



2026:UHC:3033-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE SHRI MANOJ KUMAR GUPTA

AND

THE HON'BLE JUSTICE SHRI SUBHASH UPADHYAY

23rd April, 2026

Writ Petition (M/B) 249 of 2026

Ram Babu Singh Contractor

-----Petitioner

Versus

State of Uttarakhand and others

-----Respondents

Presence:-

Mr. Arvind Vashisth, learned Senior Counsel, assisted by Mr. Siddhant Tiwari, learned counsel for the petitioner.

Mr. Sachin Mohan Singh Mehta, learned Brief Holder for the State/respondent no.1.

Mr. Manoj Kumar learned Standing Counsel for the Union of India.

JUDGMENT: (per Manoj Kumar Gupta, C.J.)

1. The petitioner submitted a bid for the work of short term maintenance of NH-309 (121) from Kilometer 70 - 263.115. The bid of the petitioner was found to be responsive by the Technical Evaluation Committee of the respondent-department.

2. Clause 31 of ITB of RFT is as follows:

“1. Notification of Award and Signing of agreement.

31.1. The Bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Par 1 General Conditions of Contract called the “Letter of Acceptance”) will state the sum that the Employer will pay to the Contractor in consideration of the execution, completion and



maintenance of the Works, and of routine maintenance of roads by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”)

31.2 The notification of award will constitute the formation of the Contract, subject only to the furnishing of a performance security in accordance with the provisions of Clause 32.

31.3 The Agreement will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and the successful Bidder after the performance security is furnished.

31.4 Upon furnishing of the Performance Security by the successful Bidder, the Employer will promptly notify the other Bidders that their Bids have been unsuccessful.”

3. Clause 32.1 of the ITB of RFT provides for furnishing of performance and additional performance security within ten days of receipt of letter of acceptance. On 20th March, 2026, the department communicated to the petitioner that its bid has been accepted and it was required to submit performance security and additional performance security in terms of ITB of RFT.

4. At this stage, the petitioner made a representation to the respondent-authority that a sum of Rs.30,4049/ deposited by the petitioner firm for security in respect of another contract has not been



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refunded to the petitioner firm and the said amount be adjusted as against the performance security and additional performance security required to be deposited under Clause 32.1 of the ITB of RFT. The respondent-department however did not respond to the said request and, therefore, the petitioner filed Writ Petition (M/S) No. 662 of 2026 before this Court and the writ petition was disposed of by order dated 20th March, 2026 directing the respondent-department to decide the representation. In compliance of the said order, the respondent-department has decided the representation vide order dated 04.04.2026 and has rejected the same observing that the performance and additional performance security in terms of Clause 32 are required to be deposited in shape of the instruments as stipulated thereunder. There is no provision for adjustment of performance security from any dues pending payment to a bidder

5. The petitioner was further required to furnish the security in form of instruments as given in Clause 32 by 08.04.2026, failing which, the respondents reserved right to take decision about the bid of the petitioner as per appropriate clauses of RFP. Being aggrieved thereby, the instant petition has been filed.



6. Learned counsel for the petitioner submits since the amount is due to the petitioner, the respondents should permit set off of the said amount as against the performance security to be deposited under the contract. He places reliance on judgment of Supreme Court, **2004 3 SCC 504, Union of India vs. Karam Chand Thapar and Bros. (Coal Sales) Ltd. and others**. In alternative, he submits that since the amount is due and payable to the petitioner, the respondents be directed to refund the said amount.

7. On 16.04.2026, while entertaining the writ petition, learned Standing Counsel was directed to obtain instructions as to whether the said amount is refundable to the petitioner or not.

8. On matter being taken up today, learned counsel, on instructions, states that the amount in question i.e. sum of Rs. 30,04,049/- is to be returned to the petitioner but it is in respect of a different contract. He submits that the Regional Office, Ministry of Service Transport and National Highways, Dehradun, vide letter dated 22.04.2026, has given approval for return of the said amount. He states that the Regional Office is now in the processes of refunding the said amount to the petitioner. The written instruction



supplied to the State Counsel by Executive Engineer, National Highway Division, PWD, Dhoomakot, Pauri, in this regard, has been placed on record.

9. The amount is thus in process of being returned to the petitioner. However, the question is whether the respondents are right in taking the stand that the said amount, though is to be returned, cannot be adjusted, against the performance and additional performance security to be submitted by the petitioner under the present contract?

10. Concededly, the performance security and additional performance security which are to be furnished is in respect of an entirely different contract and not the same contract.

11. The petitioner was aware of the conditions of the RFT and that the performance security and additional performance security are required to be deposited in shape of the instruments stipulated thereunder. Clause 32.1 does not make any provision for adjusting the performance security and additional performance security from any dues pending payment to the bidder. For ready reference, Clause 32.1 is reproduced below:-



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“32.1 Within 10 (ten) days of receipt of Letter of Acceptance, the selected Bidder shall furnish to the Authority in the **form of issuance Surety Bond in the formant at Appendix-X, Account Payee Demand draft, Banker’s Cheque or irrevocable and unconditional guarantee- e-Bank Guarantee/physical bank guarantee from a Bank in the form set forth in Appendix-VII (“the “Performance security”)** for an amount equal to 3% (three percent) of its Bid Price. In case of bids mentioned below, the selected Bidder, along with the Performance Security, shall also furnish to the Authority ***in the form of Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the format at Appendix-X), Account Payee Demand Draft, Bankers Cheque or an irrevocable and unconditional e-Bank Guaranteed/Physical Bank Guarantee from a Bank in the same form given at Appendix-VII towards an Additional Performance Security.***”

12. The right of set off being claimed by the petitioner is thus wholly misconceived. If allowed, it would amount the altering the conditions of RFT. Accordingly, we find no error in the stand taken by the department while deciding the representation.

13. Thus, while we decline to interfere with the impugned order, the writ petition is disposed of directing the respondent-department to refund amount of Rs. 30,04,049/- to the petitioner positively within four weeks from today, failing which, the petitioner



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would be entitled to interest on the said amount @ of
9% per annum.

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

(MANOJ KUMAR GUPTA, C.J.)

(SUBHASH UPADHYAY, J.)

Dated: 23.04.2026
Kaushal