



2025:DHC:9256-DB



- * **IN THE HIGH COURT OF DELHI AT NEW DELHI**
- % Judgment reserved on: 10.10.2025
Judgment delivered on: 17.10.2025
- + **W.P.(C) 13176/2025, CM APPL Nos. 54011-13/2025 & 55021/2025**
AGRAWAL INFRABUILD PRIVATE LIMITEDPetitioner
versus
NATIONAL HIGHWAYS AUTHORITY OF INDIA & ANR
.....Respondents
- + **W.P.(C) 4599/2025, CM APPL Nos. 21294-95/2025 & 52432/2025**
AGRAWAL INFRABUILD PRIVATE LIMITEDPetitioner
versus
NATIONAL HIGHWAYS AUTHORITY OF INDIA & ANR.
.....Respondents
- + **W.P.(C) 4054/2025**
REVIEW PET. 454/2025 & CM APPL. 54265-66/2025
M/S. CEIGALL INDIA LIMITEDPetitioner
versus
NATIONAL HIGHWAY AUTHORITY OF INDIA & ANR
.....Respondents

Advocates who appeared in this case:

For the Petitioners: Mr. Parag P. Tripathi and Mr. Rajsekhar Rao, Senior Advocates with Ms. Bani Dikshit, Ms. Mehermissa Jaitley and Mr. Uddhav Khanna, Advocates.

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For the Respondents : Mr. Manish K. Bishnoi and Mr. Khubaib Shakeel,
Advocates for NHAI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present petitions have been filed under Article 226 of the Constitution of India, 1950, *inter alia*, seeking following reliefs:-

W.P.(C) 13176/2025

“a. Issuance of an appropriate writ, order or direction for quashing of the Tender Annulment Notice dated 24.08.2025 issued by the Respondent, whereby the Respondent has annulled the tender floated by way of Request of Request for Proposal dated 26.09.2024;

b. Issuance of writ of mandamus or any other appropriate writ, order or direction, to Respondent to declare the Petitioner as the L1 bidder and...”

W.P.(C) 4599/2025

“a. Issue a writ, order or direction in the nature of a writ of Certiorari or any other appropriate writ quashing of minutes of meeting dated 29.03.2025 of the Executive Committee, Respondent No. 1 issuing Letter of Award to Ceigall India Limited (Respondent No.2), as L1 Bidder being arbitrary, unreasonable, capricious and lacking application of mind, and in contravention of the spirit of Articles 14 and 19(1)(g) of the Constitution; and

b. Issue a writ, order or direction in the nature of a writ of Mandamus or any other appropriate writ directing Respondent no.1 to declare the Petitioner as the L1 bidder and issuance of Letter of Award in favour of the Petitioner...”

2. It is the case of the petitioner that the NHAI floated a Request for Proposal (hereinafter referred to as “RFP”) dated 26.09.2024 for the development, operation, maintenance and construction of a new four lane Sambalpur Bypass from km 0.000 to km 35.384 under NH(O) on Hybrid

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Annuity Mode in the State of Odisha, through Public Private Partnership, on a Design, Build, Operate and Transfer basis with an estimated cost of Rs.1086.73 crores. In response thereto, the petitioner submitted its bid quoting Rs.880 crores. The petitioner claims to be the lowest bidder (L1) as per the list of successful bidders. It is claimed that despite petitioner being the lowest bidder, NHAI declared M/s Ceigall India Limited (hereafter referred to as "*the CIL*") as L1 which was actually placed at L22 in the list of successful bidders. According to the petitioner, this was in stark violation of the mandatory conditions of the RFP.

3. Whilst things stood thus, on the ground that CIL had quoted vastly varying bid amount in "*words*" as "*One Thousand Two Hundred and Twenty only*", but in "*figures*" as Rs.1220,00,00,000/-, the NHAI, allegedly in conformity with the conditions of the RFP and in view of the non-submission of original documents, initiated coercive action of forfeiture of bid security. This action of the NHAI was challenged by CIL in W.P.(C) No.4599/2025, which culminated in the judgement dated 13.08.2025 quashing the letter dated 27.03.2025 to invoke partial forfeiture of bid security apart from intimating to initiate debarment proceedings *vide* letter dated 29.03.2025 as also the letter dated 29.03.2025, encashing the bid security.

4. The present two writ petitions, i.e., WP (C) No.4559/2025 (hereafter referred to as "*the 1st writ petition*") and WP (C) No.13176/2025 (hereafter referred to as "*the 2nd writ petition*") have been preferred by the petitioner. The 1st writ petition seeks quashing of the minutes of the meeting of the Executive Committee of NHAI dated 29.03.2025 apprehending issuance of Letter of Award (hereinafter referred to as "*LoA*") in favour of CIL and consequent declaration



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of the petitioner as L1 and simultaneous grant of LoA in its favour. The 2nd writ petition seeks quashing of the annulment letter dated 24.08.2025 cancelling the previous RFP which was the subject matter of 1st writ petition and further sought a relief of declaration of petitioner as L1 bidder and issuance of LOA in its favour.

CONTENTIONS OF THE PETITIONER :-

5. Mr. Parag Tripathi, learned senior counsel appears on behalf of the petitioner in the two writ petitions and the Review Petition No.454/2025 arising in W.P.(C) No.4054/2025 seeking review of judgement dated 13.08.2025. At the outset, Mr. Tripathi, on instructions, fairly submitted that so far as the challenge in Review Petition No.454/2025 is concerned, the same is not being pressed.

6. He further clarified that the 1st writ petition was filed by the petitioner in respect of RFP dated 26.09.2025. He stated that the said writ petition was filed on the basis that one CIL which was declared as L1 in the aforementioned tender, had been proceeded against by the NHAI on two counts. One, that there was a clear discrepancy in the bid amount as quoted by CIL in “Words” on the one hand and in “Figures” on the other; and two, since CIL despite being called upon to submit its original documents for verification taking the bid amount to be Rs.1220/-, did not comply with such directions and the NHAI consequently proceeded to forfeit the bid security. He urged that when such action was initiated by the NHAI under the letters dated 27.03.2025 and 29.03.2025 respectively, the cause of action for filing the W.P.(C) No.4599/2025 seeking positive directions, accrued to the petitioner. In other words, learned senior counsel submitted that once CIL was removed from the status of L1 by the



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aforesaid actions taken by NHAI, the petitioner being the lowest bidder at Rs.880 Crores, ought to be the natural choice as a successor to be awarded the contract.

