

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

MAT 1894 of 2025

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IA NO. CAN/1/2025

Ghosh & Roy Co.

Vs

A-One Enterprise & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Joydip Kar, Sr. Adv.,
Mr. Sagar Bandyopadhyay, Sr. Adv.,
Ms. Soma Kar Ghosh, Adv.,
Ms. Shilpi Ghosh, Adv.,
Ms. Suparna Paul. Adv.

For the Respondent nos. 1 & 2 : Mr. Abhratosh Majumder, Sr. Adv.,
Mr. Arjun Roy Mukherjee, Adv.,
Ms. Saheli Mukherjee, Adv.,
Ms. Kousheyo Roy, Adv.,
Mr. Joyjeev Medhi, Adv.

For the State : Mr. Swapan Kr. Dutta, Ld. G.P.,
Mr. Niloptal Chatterjee, Adv.,
Mr. Amritalal Chatterjee, Adv.

For Judgment on : 28.11.2025

Arijit Banerjee, J. :-

1. A judgment and order dated October 27, 2025, passed by a learned Judge of our Court in WPA 16009 of 2024, being a writ petition filed by the respondent nos. 1 and 2 herein (in short 'A-One'), is under challenge in this appeal at the instance of the respondent no. 6 in the writ petition, Ghosh & Roy Co. (in short 'GRC').
2. The disputes between the parties pertain to a tender floated by the Government of West Bengal, Office of the MPO –cum-Superintendent, ESI Hospital, Manicktala, Kolkata. It was an E-tender (Two Bid System) for “Patient Diet (indoor patients)” at the ESI Hospital Manicktala for 2023-24 and 2024-25. The invitation to E-tender was issued vide memo dated May 11, 2023.
3. The relevant terms and conditions of the tender are reproduced hereunder:-

“5. Financial Bids

- (i) The rate should be quoted for all categories of diets separately (Diet 01 to Diet 08) in the format and upload the same along with other documents.
- (ii) In the interest of supplying quality Diet for indoor patients, the offered rate for raw materials should not be less than the rate calculated by the Office on the basis of the rate provided by West Bengal Agriculture Marketing Board.
- (iii) The cost of cooking gas has been fixed at Rs. 6.15/- per head per day.
- (iv) The rate offered should be consolidated i.e., (a) cost of raw material (b) cost of cooking gas (c) service charge including profit and taxes if any.

26. From diet schedule, annexed herewith, it will be evident that a total of 8 (Eight) categories of diet along with scales are being maintained in

the Hospital diet so constituted with a no. assigned to each dietary categories should preferably be supplied as follows:-

- (i) Morning Tea - 7 a.m. to 7.30 a.m.
- (ii) Breakfast - 8.30 a.m. to 9 a.m.
- (iii) Lunch - 11.30 a.m. to 12 Noon.
- (iv) Afternoon Tea - 3.30 p.m. to 4 p.m.
- (v) Dinner - 8 p.m. to 8.30 p.m.

FURNISHING OF RATES:-

- a) Cost of raw materials :- The costs of raw materials have been acquired as per West Bengal Agricultural Marketing Board.
- b) Cooking gas:- The cost of cooking gas will have to be shown separately for Tea, Breakfast, Lunch and Dinner for each category of diet.
- c) Cost of Service charges including taxes, if any:- The cost of service charges including taxes, if any, will have to be shown separately for Tea, Breakfast, Lunch and Dinner for each category of diet.
- (d) Finally, consolidated rate against each to be quoted taking together, (a+b+c) for the supply of each category of diet. The bidder has to fill up the Diet schedule of Diet – I to Diet-8 accordingly and upload it along with other documents for verification of the calculation done by the bidder, to come to a consolidated rate. The bidders can only put the consolidated rate of each category of Diet in the BOQ. If there is discrepancy between the rate uploaded and the rate quoted in the Diet schedule, then the bid will be liable for rejection. Rates must be quoted against each category of diet and each scale of diet and not in a single category of diet should be left

un-quoted. **The bid will be cancelled, if the bidder does not quote the rates properly.**

(e) No separate charge for any other item is admissible.

(f) The selected contractor will have to pay minimum wages to his employees at the rate as notified by the concerned department, Government of West Bengal from time to time as well as to contribute towards EST A/C and EPF A/C in respect of his Employees as and when applicable. The bill for reimbursement of wages, EPF, ESI contribution will be reimbursed separately (only for the no. of manpower sanctioned). The agency has to submit the challan/document of the previous month as a proof that Employers contribution towards, ESI, EFP is deposited for processing of bill for the following month.

32. Rates should be quoted clearly in both figures and words in specific unit.

a) In the interest of supplying quality Diet for indoor patients, the offered rate for raw materials should not be less than the rate calculated by the Office on the basis of the rate of the rate provided by West Bengal Agriculture Marketing Board.

b) Fill up 3rd, 4th and 5th Column at Financial bid is mandatory.

c) IN CASE OF TIE OF RATES, THE SUCCESSFUL BIDDER WILL BE DECIDED BY DRAW OF LOTS.

39. MODE OF CALCUTATION OF RATE:-

The calculation of rates of acceptable bidders will be on the basis of overall monthly financial implication for supply of all categories of diet. In case of tie the lots will be drawn under the supervision of the

Superintendent of the hospital with the help of the tender selection committee.”

4. At various stages of the tender process, writ petitions were filed by participating parties challenging various aspects of the process. The orders passed on such writ petitions may not be strictly relevant at this stage and hence I refrain from advertent thereto.

5. One of the bidders i.e. A-One, filed a writ petition being WPA No. 13777 of 2024, challenging the tender process on various grounds including that there was irregularity in the diet schedule furnished by some of the bidders and since at the financial evaluation stage, there was a tie, before going in for a draw of lots, the Tender Inviting Authorities are required to comply with Clause 39 of the tender documents which mandates that the calculation of rates of acceptable bidders will be on the basis of overall monthly financial implication for supply of all categories of diet. A learned Single Judge of this Court by an order dated May 22, 2024, disposed of the writ petition holding that the writ petitioner’s apprehension was premature since the authorities were yet to take a final call on the financial bids and observing as follows:-

“9. It is expected that the Tender Issuing Authorities shall comply with not only Clause 39 of the tender document but also other relevant terms of the tender as well as the governing Financial Rules while taking a final decision in the tender process.

10. Hence, there is no scope to interfere at this stage.

11. Accordingly, WPA No. 13777 of 2024 is disposed of in the light of the above observations, making it clear that the merits of the contentions of the parties have not been gone at this stage and keeping it open for any aggrieved bidder to challenge the tender process in the event it is found

that there is any gross illegality or violation or non-adherence to the tender clauses or the rules of fair play by the Tender Issuing Authorities.”

6. Thereafter, the tender process was carried forward. The bids of the interested parties were evaluated. It was found that there was a tie amongst the ten bidders. The rates quoted by all the bidders were the same. By a communication dated May 27, 2024, the authorities intimated the bidders that the successful bidder will be decided by draw of lots May 28, 2024. Upon such draw of lots being held, the appellant herein being GRC emerged as the lucky bidder. The work order was issued to GRC on May 28, 2024.

7. Challenging the work order and contending that the financial bid of GRC was not in accordance with the terms of the tender documents and therefore liable to be rejected, A-One filed the present writ petition. By the impugned judgment and order, the learned Single Judge allowed the writ petition. The relevant portion of the impugned order reads as follows:-

“36. Therefore, in terms of the order dated 22.05.2024 passed in WPA No. 13777 of 2024, the tendering authority was required to comply with Clause 39 and other relevant provisions of the tender document, as well as the applicable Financial Rules, while taking a final decision in the tender process.

37. In accordance with Clause 26, each bidder was required to indicate separately the cost of cooking gas and the service charges. The clause further stipulates that if a bidder fails to quote the rates properly, the bid shall be liable to cancellation.

38. From the rates quoted by the private respondent no. 6, as appearing at pages 403 to 410 of the writ petition, it is evident that the cost of cooking gas has not been shown separately. Accordingly, in terms of Clause 26, the bid of the private respondent no. 6 ought to have been cancelled. However, the tendering authority, for reasons best known to it, overlooked this irregularity and failed to cancel the said bid. It is needless to mention that non-compliance with the terms and conditions of the tender document not only amounts to illegality but also constitutes a clear violation of the order dated 22.05.2024 passed in WPA No. 13777 of 2024.

39. Therefore, from any angle it is viewed, it cannot be denied that the selection of the private respondent no. 6 as the successful bidder does not conform to the legal and procedural requirements. To some, such an omission may appear trivial or negligible: however, this situation invokes the legal maxim “Dura lex sed lex” which serves as a reminder of the importance of the rule of law and the necessity of adhering to legal standards, even when they may seem rigid or unjust in particular instances. It embodies a foundational principle that upholds the integrity and reliability of the legal system.

40. There can be no doubt as to the binding authority of the decisions cited by Mr. Ghosh; however, those precedents are of no avail to the private respondent no. 6 in the facts of the present case.

Order:

41. Therefore, based on the discussions and reasons set out in the preceding paragraphs, the writ petition is disposed of with a direction

upon the tendering authority to treat the bid uploaded by the private respondent no. 6 as invalid. The respondent authority is further directed to evaluate the bids of the remaining bidders whose technical bids were found to be valid, prior to conducting the lot in which the private respondent no. 6 was selected as the successful bidder, and to finalise the tender process strictly in terms of the order dated 22.05.2024 passed in WPA No. 13777 of 2024, in accordance with Clause 39 and other relevant provisions of the tender document as well as the governing Financial Rules within four weeks from the date of receipt.

42. It is imperative to clarify that until the tender process is finalised in terms of the above directions, the private respondent no. 6 shall be permitted to continue with the work order presently operating in its favour. However, such continuance shall not create any equity or confer any right upon the said respondent.”

- 8.** Being aggrieved, GRC has come up by way of this appeal.
- 9.** Appearing for GRC, Mr. Joydeep Kar, learned Senior Advocate, submitted that the learned Single Judge is factually wrong in holding that GRC has not shown the cost of cooking gas separately in its bid. Mr. Kar drew our attention to the bid submitted by GRC (page 417 of the stay petition), from where it appears that GRC has quoted an amount of Rs. 1.23 as cost of cooking gas for preparation of morning tea and the same amount for preparation of breakfast, lunch, evening tea and dinner. In other words, GRC has quoted the flat rate of Rs. 1.23 as cost of cooking gas for preparation of each of the 5 meals.
- 10.** Mr. Kar further submitted that similar flat rates have also been quoted by another bidder, viz., Sonar Bangla Caterers. There is no bar in the tender

documents to quoting such flat rates. It is the overall financial implication per month which is important.

11. Learned Senior Counsel further submitted that the Tender Issuing Authority is in the best position to interpret the clauses of a tender. The authority did not find anything wrong with the financial bid of GRC. Therefore, there could be no question of disqualifying GRC. There being a tie as regards the amounts quoted by each of the tenderers, the authority resorted to draw of lots for awarding the contracts. This is contemplated in Clauses 32 and 39 of the tendered documents.

12. Mr. Kar relied on the following decisions of the Hon'ble Supreme Court: ***State of Madhya Pradesh & Anr. v. Uttar Pradesh State Bridge Corporation Ltd. & Anr reported at (2022) 16 SCC 633 paragraphs 11, 21 & N.G. Projects Limited. v. Vinod Kumar Jain & Ors reported at (2022) 6 SCC 127 paragraphs 12-16, 23.***

13. Appearing for the respondents/writ petitioners, Mr. Abhratosh Majumder, learned Senior Counsel drew our attention to the bids submitted by the other interested parties, viz, C.M. Enterprise, Jana Enterprise, Grand Supply Service, Nihar Enterprise and Others. He also drew our attention to the bids submitted by the writ petitioners. He submitted that all the said bids showed variable costs of cooking gas for preparing the different meals i.e., morning tea, breakfast, lunch, evening tea and dinner. However, the appellant and Sonar Bangla which are related concerns, submitted bids showing flat rate of cost of cooking gas for all the meals. This is not possible. There was no application of mind on the part of the appellant. It was the understanding of the majority of the bidders that actual cost of cooking gas for preparing each meal would be furnished. At least, the cooking gas cost must have nexus to the meal in question. Notional cost will not do. Public money is involved.

