IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1377 of 2025

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POCT Services, having its registered office located at 298-281, Transport Nagar, Kanpur Road, adjacent to Transport Nagar Metro Station, P.S.- Sarojini Nagar, P.O.- Manas Nagar, Lucknow, Uttar Pradesh- 226023. through its duly authorized representative, Vinay Mishra, Male, Aged About 54 years, Son of Late Data Ram Mishra, Resident of- B-653, P.O. and P.S.- Rajajipuram, Lucknow, Uttar Pradesh PIN- 226017. ... ... Petitioner

Versus

1. The State of Bihar Through its Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
2. The Director-in-Chief, Department of Health, Government of Bihar, cum Chairman, Technical Committee, State Health Society Bihar (SHSB), Patna.
3. The Assistant Director, Regional Office for Health and Family Welfare, Patna, Government of India.
4. The Executive Director, State Health Society Bihar (SHSB), Patna.
5. The Administrative Officer, State Health Society, Patna, Bihar.
6. The Deputy Secretary-cum-In Charge, PPP, State Health Society Bihar (SHSB), Patna.
7. The Additional Director, Finance, State Health Society Bihar,
8. M/S Hindustan Wellness Private Limited, having its registerd Address at 107, 1st Floor, Sector 44, Gurugram, Haryana, India- 122002.
9. M/S Dr. Khannas Pathcare Private Limited, having its registered address at E-8-A, Ground Floor, New Delhi, 110016.
10. Consortium of Science House Medicals Private Limited and Sodani Hospitals and Diagnostics Pvt. Ltd. Having its registered Office at 1st Floor, Plot No. - C-65 at Gautam Nagar, Bhopal, Madhya Pradesh, India - 46202 through its authorised signatory Mr. Sanchit Chaturvedi, aged about 33 years, son of Satish Chaturvedi, House No. A-07, Ashima Divine City, Near Pebble Bay Phase - II, Baghmugaliya, Huzur, P.S. - Baghsewaniya, Bhopal, Madhya Pradesh - 462043.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Mrigank Mauli, Sr. Advocate Ms. Madhubala Kumari, Advocate Mr. Amit Anand, Advocate
For the State	:	Mr. P.K. Shahi, Sr. Advocate Mr. K.K. Sinha, Advocate
For the Resp No. 6 & 8	:	Mr. Ashish Giri, Sr. Advocate Mr. Kumar Shanu, Advocate Mr. Kumar Abhishek, Advocate Mr. Shubham, Advocate Mr. Ranvir Pratap Singh, Advocate Mr. Parag Maini, Advocate Mr. Raghav Chadha, Advocate Mr. Abhishek Awasthi, Advocate

For the Resp no. 9	:	Mr. Ravinder Singh, Advocate Mr. Parth Gaurav, Advocate Mr. Govind Raj Shahi, Advocate
For the Resp no. 10	:	Mr. Abhinav Srivastava, Sr. Advocate Mr. Nirbhay Prashant, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 08-08-2025

In the present writ petition, the petitioner is seeking the following reliefs:-

> "(i) For quashing and setting aside the Agreement dated 19.11.2024 (Annexure P/14), executed between the State Health Society Bihar (SHSB) and the Consortium of M/s Hindustan Wellness Pvt. Ltd. (Lead Partner) and M/s Dr. Khannas Pathcare Pvt. Ltd. (Partner 2), as the selected agency for providing pathology services at designated government healthcare facilities under the Hub and Spoke model in Bihar. The said Agreement, executed pursuant to the issuance of the Letter of Intent (LOI), as detailed in Schedule I of the Agreement, stems from a selection process riddled with procedural irregularities and non-compliance with the eligibility criteria outlined in Section V, Clause 2.4 of the tender document. The LOI, which forms the basis of this Agreement, was issued in contravention of the mandatory requirement for bidders to demonstrate conducting a minimum of 20 lakh pathology tests per year during the last three financial years (FY 2021-22, FY 2022-23, and FY

2023-24) through client-issued certificates, supported by Work Orders, MoUs, Contracts, or Agreements.

(ii) For quashing and setting aside the selection of the Consortium of Respondent No. 8 and Respondent No. 9, comprising M/s Hindustan Wellness Pvt. Ltd. (Lead Partner) and M/s Dr. Khannas Pathcare Pvt. Ltd. (Partner 2), as the L1 bidder for providing pathology services at designated government healthcare facilities under the Hub and Spoke Model in Bihar, as finalized in the proceedings of the Project Appraisal Committee (PAC) meeting held on 23.10.2024, and formalized under the signatures of the PAC members on 29.10.2024, as contained in Annexure-P/13 related to Notice Inviting Tender (NIT) Reference No. 09/SHSB/Pathology Services/2024-25, on the ground that the Consortium of Respondent No. 8 and Respondent No. 9 does not fulfil the eligibility criteria mandated under Section V, Clause 2.4 of the tender document, which requires conducting a minimum of 20 lakh pathology tests per year during the last three financial years (FY 2021-22, FY 2022-23, FY 2023-24) and the submission of a self-attested copy of the Experience Certificate issued by the client (Government/Private), along with the Work Order/MoU/Contract Agreement, evidencing the count of pathology tests conducted per year during the last 3 years (FY 2021-22, FY 2022-23 and FY 2023-24), thus rendering their selection arbitrary, unlawful, and contrary to the terms of the tender.

(iii) For quashing and setting aside the Minutes of the Meeting of the Technical Committee, dated 21.10.2024, related to Notice Inviting Tender (NIT)

Reference No. 09/SHSB/Pathology Services/2024-25, as detailed in Annexure-P/8, for the selection of an agency to provide pathology services at designated government healthcare facilities under the Hub and Spoke model in Bihar. This meeting, held on 21.10.2024 at 5:30 p.m. in the Conference Hall of the State Health Society Bihar, Patna, was convened for the evaluation of technical bids and was issued under the signatures of the members present, are challenged on the grounds that the Consortium of Respondent Nos. 8 and 9 was deemed technically qualified despite failing to meet the eligibility criteria.

(iv) For commanding the respondents to produce the complete records pertaining to the tender process, including all documents submitted online in accordance with Section II, Clause 10.3 of the tender document, as well as the Letter of Intent (LOI), Letter of Award (LOA), Work Order, and any Contract Agreement executed between the respondent authorities and the L1 bidder (Respondent No. 8 and Respondent No. 09) for the execution of services under the subject contract. Upon such production and after judicial scrutiny, for quashing and setting aside the said LOI, LOA, Work Order, and any related contract agreement, considering the procedural irregularities, non-compliance with eligibility criteria, and violations of the tender process, to ensure transparency and uphold the integrity of public procurement.

(v) For further commanding the respondent authorities to recommence or reprocess the entire bidding process afresh, in light of the facts and circumstances of this case, as the fundamental eligibility criteria outlined in the tender document have been grossly violated in the selection of the consortium of Respondent No. 8 and Respondent No. 9 as the L1 bidder. The gross non-compliance with the mandatory eligibility requirements, including the minimum capacity of conducting 20 lakh pathology tests annually for the last three financial years, has undermined the integrity, transparency, and fairness of the procurement process. Alternatively, in view of the demonstrated ineligibility of Respondent No. 8 and Respondent No. 09, the petitioner, being, a fully compliant and eligible bidder, prays that the contract under the tender be awarded to the petitioner in accordance with the principles of fairness and equity in public procurement, thereby safeguarding public interest and ensuring adherence to procurement norms.

(vi) For grant of any other incidental/consequential or other appropriate relief/reliefs to which the petitioner may be found entitled."

Case of the Petitioner

2. The State Health Society, Bihar (hereinafter referred to as the 'Society' of 'the Tender-Inviting Authority') issued an e-tender (Notice Inviting Tender) (hereinafter referred to as the 'NIT') bearing Reference No. 09/SHSB/Pathology Services/2024-25 dated 21.08.2024. A copy of the e-tender has been brought on record as Annexure 'P/2' to the writ application. A perusal thereof would show that the Society floated the tender intending to select an agency for providing pathology services in Hub and Spoke

Model under Public Private Partnership ('PPP') mode for a period of 5 years from the date of signing of the contract agreement. The Society invited bids from eligible business entities, in providing the services as mentioned in the standard documents. After the NIT was published, on 30.08.2024, a corrigendum was issued in response to the various queries and requests made by the prospective bidders during the pre-bid meeting held earlier. By this corrigendum (Annexure 'P/3'), the timeline for submission of pre-bid queries was extended. All the prospective bidders had an opportunity to raise their concerns and receive appropriate responses. The second corrigendum was issued on 10.09.2024 extending the schedule of events for the tender process timeline revised for the submission of online bidding documents. A third corrigendum was subsequently issued on 17.09.2024 by which certain clarifications were issued clearing the concerns raised by the interested bidders during the pre-bid meeting as well as other submissions online. The technical committee decided to amend certain conditions in the NIT including the schedule of events. It is stated that pre-bid meeting was held on 03.08.2024 and the minutes of the meeting were duly recorded on 17.09.2024.

