AFR

ORISSA HIGH COURT : CUTTACK

W.P.(C) No.35596 of 2025

CNR No.: ODHC01-090144-2025

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

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M/s. Sunil Kumar Agrawal LLP
Regd. Office: Chandani Chowk
Raigarh – 496 001, Chhattisgarh
Represented through its
Authorised Representative
(duly authorised by its Board of Directors)
Sri Purusottam Agrawal
Aged about 30 Years
Son of Ishwar Prasad Agrawal
Residing At: B-26, Banyan-Tree-Khamadih
Raipur. ... Petitioner

-*VERSUS*-

1. State of Odisha
Represented through
Commissioner-*cum*-Secretary
Works Department
Government of Odisha
Secretariat Building, Bhubaneswar
District: Khordha.

2. State of Odisha
Represented through
Chief Engineer-*cum*-Addl. Secretary
To Government, Works Department
Bhubaneswar, District: Khordha.

3. Engineer-in-Chief (Civil-*cum*-Roads)
Odisha, Nirman Soudha, Unit-V
Bhubaneswar, District: Khordha.

4. Chief Engineer (Building-I) Odisha
Nirman Soudha, Unit-V, Bhubaneswar
District: Khordha.

5. Chief Engineer (Building-II), Odisha
Nirman Soudha, Unit-V, Bhubaneswar
District: Khordha.

6. B.C. Bhuyan Construction Pvt. Ltd.
Plot No.890, Palasuni, Rasulgarh
Bhubaneswar – 751 010, Odisha
Represented through its
Managing Director. … Opposite parties.

Counsel appeared for the parties:

For the Petitioner	:	Mr. Prafulla Kumar Rath, Senior Advocate Assisted by M/s. Prabodha Chandra Nayak, Subrat Kumar Sahu and Deba Prasad Mishra, Advocates
For the Opposite party No.1 to 5	:	Ms. Aishwarya Dash, Additional Standing Counsel
For the Opposite party No.6	:	Mr. Pradipta Kumar Mohanty, Senior Advocate Assisted by Pronoy Mohanty, S.N. Das, S.K. Sahu, K.T. Mudali and P. Pani, Advocates

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 03.09.2026 :: Date of Judgment : 12.11.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

Questioning the propriety of financial evaluation of the bids with respect to tender titled undertaken on 03.11.2025, and legality of decision taken thereby declaring the opposite party No.6 as the lowest bidder ("L-1"), the petitioner approached this Court by way of the instant writ petition for exercise of power of judicial review under Article 226/227 of the Constitution of India:

"In the above premises, it is most humbly prayed that this Hon'ble Court may graciously be pleased to:

A. Issue a writ of Certiorari, quashing the impugned Financial Evaluation dated 03.11.2025 (Annexure-6), to the extent declaring opposite party No.6 as L-1, despite having quoted 18.76% less than estimated cost, in blatant violation of Office Memorandum No.1437 dated 31.01.2023 of the Works Department, Government of Odisha, (Annexure-8) which mandates any bidder quoting more than 15% less than the tender value shall be rejected;

B. Declare that the action of opposite party No.4-Tender Authority in accepting and treating the financial bid of opposite party No.6 as responsive is illegal, arbitrary, discriminatory, mala fide, non-speaking and violative of Articles 14 and 19(1)(g) of the Constitution of India;

C. *Issue a writ of mandamus, directing opposite party No.4 to declare that the petitioner is the L-1 Bidder since petitioner has complied all conditions and Government Circular in compliance with Office Memorandum No.1437, dated 31.01.2023 as well as the Odisha Pubic Works Department Code and Contract Management Framework, and to consider the petitioner's bid for further tender finalization for the work Construction of New Banijyakar Bhawan at Chandrasekharpur, Bhubaneswar on Turnkey Basis— Bid Identification No.C.E.(B)-04/2025-26;*

D. *Hold that the decision-making process in the present tender suffers from procedural irregularities, violation of statutory Government instructions, non-application of mind, unequal treatment and manifest arbitrariness, thereby violative of Article 14/19(1)(g) of the Constitution of India;*

E. *And/or be pleased to pass any other order/orders as may be deemed fit and proper in the interest of justice and equity.*

And for this act of kindness, the petitioner as in duty bound, shall ever pray."

