent Authority, i.e. AIDC. It is also seen that sufficient time including the time for queries/questions was also granted to the bidders. Thereafter, the submission of bids was closed and Technical Bids were evaluated.From the issuance of the NIT of the Auction till the Technical Bids were evaluated and results were declared, the Petitionerdid not look into the issue of the validity of its certificate but had submitted the same along with its bid. The Petitioner, i.e. the bidder, being a businessman, claiming to have sufficient experience in the field and stated to have been in the business ofsimilar contracts for many years, is expected that the bidder is vigilant enough to understand the requirements of the tender before submitting its bid. In the instant case, from the facts and materials available before this Court, it is seen that the bidder being negligent, erroneously submitted the essential pre-qualification document, i.e. the OHSAS certificate. Though it had realized its mistake and thereafter, submitted the valid certificate in a short time without any delay but that was submitted after completion of the Technical Bids' evaluation and declaration of its result. The certificate was not considered by AIDC, i.e. the Respondent Authority.Taking into account the aforesaid facts and the principles laid down by the Hon'ble Apex Court in the cases discussed above, this Court is of the considered view that the Respondent Authority, i.e. AIDC has complied with the terms and conditions of the Bid Document and has not deviated from the same.

33. Accordingly, this Court, under its power of judicial review, is of the opinion that the decision of the Respondent Authority, i.e. AIDC cannot be interfered with as it has not violated any terms and conditions of the Bid Document. More so, AIDC being the employer and creator of the Bid Document, is the best person to know it's requirements and therefore,has taken a decision which is found not to be arbitrary and which is found to be consistent with the Bid Document.

34. This Court has also considered the aspect of public interest. Though,revenue earning by the State is important in a tender, the same cannot be the only criterion and the same cannot be achieved by deviating from its own document. While benefit or accrual of more revenue to the public exchequer is an important aspect, adherence and compliance to the terms and conditions of the Tender is paramount to maintain the sanctity of the tender process.

35. In the instant case, this Court has already pointed out the fact that there are certain other bidders who have also been rejected for the ground of non-submission of the essential certificate in addition to certain non compliance of safety norms. On perusal of the Minutes of the Meeting, it is discernable that one of the main criterion of rejection of the Bid in the Technical Bid evaluation is non-submission of required OHSAS Certificate. Therefore, any leeway to the Petitionerin the instant case by the AIDC can be violative of Article 14 of the Constitution of India.

36. Therefore, in consideration of the whole matter, issues involved, the cases referred to and discussed hereinabove, this Court does not find any merit in this writ petition and therefore, the same is dismissed.

37. Interim order passed in the instant case is vacated.

38. No order as to the costs.

JUDGE

Comparing Assistant