7. Learned senior counsel submitted that this Court *vide* the order dated 13.08.2025 in the writ petition filed by the CIL, quashed the orders dated 27.03.2025 and 29.03.2025 and further directed CIL to deposit Rs.15 Lakhs with NHAI. He further clarified that the petitioner in no way is challenging the findings recorded by this Court in the petition filed by the CIL. His primary contention is that once the CIL, which was declared as L1, though CIL was otherwise at Sl. No.22 in the list of successful bidders, had been extricated out of the tender process for whatever reason, the natural corollary to that should have been that the petitioner ought to have been invited for award of the contract. His contention was based on the petitioner's cumulative interpretation of 1.2.6, 1.2.7, 3.8.1, 2.1.5 and 3.7 of the RFP.

8. According to learned senior counsel, apart from the above challenge in the first writ petition, the petitioner has also filed a writ bearing W.P.(C) 13176/2025 (2nd writ petition) challenging the order dated 24.08.2025 whereby NHAI has annulled the tender which was subject matter of the writ petition filed by the CIL as also the 1st writ petition. He submitted that since the challenge in the 1st writ petition and the 2nd writ petition are intrinsically intertwined, common arguments are being addressed. According to him, in case this Court is inclined to allow the first writ petition, the need to adjudicate the second writ petition may not even arise.

9. The contention of Mr. Parag Tripathi, learned senior counsel was that according to clause 1.2.6 of the RFP, the bids were to be evaluated on the basis



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of lowest bid project cost which was further clarified that the same shall constitute the sole criteria for such evaluation. The said intention was also reiterated by defining the term “*lowest bidder*” to mean the bidder whose bid project cost is the lowest. He submitted that there is no dispute that the petitioner was the only lowest bidder having quoted its bid at Rs.880 Crores. He contended that, in terms of clause 1.2.6, the petitioner ought to have been declared as L1 bidder.

10. In order to further substantiate the aforesaid contention, learned senior counsel preferred to clause 1.2.7 of the RFP, which provided that generally the lowest bidder shall be the selected bidder. In reiteration of the contention, he also invited attention of this Court to clause 3.8.1 of the RFP which provided that subject to the provisions of clause 2.16.1, the bidder whose bid is adjudged as responsive in terms of clause 3.2 and whose bid project cost is the lowest, shall be declared as the “*selected bidder*”. Relying upon and referring to the aforesaid provisions of the RFP, learned senior counsel forcefully contended that the NHAI violated the mandatory terms and conditions stipulated in the said clauses while declaring CIL as L1, instead of the petitioner.

11. Furthermore, learned senior counsel also submits that though the declaration of CIL as L1 and the consequent actions taken by NHAI is covered by the judgment of this Court 13.08.2025, the NHAI had grossly violated its own terms and conditions as also the rights which had accrued to the petitioner by such infractions. He stated that in the 1st writ petition the very declaration of CIL as L1 *vide* the Minutes of Meeting dated 29.03.2025 of the Executive Committee (hereinafter referred to as ‘EC’) of the NHAI was challenged by the petitioner with simultaneous relief of the petitioner being declared as L1 and for issuance

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of LoA. He stoutly contended that once NHAI itself proceeded against CIL and extricated it from the tender process, the petitioner ought to have been automatically declared as L1 being the lowest bidder as mandated in clauses 1.2.6, 1.2.7 and 3.8.1 of the RFP.

12. Learned senior counsel also contended that it was the NHAI itself which stated before this Court that annulment of the tender is not in public interest. He contended that having stated so, the decision to annul the RFP dated 26.09.2025 was arbitrary, whimsical, and capricious and without any authority of law. That apart, he contended that the reason provided in the annulment notice dated 24.08.2025 cannot be countenanced in as much as, even though the tendering authority may have a right to cancel/annul the tender process, the same cannot be without sufficient and cogent reasons or explanations as to why the authority has annulled the tender process. He forcefully contended that such arbitrary decisions are not in public interest inasmuch as, not only the previous tender process has involved huge costs and time, both of the NHAI and the bidders but is likely to result in impacting the estimated cost of the project while inviting fresh bids. He also contended that the reason as provided in the impugned annulment notice dated 24.08.2025 that such action has been undertaken on the basis of the judgment dated 13.08.2025 passed in the writ petition filed by CIL, is neither justified nor available to the NHAI. He contended that this Court had not given any such direction in the order dated 13.08.2025 and in order to support the said contention, he invited attention of this Court to para 22 of the said judgment. According to him, only liberty was granted to NHAI to take a decision in case any such step was warranted. He vehemently contended that other than that, there was no such positive direction as is being sought to be

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projected in the impugned annulment notice dated 24.08.2025.

13. Yet another contention urged on behalf of the petitioner was that the bid of the petitioner quoted at Rs.880 Crores is now out in the open and known to all the other prospective bidders. He contended that this knowledge prejudices the case of the petitioner. In that context too, learned senior counsel would submit that it would be in the interest of the project; the public interest as also in alignment with the conditions of the RFP, that the petitioner be declared as L1 and also be granted the LoA after fulfilment of all necessary formalities.

14. Mr. Parag Tripathi, learned senior counsel stoutly contended that the actions taken by tender issuing authorities like NHAI, while annulling or cancelling the tender process, cannot be arbitrary or capricious and definitely not shrouded in mystery. He strongly asserted that fairness and transparency in actions by public bodies, specially in tender matters, is no more *res integra*. He contended that annulment of a tender process midway is an exception and not a norm and cannot be initiated by a public authority *sans* reasons. In order to substantiate this he relied on the following judgements:-

(i) *Eva Agro Feeds (P) Ltd vs. Punjab National Bank: (2023) 10 SCC 189*

“79. Thus, mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to incurring of avoidable expenses but also erode credibility of the auction process itself. That apart, post auction it is not open to the Liquidator to act on third-party communication and cancel an auction, unless it is found that fraud or collusion had vitiated the auction. The necessary corollary that follows therefrom is that there can be no absolute or unfettered discretion on the part of the Liquidator to cancel an auction which is otherwise valid. As it is in an administrative framework governed by the rule of law there can be no absolute or unfettered discretion of the Liquidator. Further, upon a thorough analysis of all the provisions concerning the Liquidator it is evident that the Liquidator is vested with a host of duties, functions and powers to oversee the liquidation process in which he is not to act in

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any adversarial manner while ensuring that the auction process is carried out in accordance with law and to the benefit of all the stakeholders. Merely because the Liquidator has the discretion of carrying out multiple auction it does not necessarily imply that he would abandon or cancel a valid auction fetching a reasonable price and opt for another round of auction process with the expectation of a better price. Tribunal had rightly held that there were no objective materials before the Liquidator to cancel the auction process and to opt for another round of auction.”