3. It is the case of the petitioner that despite issuance of three corrigendum and clarifications, the respondents failed to ensure a fair, transparent and competitive bidding process. The fourth corrigendum was issued on 25.09.2024 by the Society in response to multiple requests received from the bidders via e-mail to extend the timeline for submission of the documents under the NIT. The corrigendum updated the schedule of the events. The petitioner submitted it's bid on 03.10.2024 and according to the petitioner, they complied with each of the conditions laid down by the tender document.

4. The minutes of the technical committee meeting held on 21.10.2024 has been brought on record as Annexure 'P/8' to the writ application. The technical submissions from all the seven bidders were reviewed and all were technically qualified. The technical committee subsequently invited these technically qualified bidders for a presentation scheduled on 23.10.2024 and proposed to proceed with the opening with the financial bids.

5. It is the submission of the petitioner that the technical presentation was conducted in an extremely rash manner which compromised the ability of the bidders to adequately prepare. The technical presentation required the bidder to present a comprehensive proposal covering various aspects of the project, including an understanding of the project, implementation plans, human resource deployment, training methodology, service level agreement management, strategies for fulfilling key performance indicators and the use of laboratory information management system and other innovative IT technologies. The petitioner received e-mail on 22.10.2024 at 06:37 PM from the Director-in-Chief, Department of Health, Government of Bihar-cum-Chairman of the technical committee to attend the technical representation scheduled on 23.10.2024 at 11:00 AM onwards. It is further stated that the Executive Director of the Society informed the petitioner via e-mail dated 22.10.2024 at 06:05 PM to attend financial bid opening scheduled for 23.10.2024 at 04:00 PM. The submission is that even before technical presentation, the bidders were directed to be present for the financial bidding process. The copies of the e-mails have been brought on record vide Annexures ‘P/9’ and ‘P/10’ respectively.

6. According to the petitioner, during the financial bid opening, significant discrepancies were observed in the submissions of M/s Science House Medicals Pvt. Ltd. including two conflicting bids – one showing a one percent discount on the e-procurement portal and the other, in a separately uploaded excel sheet reflecting a 77.06 percent discount. Further, Hindustan Wellness Pvt. Ltd. and its consortium partner (L1 bidder) fails to meet the essential eligibility criteria of conducting at least twenty lakhs pathology tests annually as required under Section V, Clause 2.4 of the tender document. As per the requirement mandates, proof in the form of an experience certificate issued by the end-user (government or private) and supporting documents such as Work Orders or Agreements were required. M/s Hindustan Wellness Pvt. Ltd. (Respondent No. 8) and its consortium partner M/s Dr. Khanna's Pathcare Pvt. Ltd. (Respondent No. 9) could not furnish the mandatory documents as per Clause 2.4 which rendered their bid non-compliant and invalid but the Society permitted both the bidders i.e. M/s Science House Medicals Pvt. Ltd. (Respondent No. 10) and M/s Hindustan Wellness Pvt. Ltd. and its consortium joint (Respondent Nos. 8 and 9 respectively) to proceed. This is said to be a compromise with the quality and efficacy of pathology services posing a serious threat to the integrity and objectives of the tender process.

7. It is stated that on 23.10.2024 at 07:16 PM, the petitioner in co-ordination with Respondent No. 8 submitted an e-mail to the Executive Director of the Society attaching a formal representation and objection regarding observed irregularities in the financial bid opening. The joint representation emphasized that M/s Science House Pvt. Ltd.'s bid contained conflicting discount rates on the e-procurement portal. On 24.10.2024, the petitioner submitted a detailed representation to the Additional Chief Secretary, Health-cum-CEO of the Society and also to the Executive Director in which the petitioner highlighted significant discrepancy and procedural irregularities.

8. The petitioner highlighted the conflicting financial submissions by Respondent No. 10 and inability of Respondent Nos. 8 and 9 to comply with the mandatory conditions of at least one consortium partner must have an experience of conducting a minimum of twenty lakhs pathology tests per year over the last three financial years (FY 2021-22, FY 2022-23 and FY 2023-24). Copies of the representations of the petitioner are Annexures 'P/11' and 'P/12 series' to the writ application.

9. The grievance of the petitioner is that despite submission of the detailed representation highlighting that Respondent No. 8 and Respondent No. 9 do not fulfill the eligibility criteria, the Project Appraisal Committee (PAC) proceeded without proper scrutiny and recommended selection of the consortium of Respondent Nos. 8 and 9 as L1 bidder for providing these pathology services. This recommendation was issued under the signature of the members present at the PAC meeting, as recorded in the minutes of the meeting signed on 29.10.2024.

Submissions on behalf of the Petitioner

10. Mr. Mrigank Mauli, learned Senior Counsel representing the petitioner has drawn the attention of this Court towards Clause 2.4 under Section V of the NIT. Section V deals with the eligibility criteria. It is submitted that Clause 2.4 is a mandatory eligibility criteria which cannot be relaxed or ignored by the Society. It is submitted that the petitioner having pointed out the illegality and irregularity in the declaration of Respondent Nos. 8 and 9 as L1 bidder submitted an application under Right to Information Act, 2004 (hereinafter referred to as the 'RTI Act, 2004') vide Annexure 'P/15'. The petitioner requested to provide the details about the participants, technical and financial evaluations, Letters of Acceptance (LoA) issued and eligibility document submitted by specific bidders, compliance with procurement rules and any amendments or the complaints addressed during the process. It is submitted that respondents denied to furnish the information requested under Annexure 'P/15', on the ground that case is pending and, therefore, it would be exempted under Section 8(1) of the RTI Act, 2004.

11. Learned Senior Counsel submits that the specific statements of the petitioner in paragraphs '22' to '25' of the writ application have not been specifically denied by the Respondents. In this regard, paragraph ‘32’ of the counter affidavit filed on behalf of the Respondent Nos. 4 to 7 (Bihar Health Society) has been relied upon. Paragraph ‘30’ of the counter affidavit of Respondent No. 8 is in response to paragraphs ‘22’ and ‘23’ of the writ application which has also been placed before this Court to submit that even Respondent No. 8 has not specifically denied the statements made in paragraphs ‘22’ and ‘23’ of the writ application. In fact, a perusal of the counter affidavit of the Society as well as Respondent No. 8 would show that they did not deny that in terms of Clause 2.4 in the eligibility criteria, Respondent No. 8 had not submitted the self-attested copies of experience certificate issued by the client (government/private) along with Work Order/MoU/Contract/Agreement evidencing the counting of pathology test conducted per year during the last three years. It is submitted that Respondent Nos. 8 and 9 might have conducted one crore of pathology tests as per tender conditions but it is to be done for their client and they had to produce experience certificate issued by the client along with the Work Order.

12. Learned Senior Counsel further submitted that in terms of the paragraph ‘4(vi)’ under Section V (eligibility criteria), the partners of the consortium shall mandatorily form a Special

Purpose Vehicle (SPV) under the Companies Act, 2013 to execute the project, after they are selected and awarded the contract agreement. It is pointed out that SPV was to be formed within 90 days but it has yet not been done. It is a matter of record that without forming SPV, agreement was executed on 19.11.2024 between the Society and Respondent No. 8 which is establishing the fact that Society has only favoured the Respondent No. 8 by not adhering to Clause 2.4 which was a mandatory clause under the eligibility criteria and even thereafter the Society executed an agreement with Respondent No. 8 without realising that the agreement was to be executed with the SPV.

13. To strengthen his submissions, learned Senior Counsel has drawn the attention of this Court towards the format of Memorandum of Understanding (MoU and consortium) as contained under Section VII. The MoU between the consortium partners is required to be submitted at the time of bidding for the project. Paragraph ‘3’ of the MoU is a covenant under which the parties have undertaken that in the event the consortium is declared the selected bidder and awarded the project, it shall incorporate a separate entity a Special Purpose Vehicle (SPV) under Companies Act within 90 days of the issue of the Letter of Intent (LoI) and shall be required to sign a contract agreement with

SHSB for performing all its obligations as per the terms and conditions of the project. It is, thus, submitted that the agreement has been wrongly executed with consortium even as no SPV has been formed in terms of the conditions mentioned in the tender documents and its Annexure ‘5’.

14. Learned Senior Counsel submits that earlier, the petitioner had moved this Court in a writ application being CWJC No. 17583 of 2024 challenging the tender process initiated by the Society, with a specific focus on the technical presentation and the financial bid opening conducted on 23.10.2024. The writ petition was presented on 30.10.2024. At the time of presentation of the said writ, the minutes of the financial bid held on 23.10.2024 and signed on 29.10.2024 were not known. Later on, when the petitioner came to know the same, two I.As. Were filed for impleadment of parties. By its judgment dated 03.12.2024, this Court dismissed the earlier writ application granting liberty to the petitioner to challenge the issuance of Letter of Award (LoA) to the successful bidders, if the petitioner is so aggrieved. It is submitted that during the pendency of the writ application, the petitioner learnt that an agreement dated 19.11.2024 has been executed between the Society and Respondent Nos. 8 and 9.

Submissions on behalf of the Respondent Nos. 4 to 7 (State Health Society)

15. A counter affidavit has been filed on behalf of Respondent Nos. 4 to 7 through its State Programme Officer in the office of the Executive Director, State Health Society, Bihar. It is submitted that the entire tendering process has been conducted in fair and transparent manner. The tender was floated by the Society as an initiative to address the growing demand for quality health care services in the State, particularly, in under-served and remote areas. The PAC has adhered to the established procedure and the financial bids of all the seven technically qualified bidders were duly opened on 23.10.2024 and the comparison sheet was downloaded in presence of all the bidders and the evaluation was done on the basis of this comparison sheet itself. The selection is based on a maximum percentage of discount quoted by the participated bidder on the base price i.e. prevailing on the CGSH (Central Government Health Scheme) rates which is the common practice being followed in various states to over diagnostic services in Government Health Care facilities. Upon conclusion of the bidding process, consortium of Respondent Nos. 8 and 9 emerged as L1, accordingly they were issued the LoI on 05.11.2024. Subsequently, the agreement was executed on

19.11.2024 and Award Letter dated 31.12.2024. All the district authorities were informed about the selection of bidder no. 2 for the provision of the specified pathological services.

16. It is submitted that the petitioner did not qualify as alone, therefore, it's claims seem to stem from its dissatisfaction with the outcome of the tender process. The objection regarding the selection/tender process has been raised by the petitioner only subsequent to their rejection in the financial bid evaluation and not at any prior stage of the tender process. It is submitted that the petitioner only intended to create obstruction and delay in ongoing tender process.

17. It is submitted that bid submitted by the M/s Science House Medicals Pvt. Ltd. was disqualified/rejected strictly in accordance with the terms of the 'NIT' because the said bidder had quoted two different financial rates "1" in the financial rate column of the comparison sheet, while the percentage discount on the base price was discovered to be "77.06%" in the same sheet. While answering paragraphs '22' to '27' of the present writ application, the Respondent Nos. 4 to 7 have submitted in paragraph '32' of their counter affidavit that Respondent Authorities have conducted the tender process in fair and transparent manner and the petitioner's claim is void of merit which is required to be dismissed outrightly. It is submitted that Respondent Authorities have meticulously followed the terms and conditions of the Notice Inviting Tender in question and the selection of the successful bidder was made through and after following the objective evaluation of all the bids received.

18. In course of his submission, Mr. P.K. Shahi, learned Advocate General submits on the strength of the statement made in paragraph '30' of the supplementary counter affidavit of the Society that the tender evaluation committee verified the documents submitted by the successful bidders, certificate of Chartered Accountant (in short 'CA') along with MoU/Work Order/Agreement sufficiently satisfied with the requested credentials were accepted as a valid and reliable format of documentary evidence in the absence of any prescribed format in 'NIT' against the requirement of client issued count certificates in the tender, particularly, for providing entity having retail business. It is stated in paragraph '35' of the supplementary counter affidavit that the tender document did not prescribe any specific format to show the count of test conducted specially for the companies that handle millions of individual pathology tests like retail labs. It is submitted that the CA Certificate is highly reliable and based on audited financial records which are thoroughly checked and are legally recognized as accurate. Although, in the supplementary counter affidavit (paragraph '35'), it is stated that the supporting documents are voluminous, therefore, the deponent instead of enclosing such documents with this affidavit craves leave of this Court to produce the same as and when required. In course of his submission, learned Advocate General has clearly stated that apart from the CA Certificate, there is no other document, particularly, by way of experience certificate issued by the client (government/private) along with Work Order/MoU/Contract Agreement evidencing the count of pathology tests, in the possession of the society. In fact, towards the end of his submission, learned Advocate General has submitted that the Society has right to relax any of the conditions in the NIT.

19. It is submitted that the denial of information sought under RTI is in terms of the specific statutory exemptions provided by the RTI Act. It would not have any bearing upon the fairness of the tender process.

<u>Submissions on behalf of the Respondent Nos. 8 and 9</u>

20. A counter affidavit has been filed on behalf of Respondent Nos. 8 and 9. In course of argument, Mr. Ravinder Singh, learned counsel for the Respondent No. 9 has adopted the arguments/submissions made on behalf of Respondent No. 8. The

Respondent No. 8 has raised a preliminary issue. It is submitted that the petitioner has filed this writ application just to prolong the ongoing litigation as the petitioner has already signed a rate bearing Tender No. BMSIC/REAGENT/19-01 for the same work with the Bihar Medical Services and Infrastructure Corporation Limited with tenure 'extending till 27th June, 2027 or till the period when new rate contract comes into force whichever is earlier'. The existing rate card governing services rendered by the petitioner shall cease to exist upon the commencement of the said new tender i.e. NIT Reference No.-09/SHSB/Pathology Service/2024-25. A copy of the communication dated 13.06.2024 issued by the GM (Procurement) BMSICSCL to the Managing Director of the petitioner company has been brought on record. It is submitted that the petitioner is supplying Reagents (chemicals) to the Government of Bihar at an exorbitantly high rate. In contrast under the Notice Inviting Tender in question, the consortium of Respondent Nos. 8 and 9 shall be providing comprehensive end-to-end services including manpower, reagents, machinery and other essential components at merely 1/6th of the rate specified in the existing rate contract. The comparative rate chart detailing the rates at which the petitioner on one hand and Respondent Nos. 8

and 9 on the other hand offering the same services to the people of Bihar has been provided in paragraph '5' of the counter affidavit.

21. It is submitted that the petitioner was blacklisted by the Government of Maharashtra for being involved in unethical practice and has been under litigation which has not been disclosed by him.

22. It is submitted that pursuant to the issuance of Work Order/Purchase Order dated 05.11.2024 and signing of the agreement dated 19.11.2024, the consortium of Respondent Nos. 8 and 9 has made investment and added manpower whereafter Respondent No. 8 is conducting the pathology test. It is submitted that the tender process has been conducted in a fair manner and keeping in view the judgment of the Hon'ble Supreme Court in the case of **Tata Motors Limited Vs. The Brihan Mumbai Electric Supply and Transport Undertaking (BEST) and Others** reported in **2023 SCC OnLine SC 671,** this Court need not exercise its extra writ jurisdiction to interfere with the selection of Respondent Nos. 8 and 9 as the lowest bidder.

23. The bone of contention in the present writ application is the experience of Respondent Nos. 8 and 9 in terms of Clause 2.4 under the eligibility criteria in Section V of NIT. In this regard, the petitioner has relied upon the statements made in paragraphs ‘22’ and ‘23’ of the writ application. Respondent No. 8 has responded to paragraphs ‘22’ and ‘23’ of the writ application in paragraph ‘30’ of its counter affidavit wherein it is stated that the statements made in paragraphs ‘22’ and ‘23’ of writ application are wrong and denied and was vague and merely speculative in nature.

24. In course of argument, learned Senior Counsel for the Respondent No. 8 has relied upon the judgment dated 03.12.2024 passed by an Hon’ble Division Bench of this Court in CWJC No. 17583 of 2024 (POCT Services Vs. The State of Bihar and Others), copy of which has been enclosed as Annexure ‘R/5’ to the counter affidavit of Respondent No. 8. It is submitted that Annexure ‘R/5’ would operate as ‘constructive *res judicata’* and deserves to be dismissed on this ground alone. Reliance has been placed on paragraph ‘17’ of the writ application (CWJC No. 17583 of 2024) to demonstrate that earlier, the same writ petitioner had pointed out that Respondent No. 8 does not meet the essential capacity requirements of twenty lakhs tests annually as mandated under Section V Clause 2.4 of the tender document but while dismissing the writ petition, the Hon’ble Division Bench of this Court was not inclined to entertain the writ application filed against the decision of the technical committee to call for a technical presentation followed up opening of the financial bid and the tender process was carried out and concluded. So far as the liberty granted to the petitioner in the said writ to challenge the 'LoA' issued to the successful bidder is concerned, it is the submission of learned Senior Counsel for Respondent No. 8 that no substantive ground has been raised by the petitioner in the present writ with respect to the LoA and in fact, the petitioner seeks to challenge the decision of the technical committee which would be impermissible and not entertainable. Reliance in this regard has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Celir LLP Vs. Sumati Prasad Bafna and Others** reported in **2024 SCC OnLine SC 3727**.

25. Learned Senior Counsel for the Respondent No. 8 submits that the consortium of Respondent Nos. 8 and 9 meets the technical requirement and all the required documents were categorically uploaded on the e-procurement portal for the satisfaction of the State Health Society. It is submitted that the Respondent Health Society acting in full compliance of the requirement of the tender documents on the experience certificate duly issued by the client (government/private). It is submitted that in accordance with Clause 2.4, the Respondent has duly submitted experience certificate, MoU/Agreement from concerned clients and evidence of doing much more than twenty lakhs pathology tests per annum.

26. In course of arguments/ submissions, Mr. Ashish Giri, learned Senior Counsel for Respondent No. 8 accepts the fact that State Health Society has taken stand that what were submitted by Respondent No. 8 were the Chartered Accountant Certificate and not the experience certificate issued by the client (government/private). It has also been admitted at the Bar that so far as the copies of the MoU/Agreement between Respondent No. 8 and Respondent No. 9 with their respective clients are concerned, no copy of MoU/Agreement has been submitted.

27. As regards formation of SPV, it is submitted that as per tender document, the formation of SPV is only subsequent action to be done after 90 days from the date of Letter of Intent (LoI) and it is not a condition precedent. Referring to Clause 8.9 Section III of the tender document, learned Senior Counsel submits that a contract between the society and the selected bidder was required to be sent within 21 days from the issuance of LoI. It is in this background that LoI was issued on 29.10.2024 and subsequently, agreement was executed on 19.11.2024 i.e. within 21 days.

Submission of Respondent No. 10

28. A counter affidavit has also been filed on behalf of Respondent No. 10 i.e. the consortium of M/s Science House Medical Private Limited and Diagnostic Pvt. Ltd. It is the stand of Respondent No. 10 that they have filed a separate writ petition bearing No. 17505 of 2024 which is pending consideration before this Court. In the said writ petition, the Respondent No. 10 has sought quashing of the financial bid disqualification order dated October 29, 2024 which was issued by Respondent Nos. 2 and 3. In this writ petition, the Respondent No. 10 has requested this Court to issue direction to Respondent Nos. 1, 2 and 3 to reconsider its financial bid and to award the contract to Respondent No. 10.

29. It is submitted that the only intention of the petitioner is to delay the fair resolution of the matter and obstruct justice for Respondent No. 10 who has been unfairly affected by a biased and unjust financial evaluation carried out by the authorities. While denying the allegation made by the petitioner in the writ application against this respondent in paragraph '16' of the writ application and saying that those are false, misleading and baseless, Respondent No. 10 has submitted that Clause 9.5 of Section II (Instructions to Bidders) of the tender document explicitly states that bidders are required to download the financial bid file from e-procurement portal, fill in the prescribed format by entering their quoted discount rate and upload the complete file. Only one standard format (in the form of an excel sheet) is made available to the bidders to download, fill out and upload via the e-procurement portal. This form corresponds to Annexure '16' to the tender document. According to Respondent No. 10, they fully adhered to these instructions and submitted its financial bid using the excel sheet downloaded from the e-procurement portal. Thus, the allegation that Respondent No. 10 submitted two bids as alleged by the petitioner is entirely unfounded. Learned counsel for Respondent No. 10 has further submitted that the Respondent No. 10 has filed its writ application on 13th November, 2024.

30. Upon becoming aware of the filing of writ, the Respondent Soceity hastily executed the agreement with the consortium of Respondent Nos. 8 and 9 on 19th November, 2024. This action appears to be a deliberate attempt to deprive Respondent No. 10 of its rightful claim over the contract despite having quoted the highest discount percentage of 77.06% which was 4.01% higher than the discount rate offered by the consortium of Respondent No. 8 and Respondent No. 9. Moreover, this rushed execution of the agreement seemingly meant to evade judicial scrutiny and deny Respondent No. 10 its rightful access to justice.

31. At this stage, this Court would record that the writ petition preferred by Respondent No. 10 was earlier heard on 24.01.2025 by a learned co-ordinate Bench of this Court wherein a direction was issued to the Executive Director (Society) not to precipitate the matter till the next date of hearing. Registry was directed to process the Token no. 1283 of 2025 (i.e. of the present writ) and list the matter along with the said writ petition before the roster Bench. On 05.02.2025, both the writ petitions were listed together and on the said date, an interim direction dated 24.01.2025 was ordered to be continued till final disposal.

32. It appears from the record that when the parties exchanged their pleadings and the matters were being heard, vide order dated 18.02.2025, the Registry was directed to place the matter before Hon’ble the Acting Chief Justice on administrative side and obtain necessary order to place the matter before a Bench to which one of the Hon’ble Judges is not a party to the proceeding. Thereafter, the matter was assigned to this Bench. The hearing in CWJC No. 17505 of 2024 continued on several dates. The hearing was concluded in the said matter on 24.06.2025 and the judgment was reserved. While reserving the judgment, it was made clear that though the matters are being heard separately, the judgment in both the writ applications would be rendered simultaneously after completion of hearing in the present writ. In the aforementioned background, the hearing of the present writ application begun from 26.06.2025 which continued on several dates and ultimately, the parties concluded their submissions on 09.07.2025. They were given liberty to file their respective written arguments/submissions by 15.07.2025.

Consideration

33. We have heard learned Senior Counsel for the parties.

Plea of Constructive *Res Judicata*

34. It appears from the records that earlier, the petitioner had moved this Court in CWJC No. 17583 of 2024. The said writ application was dismissed with liberty to challenge the 'LoA', by a Hon'ble Division Bench of this Court vide judgement dated 03.12.2024. A perusal of the order of the Hon'ble Division Bench would show that in the said writ application, the petitioner raised a grievance against the decision taken on 21.10.2024 by the Technical Committee to proceed on a technical presentation and opening of financial bid and the technical presentation called on 23.10.2024 at 11:00 AM and the financial bid opening at 4:00 PM on the very same day. In the writ petition following reliefs were prayed for:-

> "i. A writ of certiorari, or any other suitable writ, order, or direction, quashing the order contained in File No. SHSB/GA/PPP/8035/2024/3746, dated 22.10.2024, issued by the Executive Director of the State Health Society Bihar (SHSB), as detailed in Annexure-P/9, This order pertains to the participation in the Financial Bid Opening under NIT Reference No. NIT-09/SHSB/Pathology Services/2024-25, which was conveyed to the petitioner via email on 22.10.2024 at 6:05 p.m.
> ii. A writ of Certiorari, or any other appropriate writ, order, or direction, quashing the order contained in File No. SHSB/GA/PPP/8035/2024/3678, dated 21.10.2024, issued by the Director-in-Chief, Department of Health, Government of Bihar, who is also the Chairman of the Technical Committee for the tender process under NIT No. 09/SHSB/Pathology Services/2024-25, as detailed in Annexure-P/8. This order pertains to the selection of an agency to provide pathology services at designated government healthcare facilities under the Hub and Spoke model in the State of Bihar. The petitioner was invited for a technical presentation on 23.10.2024 at 11:00 am. at the Conference Hall, 4th Floor, Swasthya Bhawan, State Health Society, Sheikhpura, Patna 800014. The invitation, conveyed through email on 22.10.2024 at 6:37 p.m.,
> iii. A writ of Certiorari, or any other appropriate writ, order, or direction, for quashing the Minutes of the Meeting of the Technical Committee, dated 21.10.2024, related to Notice Inviting Tender (NIT). Reference No. 09/SHSB/Pathology Services/2024-25, as detailed in Annexure-P/7, for the selection of an agency to provide pathology services at designated government healthcare facilities under the Hub and Spoke model in

> Bihar. This meeting, held on 21.10.2024 at 5:30 p.m. in the Conference Hall of the State Health Society Bihar, Patna, was convened for the evaluation of technical bids and was issued under the signatures of the members present.
> iv. A writ of Mandamus, or any other appropriate writ, order, or direction, restraining the respondents from proceeding further with the impugned tender process under NIT No. 09/SHSB/Pathology Services/2024-25; and/or for grant of any other incidental/consequential or other appropriate relief/reliefs to which the petitioner may be found entitled."

35. We have called for the records of CWJC No. 17583 of 2024. On perusal of the records, it is found that the affidavit in the said writ petition was sworn on 30.10.2024 and copies of the same were served on the same day in the office of the learned Advocate General. The writ application was presented on that very day i.e. on 30.10.2024.

36. In the writ application, the petitioner raised grievance against the decision of the Technical Committee allowing ineligible bidder to participate in the financial bid. In paragraph '17' of the writ application, the petitioner had raised a grievance against respondent no.8 and respondent no. 10. It is stated in paragraph '23' that M/s Science House Medicals Private Limited (respondent no.10) was declared L-1 by the Committee while the portal displayed them as L-7. In the prayer portion of the writ application, a prayer was made inter alia to grant relief in terms of paragraph '1' as also to restrain the society from proceeding further and from awarding the contract or LoI to M/s. Science House Medicals Private Limited or any bidder in violation of the tender terms.

It is evident that the petitioner was not aware that consortium of Respondent no. 8 and Respondent No. 9 has been declared L-1 bidder.

37.. In the aforementioned background of the facts and reliefs prayed in the writ application, we have to take a view as to whether the judgment of the Hon'ble Division Bench of this Court passed in CWJC No. 17583 of 2024 would operate against the petitioner on the principle of constructive res judicata. When we go through the judgment of this Court, it is found that in paragraph '2' of the judgment, the Hon'ble Division Bench has taken note of the fact that the petitioner had filed an interlocutory application seeking to implead two successful bidders on the ground that they had been qualified illegally and without looking at the requirements as per the NIT, the Hon'ble Division Bench observed inter alia "..................... which we perceive as an extension of the scope of the writ petition, against which no relief has been sought in the memorandum."

38. The Hon'ble Division Bench observed that in the writ petition, there are four reliefs sought, which are in the nature of a writ of certiorari against the decision to hold the technical presentation at 11:00 AM on 23.10.2024; the financial bid opening at 4:00 PM on the same day and the decision to that end of the Technical Committee taken on 21.10.2024.

39. The Hon’ble Division Bench having taken note of the four reliefs which were prayed in the writ application finally observed in paragraphs ‘12’ ‘13’ and ‘14’ as under: -

> “**12.** We cannot permit the petitioner to expand the scope of the writ petition; to include allegations against the successful bidders, to be agitated, when even such relief was not sought in the writ petition. We also notice that even today there is only an impleadment sought of two bidders who participated without any amendment to the pleadings or reliefs. We are not inclined to entertain the writ petition filed against the decision of the Technical Committee to call for a Technical Presentation, followed up with the opening of the financial bid and the tender process so carried out and concluded. However, we make it clear that the petitioner would be left liberty to challenge the LoA issued to the successful bidders, if he is so aggrieved.
>
> **13.** The writ petition would stand dismissed with the above reservation.
>
> **14.** Interlocutory Application(s), if any, shall stand closed”

40. To us, it appears that while dismissing the writ application, the Hon'ble Division Bench has made it clear that the petitioner would be left at liberty to challenge the LoA issued to the successful bidders, if he is so aggrieved. The Hon'ble Division Bench was conscious about the scope of the litigation at the said stage. We have noticed from the pleadings available on the record that minutes of the meeting dated 23.10.2024 was finally signed by the members except one of them of the PAC only on 29.10.2024 and the same was uploaded on the portal of the State Health Society on 30.10.2024. Since the writ application was already affidavited, copy served and filed in this Court on 30.10.2024 (14:35:25 Hrs.) as per records available with this Court, it may be easily found that the petitioner had no opportunity to challenge the proceeding of the PAC meeting held on 29th October, 2024 in which the consortium of Respondent no. 8 and Respondent no.9 were declared the successful bidders. When they came to know about the decision of the PAC in it's meeting held on 23rd October, 2024, they moved this Court by filing Interlocutory Application to implead the successful bidders, however, the Hon'ble Division Bench did not allow the petitioner to agitate the allegations against the successful bidder and to proceed with the writ application by impleading the successful bidders on the ground that there was no amendment to the pleadings or the reliefs were sought for. Even though, we find that the petitioner had agitated one of the issues which is being raised in the present writ application against the successful bidders in paragraph '17' of the writ application, it is evident to us that the said issue was not adjudicated by the Hon'ble Division Bench and liberty was granted to the petitioner to challenge the 'LoA' issued to the successful bidders.

41. This Court is, therefore, of the opinion that to shut out the petitioner from filing the present writ application despite the fact that earlier the Hon'ble Division Bench had given liberty to the petitioner to challenge the LoA, without adjudicating the issues raised in paragraph '17' of the writ application, would amount to leaving the petitioner remediless. It would not be a fair play in action. The principles of constructive res judicata would have no application in the facts of the present case.

42. Respondent no. 8 has relied upon the judgment of the Hon'ble Supreme Court in the case of **Celir LLP** (supra). Paragraphs '135' to '153' of the judgment have been referred to. The Hon'ble Supreme Court has discussed in detail the 'Henderson Principle' as corollary to the constructive res judicata in paragraphs '135' '136' and '137' are quoted hereunder for a ready reference: -

> "**135.** The 'Henderson Principle' is a foundational doctrine in common law that addresses the issue of multiplicity in litigation. It embodies the broader concept of procedural fairness, abuse of process and judicial efficiency by mandating that all claims and issues that could and ought to have been raised in a previous litigation should not be relitigated in subsequent proceedings. The extended form of *res-judicata* more popularly known as 'Constructive Res Judicata' contained in Section 11, Explanation VII of the CPC originates from this principle.
>
> **136.** In *Henderson* v. *Henderson*, [1843] 3 Hare 999, the English Court of Chancery speaking through Sir James Wigram, V.C. held that where a given matter becomes the subject of litigation and the adjudication of a court of competent jurisdiction, the parties so litigating are required to bring forward their whole case. Once the litigation has been adjudicated by a court of competent jurisdiction, the same parties will not be permitted to reopen the *lis* in respect of issues which might have been brought forward as part of the subject in contest but were not, irrespective of whether the same was due to any form of negligence, inadvertence, accident or omission. It was further held, that principle of *res judicata* applies not only to points upon which the Court was called upon by the parties to adjudicate and pronounce a

judgment but to every possible or probable point or issue that properly belonged to the subject of litigation and the parties ought to have brought forward at the time. The relevant observations read as under:—

"*In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.* […]"

(Emphasis supplied)

137. The above proposition of law came to be known as the 'Henderson Principle' and underwent significant evolution, adapting to changing judicial landscapes and procedural requirements. The House of Lords in *Johnson* v.

Gore Wood & Co, [2002] 2 A.C. 1, upon examining the 'Henderson Principle' authoritatively approved it with the following observations:—

(i) Lord Bingham of Cornhill integrated the principle with the broader doctrine of abuse of process and held that the bringing of a claim or the raising of a defence in later proceedings which ought to have been raised earlier will not always be hit by this principle, but rather will apply where such point is sought to be raised as an additional or collateral attack on a previous decision and the bringing forth of such ground amounts to misusing or abusing the process of the court or as a means for unjust harassment of a party. The relevant observations read as under:—

"Henderson *v.* Henderson *abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same : that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be* *raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not [...]"*

(Emphasis supplied)

(ii) Lord Millett construing the Principle held that it does not belong to the doctrine of *res-judicata* in the strict sense but rather was analogous to the doctrine, as it goes a step further to encompass even those proceedings that either culminated into a settlement or issues which had never been adjudicated previously in order to protect the process of the court from abuse and the defendant from oppression. The relevant observations read as under:—

"*As the passages which I have emphasised indicate, Sir James Wigram V-C did not consider that he was laying down a new principle, but rather that he was explaining the true extent of the existing plea of res judicata. Thus he was careful to limit what he was saying to cases which had proceeded to judgment, and not, as in the present case, to an out of court settlement. Later decisions have doubted the correctness of treating the principle as an application of the doctrine of res judicata, while describing it as an extension of the doctrine or analogous to it ... But these various defences [res judicata, issue or cause of action estoppel] are all designed to serve the same purpose : to bring finality to litigation and avoid the oppression of subjecting a defendant unnecessarily to successive actions. <u>While the exact relationship between the principle expounded by Sir James Wigram V-C and the defences of res judicata and cause of action and issue estoppel may be obscure, I am inclined to regard it as primarily an ancillary and salutary principle necessary to protect the integrity of those defences and prevent them from being deliberately or inadvertently circumvented.</u>*

<u>In one respect, however, the principle goes further than the strict doctrine of res judicata or the</u>

formulation adopted by Sir James Wigram V-C, for I agree that it is capable of applying even where the first action concluded in a settlement. Here it is necessary to protect the integrity of the settlement and to prevent the defendant from being misled into believing that he was achieving a complete settlement of the matter in dispute when an unsuspected part remained outstanding. However this may be, the difference to which I have drawn attention is of critical importance. It is one thing to refuse to allow a party to relitigate a question which has already been decided; it is quite another to deny him the opportunity of litigating for the first time a question which has not previously been adjudicated upon. This latter (though not the former) is prima facie a denial of the citizen's right of access to the court conferred by the common law and guaranteed by article 6 … While, therefore, the doctrine of res judicata in all its branches may properly be regarded as a rule of substantive law, applicable in all save exceptional circumstances, the doctrine now under consideration can be no more than a procedural rule based on the need to protect the process of the court from abuse and the defendant from oppression […]"

(emphasis supplied)"

43. The Hon'ble Supreme Court has held in paragraph '140' of the judgment as under:-

"**140.** The fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation benefits not the litigants whose rights have been determined, but those who seek to delay the enforcement of those rights and prevent them from reaching the rightful beneficiaries of the adjudication. The Henderson Principle, in the same manner as the principles underlying *res judicata*, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceeding. A party which avoids doing so does it at its own peril. In deciding as to whether a matter might have been urged in the earlier proceedings, the court must ask itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy. In holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future. The doctrine itself is based on public policy flowing from the age-old legal maxim *interest reipublicae ut sit finis litium* which means that in the interest of the State there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause."

44. On a bare reading of the aforementioned paragraphs, it would appear that in deciding as to whether a matter might have been urged in the earlier proceedings, this Court must ask itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the Court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy. When we apply this principle in the facts of the present case, we are of the considered opinion that in fact, the issues raised in the present writ petition have not been adjudicated/determined by the Hon'ble Division Bench and it was left open to the petitioner to challenge the 'LoA' issued to the successful bidder.

45. The order dated 03.12.2024 passed in CWJC No. 17583 of 2024 clearly shows that the Court did not allow the petitioner to expand the scope of the writ petition but granted liberty to challenge the 'LoA' issued to the successful bidder. It is evident that the petitioner could not have challenged the decision of the PAC as contained in minutes dated 23rd October 2024 which was in fact uploaded only on 30.10.2024. The Hon'ble Division Bench instead of determining the issues raised in earlier writ application, and further allowing the petitioner to extend the scope of writ application, granted liberty to challenge the LoA issued to the successful bidders. We would reiterate that the submissions of learned Senior counsel for respondent no. 8 that the writ application would be barred by principles of constructive res judicata and Henderson principles is liable to be rejected.

46. There would be one more reason to reject this plea. This Court has found that in course of scrutiny of Tender the Technical Bid Committee has made wrong and false enteries in the technical bid comparative chart which is Annexure '1' to Annexure 'P/17' of the writ petition. This has been done in order to favour the consortium of Respondent Nos. 8 & 9. In such circumstance, this Court cannot remain oblivious of the seriousness of the matter and this writ cannot be said to be an abuse of the process of Court.

Essential Conditions-Mandatory Documents as per N.I.T.

47. We have noticed from the submissions of the parties recorded hereinabove that the bone of contention of the parties cluster around clause 2.4 under section V eligibility criteria. The same is quoted hereunder for a ready reference:-

	Eligibility Criteria	Mandatory Documents
2.4	The bidder (In case of sole bidder) should have an experience of conducting a	Self-attested copy of Experience Certificate Issued by Client

	minimum 20 lakh pathology tests per year during the last 3 years (FY 2021-22, FY 2022-23 and FY 2023-24). In case of consortium, either one of the consortium members should have the experience of conducting a minimum 20 lakh pathology tests per year during the last 3 years (FY 2021-22, FY 2022-23 and FY 2023-24).	(Government/Private) along with Work Order/MoU/Contract/Agreement evidencing the count of pathology tests conducted per year during the last 3 years (FY 2021-22, FY 2022-23 and FY 2023-24).

48. It is evident from a bare reading of Clause 2.4 that it is one of the essential eligibility criteria in support of which documents are to be submitted by the bidders. The documents which are required to be submitted have been duly pointed out. A self attested copy of experience certificate issued by the client (government/private) along with work order/MoU/contract/agreement evidencing the count of pathology tests conducting per year during the last three years (FY 2021-22, 2022-23, 2023-24) were required to be submitted by the bidders.

49. In paragraphs ‘22’ and ‘23’ of the writ application, the petitioner has made specific statements which we quote hereunder for a ready reference:-

> “**22.** That the petitioner has come to know that the **Consortium of M/s Hindustan Wellness Pvt. Ltd. (Lead Partner) and M/s Dr. Khannas Pathcare Pvt. Ltd. (Partner 2)** fails to meet the essential capacity requirement of conducting 20 lakh tests annually, as mandated under **Section V, Clause 2.4** of the Tender Document. The consortium's claim of

> meeting this requirement is based solely on a **self-attested document**, which is in direct contravention of the stipulations under the said clause of the Notice Inviting Tenders. The petitioner submits that this self-attested declaration does not constitute credible evidence as per the tender conditions, and the State authorities are well within their rights to verify the claim. If deemed necessary, the relevant bid documents can be brought on record before this Hon'ble Court for further scrutiny. The inability to satisfy this fundamental eligibility criterion significantly undermines the qualification of **Consortium of M/s Hindustan Wellness Pvt. Ltd. (Lead Partner) and M/s Dr. Khannas Pathcare Pvt. Ltd. (Partner 2)** to proceed further in the tender process, rendering their selection arbitrary and non-compliant.
>
> **23.** That such inconsistencies, including the selection of **M/s Hindustan Wellness Pvt. Ltd.** and its consortium partner as the L1 bidder despite their failure to meet the mandatory eligibility criteria, violate the guidelines issued by the Central Vigilance Commission (CVC) and established procurement principles. These principles mandate strict adherence to the eligibility conditions outlined in the tender document to ensure transparency, fairness, and accountability in public procurement processes. The deviation from these norms in favor of **M/s Hindustan Wellness Pvt. Ltd.** undermines the integrity of the tender process and creates an unfair and non-competitive environment, contravening the very objectives of public procurement."

50. In response to the aforementioned statements in the writ petition, in its counter affidavit Respondent nos. 4 to 7 have come out with the following statements:-

> "32. The contents of **paragraph 18 to 20 and paragraphs 22 to 27** of the writ petition are wholly incorrect, misleading, and are denied in their

entirety. The respondent authorities categorically state that the tender process was conducted in a fair, transparent manner and in strict compliance with the principles of law. Accordingly, the petitioner's claims are devoid of merit and should be dismissed outright.

It is further submitted that in this regard that paragraph 27 of this counter affidavit is reiterated herein for the sake of brevity. The aforementioned allegations of the petitioner is merely a repetition, baseless allegations without any substantive foundation. The respondent authorities have meticulously followed the terms and conditions of the Notice Inviting Tender (NIT) in question, and the selection of the successful bidder was made after a thorough and objective evaluation of all bids received."

51. In its supplementary counter affidavit, respondent nos. 4 to 7 have once again tried to explain it further. In this regard, their statements made in paragraphs '34' and '35' of the supplementary counter affidavit are to be taken note of which are quoted hereunder for a ready reference:-

"**34.** That the tender evaluation committee verified the documents submitted by successful bidder such as certificate of Chartered Accountant along with MoU/Work Order/Agreement and being sufficiently satisfied with the requisite credentials, accepted as a valid and reliable form of documentary evidence in the absence of any prescribed format in NIT against the requirement of client-issued count certificates in the tender particularly for private entity having retail business.

35. That the tender document (NIT) did not prescribe any specific format to show the count of test conducted especially for companies that handle

> **millions of individual pathology tests, like retail labs and respondent no.8 & 9.** The supporting documents are voluminous, therefore the deponent instead of enclosing such documents with this affidavit craves leave of the Hon'ble court to produce the same as and when required.
>
> That Chartered Accountant's certificate is highly reliable and based on audited financial records, which are thoroughly checked and are legally recognized as accurate. This certificate was also backed up by other documents like work orders and agreements, MOU etc. proving that pathology tests have been done/ pathology service provided by successful bidder. Thus the Technical Committee has acted in a reasoned manner and no illegality or arbitrariness can be attributed to the decision to technically qualify the selected bidder in the absence of any prescribed format to show count of test done particularly for private entity/retail business entity. Hence the decision of technical committee is neither arbitrary nor violative to tender process as wrongly alleged by petitioner rather a fiscally responsible and legally sustainable measure/decision in furtherance of public interest and effective financial management."

52. In response to paragraphs '22' and '23' of the writ petition, the contesting Respondent No. 8 has made the following statements in paragraph '30' of its' counter affidavit:-

> "**30.** That the contents of Paragraphs Nos. 22 and 23 of the Writ application are wrong and denied. The same are vague and merely speculative in nature without any substantiation whatsoever. The same has been replied to extensively in the preceeding paragraphs."

Apparantly, there is no denial of the statements made in paragraphs ‘22’ and ‘23’ of the writ petition.

53. As recorded hereinabove, in course of his submissions, Mr. P.K. Shahi, learned Advocate General has clearly stated that apart from the CA certificate, there is no other document by way of experience certificate issued by the client (Government/Private) along with MoU/order/contract evidencing count of pathology tests is in possession of the Society. We have also recorded that Mr. Ashish Giri, learned Senior Advocate representing Respondent No. 8 has accepted the fact that the State Health Society has taken a stand that what were submitted by Respondent No. 8 were the CA certificate and not the experience certificate issued by the client (Government/Private) and no copy of MoU/Agreement has been submitted.

54. Despite this being clear, in course of hearing of the writ petition, this is unfortunate that when the written submissions were filed on behalf of Respondent No. 8, it has been emphatically submitted in some of the paragraphs that Respondent Nos. 8 and 9 have satisfied the criteria under Clause 2.4 by providing experience certificate duly issued by the client (government/private).

55. We find that in the written submission of Respondent No. 8, instead of accepting the correct position which emerged in course of hearing of the writ application, attempt has been made to repeat and reiterate certain facts with regard to the submissions of the experience certificate issued by the client.