Case of the petitioner:

2. The petitioner, a limited liability partnership firm registered under the Limited Liability Partnership Act, 2008, participated in the tender floated by the Chief-Engineer (Building-II), Odisha, Bhubaneswar (for brevity, "tendering authority") on 21.04.2025 inviting bids for execution of works on "turnkey basis" for construction of

Banijyakar Bhawan at Chandrasekharpur in Bhubaneswar. The tendering authority published corrigenda from time to time by extending last date of submission of documents, as a result of which the last date fixed for opening of bid on 06.06.2025 initially scheduled got extended. Consequently, the final date for bid submission was extended to 11.07.2025, and the receipt of hard copies was scheduled for 18.07.2025. Accordingly, the opening of the Technical Bid (Cover-I) was rescheduled for 19.07.2025 (See, fourth corrigendum dated 03.07.2025).

2.1. The minutes of the Technical Evaluation Committee in its Meeting held on 29.10.2025 reveal that out of eleven participating bidders, seven qualified and were called for a presentation on 03.11.2025 (Annexure-5), which being concluded, the financial bids were opened at 6.30 p.m. on the said date. At paragraph 12 of the writ petition it is averred by the petitioner as follows:

"That the financial bid was opened on 03.11.2025 wherein the opposite party No.6 quoted less (than) 18.76% and the petitioner quoted 14.99% less than the estimated value of the contact and the opposite party No.6 declared as L-1 bidder."

2.2. This writ petition has been filed on the premise that such a decision is contrary to amended provisions contained in Clause 36 of Appendix-IX of Volume-II of the Odisha

Public Works Department Code (for convenience be called "OPWD Code")[1]. The decision of the tendering authority is arbitrary inasmuch as there is no justified reason for it to selectively choose provisions of said Code to be applied in different contexts. Therefore, such decision alleged to have offended provisions enshrined in Article 14 of the Constitution of India. The decision of the tendering authority, it is contended, being arbitrary and falling within the ken of Article 14, deserves to be declared vitiated for the course adopted by the authority prevents the petitioner from carrying his business smoothly, as a result of which it impinges upon pristine provisions of Article 19(1)(g) of the Constitution of India.

Counter affidavit of the opposite party Nos.1 to 5:

3. Reference is made to Clause 13 under the Heading "Preparation of Bids" of the Instruction to Bidders forming

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[1] Clause 36 of Appendix-IX contained in Volume-II of the Odisha Public Works Department Code as amended by virtue of Office Memorandum bearing No.1437— 07559600192022, dated 31.01.2023 issued by the Government of Odisha in Works Department stands thus:

"If the rate quoted by the bidder is less than 15% of the amount put to tender, then such a bid shall be rejected and the tender shall be finalized basing on merits of rest bids. But, if more than one bid is quoted (decimal up to two numbers will be taken for all practical purposes) either at the estimated cost put to tender or less than the estimated cost put to tender, the tender accepting authority will finalise the tender through a transparent lottery system, where all bidders/ their authorized representatives, the concerned SE/Executive Engineer of concerned Division and DAO will remain present.

1. *This amendment to the codal provision shall take effect from the date of issue of the order.*
2. *Accordingly, the relevant existing codal/contractual provision stands modified with effect from the date of issue of this O.M.*
3. *This has been concurred in by Finance Department in their OSWAS File No.FIN-WF1-MISC-0042-2022."*

part of Request for Proposal ("ITB", abbreviated) which stands as follows:

"13. Bid Price:

13.1 The Contract shall be for the whole work as described in Sub-Clause 1.1 based on the Lump-sum Price bid submitted by the Bidder.

13.2 The bidder shall fill the total bid price as Lump-sum Price (both in figures and words) for execution of work on Lump-sum/Turnkey basis including all items of works as specified in the Bid document.