(ii) *Union of India vs. Dinesh Engineering Corporation & Anr.: (2001) 8 SCC*

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*15. Coming to the second question involved in these appeals, namely, the rejection of the tender of the writ petitioner, it was argued on behalf of the appellants that the Railways under clause 16 of the Guidelines was entitled to reject any tender offer without assigning any reasons and it also has the power to accept or not to accept the lowest offer. We do not dispute this power provided the same is exercised within the realm of the object for which this clause is incorporated. This does not give an arbitrary power to the Railways to reject the bid offered by a party merely because it has that power. This is a power which can be exercised on the existence of certain conditions which in the opinion of the Railways are not in the interest of the Railways to accept the offer. No such ground has been taken when the writ petitioner's tender was rejected. Therefore, we agree with the High Court that it is not open to the Railways to rely upon this clause in the Guidelines to reject any or every offer that may be made by the writ petitioner while responding to a tender that may be called for supply of spare parts by the Railways. Mr Iyer, learned Senior Counsel appearing for EDC drew our attention to a judgment of this Court in *Sterling Computers Ltd. v. M & N Publications Ltd.* [(1993) 1 SCC 445] which has held: (SCC p. 455, para 12)*

“Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of ‘play in the joints’ to the executive.”

16. But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is



to be conceded in such authorities, they are bound to follow the norms recognised by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law, especially Article 14 of the Constitution. In the instant case, we have noticed that apart from rejecting the offer of the writ petitioner arbitrarily, the writ petitioner has now been virtually debarred from competing with EDC in the supply of spare parts to be used in the governors by the Railways, ever since the year 1992, and during all this while, we are told the Railways are making purchases without any tender on a proprietary basis only from EDC which, in our opinion, is in flagrant violation of the constitutional mandate of Article 14. We are also of the opinion that the so-called policy of the Board creating monopoly of EDC suffers from the vice of non-application of mind, hence, it has to be quashed as has been done by the High Court.

(iii) *M/s. Star Enterprises & Ors. vs. City and Industrial Development Authority & Ors.: (1990) 3 SCC 280*

5. It is not disputed that the scheme which is operating provides that “respondent 1 reserves the right to amend, revoke or modify the scheme at its discretion as well as to reject any or all offers for allotment without assigning any reason.” Obviously it is in exercise of this power that the highest tenders have not been accepted.

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10. In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority



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should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so.

(iv) Assistant General Manager State Bank of India & Anr. vs. Tanya Energy Enterprises, through its Managing Partner Shri Alluri Lakshmi Narasimha Varma: 2025 SCC OnLine SC 1979

34. A question would obviously arise for our answer, having regard to the Constitution Bench decision in Mohinder Singh Gill v. Chief Election Commissioner and the larger Bench decisions of this Court in Commissioner of Police v. Gordhandas Bhanji and Opto Circuits (India) Ltd. v. Axis Bank, as to whether, a court can uphold an order rejecting an applicant's claim based on a ground appearing from the records of the case which could have been but has not been mentioned, if the grounds mentioned in such order of rejection are not found to be tenable?

35. To refresh our memory, the aforesaid decisions are authorities for the proposition that validity of an order, which is under challenge in the proceedings, must be tested on the basis of the ground(s) mentioned in it in support thereof; and any additional ground, to support the order under challenge, cannot be allowed to be raised in the reply affidavit or in course of arguments. The underlying principle is that an order which is bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. As Hon'ble Vivian Bose, J. famously remarked in Commissioner of Police (supra), orders are not like old wine becoming better as they grow older. What was later held in Mohinder Singh Gill (supra) drew inspiration from the principle of law laid down in Commissioner of Police (supra).

36. Mohinder Singh Gill (supra) has been considered by this Court in All India Railway Recruitment Board v. K. Shyam Kumar. It has been held there that the principle laid down in Mohinder Singh Gill (supra) is not applicable where larger public interest is involved and in such a situation, additional grounds can be looked into, to examine the validity of an order. To the same effect is the decision in PRP Exports v. State of Tamilnadu. However, K. Shyam Kumar (supra) and PRP Exports (supra) have been considered in 63 Moons Technologies Ltd. v. Union of India where it has been held in paragraph 102 by a coordinate Bench that there is no broad proposition that the law laid down in Mohinder Singh Gill (supra) will not apply where larger public interest is involved. The decisions in K. Shyam Kumar (supra) and P.R.P. Exports (supra) were distinguished on the ground that the coordinate Benches there had proceeded to

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consider subsequent materials that emerged for the purpose of validating the order under challenge.

37. The need, thus, arises to reconcile the decisions noticed above.

38. The respective Benches in Commissioner of Police (supra), Mohinder Singh Gill (supra), Opto Circuits (India) Ltd. (supra) and 63 Moons Technologies Ltd. (supra), in our reading, while mandating what has been noticed above was not required to and, as such, rightly did not go that far in establishing the principle that, in all cases coming before it, the court is necessarily bound to confine itself to the grounds mentioned in the administrative order under challenge and cannot look beyond such grounds at all. While the courts, in course of reviewing administrative orders, may not permit additional grounds not found within the four corners of the said order to be raised in an affidavit or in oral arguments, we are inclined to the view that the factual narrative in such order and the documents referred to therein can certainly be considered together with the case set up in the writ petition, but in appropriate cases. Such cases could include a case, as the present, where the mentioned grounds are found to be untenable and, thus, unsustainable, but an alternative ground (appearing from the factual narrative in the order itself and/or from the records relevant thereto) is traceable which could have validly been mentioned as a ground to support the impugned rejection had there been a proper application of mind by the administrative authority. In all such cases, it would be open to the court to uphold it on such alternative ground subject, of course, to the affected party being put on notice and an opportunity to respond. This approach, which would prioritize fairness and justice over technicalities, does not run contrary to or inconsistent with the law laid down in the afore referred precedents.

CONTENTIONS OF THE RESPONDENT NO.1/NHAI

15. Appearing for the NHAI, Mr. Bishnoi, learned standing counsel, at the outset, submitted that the 1st writ petition as well as the 2nd writ petition are liable to be dismissed on the basic premise that under clause 3.8.3 of the RFP, the NHAI is entitled to annul the tender process without assigning any reasons and simultaneously notify fresh invitation for bids. In other words, the prayer sought in 1st writ petition as also the 2nd writ petition need not be granted at all keeping in view clause 1.2.7, clause 2.16.1, clause 2.16.2, clause 3.8.1, clause 3.8.3 read



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with clause 6.2(a) of the RFP.

16. Learned counsel for NHAI, forcefully contended that the NHAI in its discretion declared CIL as L1, considering the fact that the CIL had quoted a bid amount of Rs.1220/-. He would contend that such declaration on the said quoted bid amount is in consonance with clause 2.1.5 of the RFP, wherein it was clearly mandated that if there is any variation or discrepancy between the quoted bid amount in “words” and that in “figures”, the NHAI may in its discretion take the amount quoted in “words” into account. Consequently, the amount quoted by CIL in “words” was “*Rupees One Thousand Two Hundred and Twenty*” only and thus treated as L1. It was only when CIL did not come forward for the verification of the documents as stipulated in the RFP, that the NHAI was constrained to invoke the bid security amount and contemplate other penal actions. Thus, according to him, at that stage, the tender process had reached a stage prior to grant of LoA, post the declaration of CIL as L1. He submitted that once the tender process reached the stage of requiring submission of original documents for verification of L1, the NHAI was under compulsion of the provisions of RFP to proceed further and the stage cannot be reversed at the insistence and asking of the petitioner. In other words, the tender process had reached a stage which became irreversible. He would also contend that the judgment of this Court dated 13.08.2025 in writ filed by CIL also did not contain any direction that the original tender needed to be revived or reprocessed. In fact, the discretion to annul or cancel the original RFP was made available to the NHAI by this Court. Thus, according to him, the submission of the petitioner that it ought to be now declared as L1 is untenable in law.

17. Reading the relevant clauses as referred to above, Mr. Bishnoi would

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contend that clause 1.2.7 read with clause 3.8.3 of the RFP clearly vested the power and authority upon NHAI, in its discretion to invite either fresh bids from the remaining bidders or annul the bidding process in case the lowest bidder withdraws or is not selected for whatsoever reason. He submitted that the competent authority had deliberated and decided that it would be in the interest of the project to annul the bidding process and notify a fresh invitation for bids from the eligible bidders. He submitted that the petitioner may also apply afresh in the fresh RFP. In this context, learned counsel also invited attention to clause 2.16.1 of the RFP which, as per him is a *non obstante* clause. According to him, the said clause provided that notwithstanding anything contained in the RFP, the NHAI had the right to reject any bid and to annul the bidding process and reject all bids at any time without any liability or obligation for such acceptance and without assigning any reasons whatsoever. He contended that it is trite that a *non obstante* clause would generally override the remaining provisions of a document. In that context, he would rely upon the judgment of the Hon'ble Supreme Court in ***IJM Corporation Berhad vs. National Highways Authority of India & Anr.***: SLP(C) No. 10811/2022 decided on 12.05.2022, wherein identical clauses were interpreted in favour of the NHAI.

18. Additionally, Mr. Bishnoi submitted that the only issue crystallized for consideration by this Court in the writ petition filed by CIL, was as to whether the mistake or error committed by CIL in submitting the bid amount was to be classified as *bonafide* or not. It was in that context that the judgment dated 13.08.2025 was passed by this Court. He contended that other than that, this Court neither touched upon or made any observations in regard to the other terms and conditions of the RFP nor as to whether the NHAI was bound to reconsider

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the remaining proposals/bids of the other bidders. Thus, according to him, the discretion of the NHAI available to it under clause 1.2.7, clause 3.8.3, clause 2.16.1 read with clause 6.2 of the RFP was left untouched, leaving the NHAI to consider the future course of action.

19. Learned counsel invited attention to the minutes of the meeting dated 29.03.2025 particularly the decision taken at para 659.06. Reading the proposal as approved by the EC, he submitted that the proposal to reject the bid of CIL and to annul the original RFP and invite fresh bids was already a subject matter as far back as on 29.03.2025 and was not taken on the basis of the judgment rendered in CIL's writ petition dated 13.08.2025. According to him, the contention of the petitioner that the impugned annulment notice dated 24.08.2025 was a decision taken by the NHAI not only on the basis of a judgment dated 13.08.2025 but after considering the entire conspectus which had arisen from the time the CIL had filed its writ petition and even in view of the events post the judgment dated 13.08.2025. Learned counsel had furnished certified copies of the deliberations which had gone into by the NHAI at the highest level before the decision to annul the RFP was taken. Though, according to him, in terms of clause 2.16.1 read with clause 3.8.3, the NHAI was not under any obligation to give any reason whatsoever before annulling the RFP at any stage, yet a perusal of the said deliberation would clearly indicate the reasons which were considered before such annulment was decided.

20. He relies upon the following judgments of the Hon'ble Supreme Court:-

(i) **IJM Corporation** (*supra*):-

"Clause 2.16 provides that notwithstanding anything contained in the RFP, the Authority reserves the right to reject any bid and to annul the bidding process and reject all bids at any time without any liability or any obligation for such

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acceptance, rejection or annulment, and without assigning any reasons thereof. In the event the NHAI rejects or annuls all the bids, it may, in its discretion, invite all eligible bidders to submit fresh bids hereunder. Clause 3.8.2 of the Bid document clearly provides that in the event highest bidder withdraws or is not selected for any reason, the authority shall annul the bidding process and invite fresh bids. In the event the authority rejects or annuls all the bids, it may, in its discretion invite all eligible bidders to submit fresh bids.