56. Having gone through the aforementioned pleadings, we find that clause 2.4 of Section V prescribes a mandatory document, in fact in paragraph 30 of their supplementary counter affidavit, respondent nos. 4 to 7 have themselves termed this document a mandatory document, it is crystal clear that respondent no. 8 had not provided the self-attested copies of experience certificate issued by client (government/public) along with work order/MoU/agreement/contract) evidencing the count of pathology tests conducted per year. Initially, neither respondent nos. 4 to 7 nor respondent no. 8 specifically answered the paragraph '22' and '23' of the writ application but having noticed that their statements are not specifically answering the assertions of the petitioner, the respondent nos. 4 to 7 have come out with supplementary counter affidavit in which they have for the first time talked about submission of a certificate of Chartered Accountant along with MoU/work order/agreement which satisfies the PAC. In course of hearing, we were given to peruse the certificate of Chartered

Accountant and at this stage, it has been detected that this certificate was not along with MoU/work order/agreement of any of the clients (government/private). It is only a certificate of the Chartered Accountant showing the financial transactions carried out by respondent no. 8 which is another eligibility requirement.

57. To this Court, it has transpired that the Respondent No. 8 and Respondent No. 9 had not submitted the mandatory documents in terms of clause 2.4 of Section V of Instructions to Bidders (I.T.B.) but in the technical bid comparative chart, they were wrongly and falsely shown to have submitted these documents.

At this stage, this Court would reproduce clause 9.6, Section V of the I.T.B. as under:-

> "9.6 Following required evaluation criteria must be submitted through online mode on e-Procurement Portal https://eproc2.bihar.gov.in :
> 9.6.1 Technical Proposal covering letter, as per Annexure-1
> 9.6.2 Authorization Letter for signing of proposal in favour of signatory to tender documents as per 'Annexure-2' for Sole Bidder and in case of Consortium '**Annexure-2' & 'Annexure-3'.**
> 9.6.3 A duly notarized declaration (for not being blacklisted) from the bidder should be submitted in the format given in the '**Annexure-6'** (Applicable for Sole Bidder or for Consortium shall mean each of the Partners including the Lead Partner)
> 9.6.4 Particulars of the bidder, as per **Annexure-7**

9.6.5 Self-attested copy of establishment of the entity under Companies Act, 1956/2013 or Limited Liability Partnership Act 2008, or Societies Registration Act 1860, or Indian Trusts Act 1882 (Applicable for Sole Bidder or for Consortium shall mean each of the Partners including the Lead Partner)

9.6.6 Self-attested copy of audited financial statement for the FY 2021-22, FY 2022-23 & FY 2023-24 i.e. Audited Balance Sheet, Audited Profit & Loss Account (if the bidder is registered under Companies Act or Limited Liability Partnership Act), Audited Income & Expenditure Account (if the bidder is registered under Societies & Trust Act) along with related notes on account.

9.6.7 Turnover certificate issued by Chartered Accountant (must be mentioned Membership No., UDIN No. & Date) certifying the financial turnover related to Pathology Services of respective years for which the bidder is submitting the turnover statement for the financial years (FY) 2021-22, 2022-23 and 2023-24. (Applicable for Sole Bidder or for Consortium shall mean each of the Partners including the Lead Partner)

9.6.8 Self-attested copy of the Income Tax Returns (ITR) acknowledgement for three assessment years (AY) i.e. 2021-22, 2022-23 and 2023-24, for bidders (Sole Bidder or for Consortium shall mean each of the Partners including the Lead Partner)

9.6.9 Self-attested copy PAN Card and certificate of registration of EPF, ESI and GST issued by the appropriate authority valid as on date of submission of tender documents. (Applicable for Sole Bidder or for Consortium shall mean each of the Partners including the Lead Partner)

9.6.10 Self-attested copy of Experience Certificate issued by Client (Government/Private) along with Work Order/MoU/Contract/Agreement evidencing the required experience of the bidder mentioned in the Eligibility Criteria in 'Section-V'.
9.6.11 Self-attested copy of Registration document showing incorporation of the Bidder, and an undertaking on the letterhead of the Bidder stating that the Bidder has been in operation for a minimum of last 3 (three) Financial Years (i.e. FY 2021-22, FY 2022-23 and FY 2023-24) in the field of establishment, implementation and management of integrated laboratory network services.
9.6.12 In the case of consortium, the partners shall have to mandatorily submit the following:
a) Board resolutions for bidding entities for each partner(s) including lead partner in the consortium, as per format "**Annexure-4**".
b) "Memorandum of Understanding (MoU)-Consortium", as per format given in **"Annexure-5"**."

58. In the technical bid comparative chart and evaluation sheet (Annexure '1') which is enclosed with the minutes of the Meeting (MOM) of the Technical Committee held on 21.10.2024 (Annexure 'P/8'), the documents submitted by the bidders in terms of requirement as pointed out under clause 9.6 of Section V of I.T.B have been shown in the tabular chart. A close perusal of the tabular chart would show that as regards the mandatory documents under clause 2.4 of Section V of the N.I.T.

read with clause 9.6.10, the same have been shown "Lead Partner submitted Partner 2 submitted". It means, the Respondent Nos. 8 and 9 both are said to have submitted self-attested copy of experience certificate issued by the client (Government/Private) along with work order/MoU/Contract/Agreement evidencing the count of pathology tests during the last three years (FY 2021-22, FY 2022-23 and FY 2023-24). Clause 9.6 says that required evaluation criterion must be submitted. This requirement is duly mentioned in sub-clause 9.6.10 of clause 9.6 of Section V of I.T.B.

As recorded above, in fact, the required documents were not submitted by Respondent No. 8 and Respondent No. 9. This Court has, therefore, no hesitation in recording that this is a clear case of giving undue favour to Respondent No. 8 and Respondent no. 9 by falsifying the records.

59. The Chartered Accountant certificate showing that the bidder (in case of consortium) have a cumulative minimum average annual turnover of INR 50 crores from Pathology services during the FY 2020-21, FY 2021-22 and FY 2022-23 and that the lead partner on the consortium must have a minimum annual average turnover of INR 25 crores while another partner must have a minimum annual average turnover of INR 12.5 crores from pathology services during the aforesaid Fys, is a separate requirement in terms of sub-clause 9.6.7 under clause 9.6, Section V (N.I.T.).

It is evident that Chartered Accountant Certificate is required in terms of clause 9.6.7 whereas experience certificate in terms of clause 2.4 is another mandatory document under clause 9.6.10.

60. There is nothing on the record that in terms of clause 18 of Section I (NIT) or clause 5.1 of Section II Tender Inviting Authority i.e. the State Health Society ever amended clause 2.4 or 9.6 under Section V (I.T.B.). These clauses remained as they stood, hence, the bidders were obliged to fulfill the required evaluation criteria. The words ‘must be submitted’ clearly show that the documents were to be mandatorily submitted.

(Emphasis is mine)

Clause 10.2 of Section V of the I.T.B. only strengthens the views of this Court. Clause 10.2 reads as under:-

> “10.2 Technical Evaluation of the Bid will be done on the basis of technical qualification criteria and documents mentioned (TECHNICAL BID) in Mandatory Documents Link present in the e-Procurement Portal https://eproc2.bihar.gov.in falling which the bid will not be considered for technical evaluation.”

61. From the statements made in paragraph ‘35’ of the supplementary counter affidavit, it is evident that the respondent nos. 4 to 7 are coming out with a cover to provide a shield to respondent nos. 8 and 9. According to respondent nos. 4 to 7, the tender document (NIT) did not prescribe any specific format to count the test conducted specially for companies that handle millions of individual pathology test, like retail labs. This cannot be the stand of respondent nos. 4 to 7 on the face of Clause 2.4 clearly providing that a self-attested copy of experience certificate issued by the client (government/private) along with MoU/ order of contract document evidencing the count of pathology tests were to be provided. Not prescribing any specific format to show the count of test has been cited by respondent nos. 4 to 7 as a rescuing factor for respondent no.8. Further, it is evident that handling of millions of individual pathology tests like retail labs by respondent nos. 8 and 9 would not have made them eligible in terms of Clause 2.4. The provision is very clear in Clause 2.4. It should be experience certificate issued by the client (government/private) with work order/MoU/contract/agreement. This tender was not for those who were handling millions of individual pathology tests like a retail lab. We agree with the submissions of learned Senior Counsel for the petitioner that respondent nos. 8 and 9 might have an experience of carrying out individual pathology test over a crore but that would not make them eligible in terms of Clause 2.4. Here, we see a clear attempt by respondent nos. 4 to 7 to cover up the fact that respondent no. 8 had not provided the required mandatory document in terms of Clause 2.4.

