



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10131 OF 2024

Nalanda Bahuddeshiya Sewabhavi Sanstha,]
Jalna registered under the provisions of]
Co-operative Societies Act, 1960]
Having its office at Plot No.61,]
Pangarkar Nagar, Ambad Road,]
Jalna – 431 213]
through its Authorized Representative]
Mr. Bhaskar Kaduba Shinde,]
Tel. No.02482-223855]
Email Id 358bhaskarshinde@gmail.com] ... Petitioner

Versus

1. The State of Maharashtra through its]
Secretary, Tribal Development]
Department, Mantralaya,]
Mumbai – 400 032]
Email: sec.tribal@maharashtra.gov.in]
2. The Tribal Research and Training]
Institute (TRTI), Pune And Autonomous]
Institute of Government of Maharashtra]
Under Tribal Development Department]
Having its office at 28 Queens Garder,]
Camp, Pune – 411 001]
Through its Commissioner]
Email : trti.mah@nic.in]
3. The Competitive Pre-Examination]
Training Implementation & Monitoring]
Committee]
Through its Chairperson/Commissioner]
Tribal Research & Training Institute]
Pune, Government of Maharashtra, 28,]
Queens Garden, Camp Pune – 411 001]
Through its Chairperson – TRTI]
Email : trti.mah@nic.in] Respondents

**WITH
WRIT PETITION NO. 10132 OF 2024**

Anusuchit Jati Jamati Shikshan Sanstha (Regd.)	]	
registered under the provisions of	]	
Co-operative Societies Act, 1960	]	
Having its office at F 501-502, Tower-2	]	
Seawoods Grand Central Condominium	]	
Sector 40, Seawoods, Navi Mumbai – 400706	]	
through its authorized representative	]	
Mr. Bhushan Govind Ramteke,	]	
Mob. No. 9082102879	]	
Email Id bhushan.ramteke@gmail.com	]	... Petitioner

Versus

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|---|---|------------------|
| 1. The State of Maharashtra through its |] | |
| Secretary, Tribal Development |] | |
| Department, Mantralaya, |] | |
| Mumbai – 400 032 |] | |
| Email: sec.tribal@maharashtra.gov.in |] | |
| 2. The Tribal Research and Training |] | |
| Institute (TRTI), Pune And Autonomous |] | |
| Institute of Government of Maharashtra |] | |
| Under Tribal Development Department |] | |
| Having its office at 28 Queens Garder, |] | |
| Camp, Pune – 411 001 |] | |
| Through its Commissioner |] | |
| Email : trti.mah@nic.in |] | |
| 3. The Competitive Pre-Examination |] | |
| Training Implementation & Monitoring |] | |
| Committee |] | |
| Through its Chairperson/Commissioner |] | |
| Tribal Research & Training Institute |] | |
| Pune, Government of Maharashtra, 28, |] | |
| Queens Garden, Camp Pune – 411 001 |] | |
| Through its Chairperson – TRTI |] | |
| Email : trti.mah@nic.in |] | Respondents |

**WITH
WRIT PETITION NO. 10705 OF 2024**

Anusuchit Jati Jamati Shikshan Sanstha (Regd.)	]	
registered under the provisions of	]	
Co-operative Societies Act, 1960	]	
Having its office at F 501-502, Tower-2	]	
Seawoods Grand Central Condominium	]	
Sector 40, Seawoods, Navi Mumbai – 400706	]	
through its authorized representative	]	
Mr. Bhushan Govind Ramteke,	]	
Mob. No. 9082102879	]	
Email Id : bhushan.ramteke@gmail.com	]	... Petitioner

Versus

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| 1. The State of Maharashtra through its |] | |
| Secretary, Tribal Development |] | |
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| Email: sec.tribal@maharashtra.gov.in |] | |
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| 2. The Tribal Research and Training |] | |
| Institute (TRTI), Pune And Autonomous] |] | |
| Institute of Government of Maharashtra |] | |
| Under Tribal Development Department |] | |
| Having its office at 28 Queens Garder, |] | |
| Camp, Pune – 411001 |] | |
| Through its Commissioner |] | |
| Email : trti.mah@nic.in |] | |
| | | |
| 3. The Competitive Pre-Examination Training |] | |
| Implementation & Monitoring Committee |] | |
| Through its Chairperson/Commissioner |] | |
| Tribal Research & Training Institute Pune |] | |
| Government of Maharashtra, 28, |] | |
| Queens Garden, Camp Pune – 411001 |] | |
| Through its Chairperson – TRTI |] | |
| Email : trti.mah@nic.in |] | |
| | | |
| 4. The Director General |] | |
| National Informatics Center |] | |