The NHAI had clearly reserved to itself the right to annul the bidding process. Clause 6.2 provided that the NHAI might have sole discretion and without incurring any obligation or liability, suspend and/or cancel the bidding process and/or amend and/or supplement the bidding process or modify the dates or other terms and conditions relating thereto.

The petitioner submitted its tender in terms of the RFP and obviously after going through the terms and conditions of the RFP. It is not open to the petitioner to question the annulment of the tender process.”

(ii) *Union of India & Anr vs. International Trading Co. & Anr.: (2003) 5 SCC 437:-*

“13. What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short “the Constitution”) cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.”

(iii) *Principal Chief Conservator of Forest and Others vs. Suresh Mathew & Ors.: 2025 SCC OnLine SC 933:-*



“22. The Division Bench of the High Court, which upheld the judgment of the Ld. Single Judge, was of the opinion that merely because there was a likelihood of the rates being lowered if successive tenders are invited, the same cannot be a justifiable ground at all for cancellation of the contract since it would lead to a situation of an unending tender inviting procedure. However, we are of the opinion that the said observations by the High Court are contrary to the settled principles of law laid down by the Supreme Court that the Government is the protector of financial resources of the state and thus, it has every right to cancel and call for fresh tender if it is in the nature of protecting the financial interests of the State.”

REJOINDER ON BEHALF OF THE PETITIONER:-

21. In rejoinder, Mr. Parag Tripathi learned senior counsel reiterated and reaffirmed the arguments made on behalf of the petitioner apart from trying to distinguish the applicability of the judgments in **IGM Corporation** (*supra*) and **Suresh Mathew** (*supra*). In particular, Mr. Tripathi invited attention to page 405 of the writ petition to submit that the Executive Committee of NHAI on a previous occasion in the case of M/s. KMC- Longijan (JV), which had erroneously quoted a bid price of Rs.1539/- against an estimated bid price of Rs.1848 Crores and yet after declaring such bid as abnormally low and unacceptable, decided not to annul the whole bidding process and to select the lowest bid amongst other responsive bidders for award of work subject to approval of the Competent Authority. In other words, learned senior counsel contends that even after an identical situation had arisen in the present case, there was no valid justification or reason as to why a similar decision to continue with the previous bidding process by choosing the lowest bidder as L1 could not have been undertaken.

ANALYSIS AND CONCLUSIONS:-

22. We have heard the eloquent arguments of Mr. Parag Tripathi and Mr.



Rajshekar Rao, learned senior counsel for the petitioner and crisp rebuttal of Mr. Bishnoi for the NHAI, minutely examined the record and considered the judgements relied upon.

23. Since Mr. Tripathi has not pressed the Review Petition No.454/2025 we are refraining from passing any orders thereon.

24. We are concerned only with the 1st and 2nd writ petitions preferred by the petitioner. Both parties had relied upon certain clauses of the RFP, which in their submission would be central to their respective causes. We are of the opinion that it would be in fitness of things to first advert to the said clauses. The same are extracted hereunder:

Clause 1.2.6 of the RFP:-

“1.2.6 Bids will be evaluated on the basis of the lowest Bid Project Cost. The Concession Period is pre-determined. The Bid Project Cost shall constitute the sole criteria for evaluation of Bids. In this RFP, the term “Lowest Bidder” shall mean the Bidder whose Bid Project Cost is the lowest.”

Clause 1.2.7 of the RFP:-

“1.2.7 Generally, the Lowest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for whatsoever reason except the reason mentioned in clause 1.2.12 and 3.8.1 of RFP. In the event that none of the other Bidders match the Bid of the Lowest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.”

Clauses 2.16.1 & 2.16.2 of the RFP:-

“2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.



2.16.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.”

Clause 3.8.1 of the RFP:-

*“3.8.1 Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and whose Bid Project Cost is the lowest, shall be declared as the selected Bidder (the “**Selected Bidder**”) as per procedure defined as under: ...”*

Clause 3.8.3 of the RFP:-

“3.8.3 In the event that the Lowest Bidder is not selected for any reason, the Authority shall annul the Bidding Process and invite fresh Bids. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.”

Clause 6.2 (a) of the RFP:-

*“6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;”*

25. What can be gathered from clauses 1.2.6 and 1.2.7 of the RFP is that the sole criteria for evaluation would be the “lowest bid” and the bidder quoting such price would be the “lowest bidder”. However, clause 1.2.7 provides that ordinarily the lowest bidder would be the “selected bidder” but the use of the word “generally”, to our mind does give some room for departure which may be an exception rather than a rule. Clause 1.2.7 further provides that in case the lowest bidder withdraws or is not selected for whatever reason, the remaining bidders may be called for matching the said bid and in case no bidder matches the said bid, NHAI in its discretion, may invite fresh bids from the remaining bidders or annul the bidding process. The intention seems to be clear that NHAI



retains its discretion to invite fresh bids from the remaining bidders or annul the entire bidding process in the eventuality of the lowest bidder not being selected for any reason. Thus, from a plain reading, it is clear that there is no compulsion or mandate that the NHAI is compulsorily required to go through the bidding process and quite to the contrary, has the discretion to annul the bidding process.

26. Clause 3.8.3 of the RFP appears to be in furtherance of the intention conveyed in clause 1.2.7 of the RFP and provides that in case the lowest bidder is not selected for any reason, NHAI shall annul the bidding process and invite fresh bids. In case, the NHAI rejects all bids it may, in its discretion, invite all eligible bidders to submit fresh bids. Though, the language in clauses 3.8.3 and 1.2.7 of the RFP appears to be overlapping, yet, the word “*shall*” in clause 3.8.3 of the RFP appears to be the distinctive feature. In that, though clause 1.2.7 of the RFP provided room for NHAI to select from the remaining bidder a bidder who may match the bid of the lowest bidder and proceed with the bidding process in case such lowest bidder withdraws or is not selected for whatsoever reason except the reason mentioned in clause 1.2.12 and 3.8.1. of the RFP, clause 3.8.3 brooks of no such discretion. Of course, that has to be read in a situation where clause 3 of the RFP needs to be understood and we are not called upon to interpret the said clause. The authors of the RFP have carefully thought of different situations and varied and myriad possibilities before crafting the language employed in these clauses. However, the relevant provision in both clauses is the discretion available to NHAI to annul the entire bidding process. The discretion provided to NHAI seems to be one of the underlying purposes of the clauses in case of eventuality of the situations proposed therein.

27. Yet another relevant and critical clause which is relevant in the context in



which we are called upon to render our opinion, are clauses 2.16.1 and 2.16.2 of the RFP. Plainly, both clauses when read in conjunction appear to provide unfettered discretion to NHAI to annul or reject any or all bids or the bidding process itself without assigning any reason whatsoever and that too without any corresponding liability. Significantly, clause 2.16.1 also provides the same discretion to NHAI to call for fresh bids, in case it rejects or annuls all bids. Clause 2.16.2 also reserves the right of NHAI to annul the entire bidding process itself at anytime without assigning any reasons, without any notice or attracting any liability. It would be crucial to note that clause 2.16.1 is a *non-obstante* clause and would ordinarily override the other provisions/clauses of the RFP and has to be understood in that context. This issue is no more *res integra* in view of the judgement of the Hon'ble Supreme Court in **IJM Corporation** (*supra*) where clauses 2.16, 3.8.2 and 6.2 of the RFP were called for consideration. It would be apposite to reproduce hereunder the relevant paragraphs of **IJM Corporation** (*supra*):

“Clause 2.16 provides that notwithstanding anything contained in the RFP, the Authority reserves the right to reject any bid and to annul the bidding process and reject all bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event the NHAI rejects or annuls all the bids, it may, in its discretion, invite all eligible bidders to submit fresh bids hereunder. Clause 3.8.2 of the Bid document clearly provides that in the event highest bidder withdraws or is not selected for any reason, the authority shall annul the bidding process and invite fresh bids. In the event the authority rejects or annuls all the bids, it may, in its discretion invite all eligible bidders to submit fresh bids.

The NHAI had clearly reserved to itself the right to annul the bidding process. Clause 6.2 provided that the NHAI might have sole discretion and without incurring any obligation or liability, suspend and/or cancel the bidding process and/or amend and/or supplement the bidding process or modify the dates or other terms and conditions relating thereto.



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The petitioner submitted its tender in terms of the RFP and obviously after going through the terms and conditions of the RFP. It is not open to the petitioner to question the annulment of the tender process.”

Thus, it is clear that the NHAI does have the right to cancel or annul the bidding process itself without assigning any reasons whatsoever. However, it is trite that such power has to be exercised fairly and even if reasons are not to be disclosed, there has to be some underlying justification which propelled NHAI to take such an extreme step. The prohibition from disclosure of reasons would not imply that the discretion is unfettered or untrammelled and the justification to initiating such extreme action may be called in question while the Constitutional Courts exercise the powers of judicial review. It cannot be countenanced that the tender issuing authority would not have some justification to explain its actions particularly when called for by the Constitutional Court. What appears to have been provided under the clauses in question is the discretion and right to take a particular action, however, it must be predicated on templates like paramount public interest; impact upon public exchequer since such projects are based on largesse; avoidance or multiplicity of litigations and other similar considerations which cannot be exhaustively provided here. Reasons may not be disclosed, nevertheless, some deliberations may have gone into, before such exercise is undertaken. It would be only for the Court to consider such justification that too from the stand point of the tender issuing authority.

28. Learned counsel for the NHAI had also referred to Clause 6.2 (a) of the RFP to substantiate the contention that the tender issuing authority has overarching authority to suspend or cancel the bidding process at its discretion. Having perused the said clause, what appears to us is that the NHAI may be

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vested with the discretion to suspend or cancel the bidding process and other aspects covered under sub-clause (a) of Clause 6.2, however, the stipulations mentioned therein may have to be made applicable on a case to case basis. We are afraid that the situation contemplated in sub-clause (a) of Clause 6.2 of the RFP does not appear to have arisen in the present factual matrix and thus, it would not be appropriate to give any definitive observation as to its interpretation.

29. In the present case, the NHAI had admitted in their counter affidavit that CIL is the L1 bidder. *Vide* letter dated 29.03.2025 NHAI called upon CIL to submit original documents for verification. In response to such letter, CIL *vide* the representation/letter dated 27.03.2025 apprised NHAI of the *bonafide* error of quoting the bid amount in words as “*Rupees One Thousand Two Hundred and Twenty*” instead of “*Rupees One Thousand Two Hundred and Twenty Crores*” and that it may be allowed to rectify the said error/mistake and thereafter submit its original documents. NHAI, while refusing to accede to the request, *vide* its letter dated 27.03.2025, directed New India Insurance Company to partially invoke the 5% Bid Security amount as per clause 2.20.7(a) of the RFP. NHAI, *vide* letter dated 29.03.2025, informed CIL that the financial bid submitted by CIL had been considered as “*Rupees One Thousand Two Hundred and Twenty Only*” and directed CIL to furnish the original documents as per clause 2.11.2 of the RFP, failing which debarment proceedings would be initiated in accordance with clause 2.11.5 of the RFP. Simultaneously, on 29.03.2025, the National Assurance Company informed the encashment of 5% of the bid security as requested. It was the action of forfeiture of bid security initiated *vide* letter dated 27.03.2025 coupled with the intimation of debarment proceedings *vide* the letter

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dated 29.03.2025, which were impugned by CIL by way of a writ petition bearing W.P.(C) No.4054/2025. By way of the judgment dated 13.08.2025, this Court disposed of the writ petition filed by CIL, which is part of the record.

30. Soon after the judgment dated 13.08.2025 was passed by this Court in the writ petition filed by the CIL, by the annulment notice dated 24.08.2025, the NHAI annulled the original RFP/tender. It is this annulment dated 24.08.2025 which forms the subject matter of challenge of the 2nd writ petition bearing W.P.(C) No.13176/2025 filed by the petitioner. The petitioner further sought a relief of declaration of petitioner as L1 bidder and issuance of LoA in its favour.

31. So far as the challenge in the 2nd writ petition to the annulment notice dated 24.08.2025 of the NHAI is concerned, we are of the considered opinion that in view of our above analysis of various clauses of the RFP read with the authoritative pronouncement and enunciation of law by the Hon'ble Supreme Court in *IJM Corporation (supra)*, there is no merit in the challenge so raised. However, having regard to our further observation that though reasons need not be disclosed by the tender issuing authority, yet, the deliberations or the justifications behind such action may be looked into and considered by the Constitutional Court in exercise of its power of judicial review, that too from the standpoint of the NHAI, we requested learned counsel for the NHAI to provide us the deliberations which may have gone into such decision. We have perused the certified copy of the deliberations handed over, and find that the tendering authority had taken into consideration the litigations which have commenced from CIL filing its writ petition; the judgment dated 13.08.2025; the opinion rendered by its Standing Counsel and the obvious need to avoid multiplicity of litigations before deciding to annul the tender process.



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32. As noted above, disclosure of such reasons are neither mandated nor required, however what is to be considered by a Constitutional Court is as to whether it is an arbitrary and capricious exercise of power or whether there is some justification for taking such an extreme action. We also add with caution and are of the firm opinion that the Court cannot and ought not to consider the merits and reasons behind such deliberations, but as to whether there is some aspect which has impelled the authority to annul the tender process. The Court can neither supplant nor substitute its own opinion for that reached by the Competent Authority of the NHAI. It is pertinent to also observe that this is not a case of no justification at all. Predicated upon the above reasons, we find the said challenge unpersuasive, unmerited and therefore, the challenge in the 2nd writ petition fails.

33. So far as the challenge in 1st writ petition seeking quashing of Minutes of the Meeting dated 29.03.2025 of the EC purportedly issuing LoA to CIL on the premise of it being L1 is concerned, we do not find any merit in the same. A perusal of the Minutes of the Meeting dated 29.03.2025 clearly disclose that the purported LoA was never issued to CIL. Rather, the Executive Committee decided to, (i) To reject Bid of M/s Ceigall India Ltd. quoting Rs 1220 for subject project as per clause 2.16.1; (ii) To encash BG for Bid Security of M/s Ceigall India Ltd. considering same as Non-responsive Bid {5% of value of Bid Security (i.e., Rs.54.35 Lakhs) of Rs 10.87 Cr. in present case} as per Clause 2.6.3 & 2.20.7(a); (iii) To annul the instant bid and re-invite fresh Bid with compressed schedule of 28 days period since earlier published Tender was uploaded for over 5 months and there is no change in Bid Documents and; (iv) Proposal of Debarment of M/s Ceigall India Ltd. for participating in future Bids

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of NHAI will be taken based on NHAI Policy Guidelines and in consultant with Legal Division separately.

34. It is apparent from the decision noted above, if at all, any entity can be said to have any grievance, it could only be CIL and not the petitioner. Thus, the prayer to quash the Minutes of the Meeting dated 29.03.2025 of the EC of the NHAI is not available to the petitioner and is rendered infructuous. So far as the challenge laid to the proposed decision to annul the tender process, as mentioned in the minutes of the meeting dated 29.03.2025 is concerned, NHAI had not taken any action in that context, thus the said challenge too, is premature. The actual decision to annul the RFP taken vide letter dated 24.08.2025 is already subject matter of the 2nd writ petition.

35. The petitioner had also sought another prayer seeking a direction to be declared as L1 and consequent thereto, be issued the LoA in the 1st writ petition. The entire thrust of the arguments submitted by Mr. Parag Tripathi and Mr. Raj Shekhar Rao, learned senior counsel was on the premise as to how the petitioner would not only be the natural successor but also the only bidder entitled to be declared as L1 and be issued the LoA in accordance with clauses of the RFP. Learned senior counsel had extensively argued the entitlement of the petitioner premised on clauses 1.2.6, 1.2.7, 3.8.1, 2.1.5 and 3.7 of the RFP.

36. There is a fundamental flaw in the submission predicated upon the aforesaid clauses noted in para 24 above. The petitioner proceeds on an assumption, and according to us incorrectly, that CIL was never declared as L1 and therefore, the petitioner would be the next natural choice in terms of clauses 1.2.6, 1.2.7 and 3.8.1 of the RFP. The facts as emerged while examining the records of the writ petition filed by the CIL; those of 1st and 2nd writ petitions

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filed by the petitioner; and the counter affidavits filed by NHAI, is that NHAI had not only declared the CIL as L1 on the quoted bid of Rs.1220/- but had also proceeded in terms of clause 3.8.1 of the RFP to declare CIL as the selected bidder. NHAI had also, in terms of clause 2.11.2 of the RFP directed CIL to furnish original documents for the purposes of verification before intending to grant the LoA. On the failure of CIL to submit the documents, as noted in the preceding paragraphs, NHAI, *vide* letter dated 27.03.2025, issued directions to New India Assurance Company to partially invoke the bid security, and subsequently, *vide* letter dated 29.03.2025, issued a notice to CIL of its intention to initiate debarment proceedings if the original documents were not submitted. As noted above, NHAI also encashed the security bank guarantee *vide* on 29.03.2025. It was at this stage that the CIL had preferred the writ petition which culminated in the judgment dated 13.08.2025.

37. Thus, so far as the NHAI is concerned, it had proceeded with the tender process on the assumption that CIL was declared as the L1 as also the selected bidder in terms of the Clauses of the RFP. Therefore, once an entity has been declared as L1 and also the selected bidder as per the clauses of the RFP and which was required to commence the fulfilment of formalities of the next stage of the tender process, the need for the NHAI to revert back to the previous stages of the tender process does not appear to be conducive. What the petitioner seeks to put forth is asking this Court to assume as if the bid of CIL was disqualified for some reasons and therefore, the choice was available with NHAI to replace CIL with the petitioner and proceed further with the tender process. This assumption is without any substance and unsubstantiated. Another relevant aspect which drives us to form this opinion is the fact that the NHAI invoked the

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provisions in clause 2.20.7 (a) of the RFP to initiate invocation and encashment of bid security as furnished by CIL on the premise that CIL had submitted a non-responsive bid. It was also the submission of Mr. Bishnoi that for all intentions and purposes the tender process had reached a particular logical conclusion and it was not open to the authority to reopen or reverse the tender process. We too agree with the said submission given the peculiar facts and circumstances which had arisen in the case of CIL.

38. That apart, as held above, clause 3.8.3 read with clauses 2.16.1 and 2.16.2 of the RFP clearly provide the NHAI the discretion and the right to annul a tender process. The relevant clauses, when read harmoniously and conjunctively coupled with the analysis, observations and findings recorded by us *qua* the 1st and 2nd writ petitions preferred by the petitioner, leave no manner of doubt in our mind that the challenge laid in the 1st writ petition too is unmerited and as such liable to be dismissed.

39. Mr. Tripathi had also relied upon the deliberations of the EC of the NHAI in the case of M/s. KMC – Longijan (JV) wherein in similar circumstances to that of CIL, the Committee had recommended that the bid amount of Rs.1539/- of M/s. KMC – Longijan (JV) is abnormally low and unreasonable and cannot be accepted. While holding so, the Committee had also decided that the Authority should not suffer and annul the whole bidding process on account of mistake of a bidder, proceeded to recommend, amongst others, selection of the lowest bid amongst other responsive bidders. Premised thereon, Mr. Tripathi had contended that a similar decision could and ought to have been taken by the EC and no reasons have been attributed at all by the EC why a departure was made in the case of the subject RFP. This, according to him, caused grave prejudice to the



rights of the petitioner. To the said submission, all that we can observe is that the decision to proceed or not to proceed with a particular bid or the decision as to whether a tender process is to be annulled or not is exclusively in the domain of the tender issuing authority as also its Executive Committee. It is not open to the Court to consider or deliberate upon the reasons on which a particular decision is taken by the Competent Authority of a tender issuing authority. It is trite that while exercising the power of judicial review, a Constitutional Court examines the decision making process alone and not the decision itself. [See: ***Tata Cellular vs. Union of India: (1994) 6 SCC 651***]. Thus, this argument purportedly based on apparent discrimination, is unpersuasive and rejected.

40. Insofar as the judgements of the Hon'ble Supreme Court relied upon by the petitioner are concerned, they are distinguishable on facts. The Hon'ble Supreme Court in ***Eva Agro (supra)*** held that the liquidator in exercise of the power under clause 3(k) of the E-Auction Process Information therein, cannot cancel the auction, post auction, unless there is an objective material before it to prove that fraud or collusion had vitiated the auction. Whereas, in the present case, the clauses 2.16 and 6.2 of the subject RFP herein was directly considered and interpreted by the Hon'ble Supreme Court in ***IJM Corporation (supra)*** in favour of the NHAI that the NHAI reserves the right to reject any bid and to annul the bidding process and reject all bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In view of ***IJM Corporation (supra)***, the judgement of ***Eva Agro (supra)*** is not applicable.

41. The ratio laid down by the Hon'ble Supreme Court in ***Dinesh Engineering (supra)***, is that the authority does not have an arbitrary power to



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reject the bid offered by a party merely because it has that power. Whereas in the present case, the issue is different. In the present case, the NHAI exercised the power of annulment post the judgement dated 13.08.2025 passed by this Court in the CIL's writ petition and we have also examined the deliberations which were undertaken while deciding to annul the RFP, which we find satisfactory in the context of limited scope of judicial review. Therefore, the factual matrix which is the basis of this judgement being distinct from that of ***Dinesh Engineering (supra)***, we are of the opinion that the ratio therein does not apply.

42. The ratio laid down in ***Tanya Energy (supra)*** is distinguishable on facts. The petitioner relied on ***Tanya Energy (supra)*** to submit that grounds of rejection had to be mentioned to the aggrieved party. In that, (i) Tanya Energy Enterprises (borrower) had availed loans from State Bank of India (SBI) by mortgaging several properties but later defaulted, leading to its account being declared a Non Performing Asset; (ii) SBI initiated recovery proceeding under SARFAESI and also before the Debt Recovery Tribunal; (iii) Though a Rs.5 crore compromise was earlier approved in 2018, the borrower failed to honour it; (iv) In 2020, the borrower applied under SBI's One Time Settlement (OTS) Scheme seeking relief, which the bank rejected citing prior defaults; (iv) The borrower approached the High Court, which ordered reconsideration and that prompted SBI to file appeal before the Hon'ble Supreme Court. There is no quarrel on the principle laid down in Tanya, however, in the present case, the issue relates to annulment of tender. Though annulment of bidding process without assigning any reason was upheld by Hon'ble Supreme Court in ***IJM Corporation (supra)***, in para 27 above, we have held that even if reasons are not required to be given, the Court may, if so required, satisfy its conscience by

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calling for the deliberations behind such annulment. Upon such inspection, this Court found that the action of annulment was indeed based on deliberations by the Executive Committee of the NHAI. Therefore, the ratio laid down in *Tanya Energy (supra)* is not applicable to the facts of the present case.

43. There may not be any quarrel with the principle laid down in *Star Enterprises (supra)*. However, in the present case, we have examined and considered the deliberations recorded by the Executive Committee of the NHAI and we are satisfied that the requisites or parameters for such annulment appear to have been considered by the said Committee.

44. The judgement in *Subodh Kumar (supra)* laying down the principle of fairness and transparency in contractual matters cannot be ignored. In the present matter, so far as the decision of annulment of the RFP is concerned, there are two reasons which have propelled us to agree with the said actions. One, the authoritative pronouncement in *IJM Corporation (supra)* which dealt with the identical clauses which are subject matter of the present petitions; and two, this Court called for and has examined the deliberations which went to such decision for annulment. In view of the reasons rendered above, while examining such deliberations, we are of the considered opinion that the ratio in *Subodh Kumar (supra)* has been applied by this Court.

45. As an upshot of the aforesaid analysis and findings, the writ petition bearing WP (C) No.4599/2025 and WP (C) No.13176/2025 alongwith pending applications are dismissed without any order as to costs.

REVIEW PETITION 454/2025 in W.P.(C) 4054/2025:-

46. In view of the statement made by Mr. Parag Tripathi, learned senior



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counsel for the review petitioner/respondent no.2 and recorded in para 23 above, the present review petition along with pending application, if any, is dismissed as not pressed.

TUSHAR RAO GEDELA, J

DEVENDER KUMAR UPADHYAY, CJ

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