62. It is because of this that towards the end of his submissions, Mr. P.K. Shahi, learned Advocate General has submitted that the State Health Society has power to relax the conditions, therefore, in public interest if the condition as contained in Clause 2.4 has been relaxed to some extent, this Court need not interfere with the decision of the Society in declaring respondent no. 8 a successful bidder. We would respectfully differ with the opinion of the learned Advocate General on this point. At first instance, there is no decision on record to do away with clause 2.4. No amendment as respect clause 2.4 and 9.6 has been notified by Respondent Nos. 4 to 7. It is not the stand of R-4 to R-7 that they have consciously ignored/relaxed the eligibility criterion for R-8 and R-9. In fact the R-4 to R-7 have shown R-8 and R-9 fulfilling the said criterion by making false entries in the Technical Bid comparison sheet. Thus, this stand of exercise of power to relax the eligibility criterion does not reflect in the decision making process. This does not conform to the privilege-of-participation principle as laid down in **Ramana Dayaram Shetty vs. International Airport Authority of India** reported in **(1979) 3 SCC 489**. Moreover, if the condition as contained in Clause 2.4

would have been relaxed for respondent no.8, we find no reason that why this Society would not exercise the same discretion judiciously that too in public interest in respect of respondent no. 10 who has in fact submitted a financial bid which is providing advantage of over four percent of higher percentage of discount. If the discretion would have been applied in favour of the respondent no.10 in the given facts of the case, it would have benefited the public exchequer. This has also an element of public interest. In fact, when this plea was taken by learned Advocate General, we specifically called upon him to make a statement as to why the same relaxation/exercise of discretion was not done in favour of respondent no.10 who had offered four percent more discount that would go in several crores of rupees and that would be ultimately beneficial to the State exchequer and to the public at large. We could not get any satisfactory response to this query.

63. In view of the discussions made hereinabove, we find that the respondent nos. 4 to 7 have ignored Clause 2.4 and 9.6.10 under Section V of the NIT and allowed respondent nos. 8 and 9 to qualify for the financial bid and in financial bid, selected the consortium of Respondent No. 8 and Respondent No. 9 even as they are not offering the highest discount. We have already recorded as to how wrong and false entries were made in the technical bid comparison chart (Annexure ‘1’ to ‘P/17’ of the writ petition) in order to favour Respondent Nos. 8 and 9.

64. At this stage, it would be important to have a glance over the judgments of the Hon’ble Supreme Court in the matters of interference with the award of contract/tender by a writ court. In the case of **Tata Motors** (Supra), the Hon’ble Supreme Court has held that in contract involving technical issues, Court should be even more reluctant, the Court should not use magnifying glass and must give fair play in the joints. It is further observed in the judgment that no interference be made unless it will cause unnecessary loss to the public exchequer.

65. In the case of **Ramana Dayaram Shetty (supra),** the Hon’ble Supreme Court has been pleased to hold that the word used in the document are not superfluous or redundant and those must be given some meaning and weightage.

66. In the case of **Tata Cellular Vs. Union of India** reported in **(1994) 6 SCC 651** in paragraph ‘94’, the Hon’ble Supreme Court has been pleased to emphasize the need to find a right balance between the administrative discretion to decide the matters on the one hand and need to remedy any unfairness on the other.

67. In the case of **Raunaq International Ltd. Vs. I.V.R. Construction Ltd. And Others** reported in **(1999) 1 SCC 492**, the Hon'ble Supreme Court was considering a challenge to an interim order of stay of the operation of the Letters of Intent issued to M/s Raunaq International Ltd. by the Hon'ble High Court of Bombay. In the said case M/s Raunaq International Ltd. was not meeting the qualifying requirements but it was reported that the company had done CW piping for 210 MW units. The qualifying requirements of bidder was that the bidder should have designed, fabricated/manufactured, supplied, erected and successfully commissioned large diameter piping system comprising the supply of MS pipes not less than 2000 mm diameter and laid/buried for a minimum total length of 3 kms in a thermal power station and the same should be in successful operation for the past two years. The Tender awarded to M/s Raunaq International Ltd. was challenged by another bidder M/s I.V.R. Construction Ltd. There was a submission that the Board of Directors of Maharashtra State Electricity Board whil awarding the contract to M/s Raunaq International Ltd. had relaxed a cretira. The Hon'ble Supreme Court considered the challenge made to the interim order staying the award of tender to M/s Raunaq International Ltd. and found that the relaxation of criteria would have been required in respect of M/s I.V.R. Construction Ltd. also but in view of the fact that the offer of M/s Raunaq International Ltd. was the lowest, if the Board had accepted the offer of M/s Raunaq International Ltd. after weighing their requirements against the qualifications of the two competing bidders, the High Court couldnot have intervened and stayed the operation of the award of contract.

68. This Court finds that the facts revealed in the present writ application are otherwise. In this case, there is no provision in the N.I.T. for the relaxation with respect to the eligibility criteria and mandatory requirement. If at all any relaxation was to be given to the Respondent No. 8, there was no reason for Respondent Nos. 4 to 7 not to exercise their discretion in favour of Respondent No. 10 who had offered 4% more discount in their financial bid document. The Hon'ble Supreme Court has considered as to what are the elements of public interest. This Court would qoute paragraph '9' and '10' of the judgment of the Hon'ble Supreme Court in the case of **Raunaq International Ltd.** (supra) for a ready reference:-

> "**9.** The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount importance are commercial considerations. These would be :
> (1) The price at which the other side is willing to do the work;

(2) Whether the goods or services offered are of the requisite specifications;
(3) Whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;
(4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;
(5) past experience of the tenderer, and whether he has successfully completed similar work earlier;
(6) time which will be taken to deliver the goods or services; and often
(7) the ability of the tenderer to take follow up action, rectify defects or to give post contract services.
Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.
10. What are these elements of public interest ? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public

> hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in re-doing the entire work – thus involving larger outlays or public money and delaying the availability of services, facilities or goods, e.g. A delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation."

69. In the case of **Jagdish Mandal Vs. State of Orissa** reported in **(2007) 14 SCC 517** (para 22), the Hon'ble Supreme Court has been pleased to observe as under:-

> "**22.** Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. 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, certainspecial 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, 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. The 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 interferences, 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. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached."'

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black- listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of

> licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

70. In the case of **Podder Steel Corpn. Versus Ganesh Engg. Works and Others** reported in **(1991) 3 SCC 273**, the Hon’ble Supreme Court in paragraph ‘6’ has held as under:-

> “**6.** ....The requirements in a tender notice can be classified into two categories — those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. ......”

Similarly, in the case of **B.S.N. Joshi & Sons Ltd. Versus Nair Coal Services Ltd. and Others** Reported in **(2006) 11 SCC 548,** The Hon’ble Supreme Court in paragraph ‘66’ has held as under:-

> “**66.** We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarised as under:
>
> (*i*) if there are essential conditions, the same must be adhered to;
>
> (*ii*) if there is no power of general relaxation, ordinarily the same shall not be exercised and the

principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

(*iii*) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;

(*iv*) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;

(*v*) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;

(*vi*) the contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority;

(*vii*) where a decision has been taken purely on public interest, the court ordinarily should exercise judicial restraint."

<u>Opinion of this Court</u>

71. In the facts of the presnt case, we are of the considered opinion that the process adopted by the authorities of the Society were intended to favour the consortium of Respondent

No. 8 and Resp No. 9. We say so as on the one hand a mandatory eligibility criteria in terms of the Clause 2.4 read with clause 9.6.10 of the Tender Docuemnt has been given go-bye in order to award the work to the consortium of Respondent Nos. 8 and 9 but at the same time, Respondent No. 10 who has given the highest discount that too by more than 4 percentage over and above the discount rate offerred by the consortium of Respondent No. 8 and 9 has been ousted by accepting the objection of Respondent No. 8 and that of the petitioner in the name of being a competitive bid. We find that if the eligibility criteria as contained in Clause 2.4 read with 9.6.10 is given a go-bye, the quality of work which are to be undertaken by the successful bidder and the public money which would be spent for the purpose both would suffer.

72. In result, this Court is of the considered opinion that the Respondent Nos. 8 and 9 have failed to fulfil the eligibility criteria as contained in Clause 2.4 read with Clause 9.6.10, Section V of the Tender Document. The 'LoI' issued in favour of Respondent Nos. 8 and 9 and consequent agreement dated 19.11.2024 are result of a favour shown to them at both the stages keeping aside the public interest, hence, those are liable to be quashed and cancelled. We accordingly, quash and cancel the 'LoI' and consequent agreement executed in favour of consortium of Respondent Nos. 8 and 9.

73. The respondent Nos. 4 to 7 i.e. the Society shall convene a meeting of the Technical Bid Committee and the PAC within one month from today. They will go for scrutiny of the tenders, take a decision with regard to award of tender afresh at the earliest keeping in view the discussions and observations made in this judgment hereinabove.

74. The writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/-

AFR/NAFR	AFR
CAV DATE	09.07.2025
Uploading Date	08.08.2025
Transmission Date	