13.3 The prices tendered shall except in so far as it is otherwise, provided under the contract, include all constructional plant, labour, supervision, materials, erection maintenance, insurance, profit, taxes and duties except GST & other levies together with all general risks, liabilities and obligations set out or implied in the contract.

13.4 The lump-sum bid price quoted by the bidder shall be fixed for the duration of the Contract and shall not be subject to adjustment on any account."

3.1. The "estimated cost" for the tender was not defined in the Request for Proposal ("RfP", for convenience). Rather, the "amount put to tender" is the "Lump-Sum Price" as required to be quoted by the bidders. As per Clause 13.2 of the "Preparation of Bid", the bidder is required to fill the total bid price in figures online as "Lump-Sum Price". Nowhere in the ITB it was mentioned that percentage rate

of "amount put to tender" would be the criteria for evaluation to determine the lowest bidder.

3.2. With such note, it is explained by the opposite parties that the petitioner along with six others was called for presentation on 03.11.2025 and upon the financial bids being opened, the opposite party No.6 was found to be L-1 having quoted the lowest price of Rs.175,00,00,000/-. Though offer was made to reduce the cost, it expressed inability. Accordingly, the Works Department, being moved in terms of Note-1 of Clause 6.3.15 contained in Volume-I of the OPWD Code, the approval was accorded *vide* Letter No.24172/AC-II-07218800812025/W, dated 15.12.2025.

3.3. In the decision-making process, there is no flaw warranting interference of this Court.

Counter affidavit of the opposite party No.6:

4. The instant tender process commenced pursuant to the Request for Proposal ("RfP", for short) of the Government of Odisha in Works Department with all detail particulars, wherein the tender has been described as the National Competitive Bidding (Works on Turnkey basis with Architectural Planning, Design and Execution). Thus the RfP is not confined to the State of Odisha, but attracts bidders from outside the State of Odisha. Unlike other tenders, which are confined to the State of Odisha,

nowhere it was prescribed that the Office Memorandum No.1437— 07559600192022, dated 31.01.2023 of the Works Department, which is incorporated in the OPWD Code, would be applicable. Thus, having no universal application of such codal provision, it cannot be gainsaid that the evaluation of financial bid would be based on estimated value of the contract. This is more particularly so when the contract is a turnkey project inviting bidders not confining participants from this State only. Therefore, the apprehension of the petitioner, that the decision of the Committee which undertook financial evaluation of the bids ignored the tenor of Clause 36 of Appendix-IX of Volume-II of the OPWD Code, being introduced by way of the Office Memorandum dated 31.01.2023, is without comprehension.

4.1. Explaining further, it has been set out by the opposite party No.6 that the RfP specified "amount put to tender" was Rs.215.40 Crores "Lump-Sum", which is apparent from the proceeding dated 29.10.2025 of Technical Evaluation Committee. The petitioner misconstrued it to be the estimated cost of the turnkey project. Elaborating further, it is stated that the nature of tender specifying that the works contract to be awarded for execution would be on "turnkey basis" requires quotation of "Lump-Sum Price". In that view of the matter, neither Clause 36 of Appendix-IX of Volume-II of the OPWD Code, as

amended by dint of the Office Memorandum dated 31.01.2023, is applicable nor can it be inferred that the said amount as mentioned in the proceeding of the Committee in the Meeting held on 29.10.2025 was considered to be the estimated cost, which would be taken as the basis for determination of the lowest bid. Had those aspects being mentioned in the instant tender documents, all other bidders would have perceived in the same fashion.

4.2. Raising strong objection, the opposite party No.6 sought to clarify that the petitioner, by placing heavy reliance on the column specifying "% in figures" calculated on supposed estimated cost on its own manufactured/ self-prepared document, not only misdirected itself but also misled this Court.[2]

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[2] Annexure-6 of the writ petition which the petitioner seeks to quash stands as follows:

Short Name	Sl. No.	Bidder Name	Amount	Bid Rank	Estimated Cost	% in figures
BoQ	1	BC Bhuyan Construction Pvt. Ltd. (BID ID 2995844)	1750000000	L-1	***	-18.76%
	2	Sunil Kumar Agrawal, LLP (BID ID 2975722)	1831115400	L-2	***	-14.99%
	3	V. Sathyamoorthy & Co. (BID ID 2981167)	1893000000	L-3	***	-12.12%
	4	BPC Infraprojects Private Limited (BID ID 2965777)	1973485000	L-4	***	-8.38%
	5	NJR Constructions Pvt. Ltd. (BID ID 2996297)	2000635200	L-5	***	-7.12%

4.3. Referring to Clause 13 of the ITB it is asserted that the estimated cost for the instant tender was not specified in the invitation for bids; nonetheless, the bidder is required to fill the "total price as Lump-Sum Price" for execution of work. The ITB does not require percentage rate of amount put to tender to be specified by the tenderer.

Hearing:

5. The pleadings are completed and exchanged among the parties. The matter was heard at length on earlier occasions. On 03.09.2026 counsel for respective parties advanced final arguments.

5.1. Having heard Sri Prafulla Kumar Rath, learned Senior Advocate for the petitioner; Ms. Aishwarya Dash, learned Additional Standing Counsel appearing for the opposite party Nos.1 to 5; and Mr. Pradipta Kumar Mohanty, learned Senior Advocate for the opposite party No.6, the matter was reserved for preparation and delivery of Judgment/order.

Arguments and submissions:

	6	KMV Projects Limited (BID ID 2993147)	2433804600	L-6	***	12.99%
	7	DEE VEE Projects Limited (BID ID 2995275)	2500794000	L-7	***	16.10%

6. Sri Prafulla Kumar Rath, learned Senior Advocate submitted that:

i. Clause 36 of Appendix-IX of Volume-II of the OPWD Code prohibits acceptance of bids quoting more than 15% below the estimated cost and said provision mandates outright rejection of such abysmally low bids. Once the OPWD Code is made applicable to RfP, the authority cannot selectively apply its provisions by accepting beneficial clauses to suit its purpose, and discard mandatory restrictions. Such selective application of codal provisions *qua* tender conditions is *per se* arbitrary, lacks transparency, and violative of Article 14 of the Constitution of India. When the State Government fixed Contractor's profit and overhead charges @ 7.5% each to be adopted in the analysis of rates of various items in order to work out estimated cost *vide* Office Memorandum dated 26.10.2013 [3], and made it

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[3] Following is the text of the Office Memorandum bearing File No.07556900062013 (Pt.I)/11681/W., dated 26.10.2013 issued by the Government of Odisha in Works Department:

"Sub: Provision of Contractors Profit & Overhead Charges In Analysis of Rates.

After careful consideration Government have been pleased to fix Contractor's profit and overhead charges @ 7.5% each to be adopted In Analysis of Rates of various items to work out estimated cost. This is over and above the cost of labour and materials and hire charges of heavy machinery. No extra cost for sundries and T & P shall be allowed in Analysis of Rates. This is applicable to all engineering works including cost of pipes, fittings and specials.

Analysis of Rates is being changed accordingly.

1. These amendments shall take effect from the date of issue of the order.

2. Accordingly, relevant existing codal/contractual provision stands modified with effect from the date of issue of this O.M.

applicable to all Engineering Works, quoting the rate beyond 15% would not be permissible in law. Therefore, the rejection of the petitioner's bid and the acceptance of the bid of the opposite party No.6 is *ex facie* illegal, arbitrary and discriminatory attracting *vice* of Article 14 and the decision of the authority encroaches upon fundamental right envisaged under Article 19(1)(g) of the Constitution of India.

ii. The tender document itself incorporates the OPWD Code and the Contract Management Framework. The State cannot be allowed to pick and choose circumstances and situations envisioned in the different provisions of the OPWD Code for their application in a tender. In essence what is sought to be argued is that the provisions of the OPWD Code are to be applied lock, stock, and barrel.

iii. It is an undisputed fact that the opposite party No.6 quoted (-)18.75% below the estimated cost, which is not in consonance with the permissible threshold prescribed under Clause 36 of Appendix-IX. The Chief Engineer's letter dated 10.11.2025 itself records percentage of deviation and reference to Clause 36 of Appendix-IX, