IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17505 of 2024

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1. M/s Science House Medicals Private Limited having its registered Office at 1st Floor, Plot No.- C-65 at Gautam Nagar, Bhopal, Madhya Pradesh, India-462023 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, PS- Baghsewaniya, Bhopal, Madhya Pradesh- 462043.
2. M/s Sodani Hospitals and Diagnostics Private Limited having its registered office at LG-1, Morya Centre, Opp. Basket Ball Club 16/1, Race Course Road, Indore (M.P) 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, PS-Baghsewaniya, Bhopal, Madhya Pradesh- 462043.
3. Consortium of Science House Medicals Private Limited and Sodani Hospitals and Diagnostics Private Limited having its registered Office at 1st Floor, Plot No.- C-65 at Gautam Nagar, Bhopal, Madhya Pradesh, India-462023 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, PS- Baghsewaniya, Bhopal, Madhya Pradesh- 462043

... ... Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Health Department, Government of Bihar 1st Floor, Vikas Bhawan, Bailey Road, Patna- 800015.
2. The State Health Society, Bihar through Executive Director, Parivar Kalyan Bhavan, Sheikhpura, Patna.
3. The Executive Director, State Health Society, Bihar, Parivar Kalyan Bhavan, Sheikhpura, Patna.
4. Hindustan Wellness Private Limited, through its director, having its registered office at 107, 1 Floor, Sector-44, Gurugram, Haryana, India, 122001.
5. Dr. Khannas Pathcare Private Limited, through its director, having its registered office at E-8-A, Ground Floor, Hauz Khas, New Delhi, Delhi, India - 110016.
6. 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, S/o Late Data Ram Mishra R/o - B-653, P.O. and P.S. - Rajajipuram Lucknow, Uttar Pradesh - 226017.

... ... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Abhinav Shrivastava, Sr. Advocate
	Mr.Nirbhay Prashant, Advocate
For the State of Bihar :	Mr.Vikash Kumar, SC-11
For the State Health Society:	Mr. P. K. Shahi, Sr. Advocate
	Mr. K.K. Sinha, Advocate
For the Respondent No.4:	Mr. Jitendra Singh, Sr. Advocate
	Mr. Kumar Shanu, Advocate
	Mr. Shubham, Advocate
	Mr. Kumar Abhishek, Advocate
	Mr. Yash Singh, Advocate
	Mr. Ishhan Singh, Advocate
	Mr. Raghav Chadha, Advocate
For the Respondent No.5:	Mr. Ravinder Singh, Advocate
	Mr. Parth Gaurav, Advocate
	Mr. Govind Raj Shahi, Advocate
	Mr. Manogya Singh, Advocate
For the Respondent No.6:	Mr. Mrigank Mauli, Sr. Advocate
	Mr. Rajeev Kumar Singh, 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

The present writ application has been preferred seeking to challenge the decision of the Project Appraisal Committee (in short ('PAC') of the Bihar State Health Society (hereinafter referred to as the 'Society') taken in its meeting dated 23.10.2024 signed on 29.10.2024 by which the financial bid of the petitioner no.3 has been placed at L7 as a result of which the petitioner no.3 has been declared unsuccessful even though the petitioner no.3 offered the highest percentage of discount of 77.06 %.

2. Initially when the writ application was filed the petitioners prayed for the following relief:-

"i. For issuance of the writ in the nature of Certiorari for quashing of the Order of Financial bid disqualification dated 29.10.2024 and declare the Order of disqualification as illegal and void in law;

ii. For directing the State Health Society, Bihar (Respondent No. 2) to reconsider the Financial Bid of the Petitioner and Award the contract/Purchase order to the Petitioner as the Petitioner offered highest percentage of discount of 77.06%.

iii. For directing the Respondent No. 2 not to cancel the Tender (e-tender notice (NIT) Reference No. 09/SHSB/Pathology Service/ 2024-25 dated 22.08.2024) or publish any new or similar tender or re-tender.

iv. For directing the Respondent No. 2 to cancel award of contract/Purchase Order issued in favour of Respondent No. 4 in consortium with Respondent No. 5;

v. For directing the Respondent No. 2 not to accept any performance Bank guarantee or return the performance bank guarantee, if any submitted by Respondent No. 4 in consortium with Respondent No. 5.

vi. For directing the Respondent No. 2 not to proceed further or issue any order in the Tender (e-tender notice (NIT) Reference No. 09/SHSB/Pathology Service/2024-25 dated 22.08.2024) till the final disposal of this writ.

vii. Award the cost of present writ petition to the petitioner;

> viii. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case as well in the interest of justice."

3. During the pendency of the writ application, by filing I. A. No. 1 of 2025 the petitioners amended the writ application. The said amendment has been allowed by this Court vide order dated 28.04.2025. The respondents were given opportunity to file additional counter affidavit. The facts stated and the reliefs prayed in the amendment application have been taken as part and parcel of the writ application. Therefore, the reliefs added to the writ application are being reproduced hereunder:-

> "1. (ix) To issue an appropriate writ/order/direction in the nature of Certiorari quashing the Letter of Intent dated 05.11.2024, the Contract Agreement dated 19.11.2024, and the Letter dated 31.12.2024 which have been issued against the prescribed law of RFP as well as against the principle of Natural justice.
>
> 1. (x) and, an interim injunction be granted, and that the effect and operation of the Letter of Intent dated 05.11.2024, the Contract Agreement dated 19.11.2024, and the Letter dated 31.12.2024 be stayed pending the disposal of the present writ petition. 1 (ix) Further, the Respondents may be restrained from taking any action or proceeding further with the said Letter of Intent dated 05.11.2024, the Contract

Agreement dated 19.11.2024, and the Letter dated 31.12.2024."

Case of the petitioners

4. The petitioner nos. 1 and 2 are private limited companies, they have formed a consortium known as Consortium of Science House Medicals Private Limited and Sodani Hospitals and Diagnostics Private Limited. This consortium is petitioner no.3 in the writ application.

5. It is the case of the petitioners that the State Health Society, Bihar (hereinafter referred to as the 'Society') (respondent no.2) invited an online tender from eligible and qualified bidders for selection of Agency to provide pathology services at designated government healthcare facilities in Hub and Spoke Model in the State of Bihar vide E-tender (NIT) Reference No.09/SHSB/Pathology Service/2024-25 dated 22.08.2024 (hereinafter referred to as the 'Tender or NIT').

6. Altogether 7 firms /companies participated in the tender. Petitioner no.3 happened to be one of the tenderers who submitted its bid on 02.10.2024 via e-procurement portal of the State of Bihar. It is stated that during the process of uploading the financial bid (BOQ) onto the portal, the petitioner encountered a mandatory blank field labelled "Rate" which had to be filled in order to proceed with the upload of the financial bid. Additionally another blank field labelled “Total Amount” was adjacent to it, which gets auto populated when any details are filled in the ‘rate’ field. Because of this ambiguous naming of these fields it caused confusion to the petitioner regarding their correct interpretation and required input. In order to resolve the confusion, the petitioner telephonically contacted the Administrative Officer and e-procurement officials of the Society who clarified that the petitioner could enter any value in the “Rate” field, as this was only required to facilitate uploading of the financial bid and would not be considered for the financial evaluation as per tender terms and conditions. The petitioner asserts that it was given to understand that only the contents of the uploaded financial bid (BOQ) would be taken into account for the purposes of financial evaluation as per tender terms and conditions.

