

Approved For Reporting**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL****THE HON'BLE CHIEF JUSTICE MR. MANOJ KUMAR GUPTA****AND****THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY****Writ Petition (M/B) No.375 of 2026**

M/s Bahadur Singh Patni

----Petitioner

Versus

State of Uttarakhand & Others

----Respondents

August 19, 2026**Presence:-**

Mr. Piyush Garg, learned counsel for the petitioner

Mr. B.P.S. Mer and Mr. Gajendra Tripathi, learned Standing Counsel for the State

Mr. Vikas Bahuguna and Mr. Yash Bisht, learned counsel for respondent no.4

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

1. Heard Shri Piyush Garg, learned counsel for the petitioner; Shri B.P.S. Mer and Shri Gajendra Tripathi, learned Standing Counsel for the State of Uttarakhand; and Shri Vikas Bahuguna, learned counsel for respondent no.4.

2. The petitioner submitted a bid in pursuance of a tender published by the State Government for a work titled: "Work for restoration of lining of left side of main canal no.01 in block Khatima in Udham Singh Nagar District (Reach – Km 2.200 to 4.500 Km)". The bid of the petitioner was found to



be non-responsive in the technical round on the ground that the petitioner did not possess the prescribed experience.

3. The other ground for declaring the bid of the petitioner as non-responsive was that the petitioner had not submitted the audit report of the year 2021. The contract has since been awarded to respondent no.4, Mr. Devendra Chand. The petitioner, being aggrieved by the rejection of his bid and award of contract in favour of respondent no.4, has filed the present writ petition.

4. As regards the objection to the non-submission of the audit report of the year 2021, the same was subsequently supplied by the petitioner and therefore the said defect which was of a minor nature stood cured.

5. Section IV of the Bid Document provides the Eligibility and Qualification Criteria. Clause 2.2A(b) thereof provides as follows:-

“b) The Bidder should have satisfactorily completed at least one similar work of amount 33% of the tender value as a prima contractor which has been started and completed within the last 5 years from the last date of submission of the bid. The similar work shall be strictly based on the nature, physical, size, complexity, methods, technology or other characteristics for the works required.”



The similar work means – Experience in canal lining in brick work.”

6. Further Clause 2.2A(d) further provides that:

“d) The Bidder should have executed in any one of the 5 (five) years, the minimum qualities of the following works:

Work for restoration of lining of left side of main canal no.01 in block Khatima in Udham Singh Nagar district

Work for restoration of lining of left side of main canal no.01 in block Khatima in Udham Singh Nagar district

(Reach – Km 2.200 to 4.500 Km).

Cement concrete (including RCC and PCC): 219 Cum

Brick Works: 1230.00 Cubic Meters”

(emphasis supplied)

7. In support of the work experience, the petitioner filed two certificates - one relating to a work executed by the petitioner for construction of Gorkha Canal under the Chief Minister Announcement No.1630/2021. The other experience certificate relates to construction of a channel for channelizing the flood water in District Udham Singh Nagar, Constituency Khatima. On the basis of these experience certificates, the petitioner claimed that he fulfilled the experience criteria stipulated under the Standard Bidding Document.

8. On the other hand, the stand of the Department in the counter affidavit is that the aforesaid experience did not



relate to similar work involving construction/lining of an irrigation canal and, therefore, could not be treated as the experience under the tender conditions.

9. Learned counsel for the petitioner submits that the requirement was only with respect to CC Work, including RCC and PCC measuring 219 cubic meters, and Brick Works measuring 1230.00 cubic meters, as specified under sub-clause (d) of Clause 2.2A. According to him, the petitioner while executing the aforesaid two works, had gained the requisite experience in different items, as stipulated under Clause 2.2A(d), and therefore, the official respondents erred in rejecting his technical bid. He further places considerable emphasis on the description of the present work occurring in Clause 2.2A(d) and submits that such description was wholly erroneous, as it relates to work for which the present tender itself had been invited and, consequently, experience of executing that very work could not possibly have been possessed by any bidder.

10. Shri Vikas Bahuguna, learned counsel appearing for respondent no.4, on the other hand, submitted that the Department, having prescribed the eligibility and qualification criteria, is the best judge to determine whether the petitioner



fulfilled the prescribed criteria. He has placed reliance on the judgment of Supreme Court in **Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and Another, (2016) 16 SCC 818**, to contend that, since the nature of work previously executed by the petitioner was different, the Department was justified in rejecting the technical bid of the petitioner. He further submits that the decision of the Technical Evaluation Committee regarding fulfillment of the experience qualification ought not to be lightly interfered with in exercise of power of judicial review under Article 226 of the Constitution.

11. We have considered the rival contentions and perused the record.

12. The controversy is not with regard to the quantity of the RCC, PCC or the masonry work executed by the petitioner under the previous contracts. The real issue is whether the experience gained by him while executing those works can be regarded as experience of a 'similar work' within the meaning of the tender conditions. The present contract relates to restoration and lining of an irrigation canal. The work experience relied upon by the petitioner, however, relates to construction of a canal for channelizing flood water and



construction of a sewage line. Though all those work may involve construction of channel and may contain certain common items of civil construction, the nature, purpose and functional requirements of the works are materially different. A canal, in its ordinary sense, is a water channel intended to carry water, in the present case, for irrigation purposes, whereas a sewage line and channel constructed for channelizing the flood water serve different purposes.

13. To ascertain whether the distinction between the works is merely nominal or is material from an engineering perspective, we had, on the previous date, required the learned Standing Counsel to place on record the opinion of the technical experts. Pursuant thereto, instructions received from the Superintending Engineer and the Executive Engineer have been placed before us. The comparative statement furnished by them indicates material differences between canal works and flood protection works. The same are as follows:-

Sl.No.	Canal Work	Flood protection work
1	It carries and distributes water for irrigation	It prevents or reduces flood damage by controlling river flow and protecting people, land and infrastructure.
2	Canal is man made structure which is used for transporting water to agricultural fields.	Flood protection work is of preventing flood damage by controlling river water.
3.	Canal works are part of irrigation and water distribution systems.	Flood protection works are part of river management and disaster mitigation
4	Water flows in a designed canal	Controls or diverts river flood water
5	Focuses on water supply to the farmer	Focuses on flood safety and inundation



14. Sub-clause (b) of Clause 2.2A of the Standard Bidding Document clearly stipulates that the work experience should be in respect of at least one similar work. Undoubtedly, under sub-clause (d) the description of the present work has been mentioned. The same appears to be an inadvertent error but the requirement of the nature of experience needed is clear from sub-clause (b). It explicitly provided that similarity is to be assessed strictly with reference to the nature, physical size, complexity, methods, technology and other characteristics of the works required. The quantity specified in sub-clause (d) cannot, therefore, be read in isolation so as to render the requirement of “similar work” under sub-clause (b) redundant. Even if the petitioner had executed the requisite quantify of BCC/PCC and brick work in his earlier contracts, it was still necessary that the experience should satisfy the requirement of similarity under sub-clause (b).

15. In **Afcons Infrastructure Limited (supra)**, the contract was for construction of a metro line. The Appellant before the Hon’ble Supreme Court had the experience of construction of inter-city rail. The issue before the Hon’ble Supreme Court was whether the experience of the appellant in construction of an inter-city rail could be treated as experience



for construction of a metro rail. The Hon'ble Supreme Court in the said context held as follows:-

“9. It is submitted before us that an inter-city rail is completely different from a metro rail. An inter-city rail is between two cities and the trains are usually high speed trains. A metro rail is intra-city, it has a dedicated right-of-way, normally it does not have high speed trains and the frequency of trains is much greater than that of inter-city trains.¹ A metro rail may extend, in some cases, to a suburb of a metropolitan city but it essentially remains an intra-city project. There is, therefore, a qualitative difference between an inter-city rail and a metro rail. By itself, this indicates a qualitative difference in a railway project that is inter-city and a railway project that is intra-city and the construction of a viaduct for a railway project that is inter-city and a railway project that is intra-city.

16. After so holding, the Hon'ble Supreme Court proceeded to examine the scope of judicial review in such matters. It has been held, relying on *Central Coalfields Ltd. vs. SLL-SML (Joint Venture Consortium) (2016) 8 SCC 622* and *Dwarkadas Marfatia and Sons v. Port of Bombay, (1989) 3 SCC 293*, that the decision of the Department in matters relating to award of tenders and contract should not be interfered with lightly unless there is any apparent malafide in

¹ [In Delhi the time duration is approximately to 2-3 minutes during peak hours and 5-10 minutes during off peak hours in the city].



the decision making process or such irrationality or perversity, which compels the constitutional court to interfere with the same. The Hon'ble Supreme Court relying on *Ramana Dayaram Shetty vs. International Airport Authority of India*, (1979) 3 SCC 489 further held that the word 'metro' used in the tender document had to be understood in its ordinary parlance and accordingly held that the decision taken by the Department should not have been interfered with by the High Court. The relevant observations from the judgment of the **Afcons Infrastructure Limited** (supra) are as follows:-

"14. We must reiterate the words of caution that this Court has stated right from the time when Ramana Dayaram Shetty v. International Airport Authority of India [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] was decided almost 40 years ago, namely, that the words used in the tender documents cannot be ignored or treated as redundant or superfluous — they must be given meaning and their necessary significance. In this context, the use of the word "metro" in Clause 4.2(a) of Section III of the bid documents and its connotation in ordinary parlance cannot be overlooked.

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.”

17. The same principle applies in the present case. The expression ‘canal’ and the requirement of experience in ‘similar work’ have to be understood in the context of the work for which the tender was invited. The tender concerns restoration and lining of an irrigation canal. The Department, on a consideration of the petitioner’s experience certificates, found that the works previously executed by him were not similar in nature to the work contemplated under the present tender. The distinction drawn by the department between an irrigation canal, on one hand, and a sewage line/ flood water channel, on the other hand, cannot be said to be arbitrary, irrational or perverse.

18. The Department, being the author of the tender document and possessing the requisite expertise, is best placed to assess the nature of experience required for



execution of the work. It's assessment that the petitioner's previous experience did not satisfy the requirement of 'similar work' under the Standard Bidding Document does not disclose any malafide, arbitrariness or perversity warranting interference in exercise of jurisdiction under Article 226 of the Constitution.

19. The writ petition is, accordingly, dismissed.

(MANOJ KUMAR GUPTA, C. J.)

(SUBHASH UPADHYAY, J.)

Dated: 19.08.2026

Rajni