Having its office at Ganesh Khinda Road,]
ICS Colony, Ashok Nagar, Pune - 411007]
Email : dg@nic.in]
Website : mahatenders.gov.in] Respondents

Mr Nitin Thakker, Senior Advocate a/w Mr B. K. Barve, Mr Sandeep Barve, Ms Simmy Sebastian, Mr Gaurav Shrivastav, Ms Sonali Patil, i/b. B. K. Barve & Co., for the Petitioners.

Mrs Neha S. Bhide, Government Pleader a/w Mr O. A. Chandurkar, Additional Government Pleader, Mrs. G. R. Raghuwanshi, AGP, for Respondent Nos.1 to 3 in WP/10131/2024 and WP/10132/2024 and for Respondent No.1 in WP/10705/2024.

Mr D. P. Singh, for Respondent-NIC in all Writ Petitions.

**CORAM : ALOK ARADHE, CJ &
M. S. KARNIK, J.**

DATE : 24th MARCH, 2025

JUDGMENT (Per M. S. Karnik, J.) :

1. These Writ Petitions are disposed of by a common judgment as common issues arise.
2. Writ Petition No.10131 of 2024 pertains to E-Tender Notice No.1565 dated 12th June 2024 issued by the Respondent No.2- The Tribal Research and Training Institute ("TRTI" for short) for empanelment of physical training-cum-coaching institute for providing non-residential physical training-cum-coaching for police, military, para-military examination for target group of TRTI and Babasaheb Ambedkar Research and Training Institute ('BARTI' for short) in Maharashtra.

3. Writ Petition No.10132 of 2024 pertains to two E-Tender Notices bearing Nos.1563 and 1565, both dated 12th June 2024 issued by Respondent No.2. E-Tender Notice No.1563 is for empanelment of coaching institute for non-residential coaching for National Bank for Agricultural and Rural Development (“NABARD”) (Grade A and B), Institute of Banking Professional Selection (“IBPS”), SBI, RBI, Regional Rural Bank (“RRB”), Insurance, LIC and other banking competitive examinations for the target groups of Sahu Maharaj Research, Training & Human Development Institute (“SARTHI”), BARTI and Mahatma Jyotiba Phule Research and Training Institute (“Mahajyoti”) in Maharashtra.

4. Writ Petition No.10705 of 2024 pertains to E-Tender Notice bearing No.1711 dated 26th June 2024 issued by Respondent No.2-TRTI for empanelment of coaching institute for non-residential coaching for Maharashtra Public Service Commission (“MPSC”) - non-gazetted Group B and C services examination for the target group of BARTI and Mahajyoti and Group C services examination for target group of Respondent No.2-TRTI in Maharashtra.

5. Mr Nitin Thakker, learned Senior Advocate submitted that all the Tenders are non-competitive and non-commercial in nature and are only

for technical evaluation of institutes seeking empanelment for providing coaching for the competitive exams to targeted groups, i.e. SC, ST, OBC and Maratha students in Maharashtra. The Tender provides for empanelment/contract for a period of three years, which will include multiple batches for the scheduled exams held from time to time.

6. In Writ Petition No.10131 of 2024 and Writ Petition No.10132 of 2024, the Petitioners were prevented from submitting their bids before the deadline of 3rd July 2024, 5:00 p.m. (17:00 hours) due to an error, namely, “JAVA HEAP SPACE” on the Mahatender website portal, which the support staff also could not resolve even after taking access of the Petitioners' computer. Therefore, the Petitioners in both Writ Petitions submitted their bid documents by emails. The Petitioners seek a direction from this Court against the Respondents to consider their bid documents for determining their eligibility and empanelment for the upcoming exams.

7. In Writ Petition No.10705 of 2024, the support staff was able to assist the Petitioner for successfully uploading the bid document on time. However, there was a miscommunication between the Petitioner and the support staff who assured the Petitioner that the bid is successfully submitted without informing the Petitioner that the Petitioner has to

follow the step of freezing the bid on the portal. Accordingly, the Petitioner in Writ Petition No.10705 of 2024 also seeks a direction from this Court to consider the bid documents submitted by emails for determining its eligibility and empanelment for the upcoming exams.

8. A few relevant facts need a reference. A Government Resolution dated 30th October 2023 was issued framing a comprehensive policy to bring uniformity in the various schemes of pre-competitive examination training program in the State of Maharashtra. E-Tender No.1565 was issued by the Respondent No.2-TRTI which provided that the Expression of Interest ("EOI") is for single bid system – technical bid and the coaching institute shall be empanelled based on technical evaluation only. The bidders had to submit all the required documents by online submission only. The conditions stipulated that the bid document will be available on the website and the interested bidders will have to register and enroll on the said website. EMD of Rs.2,00,000/- and non-refundable Tender fee of Rs.20,000/- was required to be deposited online. The complete bid was available on the website for the purpose of downloading. The downloaded bid document was considered to be valid for participation in the electronic bid process (e-tendering) subject to the submission of online bid and online payment of Tender fee and EMD.

9. To participate in online bidding process, the tender document provided that the bidder must procure a digital signature certificate as per Information Technology Act, 2000 using which they can digitally sign and encrypt the electronic bids. Certain key dates were provided for E-Tender. The said Tender aimed to cater a total of 26,000 candidates.

10. The relevant conditions of the bid document, significant to the controversy, are Clause 1 which provided for the bid process and states that the bidder has to submit a bid online in one envelope system containing technical bid. Clause 14 provides for submission of bids and states that the bidder should submit the bid online, which shall comprise of a single envelope (single envelope system should be followed for the bid). Clause 15 provides for specifications of the technical bid. Clause 21 provides that there is no need to submit commercial bid as the sanctioned amount per student is Rs.50,000/-. Clause 24 provides for evaluation of technical bids and provides that the Respondent No.3-The Competitive Pre-Examination Training Implementation & Monitoring Committee (“Committee” for short) may seek written clarification from the bidders any time during the bid evaluation process. Clause 24 provides for empanelment of coaching institutes by award of contract on obtaining at least 60% marks in technical evaluation. The successful bidder was required to enter into a separate MOU with respective organisations.

11. The Petitioner participated in the pre-bid meeting held on 24th June 2024. In the pre-bid meeting at Sr. No.33, it was clarified that all bids uploaded will be visible. The Petitioner paid the EMD and Tender fee aggregating to Rs.2,20,000/-. The Petitioner's bid for another E-Tender No.1563 (subject matter of Writ Petition No.10131 of 2024) was confirmed at 4:37 p.m. (16:37 hours) with the packet/file size of 100882 kb (100.22 mb). The Petitioner attempted to submit the bid with all documents on the portal between 2:00 p.m. to 4:45 p.m. on 3rd July 2024. However, the system persistently displayed an error viz. "JAVA HEAP SPACE". At 14:43 hours, 16:30 hours, 21:27 hours and 21:31 hours. The Petitioner's representative contacted the technical support staff on their online portal and requested the support staff to assist the Petitioner to submit their documents. Between 14:43 hours till 16:45 hours, the support staff took access of the Petitioner's computer through an application called "Any Desk" and tried to deal with the error. However, the exercise did not fructify and the Petitioner was deprived of submitting the bid.

12. At this stage it is pertinent to note that the National Informatics Centre ("NIC") in its affidavit dated 13th August 2024 at paragraph 4 confirmed that the Petitioner had made three calls before the deadline and two calls after the deadline and also has provided transcripts of the

conversation between the Petitioner and the Help Desk. The transcriptions of the confirmation confirm that the Petitioner's computer was accessed by 'Any Desk Application'. However, the Help Desk was unable to resolve the issue.

13. The Respondents have produced an hour-wise report of 3rd July 2024 showing number of bids uploaded, total size of bid document, number of logins etc. By an email dated 4th July 2024 to the Respondent No.2, the Petitioner recorded that it was unable to upload the bid due to the problem on site and requested for assistance. By a letter dated 5th July 2024 the Petitioner requested that it should be allowed to submit its bid and all documents as the same could not be submitted due to technical error which was beyond the Petitioner's control and since the tender is not commercial and is purely technical for determining the eligibility, no prejudice will be caused to any bidders or to the Respondents.

14. By emails addressed to the Respondent No.2, the Petitioner on 6th July 2024 and 10th July 2024 submitted its bid documents in parts as emails have restriction of maximum file size of 25 MB. Writ Petition No.10131 of 2024 was filed on 10th July 2024.

15. The Respondent No.2 issued a Notification on 22nd July 2024 requesting the bidders to submit additional/shortfall documents by email

in variance of the tenders. The Respondent published Notification on 22nd July 2024 intimating the date scheduled between 30th July 2024 and 1st August 2024 for one Common Entrance Test Exam.

16. This Court vide order dated 24th July 2024 directed the Respondent to bring on record the conversation which took place between the Petitioner and the Help Desk while the Petitioner was uploading its bid and faced technical glitches. The support team on 27th July 2024 replied to the Respondent No.2 as regards the Petitioner's grievance and gave a link which *inter alia* stated that there is no limit on the file size and the upload is decided on memory available at the client side as well as the network bandwidth available at the client's side at that point of time and the tender authority will not be held responsible for any sort of difficulties faced during submission of bids online due to local issues. The Respondents in their reply have also relied upon the guidelines for "hassle free bid submission" published on the Mahatender website which provides that the bidder will be held responsible for non-submission of bids within the due time and sometimes the submission of documents required to increase Local JAVA Runtime.

17. This Court vide its order dated 1st August 2024, 6th August 2024 and 7th August 2024 directed the NIC to bring on record the transcripts of

the conversation between the Petitioner and the Help Desk. On 19th August 2024 this Court in all these Writ Petitions ordered that any further decision taken by the Respondents in respect of the subject tenders, shall be subject to further orders, which may be passed in these Writ Petitions. This Court directed that the Department of Computer Science, Indian Institute of Technology, Bombay to appoint a faculty member to prepare a report in respect of the three Writ Petitions giving his opinion, as to whether the Petitioners were prevented from participating in the bid process for which whether the Petitioners or the Respondents are responsible. This Court further directed that the expert should throw light on whether the third possibility is also possible where neither the Petitioner nor the Respondent can be held responsible.

18. Before we proceed to deal with the report dated 6th September 2024 submitted pursuant to the orders passed by this Court, let us bear in mind the stand of the Respondents. Learned AGP vehemently submitted that this is not a case of technical glitch which prevented the Petitioners from bidding, but this was a complete lapse on the part of the Petitioners in failing to upload the bid documents within the stipulated time. It is further submitted that the Petitioners have participated in several tender processes and therefore are aware of the requirements when it comes to submission of bids online. If the computer belonging to the Petitioners

did not have the capacity to upload the bid, then the fault squarely lies with the Petitioners and this cannot be said to be a case of technical glitch. It is further submitted that if at this stage the Petitioners' bid documents are to be evaluated, this will seriously prejudice those who have successfully uploaded their bids and moreover as successful bidders have already been declared and even one examination has been held. It is therefore submitted that the Writ Petitions should be dismissed. Our attention is also invited to the affidavit in reply filed on behalf of the Respondents opposing the Writ Petitions.

19. Coming back to the report dated 6th September 2024 pursuant to the directions of this Court dated 19th August 2024 submitted by Mr Bhaskar Raman, Professor, Department of Computer Science, the Technical Assessment at Section C of the Report, in respect of Writ Petition No.10131 of 2024 and Writ Petition No.10132 of 2024 is relevant which needs to be reproduced reading thus :-

“(i) Java Space Heap Error appears due to combination of three conditions: (a) size of the file being uploaded being too huge, (b) memory available in the bidders' computer, (c) Java software version at the bidders' end is incorrect.

(ii) In respect of WP 10131, the issue appears to have been a combination of file size and memory available and possibly the Java software version at bidders' end.

(iii) In respect of WP 10132, the support call helper address the issue by asking to reduce file and also mention that the Java software version is possibly incorrect.

(iv) Therefore, the above issues are primarily at bidders' end computer. It cannot be called as bidders' fault as such, but it is more of an instance of lack of anticipation of possible technical hurdles in the submission process, combined with lack of knowledge of how long it may take to resolve these hurdles.

(v) Last minute rush could have been avoided by uploading a dummy bid document ahead of deadline.

(vi) The instructions for the technical aspects of the bid submissions are fairly clear. There is some scope for further improvement, which is mentioned in Section F of the Report.

Section F provides for technical suggestions for future in respect of WP 10131 and WP 10132: That submission of uploading dummy document of similar size of final document should be included in the guidelines and the same computer should be used to upload the final document.

In summary at Section G for WP 10131 and WP 10132, the expert opines that there is no specific fault attributable to the bidder, but it appears to be a cause of lack of anticipation of possible technical hurdles during the submission process.”

20. The Petitioners on their part provided a technical report by Mr Krantikumar Deshpande, Associate Director of LTI Mind Tree, Mumbai which deferred with the opinion given by Mr Bhaskar Raman. The technical assessment of the Petitioner’s expert is in the following terms :-

“(i) The "JAVA HEAP SPACE" is not a generic error commonly seen on any website and the exact issue behind it can be identified by the technical experts who had developed the software and in many cases, program debug and/or access to error logs will be required to identify exact issue, which cannot be accessed on browser’s.

(ii) Third party expert cannot understand the exact issue behind such a message. End users will not be in a position to understand the meaning of the error at their end. The screenshot shows that the error message is not from client's system.

(iii) "JAVA HEAP SPACE" message does not resonate with IT standard norms and does not convey the exact issue, warning, help message for the end user.

(iv) The Mahatender website does not mention JAVA HEAP SPACE issue and its resolution. All application-generated messages that block the end user process should have a resolution in the FAQ section or the Help section as per standard practice, which seems lacking on the portal.

(v) NIC on Affidavit has clarified that there is no limit for the file size for upload.

(vi) The error impacting end users, which is critical in nature, becomes a candidate of high severity. Since the issue was time sensitive and impacted the Petitioner's bid process, this is a high severity defect.”

21. Having regard to the narrative above referred, it is important to bear in mind that in the pre-bid meeting, it was clarified that all bids uploaded will be visible to all. This clearly indicates that it was not a competitive bidding tender. The tender was for the purpose of empanelment which provides for empanelment of coaching institutes by award of contract on obtaining at least 60% marks in technical evaluation. There was no maximum limit on the number of empanelments and the empanelment is location specific. On the basis of the documents there was to be an evaluation of the technical bids. All the tenders are non-competitive and non-commercial tenders and are only for technical evaluation of institutes seeking empanelment for providing coaching for the competitive exams to targeted groups. This empanelment is for a period of three years, which will include multiple batches for the scheduled exams held from time to time. It is ultimately for the students to choose the institute. As indicated earlier, such

empanelment is to be on the basis of the documents submitted which are required to be evaluated by the Committee before empanelment.

22. The materials on record clearly demonstrate that the Petitioners were making every possible attempt to upload the bid documents. Even if we go by the opinion of the report of the expert Mr Bhaskar Raman, the report reveals that there was a Java Space Heap Error due to combination of some factors viz. size of the file uploaded being too huge, memory available in the bidders' computer and Java software version at the bidders' end is incorrect. The Petitioner sought help from the Help Desk and the issues which arose were primarily at the Petitioners' end computer. However, the report further says that it cannot be called as bidders' fault as such, but it is more of an instance of lack of anticipation of possible technical hurdles in the submission process, combined with lack of knowledge of how long it may take to resolve these hurdles. There have been suggestions about last minute avoidance of rush by uploading a dummy bid document ahead of the deadline. Moreover, Section F of the report makes suggestions for future improvements.

23. This is a case where the Petitioners were doing its best to upload the document but could not anticipate the possible technical hurdles

during the submission process. They sought help from the Help Desk before the bid time was over. All the documents were in fact emailed to the Respondents. In such circumstances though this may not be a case of technical glitch from the Respondents side, but the circumstances on record coupled with the fact that the tenders are non-competitive and non-commercial and are only for technical evaluation of institute seeking empanelment for providing coaching, we are constrained not to adopt a technical approach in this matter. The choice whether to opt for an empanelled institute is with the students who want to undergo the training. Even otherwise the empanelled institutes have to be technically evaluated pursuant to which they can be empanelled. In such a case it is in the interest of students that they get a broad based choice as regards the institute they want to opt for. There is no question of prejudice to any institute as this is not a commercial tender and moreover the training is in batches for new students for a limited duration as a result of which even if the bid documents of the Petitioner are considered at this juncture there will be no prejudice to anyone.

24. In our opinion this is surely not a case where relief should be denied to the Petitioners only because the bid documents could not be uploaded before the deadline having regard to the overall facts and circumstances on record. The decision in **Maharashtra Housing**

Development Authority vs. Shapoorji Pallonji and Company Private Limited and Others¹ relied on by Mr Chandurkar, learned Additional Government Pleader has no application in the present facts as the same is rendered in a fact situation where there was omission on the part of the bidding party to press the ‘freeze button’ and as there was no technical glitch in the system, amply demonstrated by the acknowledgments generated in favour of other bidders, the bidding party was not held entitled to any consideration of its other defective bid. In the facts of that case it was found that the circumstances strongly indicated that the bid submitted by the bidding party was not valid. Present is a case where the tender is not commercial and it is purely technical for determining the eligibility. Moreover, the NIC in its affidavit dated 13th August 2024 had confirmed that the Petitioner had made three calls before the deadline and two calls after the deadline and also has provided transcripts of the conversation between the Petitioner and the Help Desk.

25. We may refer with profit the observations of the Delhi High Court in paragraph 21 of the decision in **Birla Ericsson Optical Ltd. and another vs. Bharat Broadband Network Ltd.**². Paragraph 21 reads thus :-

¹ (2018) 3 SCC 13

² 2013 SCC OnLine Del 2541

“21. As a matter of law, there can be no two opinions that tender conditions bind both the state agency which invites bids for goods and services, as well as the potential supplier of those goods and services, i.e. the tenderer/bidder. (Ref G.J. Fernandez v. State of Karnataka; State (NCT of Delhi) v. Sanjeev. Yet, Courts have had occasion to deal with the question whether all conditions are to be strictly complied, or are there some which are merely ancillary, and inessential and whose non-compliance cannot be reasonably considered as fatal to the tender or bid as to warrant its rejection on that score. This issue was dealt with in Poddar Steel, where the Supreme Court held that:

“... As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case, the authority issuing the tender may be required to enforce them rigidly. In the other cases, it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases...”

A similar approach was indicated in IRCTC v. Doshion Veolia Water Solutions (P) Ltd.; there the omission to mention the figure of excise duty in the bid was held to be not in respect of an essential condition as to warrant rejection of the tender.”

27. Drawing support from the observations of the Delhi High Court we may only observe that this cannot be a case where there is any breach of the essential conditions of the tender document. The Technical Committee will evaluate the bid. It is just that the circumstances on record in our opinion make out a case for the Petitioner’s empanelment by giving an opportunity to the Petitioner to effectively participate in the tender process even at this stage as there is no prejudice to any of the parties.

28. For the reasons aforesated Writ Petition No.10131 of 2024 deserves to be allowed and is accordingly allowed. The Petitioner having paid the requisite EMD and process amount, the Respondents are directed to accept the documents of the Petitioner by granting an opportunity to the Petitioner to submit remaining documents and due compliance under E-Tender Notice within a period of one week from the date of receipt of this order so as to consider the Petitioner's bid for evaluation.

29. So far as Writ Petition No.10132 of 2024 is concerned the facts are almost identical as Writ Petition No.10131 of 2024. Writ Petition No.10132 of 2024 is therefore disposed of on the same terms as Writ Petition No.10131 of 2024.