7. It is the further case of the petitioners that relying upon the express assurances from the relevant authorities the petitioner entered the value “1” in the aforementioned field and successfully uploaded the financial bid (BOQ) as per the instructions provided in the relevant clauses of tender and Annexure-16 under Section VII of the Notice Inviting Tender (‘N.I.T.’).

8. It is stated that the technical evaluation committee evaluated the technical bids of all the bidders on 21.10.2024 and uploaded the minutes of the meeting of the technical committee on same day and declared all the 7 bidders to give their technical presentation on 23.10.2024 and also recommended for the opening of financial bids of all 7 qualified bidders on same day.

9. On 23.10.2024, all the 7 qualified bidders presented their technical presentation before the Project Appraisal Committee (PAC) and on the same day the PAC of respondent no.2 carried out the financial evaluation of all the bids in presence of the representatives of the five bidders. The members of PAC opened the BOQ of all the technically qualified bidders, it was revealed that the petitioner had quoted a maximum discount of 77.06%. However, two bidders, namely the consortium of M/s Hindustan Wellness Private Limited and Sodani (R-4 & 5) quoted discount of 73.05% and M/s POCT Services (R-6) quoted discount of 69.03%. Therefore, the petitioner was found L1.

10. The participants who were L2 and L3 raised objections regarding the petitioner's financial bid. They alleged that the petitioner had quoted two different rates in its bid, they submitted their objections via e-mail. The respondent no.2 withheld the declaration of petitioner as L1 bidder. Although there was no request for clarification/representation from respondent no.2, the petitioner proactively submitted a clarification to the respondent no.2. The clarification provided a detailed explanation of the provisions of the tender terms and conditions and the petitioner's justifications. The respondent no.2, however, did not provide any opportunity to the petitioner to present its case or respond to any concerns raised by the respondent nos.4 and 5, thereby the respondent no.2 violated the foundational principles of fairness, transparency and non-arbitrariness that are essential to any tendering process.

Submissions on behalf of the petitioners

11. In course of hearing, learned senior counsel for the petitioners has taken this Court through the various conditions prescribed in the tender document. Attention of this Court has been drawn towards clause 9.5, 9.6 and 10.2 of the N.I.T. (Section-II) to submit that as per clause 9.5 rates are to be quoted in the financial bid format in online mode only. The bidder would be required to download the financial bid file, from e-tendering portal and quote the prices in prescribed format before uploading it. The bidder shall quote the rates in all necessary formats. The bidders shall not rename the financial bids files downloaded. It is submitted that on going through the entire tender documents it may be found that at some places the word 'rates' has been written but in fact in this case the financial bid was to be submitted in terms of 'percentage of discount' which was in the financial bid format as indicated in form of Annexure-16, Section VII to the N.I.T.

12. It is submitted that from clause 9.5, it is evident that the bidders are required to download a specific financial bid file, an excel sheet, available on the e-procurement portal, complete it in the prescribed manner and upload the same. According to the petitioners, this file corresponds to Annexure-16, Section VII of the tender document. The submission is that clause 9.5 nowhere states or even indirectly say that bidders must quote their percentage of discount specifically in the "rate" column of the BOQ tab on the e-procurement portal interface itself. Instead, it emphasizes the submission of the bid in the prescribed format, namely, the excel file provided for download. It is submitted that tendering authority being fully aware of the significance and sensitivity of the financial bid, would have expressly specified any such dual entry requirement (i.e. both excel file upload and portal based rate entry) if that were intended. It is submitted that the requirement of a single financial bid is under clause 9.5, clause 1.2.6, clause 10.4.1 and clause 10.4.2 of the Instructions to Bidders. Section II of the tender document mandates that the bidder is mandatorily required to quote the discount percentage in the BOQ tab on the e-procurement portal, the ‘rate’ and ‘total amount’ field present on e-procurement portal were not meant for financial bid purpose, therefore, the figure ‘1’ field in the ‘rate’ column cannot be taken as a submission of two distinct financial bids justifying the rejection of the petitioners’ bid.

13. Learned senior counsel for the petitioners submits that the difficulty faced by the petitioners in completing the “Rate” field of the BOQ tab on the e-procurement portal was the direct result of a structural ambiguity in the portal interface, not isolated or self-induced error unique to the petitioners. The field labelled “Rate” was undefined and unaccompanied by any instructions or contextual reference within the tender document. The tender required the quoting of a discount percentage, yet the portal’s web interface displayed a field for “Rate” without clarification as to its legal relevance or functional connection to the uploaded BOQ excel file. Learned senior counsel for the petitioners submits that this ambiguity was material, particularly given that “Rate” and “Discount Percentage” are distinct financial terms.

14. Learned senior counsel for the petitioners submits that the same understanding appears to have been acknowledged within the tendering authority. Sri Rajesh Kumar, Administrative Officer to whom the petitioners had contacted on his mobile number which was officially published in the tender notice was a member of PAC, he did not sign the minutes dated 23.10.2024 of the PAC. This omission is notable and strongly suggests that he disagreed with the treatment of the petitioners’ bid, which was consistent with his prior clarification.

15. Learned senior counsel for the petitioners submits that in the multiple recent tenders conducted by the Society the same practice has been followed. He has given some tender details and name of the parties who quoted “1” in the rate field of BOQ tab on the e-procurement portal but they were selected and issued letters of intent (‘LOI’) after considering their financial bid. In this connection, name of the party M/s Vatsa Innovations Pvt. Ltd., M/s Yash Services, M/s Radhika Express Service, and M/s Patliputra Printers and Stationery have been mentioned with specific tender number in which they were awarded the work based on their financial bid even though in the 'rate' field of the BOQ tab on the e-procurement portal they had either written "1" or "0". It is submitted that the insertion of placeholder figures like "0" or "1" in the "Rate" field is a well established procedural practice, routinely accepted by the respondent nos. 2 and 3. These figures are not determinative of the bidder's financial offer but are technical inputs necessary to enable the BOQ file upload.

16. Learned senior counsel submits that the respondent nos.2 and 3 have relied upon the so-called price bid comparison sheet as the basis for evaluating the petitioner's financial bid which is a fundamental flawed, procedurally invalid and legally unsustainable. The section titled "Evaluation of Tenders" (Section III), makes no reference whatsoever to any price bid comparison sheet. It conclusively establishes that such a document does not form part of the prescribed bid documentation nor is it recognized as a tool for bid evaluation under the tender framework. It holds no probative or binding value as a representation of a bidder's actual financial offer. It is submitted that the excel file aligned with Annexure-16, Section VII of the I.T.B. The same constitutes the only authorized format for financial bid submission.

17. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corp. Ltd. (2016 SCC Online Bom 5252)**, it is submitted that the Hon'ble Court held that the reliance on extraneous documents or system generated reports, not forming part of the official bid submission, would vitiate the evaluation process. It is submitted that in the present case price bid comparison sheet is not part of the bid submission, nor does it meet the evidentiary standard necessary to override or contradict the officially uploaded BOQ file. Therefore, any reliance on it in determining the petitioners' financial offer is patently misplaced.