14. Mr. Majumder drew our attention to Clauses 5 and 39 of the tender documents. He submitted that the State did not follow Clause 39.

15. Learned Counsel then submitted that in respect of the Bandel ESI Hospital, in respect of a similar tender process, the bids submitted including the bid of the successful tenderer, would reflect variable costs of cooking gas for different meals. This would also show that the appellant's bid in the present tender process is not in accordance with the terms of tender.

16. Mr. Majumder then submitted that on May 27, 2024, the writ petitioners came to know that the State was going to hold a lottery in view of their being a tie of bids submitted by all the tenders. By a letter dated May 28, 2024, the writ petitioners lodged their protest. They pointed out that the tendering authority had allowed bidders to participate in the draw of lots, whose financial bids should have been cancelled due to errors apparent on the face of the records. It was also put on record that the decision to opt for lottery is in contravention of the terms and conditions of the tender including Clause 39 thereof and also in violation of the provisions of the West Bengal Financial Rules and the judgment and order dated May 22, 2024, passed by a learned Judge of this Court in WPA no. 13777 of 2024. Therefore, it is not that the writ petitioners participated in the draw of lots without reservation and therefore cannot challenge the same as an unsuccessful bidder.

17. Learned Counsel then placed before us the affidavits-in-opposition filed by the present appellant and the State before the learned Single Judge and submitted that the affidavits are identical, word to word. This shows the collusion between the State and the appellant.

18. Mr. Majumder finally submitted that the judgments cited on behalf of the appellant have no manner of application to the facts of the present case. The writ petitioners did not challenge the tender terms. Their case is that the process of

tender has not been conducted in accordance with the clauses of the tender documents.

19. In reply, Mr. Kar, learned Senior Advocate, pointed out that Clause 5 (iv) provided that the rate offered should be a consolidated one. Therefore, it is immaterial as to whether or not variable cost of cooking gas was shown in the bids submitted by the appellant. The tender terms do not have any stipulation that such variable cost has to be furnished.

20. As regards the allegation of collusion between the State and the appellant, Mr. Kar submitted that the contract was awarded to the appellant much before filing of the writ petition. There was no allegation of collusion at that time. When the writ petition was filed, there was no conflict of interest between the State and the appellant. Hence, similarity of the affidavits of the State and the appellant or even the same being identical, is of no significance. In any event, the impugned judgment and order does not address this issue.

Court's view

21. The only question that falls for determination in this appeal is whether or not the learned Single Judge was justified in interfering with the tender process by directing the tendering authority to treat the bid uploaded by the appellant (successful tenderer) as invalid and to evaluate the bids of the remaining bidders whose technical bids were found to be valid prior to conducting the draw of lots in which the appellant/private respondent no. 6 was selected as the successful bidder.

22. Before expressing our opinion on the aforesaid issue, it may be helpful to dilate briefly on the scope of judicial review of administrative decisions with special reference to tender matters. That such scope is limited has now been made clear by the Hon'ble Supreme Court in numerous decisions, some of which we may note as follows.

23. In *Tata Cellular v. Union of India reported at (1994) 6 SCC 651*, a three-judge bench of the Hon'ble Supreme Court, in paragraph 94 of the reported judgment, held as follows:-

“94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

24. In *Jagdish Mandal v. State of Orissa and Ors reported at (2007) 14 SCC 517*, at paragraph 22 of the judgment, it was observed as follows: -

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, 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 blacklisting 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.” **(Emphasis is mine)**

25. In *Central Coalfields Limited and Anr v. SLL – SML (Joint Venture Consortium) and Ors reported at (2016) 8 SCC 622*, the Hon’ble Supreme Court held that the issue of acceptance or rejection of a bid should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. There must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision that no responsible authority acting reasonably and in accordance with relevant law could have reached. Whether a term of NIT is essential or not is a decision to be taken by the employer, which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made

applicable to all bidders and potential bidders. The lawfulness of the decision can be questioned on very limited grounds but the soundness of the decision cannot be questioned; otherwise, the Court would be taking over the function of the tender issuing authority, which it cannot.

26. In *Afcons Infrastructure Ltd. V. Nagpur Metro Rail Corpn. Ltd. reported at (2016) 16 SCC 818*, the Hon'ble Supreme Court held that a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a Constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the Constitutional Court interferes with the decision-making process or the decision. The Hon'ble Court went on to observe in paragraph 15 of the Judgment as follows:-

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

27. In *Silpi Constructions Contractors v. Union of India and Anr reported at (2020) 16 SCC 489*, at paragraphs 19 and 20 of the reported judgment, the Hon'ble Supreme Court observed as follows:-

“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias.

However, this Court in all the aforesaid decisions 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. This 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. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts, but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of

the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind, we shall deal with the present case.”

(Emphasis is mine)

28. In *Uflex limited v. Government of Tamil Nadu and Ors reported at (2022) 1 SCC 165* the Hon'ble Supreme Court observed that judicial review of contractual matters has its own limitations. It is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance. 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. In commercial matters, the objective is not to make the Court an appellate authority for scrutinising as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them.

(Emphasis is mine)

29. In *Galaxy Transport Agencies v. New J.K. Roadways reported at (2021) 16 SCC 808*, a three-judge bench of the Hon'ble Supreme Court reiterated that the authority that authors the tenders document is the best person to understand and appreciate its requirement, and thus, its interpretation should not be second-guessed by a Court in judicial review proceedings.

30. In *NG Projects Ltd. v. Binod Kumar Jain, Supra*, after referring to several earlier decisions, the Hon'ble Supreme Court held that the position of law with regard to the interpretation of terms of a contract is that the question as to whether a term of the contract is essential or not it is to be viewed from the perspective of the employer and by the employer.

31. In *State of Madhya Pradesh and Anr. v. Uttar Pradesh State Bridge Corporation Ltd. and Anr., (Supra)*, the Hon'ble Supreme Court, after recounting some of its earlier decisions, held that the Court must defer to the understanding of clauses in tender documents by the authors thereof unless there is perversity in the author's construction of the documents or there is mala fide.

32. We therefore see that the power of judicial review in contractual/ commercial matters where State is a party, should be exercised with extreme care and circumspection. Otherwise, the result will be counterproductive. Public projects would be held up; public money would be wasted. At all costs, public interest must prevail over private interest. The general principle applies that the Writ Court is not concerned with merits of a decision but with the propriety and legality of the decision-making process.

33. Often an unsuccessful participant in a tender floated by the Government, challenges the process and the final decision of the concerned Authority before the Writ Court. More often than not, such attempts are speculative and frivolous without the same having any merit. Generally, such efforts are prompted by business rivalry, wounded pride or a false perception of having been wronged. As

we understand the law to be, the Writ Court should be careful not to endorse such unmeritorious claims and ward off such attempts with strong disapproval. Only when the decision-making process or the decision is perverse or arbitrary or mala fide or tainted with bias or unreasonable in the *Wednesbury* sense, should the Court interfere in the exercise of its high prerogative writ jurisdiction under Article 226 of the Constitution of India. It is not for the Constitutional Court to judge whether or not the decision of an authority is wise or prudent. That should be left to the Authority itself. The Writ Court's function is to ensure that the decision has been taken following due process of law and adhering to the principles of fairness and natural justice.

34. Keeping in mind the aforesaid discussion, we are unable to sustain the judgment and order impugned before us.

35. Firstly, the learned Judge factually erred in holding that from the rates quoted by the private respondent no. 6 (appellant herein) "it is evident that the cost of cooking gas has not been shown separately." As we have recorded above, learned Senior Counsel for the appellant showed us the bid document submitted by GRC. The cost of cooking gas has been shown separately, albeit at a flat rate of Rs. 1.23 for all the meals. We have not been shown any clause in the tender documents which debars a bidder from quoting a flat rate for cost of cooking gas for all the meals. The tender issuing authority also did not find anything irregular about the same. If the author of the tender document did not find anything objectionable about the appellant quoting a flat rate for cooking gas cost for all the meals, we see no reason why the Court should interfere on that ground.