30. As regards Writ Petition No.10705 of 2024, some facts need to be stated. The E-Tender No.1711 was issued by the Respondent No.2 with identical terms and conditions on 26th June 2024. The EMD and tender fee aggregated to Rs.5,25,000/-. Amongst the key dates provided for the E-Tender, the bid submission end date was 18th July 2024 at 17:00 hours. The technical bid opening was to be on 19th July 2024 at 17:00 hours. On 13th July 2024 the Petitioner paid the EMD amount and transfer fee aggregating to Rs.5,25,000/-. The Petitioner successfully submitted the bid document on the portal and the portal reflected the message

"UPLOADED SUCCESSFULLY (100%)" on 16th July 2024. A further message was reflected on the portal stating "PACKET BID DOCUMENT SUBMITTED SUCCESSFULLY".

31. The above submission of the bid documents on 16th July 2024 was through the support staff who had taken access of the Petitioner's computer through "Any Desk" app and was on a phone call with the Petitioner from 12:23 hours for about 14 minutes. The support staff had assured the Petitioner that the bid document is successfully uploaded without informing and/or without himself freezing the Tender bid. The Respondent No.4-NIC has filed an affidavit dated 13th August 2024 and has confirmed that two calls were made by the Petitioner and has provided the transcripts of the conversation between the Petitioner and the Help Desk. It was noticed that the Petitioner's name did not appear in the list of active bidders on 22nd June 2024. Accordingly, by three emails, the Petitioner submitted its bid documents to the Respondent No.3. The Petitioner submitted the screenshot of the email in respect of the portal to show the successful submission of the bid documents on 23rd June 2024. On 22nd July 2024 the Respondent No.3 started scrutinizing the technical bid and have intimated the communications with the bidders whose bid documents have shortfall and/or certain minor deficiencies for compliance of the same in view of the Government Resolution dated 1st

December 2016.

32. The Petition was filed on 23rd July 2024. The Respondents filed their first affidavit on 5th August 2024 wherein it relied on the "special instructions to the contractors/bidders for e-submission of the bids online" and published by NIC support team which mentions that the bidder has to click on the freeze bid button to ensure the completion of the bid submission process. The NIC filed its affidavit on 13th August 2024 contending that the Petitioner has successfully participated in eight Tenders in the e-procurement portal and acknowledgment has been successfully generated by the Petitioner for the same from the system, which indicates that the Petitioner is fully aware of clicking on "freeze bid" button to complete the bid submission process.

33. It is pertinent to note that in the report dated 6th September 2024 submitted by Mr Bhaskar Raman pursuant to the order dated 19th August 2024 passed by this Court, Section D of the report provides for Technical Assessment in the present Writ Petition and had reached a finding that there has been a miscommunication between the bidder and technical support helper. The bidder understood it to mean that the entire process is completed. However, the instructions given to the bidder on the website is clear that the bidder has to press the freeze button. The expert

has given his suggestions for the future in Section F stating that in view of the misunderstanding in communication between the bidder and the NIC technical support, after the bid document is uploaded, NIC software should not merely stop with saying “PACKET BID DOCUMENT SUBMITTED SUCCESSFULLY” but it should immediately indicate “FREEZING IS STILL PENDING”. This will avoid misunderstanding in future, especially for technically non-savvy users. Section G in the summary no doubt provides that the bidder should have read the written instructions clearly regarding “FREEZE BID” in the step prior to the attempt to upload the bid.

34. Thus, the report of the expert appointed by this Committee clearly mentions that there is a scope for improvement in the process in future. We appreciate that the Petitioner was experienced in the matter of E-Tender process having participated several times in the past. In ordinary course we would have taken a different view of the matter having regard to the objection of the Respondents. The fact remains that the Petitioner did take the help of the support staff of NIC and the possibility of the communication gap cannot be ruled out considering the materials on record. It cannot be conclusively said that the entire fault is of the Petitioner. In any case the observations made by us in Writ Petition No.10131 of 2024 as regards the present tender being not a competitive

bidding tender and that as ultimately this tender is only for the purpose of empanelment of physical training-cum-coaching institute, the choice of enrollment for which is with the students, the present case needs to be viewed differently. The default will have to be regarded as technical not violating the essential conditions of the tender. The present Writ Petition will have to be decided in the contextual facts of this case and accordingly we have no hesitation in allowing Writ Petition No.10705 of 2024 on the same terms as Writ Petition No.10131 of 2024. The Writ Petition No.10705 of 2024 is accordingly allowed and disposed of.

35. There shall be no order as to costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)