18. In the writ application specific assertions have been made that in the matter of evaluation of the petitioners' financial bid, the respondent no.2 deviated from it's own established tendering practice and applied its own subjective and arbitrary criteria for evaluating the financial bids, disregarding the terms and conditions of the tender. As a result, the petitioners' financial bid was rejected in a manner that is discriminatory and biased, seemingly to favour respondent nos.4 and 5. It is submitted that if the criteria applied to the petitioners' bid were indeed fair and transparent, then all bids submitted by the aforementioned bidders should have been subjected to the same evaluation standards and consequently rejected for similar irregularities. It is submitted that the respondent no.2 has unfairly evaluated the bid and rejected it without justifiable reasons and the decision may have been influenced by undue pressure exerted by respondent nos.4 and 5. Relying upon the judgment of this Court in the case of **BVG India Limited Vs. State of Bihar & Ors.** reported in **2023 (6) BLJ 656**, learned senior counsel for the petitioners submits that in the said case this Court has held respondent no.2 guilty of acting unfairly and in contravention of the established norms and standards that public institutions and authorities are expected to adhere to. This judgment clearly reflects that respondent no.2 is a habitual offender who may resort to cancelling the present tender to safeguard it's own interests as well as that of respondent nos.4 and 5. Reference has been made to the judgment of the Hon'ble Supreme Court in the case of **Reliance Airport Developers Pvt. Ltd. Vs. Airports Authority of India & Ors. (2006) 10 SCC 1** wherein it has been held that every public authority has a duty to ensure fairness in its dealings with the public, particularly in the context of awarding public contracts. The authority must not act arbitrarily or without following the prescribed norms.

19. Learned senior counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in the case of **Jagdish Mandal Vs. State of Orissa (2007) 14 SCC 517**; **Air India Ltd. Vs. Cochin International Airport Ltd. (2000) 2 SCC 617**; **N.G. Projects Ltd. Vs. Vinod Kumar Jain (2022) 6 SCC 127** and **M/s Patel Engineering Ltd. Vs. Union of India (2012) 11 SCC 257**. It is submitted that the Hon'ble Supreme Court has held that scope of judicial review in contractual matters is limited, but it can be invoked if the action is found to be arbitrary, unreasonable or irrational. The Hon'ble Supreme Court has held that any deviation from the terms and conditions of the tender document, unless duly notified and justified, constitutes an irregularity and such deviation may result in the annulment of the process. It has been held in the case of M/s Patel Engineering Ltd. (supra) that any additional or unforeseen requirement that is not clearly stated in the tender document cannot be used for evaluation purposes. Bidders must be judged only on the criteria specified in the tender.

20. It is submitted that the Hon'ble Supreme Court has also held a financial evaluation must be done in a manner that benefits the public interest, especially where cost savings or discounts are concerned. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Ramana Dayaram Shetty Vs. International Airport Authority of India (1979) 3 SCC 489** in which it has been held that there should be no favouritism or bias in public procurement. The process must be conducted fairly and impartially.

Submissions on behalf of the Society and its authority (Respondent nos.2 and 3).

21. A counter affidavit has been filed on behalf of the respondent nos.2 and 3. It is the stand of the respondent nos.2 and 3 that all the 7 bidders qualified in the technical bid and the technical committee recommended to open the financial bids of the qualified bidders. The PAC fixed a meeting on 23.10.2024 to open the financial bids of all the 7 technically qualified bidders. On 23.10.2024, the financial bids of all the technically qualified bidders were opened and the price bid comparison sheet was downloaded in presence of all the bidders. The evaluation is done on the basis of this comparison sheet itself which is an inherent and essential feature of the E-procurement portal. The comparison sheet is an auto-generated document by the E-procurement that is automatically generated to facilitate comparison of rates, in this case, maximum discount rate quoted by each participating bidder to decide upon the lowest bidder.

22. Mr. P.K. Shahi, learned Advocate General representing the respondent nos.2 and 3 submits that as per the comparison sheet the petitioner no.3 i.e. the consortium of petitioner nos.1 and 2 was found L7 which had quoted "1" in the 'rate' column. However, when the Excel sheet was opened, the percentage discount on the base price, quoted by the petitioner no.3 was discovered as 77.06. It is submitted that since the tender required offering the highest discount rate on the base price i.e. prevailing on the CGHS rates which is the common practice being followed in various States to offer diagnostic services in government healthcare facilities, to facilitate this and assist the bidders, an indicative format was annexed to further clarify the process of offering the discount rates, the tendering authorities attached Annexure-16, Section VII in the N.I.T. which clearly states that it is merely an indicative format for reference and actual financial bid is to be submitted in the format available on the E-procurement portal. It is submitted that an objection was raised by respondent no.3 and respondent no.5 through their letter dated 23.10.2024 submitted before the respondent no.2 on 24.10.2024 wherein they have pointed out that two different prices have been quoted by petitioner no.3 instead of a single bid and requested the respondent no.2 to consider the bid of the petitioner no.3 invalid.

23. Learned Advocate General has submitted that the participating bidders were asked to quote their financial bids simply not in terms of the rates, but the bidders had to show the percentage discount on base price for diagnostic tests that they were ready to offer on the diagnostic tests. Annexure-R2/5 which is a corrigendum has been brought on the record. It is in response to the queries raised during the pre-bid meeting/submitted online. It is submitted that Annexure-R2/5 shows that the bidder/agency has to submit a financial quote (percentage discount on CHGS Patna Rate for diagnostics tests application as on last date of bid submission) as per the given format. This format is only indicative for reference, actual financial bid is to be submitted in the format available on e-procurement portal.

24. It is submitted that Section II, Clause 1.2.6 of the N.I.T. makes it mandatory for the bidder/agency to quote for every line item in the financial bid format. If the bidder does not quote for any line item in the financial bid format, then his proposal will be disqualified. Much emphasis has been given that so far as Annexure-16 is concerned, this format is only indicative for reference to show how the financial bid was to be quoted, as unlike any other tender simply quoting a rate was not sufficient. The bidder had to quote the percentage discount on the CGHS rates applicable in Patna as on the last date of bid submission. It is submitted that Section II, Clause 7.1 of the NIT clearly provided that a prospective bidder requiring any clarification regarding terms and conditions, technical specifications etc. Given in the tender documents may submit a written request for clarifications to Sri Rajesh Kumar, B.A.S., Administrative Officer by post/email ID within one day of date of pre-bid meeting and all correspondence with respect to this tender must be done on this email ID only. The petitioners should have sought clarification from the respondent authorities on the email ID for this specific purpose only, in such circumstance the respondent authorities would have been replied the petitioners and such confusion would not have arisen.

25. A para-wise reply of the statements made in paragraph '8' of the writ application may be found in the counter affidavit of the respondent nos.2 and 3. They have denied the statements made in paragraph '8' as false and have quoted Section II, Clause 7.1 of the NIT. In paragraph '8' of the writ application, the petitioners have stated that the petitioners had telephonically contacted the Administrative Officer and the E-procurement officials. This fact, however, has not been specifically denied in the counter affidavit. It is not stated that Rajesh Kumar was not contacted by the petitioners and that he had not informed that the 'Rate' column was only to be filled up with any value.

26. As regards non-signing of the minutes dated 23.10.2024 by Sri Rajesh Kumar, B.A.S., Administrative Officer, who was a member of the PAC, the respondents have stated that the allegation of the petitioners that he had intentionally refrained from signing of the proceeding of the financial proceeding is nothing but a concoction of facts to suit their narration. It is their stand that the quorum of the financial evaluation of the meeting was complete and hence there was no reason to delay uploading of the minutes in the meeting for the financial bid. Overwriting on the dates by one of the members of the committee while signing the proceeding, has also been responded to by offering an explanation that overwriting in the dates in the signature is a very common mistake that a human being tends to make. There is no overwriting in the proceeding.

27. It is further stand of these respondents that once the financial bid was opened and the price bid comparison sheet was downloaded, the respondent authorities had sufficient material to evaluate the financial bid and declare the L1. In the next process the individual price break up of each of the bidders was downloaded for sake of further affirmation. However, it was only then that it was discovered that the petitioners had filled two different rates in the financial bid, therefore, it was a sufficient ground to declare the petitioners unresponsive. While answering paragraph '18' of the writ application, the respondent nos.2 and 3 have taken a plea that each notice inviting tender is for a specific purpose and, therefore, the terms and conditions of each of it is framed as per the need. The notice inviting tenders mentioned by the petitioners are for hiring of vehicles and for other different needs, therefore, the method of quoting the financial bid in each of them were different and cannot be compared to each other. It is stated that in the present tender simply quoting a rate was not sufficient and, therefore, Annexure-16, Section VII of N.I.T. has been given for indicative purposes so that the bidders could understand that for this particular bid, percentage discount in the base price had to be quoted. It is admitted by respondent nos. 2 and 3 that the financial bid quoted by the petitioners was 77.06% but the petitioners had quoted two different rates.

Stand of the Respondents No.4 & 5

28. A counter affidavit has also been filed on behalf of the respondent no.4 and 5 i.e. the Hindustan Wellness Private Limited and Dr. Khannas Pathcare Private Limited who had jointly participated as Consortium of Hindustan Wellness Private Limited (Lead Partner) and Dr. Khannas Pathcare Private Limited (Partner 2). It is submitted that the petitioners' bid contained conflicting discount rates on the e-procurement portal. Initially, a 1% discount was displayed, followed by an Excel download sheet showing a 77% discount and later another downloaded sheet again showed 1%. The financial bid in a format was provided merely for reference purpose and the actual financial bid was to be submitted in a format available on e-procurement portal. The respondent no.4 has further submitted that the petitioners while submitting their tender document failed to disclose about the ongoing criminal proceedings against them related to fraudulent practices including tender pooling which is clearly a non-compliance with the eligibility criteria of the tender document. A true copy of the FIR bearing No. E.O.W P.S. Case No.0011/2024 lodged against the petitioners has been annexed as Annexure-R/4 with the counter affidavit.

29. It is further submitted that the petitioners are relying upon a photo claimed to be taken during the financial evaluation of the bids in presence of the authorities which shows their financial bid as “77” which is completely doctored/fabricated and is submitted to misguide this Hon’ble Court. Reliance has been placed on the judgment of the Hon’ble Supreme Court in the case of **Tata Motors Limited Vs. The Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Ors.** reported in **2023 SCC Online SC 671** (paragraph 48) to submit that the Hon’ble Supreme Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. The Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out.

30. The respondent no.5 who is a consortium partner of respondent no.4 has chosen to file a separate counter affidavit. On going through the counter affidavit of respondent no.5, it appears that the respondent no.5 has participated in the tender as a minority partner in the proposed consortium. After issuance of LOI dated 29.10.2024 (Annexure-R5/B), the respondent no.5 was informed to provide a separate performance bank guarantee to the respondent no.2. It is stated that at the time of providing the performance bank guarantee, it was the first time that the respondent no.5 came in direct contact with the respondent no.2 and uptill then, only the respondent no.4 was communicating with the respondent no.2. On 18.11.2024, the respondent no.4, on its own letter head, sent a letter to the respondent no.2 indicating the Division of the Territories amongst the partners, which was also signed by the respondent no.5. The Division of the Territories amongst the respondent no.4 and respondent no.5 was duly accepted by the respondent no.2 vide letter dated 25.12.2024 (Annexure-R5/D). Thereafter, the respondent no.5 purchased the necessary machines for starting the pathology labs in allotted districts but those were not opened or operated in view of the orders of the Court.

Rejoinder of the petitioners

31. The petitioners have responded to the counter affidavit filed on behalf of the respondent nos.2 and 3. It is the stand of the petitioners that the entire section on evaluation of tenders makes no reference to a price bid comparison sheet. The PAC acted beyond its authority by evaluating the petitioners' financial bid at its own discretion, rather than adhering to the explicit terms of the tender document. The arbitrary evaluation of the petitioners' financial bid by respondent nos. 2 and 3 was aimed at providing an unjust advantage to the respondent nos.4 and 5. There is deliberate deviation from the prescribed evaluation criteria which further highlights the unfair and arbitrary treatment of the petitioners' financial bid.

32. It is submitted that the Annexure-16, Section VII of N.I.T. which the respondent nos. 2 and 3 have provided as R2/2 in their counter affidavit is also factually incorrect. The document attached as Annexure R2/2 is an Excel sheet named as "29801" Financial Bid downloaded from the e-procurement portal and not the actual Annexure-16 from the tender document. The correct Annexure-16 is clearly available on page 89 of the original tender document. By submitting this incorrect Annexure, the respondent nos.2 and 3 have again attempted to mislead this Court.

33. It is submitted that the instructions in Annexure-16, read in conjunction with clause 9.5 of the tender document clearly outline that the bidder must download the financial bid file from the e-procurement portal, enter their quoted discount rate in the prescribed format and then upload it. It is submitted that the repeated assertion of the respondent nos.2 and 3 in the counter affidavit and in paragraph '19' of their counter affidavit claiming that Annexure- '16' is merely an indicative format and that the actual financial bid format is available on the e-procurement portal is a misrepresentation of facts and an attempt to mislead the Court. The tender document specifically says that the bidder was required to mention only the percentage discount on the base price for diagnostic tests.

34. It is submitted that the e-procurement portal's format requires the bidder to put a "Rate" in the blank field, with no reference to the required "percentage discount.". This part of the format was meant for those tenders which would have required quoting of 'rates' and not the 'percentage of discount'. In this tender, the only file that clearly asks for the percentage discount is the excel file downloaded from the e-procurement portal, which mirrors the structure of Annexure-16, Section VII of the N.I.T. In fact the stand of the Society is very clear that for this particular bid the percentage of discount in the base price had to be quoted in the actual format, indicated by Annexure 16 Section VII of the N.I.T.

35. It is submitted that the petitioner no.3 had quoted 4% higher discount than the other bidder and this deliberate rejection of the petitioners' bid by the respondent nos.2 and 3 may cause a significant loss to the government of Bihar as the petitioners' more competitive offer was ignored in favour of less favourable terms.

36. Referring to Annexure-P/13, learned senior counsel for the petitioners points out that this the financial bid format which is to be filled in by the agency/bidder. This document clearly mentions that the financial selection of the bidder/agency shall be based on "who quotes the highest percentage discount on the base price for diagnostic tests" (L1), provided that the bidder meets all the eligibility criteria as specified in Section V of the tender document. (underline is mine). It is submitted that there is no dispute that the petitioner no.3 meets all the eligibility criteria and was duly qualified by the technical bid committee. The highest percentage discount on the base price is required to be filled up in this document which the petitioner no.3 has rightly done and is giving the highest discount percentage, still it’s rejection smacks foul play in action.

37. It is submitted that on a bare perusal of the copy of the agreement executed between the society and the consortium of respondent nos. 4 and 5, it would appear that in paragraph 1.2 of the agreement the description of services and percentage discount have been shown which is adjactly as required to be filled up in the actual financial bid format as indicated vide Annexure-16, Section VII of the N.I.T. It makes it clear that financial bid was to be submitted in the actual format which was indicated by providing Annexure-16 in Section VII of the N.I.T. It is further submitted that the consortium of respondent nos.4 and 5 (jointly called the selected agency and service provider) it would appear from the counter affidavit of respondent nos.5 that after signing of the agreement with the society the respondent nos. 4 and 5 have on their own divided the different districts as if they would be working separately in both the districts. The respondent no.2 was informed of the division of the districts between the two consortium partners but no objection has been raised to the same. It further shows how the respondent no.2 is allowing all kinds of deviations from the tender conditions and the agreement. Till date no SPV has been formed by respondent no.4 and 5.

38. The petitioners have also responded to the counter affidavit of the respondent no.4. While reiterating their stand the petitioners have denied the statements made in paragraph 12 and 13 of the counter affidavit of respondent no.4. It is stated that the allegation that petitioners failed to submit details of the criminal proceedings is entirely untrue, as can be verified from the petitioners' bid documents, which were the basis for petitioners' technical qualification. Annexure '6' has been duly submitted and the same has been shown 'submitted' in the Technical bid comparison chart (Annexure-1 to the Minutes of Meeting dated 21.10.2024 of the Technical Committee). This baseless claim raises serious concerns regarding the conduct of respondent no.4 as they have made serious allegations without any evidence to support their assertions.

Stand of the Respondent No.6

39. A counter affidavit has been filed on behalf of the respondent no.6 i.e. POCT Services. Learned senior counsel submits in his written notes of submissions that the selection of the consortium comprising respondent nos.3 and 4 is ex-facie in contravention of the eligibility criteria prescribed under clause 2.4, Section V of the NIT. The said consortium does not meet the minimum technical and financial eligibility requirements, particularly with respect to the mandated number of operational hubs and spokes and relevant experience in delivering large scale pathology services under public health programms. It is submitted that in the case of Siemens Aktiengesellschaft & Siemens Ltd. Vs. Delhi Metro Rail Corporation Ltd. (2014) 11 SCC 288, it has been held that awarding tenders to technically or financially ineligible bidders can be challenged if it violates public interest. Learned senior counsel for the respondent no.6 has pointed out that a separate writ petition being CWJC No.1377 of 2025 has been filed by respondent no.6 in which the award of contract to the respondent nos. 3 and 4 has been challenged on various grounds. It is his submissions that because these two writ petitions are being heard simultaneously i.e. one after another he may refer the pleadings already available in the connected writ petition on this point.

40. As regards the petitioners, it is submitted that while submitting the bid the petitioner has not disclosed the fact that an FIR bearing EOW P.S. Case No.11 of 2024 dated 27.03.2024 under Sections 420, 409/120B and Section 13(1)(a) and 13(2) of the Prevention of Corruption Act, 1988 was registered against Sunaina Tiwary and Jitendra Tiwary, Directors of M/s Science House Medical Pvt. Ltd., Bhopal, Madhya Pradesh. In course of his submissions, Mr. Mrigank Mauli, learned senior counsel for the respondent no.6 submits that non-disclosure of material facts such as pending criminal cases can be a valid ground for rejection of bid, however, it is not denied that in the present case the respondent no.2 has not rejected the Technical bid of the petitioners on the ground of non-disclosure of any pending criminal case against the petitioners.

Consideration

41. We have heard learned counsel for the parties and have perused the pleadings available on the record.

42. This writ application has been filed by the petitioners questioning the decision of the PAC of respondent no.2 taken in its meeting held on 23.10.2024 which has been uploaded on 30.10.2024 on the portal of respondent no.2. Prayer is to quash the decision of the PAC which declares the petitioner no.3 L7 and the consortium of R 4 and R 5 as L1. The allegations are of arbitrariness in the decision making by deviating from the tender terms and conditions, past practices and discrimination ignoring the public interest. There is a specific assertion that the respondent no.2 has ousted the petitioners despite the petitioners offering highest discount percentage, only to favour respondent nos.3 and 4.

Relevant Clauses of the N.I.T.

43. We would first refer certain clauses from the NIT Reference No.:-09/SHSB/Pathology Service/2024-25 (Annexure-P/2 series). Clause 1.2.4, 1.2.6, 1.2.7, 9.5 and 10.4 which have been referred to by the parties are contained in Section II, 1 General Instructions. Those are quoted hereunder for a ready reference:-

> "1.2.4 Submission of bids: Bids are to be submitted through online mode to the e-Procurement Portal https://eproc2.bihar.gov.in at a time for following activities submission of technical bid & the other at the time of submission of Financial bid before the

prescribed one while uploading documents for date & time as mentioned in Clause 5 in Notice Inviting Tender (NIT) using the Digital Signature Certificate (DSC). The documents will get encrypted (transformed into non-readable formats).

1.2.6 The bidder/agency shall have to quote for every line item in the Financial Bid Format. If the bidder doesn't quote for any line item in the Financial Bid format, then his proposal will be disqualified.

1.2.7 The bidder/agency has to quote the maximum percentage discount on the 'Base Price' for diagnostics tests in the financial proposal (please refer Annexure-12 for the list of diagnostic tests with base price). The quoted rate should be firm and inclusive of all the factors like renovation/modification of space, Equipments, Computers, Reagents, LIMS, HR, Internet Connection, Printer, Barcode Scanner, Pre-printed barcode sticker/Barcoded Vacutainers, Printer Cartridges, Stationery, Consumables, Sample Storage equipment, Centrifuge, ESR Tubes, Neubauer chamber, supportive infrastructure, operational and maintenance cost for the project, all applicable taxes and duties, excluding Goods & Services Tax (GST). This shall be quoted in the online mode only. GST if applicable, will be paid by the State Health Society, Bihar (SHSB) or the authority decided by the SHSB as per the prevailing rates/rules. Please refer "Annexure-16" for information regarding Financial Bid.

9.5 Rates are to be quoted in the financial Bid format in online mode only. The financial bid submitted in any other format will be treated as non-responsive. The bidder will be required to download the financial bid file, from e-tendering portal and quote the prices in prescribed format before uploading it. The bidder shall quote the rates in all necessary formats. The bidder(s) shall not rename the financial bid files downloaded.

10.4 The financial bids of bidders whose technical bids are found technically responsive and comply with the bid documents will only be considered for financial evaluation. The date of opening of financial bids shall be communicated to such bidders, who are technically qualified."

44. Section III of the NIT provides the manner in which the evaluation is to be done. Clause 8 under Section III which deals with the award of contract provides in clause 8.2 as under:-

"8.2 The final selection of the agency/bidder shall be the one 'who quotes the highest percentage discount on the base price for tests'(L1) subject to all conditions as laid down in the tender documents, provided the bidder meets the eligibility criteria as per Section V."

45. Section V contains the eligibility criteria. Since the respondent no.6 has taken a plea that the respondent nos. 3 and 4 did not possess the eligibility criteria no.2.4 under Section V, in order to appreciate the same, we reproduce clause 2.4 which is the eligibility criteria for bidders and the mandatory documents which are required to be submitted by the bidders:-

"Section V (2.4)

S.No.	Eligibility criteria for Bidders	Mandatory Documents

2.4	The bidder (in case of sole bidder) should have an experience of conducting a minimum 20 lakh pathology tests per year during the last 3 years (FY 2021-22, Fy 2022-23 and 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).	Self-attested copy of Experience Certificate issued by client (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).

46. As per Section V, clause 3, before opening of the financial proposals the bidders shall have to make a technical presentation and demonstration of the proposed solution, detailing the understanding of the project, project implementation plan, Human Resource Development Plan, Institutional Mechanism for Training and Training methodology, SLA Management Strategy, Strategy for fulfilling KPIs, Use of LIMS and Latest IT Technology, innovations and other technical aspect of the proposal in front of the Tender Evaluation Committee appointed by State Health Society, Bihar. It is not in dispute that the petitioners had participated in the presentation before the tender evaluation committee.

Format of the Financial Bid-Percentage of discount on the base price

47. The N.I.T. contained Annexure-1 to Annexure-16 under section VII. For purpose of this case, we are concerned with Annexure-16. Since this is the most important document which is required to be looked into and considered, we think it proper to reproduce Annexure-16 hereunder:-

"INFORMATION REGARDING FINANCIAL BID

1. The bidder/agency has to submit a financial quote (Percentage discount on Base Price) as per below format. This format is only indicative for reference, actual financial bid is to be submitted in the format available on e-procurement portal:

Description of Services	Percentage Discount on Base Price for Diagnostics Tests
	In Percentage (%)
Providing Pathology Services in Hub & Spoke model in the State Inclusive of all the factors like renovation or modification of the space, provision of Equipment, Computers, Reagents, LIMS (Laboratory Information Management System), Human Resources, Internet Connection, Printer, Barcode Scanner, Pre-printed barcode stickers, Printer Cartridges, Stationery, Consumables, Vacutainers/Syringes & Vials, Sample Storage equipment, Centrifuge, ESR Tubes, Neubauer chamber, Ancillary items, supportive infrastructure, operational and maintenance cost to provide pathology test report within Turnaround Time fulfilling all the conditions mentioned in the tender	

document.)	

2. The quoted financial bid shall be firm and inclusive of all the factors like renovation or modification of the space, provision of Equipment, Computers, Reagents, LIMS (Laboratory Information Management System), Human Resources, Internet Connection, Printer, Barcode Scanner, Pre-printed barcode stickers, Printer Cartridges, Stationery, Consumables, Vacutainers, Sample Storage equipment, Centrifuge, ESR Tubes, Neubauer chamber, Ancillary items, supportive infrastructure, operational and maintenance cost for the project, all applicable taxes, and duties, **excluding Goods & Services Tax (GST)**. GST if applicable, will be paid by SHSB or the authorities decided by SHSB, as per the prevailing rates/rules.

3. The financial bid has to be submitted in "online mode" only, and as per the terms and conditions mentioned in the tender document.

4. The final selection of the agency/bidder shall be based on "who quotes the highest percentage discount on the Base Price for Diagnostic Tests" (11). provided that the bidder meets all the eligibility criteria as specified in Section V of the tender document."

Requirement to quote percentage of discount in the format as indicated in Annexure-16, Section VII of the N.I.T.

48. In the aforementioned background, the contentions of the parties are to be tested. It is the case of the petitioners that in terms of clause 9.5 under Section II ITB the rates are to be quoted in the financial bid format in online mode only. The financial bid submitted in any other format will be treated as non-responsive. This financial bid file is to be downloaded from e-tendering portal and the percentage of discount is to be quoted in the actual format available in the tender document which corresponds to Annexure 16 of Section VII of the N.I.T. This clause also says that the bidder shall quote the rates in all necessary formats and the bidders shall not rename the financial bid files downloaded. On a bare reading of this clause, to this Court it is crystal clear that in the first very line it is provided that the rates are to be quoted in the financial bid format in online mode only. The subsequent line that ‘ the bidders shall quote the ‘rates’ in all necessary formats is not in the context of this particular bid. In this particular tender, the petitioner no.3 was required to quote percentage of discount in the financial bid format. It was required to be downloaded by the bidders. What was required to be downloaded was the financial bid file, from e-tendering portal and to quote the percentage of discount in the prescribed format before uploading it.

49. In this case, Annexure-16 under Section VII of the N.I.T. is the format which has been provided as indicative for reference but the bidders have been specifically instructed to submit their financial quote (percentage discount on base price) as per the given format available on the e-procurement portal. There is no difficulty in understanding the instructions contained in Annexure-16 under Section VII of the N.I.T. The respondent no.2 has indicated Annexure-16 as the format for reference in which the financial quotes in terms of percentage discount on base price is to be submitted, though it should be filled up in the actual format and upload it.

50. There is no denial of the assertion of the petitioners in the writ petition that PAC members individually opened the uploaded BOQ of all the technically qualified bidders which revealed that the petitioner no.3 had quoted a maximum discount of 77.06% (Seventy-seven point zero six percent) in the technical bid format but the petitioner no.3 has been ousted on the ground that the petitioner no.3 had submitted two different rates in its bid.

General Instructions – applicability of Clause 1.2.6 and 1.2.7 discussed

51. On going through the general provisions under Section II of N.I.T., this Court finds that the general instructions have been formulated/ couched in such a manner that certain clauses thereunder may apply to a tender which requires quoting of 'rates of every line item'. For example, clause 1.2.6 instructs the bidder/agency to quote for every line item in the Financial Bid Format. This clause cannot be applied in a case of present nature where the bidder/agency has to quote the maximum percentage discount on the base price. For this, tender clause 1.2.7 of the general instructions, the bidder/agency has to quote the maximum percentage discount on the base price. This also refers to Annexure '12' which contains the list of diagnostic tests with base price. This Court, therefore, finds that the emphasis given by the Society and the private respondents that the petitioner no.3 had to quote for every line item in the present tender, ignores the actual position insofar as the present tender relates to. It requires quoting the maximum percentage discount on the base price. There is no 'line item' for which the financial bid is to be submitted. In fact, we find support from the stand of the Society in its counter affidavit where in paragraph XVI, R-2 and R-3 have stated inter-alia that "..........in the present tender simply quoting a rate was not sufficient and, therefore, Annexure-16, Section VII of the N.I.T. has been given for indicative purposes so that biders could understand that for this particular, percentage discount in the base price is to be quoted...."

52. To this Court, it is crystal clear that even Society understands that this particular bid requires quoting of percentage of discount on the base price in the format as indicated by Annexure 16, Section VII of N.I.T. The 'rate' column has no contextual relevance in this bid.

<u>Discrimination noticed in the matter of consideration by deviating from past practices – conduct of the Society discussed</u>

53. In the counter affidavit filed on behalf of respondent nos.2 and 3 it is not denied that earlier the same PAC had awarded contracts for the hiring of transport services to transport drugs, consumables, family planning commodities and other supplies in the State of Bihar under Reference No.16/SHSB/Drugcell/SCM/2024-25 to M/s Radhika Express Service and issued Purchase order on 28.10.2024. The petitioners have specifically stated that upon reviewing the e-procurement portal of Bihar it is evident that the aforementioned bidder/awardee had quoted a rate of "0" whereas according to the financial bid (BOQ) requirements the bidder was required to mention four separate rates. However, only a single rate was quoted in the e-procurement portal. Despite quoting "0" on the e-procurement portal, M/s Radhika Express Service was awarded the contract. The PAC seemingly regarded this omission as a minor procedural infirmity. The evaluation of financial bid was conducted solely on the basis of the financial bid (BOQ) uploaded on the portal. It is further not denied by the respondent no.2 and 3 that the tender for selection of agency for hiring of vehicles in State Health Society, Bihar was awarded to M/s Yash Services on 01.07.2024. The said bidder/awardee had quoted a rate of "1" whereas according to the financial bid (BOQ) requirements, the bidder was required to mention eight separate rates. However, only a single rate was quoted in the e-procurement portal which appears to be in violation of the tender provisions. This was again taken as mere procedural standard practice not affecting the financial evaluation. The PAC seems to have regarded this omission as a minor procedural infirmity and the evaluation of financial bids has been conducted solely on the basis of the financial bid (BOQ) uploaded on the Portal. An another example stated by the petitioners, which has not been denied by the respondent no.2, is the tender for rate contract of stationery and other items for State Health Society, Bihar awarded to M/S Patliputra Printers and Stationery. According to the petitioners, the said bidder had quoted a rate of "0" whereas according to the financial bid (BOQ) requirements, the bidder was required to mention three hundred (300) separate rates. However, only a single rate was quoted in the e-procurement portal which appears to be in violation of the tender provisions. The petitioner has submitted that again the respondent no.2 treated it a mere procedural standard practice, not affecting the financial evaluation.

54. This Court finds that in response to the assertions of the petitioners giving the aforesaid manner of evaluation of tender by the PAC in paragraph 18(i) (ii) and (iii) of the writ application, the respondent no.2 has made an ornamental statement that such allegations by the petitioners are false and denied in toto. All that is pleaded by respondent no.2 in response to the assertions of the petitioners is that each NIT is for a specific purpose and, therefore, the terms and conditions of each of it is framed as per the need. The respondent no.2 has not shown enough courage to deny the facts that when the aforementioned bidders mentioned “0” and “1” on the e-procurement portal, their financial bid evaluation was not rejected by respondent no.2. In other words, they were awarded work by treating the said mention of “0” and “1” on the e-procurement portal only a mere procedural practice.

Member of the PAC not signing the minutes dated 23.10.2024 of the PAC

55. The petitioner has specifically stated that the PAC of respondent no.2 held its meeting on 23.10.2024. Mr. Rajesh

Kumar, Administrative Officer, State Health Society, Bihar has not signed the minutes of the meeting which would be evident from Annexure-P/10 to the writ application. It is his assertion that non-signing of the minutes by Sri Rajesh Kumar only raises a serious concern regarding functioning and prevailing procedural lapses in the working procedures of State Health Society, Bihar. This raises the question of either intentionally refraining Mr. Rajesh Kumar from signing the minutes of the proceedings knowing that the reason of rejection is unjustified and biased or his signature was inadvertently omitted due to the authorities' haste in uploading the minutes unduly favouring the respondent nos. 4 and 5. Mr. Rajesh Kumar was the officer in charge of the entire tender process and any clarifications, inquiries or correspondence related to the tender could have reasonably been sought from him. The statement of the petitioners in this regard may be found in paragraph 16 (ii) of the writ petition.

56. In response to the said assertions of the petitioners, the respondent nos. 2 and 3 have not satisfactorily answered and denied the same. According to respondent no.2 the quorum of the financial evaluation of the meeting was complete and hence, there was no reason to delay uploading of minutes of the meeting for the financial bid and this in no case violates the principles of natural justice. This Court is unable to subscribe this statement of petitioner nos.2 and 3 by any cannon of justice. This seems to be a completely misplaced statement. The question of quorum of the meeting does not arise in the present case. It is not that Sri Rajesh Kumar, Administrative Officer, who was in-charge of the tender was not present in the PAC meeting held on 23.10.2024. A bare perusal of Annexure-P/10 to the writ application would show that his name is mentioned at serial no.5 and he has been shown present in the meeting of PAC. The meeting was held on 23.10.2024, signature of some of the members were obtained on 28.10.2024 and 29.10.2004 but why the signature of the one of the members Sri Rajesh Kumar was not obtained. It is an admitted position reflecting from the minutes that Sri Rajesh Kumar, Administrative Officer, State Health Society, Bihar has not signed the minutes. This speaks a lot. The explanation offered by respondent no.2 stands nowhere. The sanctity of the minutes of the meeting dated 23.10.2024, in absence of any plausible reason would be open to doubt as to what were going on between 23.10.2024 and 29.10.2024.

57. At this stage, we further find that clause 1.2.7 under Section II (ITB) reads as under:-

> "1.2.7 The bidder/agency has to quote the maximum percentage discount on the 'Base Price' for diagnostics tests in the financial proposal (please refer Annexure-12 for the list of diagnostic tests with base price). The quoted rate should be firm and inclusive of all the factors like renovation/modification of space, Equipments, Computers, Reagents, LIMS, HR, Internet Connection, Printer, Barcode Scanner, Pre-printed barcode sticker/Barcoded Vacutainers, Printer Cartridges, Stationery, Consumables, Sample Storage equipment, Centrifuge, ESR Tubes, Neubauer chamber, supportive infrastructure, operational and maintenance cost for the project, all applicable taxes and duties, excluding Goods & Services Tax (GST). This shall be quoted in the online mode only. GST if applicable, will be paid by the State Health Society, Bihar (SHSB) or the authority decided by the SHSB as per the prevailing rates/rules. Please refer "Annexure-16" for information regarding Financial Bid."

58. Apparently, clause 1.2.7 also refers "Annexure-16", Section VII of N.I.T. for information regarding financial bid. Clause 1.2.7 read together with clause 9.5 and 10.4 under Section II would leave no iota of doubt that the financial bids of the bidders whose technical bids are found technically responsive and complied with the bid documents, will only be considered for financial evaluation.

Findings with regard to the not fulfiling the eligibility criteria – false entry in Technical Bid comparison sheet to favour the consortium of R-4 and R-5

59. At this stage, we take note of the submissions on behalf of the respondent no.6 that respondent nos.4 and 5 are not fulfilling the eligibility criteria no.2.4 under Section V of the N.I.T. In C.W.J.C. No.1377 of 2025 (POCT Services Vs. State of Bihar & Others), this very criterion has been discussed. This Court has, upon a detail discussion based on the pleadings available in the said case, recorded in paragraph '56' to '61' of the judgment as under:-

> "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....”

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 term 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 term 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 <u>'must be submitted'</u> 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."

60. We have quoted the aforementioned paragraphs from the judgment of this Court in CWJC No.1377 of 2025 to place on record that in the writ application preferred by POCT Services, this Court has found that the present respondent nos. 4 and 5 who were respondent nos.8 and 9 in the said writ application could not provide the mandatory documents to satisfy the eligibility in terms of clause 2.4 of Section V (ITB).

61. At this stage, we find it appropriate to further place on record that in CWJC No.1377 of 2025 when this Court noticed that respondent nos.8 and 9 (in present case respondent nos.4 and 5) were declared eligible in the technical bid despite their not submitting the mandatory documents in terms of clause 2.4, Mr. P.K. Shahi, learned Advocate General representing the Society took a plea that the Society had a power to relax the condition. As regards the said submission, this Court has recorded in paragraphs '62' and '63' of its judgment in CWJC No.1377 of 2025 as under:-

"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 benefitted 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."

62. In the light of the aforementioned discussions, we would take a glance over some judicial pronouncements on the subject. A number of case laws have been cited on behalf of the parties to strengthen their submissions. In the case of **Jagdish Mandal Vs. State of Orissa (2007) 14 SCC 517**, in paragraph '22', the Hon'ble Supreme Court has observed 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, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, 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."

63. In the case of **Municipal Corporation Ujjain vs. BVG India Ltd.** reported in **(2018) 5 SCC 462**, the Hon'ble Supreme Court has taken the following view in paragraph '63' as under:-

"**63.** As aforementioned, unless the Court concludes that the decision-making process or the decision taken by the authority bristles with mala fides, arbitrariness, or perversity, or that the authority has intended to favour someone, the constitutional court will not interfere with the decision-making process or the decision."

64. In the case of **Tata Cellular v. Union of India** reported in **(1994) 6 SCC 651** the Hon'ble Supreme Court has held that the Court should not interfere in the matters of tenders unless substantial public interest was involved or the transactions was malafide. The Court must proceed with great caution while exercising their discretionary powers and should exercise it's powers only in furtherance of public interest and not merely on making out of a legal point.

65. In the case of **Larsen and Toubro Ltd. v. SJVN Thermal (P) Ltd.** reported in **(2020) 1 PLJR 813,** a learned writ court (authored by one of us: Rajeev Ranjan Prasad, J.) has discussed the case laws on the nature and scope of judicial review under Article 226 of the Constitution of India. The learned writ court has taken note of the judgments vis **Jagdish Mandal** (supra) and in the case of **Meerut Development Authority vs. Association of Management Studies** reported in **(2009) 6 SCC 171**. In the case of **Meerut Development Authority** (*supra*) their Lordships held that "... in the matter of award of contracts the government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest….”. It was thereafter held that the decision to cancel the tender process was in no way discriminatory or mala fide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process, serious questions touching the legality and propriety affecting the validity of the tender process would have arisen.

66. In the case of **G.J. Fernandez vs. State of Karnataka** reported in **(1990) 2 SCC 488**, **t**heir Lordships reaffirmed the principles laid down in **Ramana Dayaram Shetty v. International Airport Authority of India**, reported in **(1979) 3 SCC 489.** This has also been relied upon in the case of **Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)** reported in **(2016) 8 SCC 622**. Paragraph 38 of the in **Central Coalfields Ltd. i**s being reproduced hereunder for a ready reference:-

> “**38.** In G.J. Fernandez v. State of Karnataka[6] both the principles laid down in Ramana Dayaram Shetty[5] were reaffirmed. It was reaffirmed that the party issuing the tender (the employer) “has the right to punctiliously and rigidly” enforce the terms of the tender. If a party approaches a court for an order restraining the employer from strict enforcement of the terms of the tender, the court would decline to do so. It was also reaffirmed that the employer could deviate from the terms and conditions of the tender if the “changes affected all intending applicants alike and were not objectionable”. Therefore, deviation from the terms and conditions is permissible so long as the level playing field is maintained and it does not result in any arbitrariness or discrimination in Ramana Dayaram Shetty[5] sense.”

5. (1979) 3 SCC 489
6. (1990) 2 SCC 488

67. On a reading of the abovementioned judicial pronouncements, it is crystal clear that the scope of judicial review permits a constitutional court to interfere with the decision of the tender inviting authority if it is found to be discriminatory, it ignores the privilege-of-participation principle laid down in Ramana Dayaram Shetty (supra) and the decision made to favour a particular tenderer. In the present case, we have discussed in detail how the tender inviting authority has favoured respondent nos. 4 and 5 at the stage of technical bid and then by rejecting the bid of the lowest tenderer (the petitioner no.3) by deviating from its own past practices.

False entries in Technical Bid comparison chart to favour consortium of R-4 and R-5

68. We hasten to take note of it that in the present writ application the petitioner has not challenged the decision of the Technical Bid Committee taken in its meeting on 21.10.2024 but respondent no.6 has raised an objection as to the eligibility of R-4 and R-5 in terms of clause 2.4 read with 9.6 under Section V of the N.I.T. We have reproduced our findings with regard to the Technical bid comparison chart only to show that on the one hand how the tender inviting authority went to the extent of making false entries in the Technical bid comparison chart to favour R-4 and R-5 at the Technical bid stage but on the other hand, ousted the petitioner at financial bid stage by arbitrarily deviating from the terms and conditions of tender and the past practices. This again was to favour R-4 and R-5.

69. In the present case, this Court finds that the petitioner has been ousted on a completely irrelevant consideration. On several occasions in several tenders the Society (respondent no.2) has accepted the bids despite mention of “0” or “1” in the format which was not properly structured for submission of that particular bid. This clearly shows that the same was not part of financial bid document. In all such cases, the financial bid submitted by the tenderers such as M/s Radhika Express Services, M/s Yash Services and M/s Patliputra Printers and Stationery were evaluated on the basis of the financial bid document only and they were awarded the tender, but in the case of this petitioner, the same respondent no.2 has adopted an arbitrary approach to favour R-4 and R-5. The respondent no.2 did not consider the financial bid as per actual financial bid format mirroring Annexure-16 under Section VII of the N.I.T. which was an indicative format. The words ‘indicative format’ makes it clear that the financial bid was to be submitted in the format which was a like Annexure

16, Section VII of the N.I.T. The petitioner has rightly submitted that on e-procurement portal the petitioner was required to download the tender documents i.e. complete set. The general provision that the bidder/agency had to quote every line items in the financial bid format, was not applicable in this particular bid. It is the stand of the Society that in the financial bid format in the present case what was required to be filled up was the percentage discount on base price for diagnostics test. Apparently, the e-procurement portal was not duly structured and it was capable of creating confusion. The petitioner encountered a mandatory blank field labelled “Rate” which had to be filled in order to proceed with the upload of the financial bid. Obviously the said field labelled “Rate” was not as per the indicated Annexure-16, Section VII of the N.I.T. which required quoting of ‘percentage discount on base price’ for diagnostics test. The mandatory blank field labelled “Rate” which had to be filled in order to proceed with the upload of the financial bid cannot be said to be a financial quote in the present tender. The conduct of respondent no.2 in understanding the same in case of other tenderers as quoted above strengthens the opinion of this Court. The arbitrariness and discriminating approach of the Society writ large on the face of their conduct. At every stage R-4 and R-5 have been favoured.

Public interest ignored by the Society (R-4 and R-5)

70. It is important to take note of the public interest element present in the matter. In this case, the petitioner has quoted 77.06% of discount on the base price whereas consortium of respondent nos. 4 and 5 has quoted 73.05% of discount on the base price. It is, therefore, evident that the petitioners' quote is more beneficial to the State exchequer and ultimately it would benefit the people at large in the State of Bihar. This Court has already quoted paragraph '62' of its judgment in the case of POCT Services (supra) whereunder the stand of the learned Advocate General has been discussed.

Opinion of this Court

71. In the opinion of this Court, the action of the respondent nos. 2 and 3 in rejecting the financial bid of the petitioner is highly arbitrary and it goes to the extent of unduly favouring the respondent nos.4 and 5 by ignoring the public interest element. We are of the opinion that the decision to award contract to the consortium of respondent nos. 4 and 5 in this case is not a bonafide decision and it is not in public interest, therefore, this Court finds it a fit case to interfere with the decision of the respondent nos. 2 and 3 in exercise of its power of judicial review.

72. In result, the decision of the PAC as contained in Annexure-P/10 to the writ application rejecting the financial bid of the petitioner and awarding work to the consortium of respondent nos.4 and 5 is hereby set aside. All subsequent acts such as award of ‘LOI’ and execution of agreement in favour of the said consortium of respondent nos.4 and 5 would be of no avail and those are also set aside.

73. The respondent nos.2 and 3 are directed to take a fresh decision preferably within a period of one month from today, in the light of the discussions made hereinabove.

74. This writ application is allowed to the extent indicated hereinabove. The parties shall bear their respective cost.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	24.06.2025
Uploading Date	08.08.2025
Transmission Date	