36. In any event, we do not find any irregularity of any consequence in the bid submitted by the appellant. Ultimately what is important is the financial implication for the State. What is important is the final consolidated rate that is quoted by a bidder. In the present case, the final consolidated rates that were

submitted by all the bidders, were the same. Therefore, the respondent authority had to resort to drawing of lots for selecting the bidder in whose favour work order would be issued. There was nothing irregular about this procedure. As submitted by learned Senior Counsel for the appellant and noted above, Clauses 32 and 39 of the tender documents clearly provide for such procedure.

37. We do not find that the process of selection adopted by the respondent authority is contrary to any term of the tender. The procedure followed is in no manner arbitrary, or perverse or mala fide or *Wednesbury* unreasonable. Hence, in our opinion, the learned Single Judge should not have interfered in the matter.

38. It is also not the case that by the contract being awarded to the appellant, a greater financial burden has been imposed on the public exchequer compared to what such burden would have been had the contract been awarded to any of the other bidders. Therefore, the ground of public interest for interfering with the decision of the respondent authority was also not available to the learned Single Judge.

39. Learned Senior Counsel for the writ petitioners argued that there is unholy entente between the respondent authority and the appellant. The decision to award the contract to the appellant was a biased one. Therefore, the learned Single Judge rightly interfered.

Apart from the fact that interference by the learned Judge was not on the aforesaid ground, we also do not find any material on record or any circumstance which would lend support to the allegation of bias or partisanship of the respondent authority in favour of the appellant. A bald allegation of bias is neither here nor there. It must be substantiated by material evidence or at least circumstantial evidence which is not there in this case.

40. Learned Senior Counsel for the writ petitioners sought to rely on the bids submitted by the interested parties in similar kind of tender process for the Bandel

ESI Hospital. He tried to show that the successful bidder in case of Bandel ESI Hospital had quoted variable cost of cooking gas for the different meals of the day. With great respect, we do not see what bearing that has on the present case. We also do not know what the tender terms were in case of Bandel ESI Hospital. We reiterate that the bid submitted by the appellant in the present case is in no manner contrary to or violative of any term of the subject tender. The respondent authority being the author of the tender document was also of the same view and hence rightly did not reject the appellant's bid on the ground of the same being not in accordance with the terms of the tender.

41. As regards the affidavits of the appellant/respondent no. 6 and the respondent authority, filed before the learned Single Judge, being almost identical, we are of the view that the same per se does not establish any collusion between the appellant and the respondent authority. At the time when the writ petition was filed, there was no conflict of interest between the appellant/respondent no. 6 and the respondent authority. On the contrary, they were sailing on the same boat. Both were interested in the tender process and the final decision being upheld. Therefore, similar or identical affidavits filed by them may not be of much significance. In any event, the same does not detract from the fact as we have found that the appellant's bid was not deficient on the ground of being contrary to any term of the tender and therefore did not deserve cancellation.

42. The other point that we notice is that the learned Single Judge while holding that the precedents cited are of no avail to the private respondent no. 6 (appellant) in the facts of the case, did not record any reason as to why the principles laid down in the decisions cited would not apply to the facts of this case. In our considered view, apart from the impugned judgment being based on a completely wrong factual premise, on which ground alone the same is liable to be set aside,

the learned Judge unfortunately failed to appreciate the scope and ambit of the writ jurisdiction in commercial/contractual matters and in particular, tender matters.

43. For the reasons aforestated, the judgment and order under appeal is set aside. All steps taken on the basis of or pursuant to such judgment and order including issuance of Memo No. 7976 dated 11.11.2025 by the ESI Hospital Manicktala are also set aside.

44. The appeal is accordingly allowed. There will be no order as to costs. In view of disposal of the appeal the connected application being **IA NO. CAN/1/2025** shall stand disposed of.

45. Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)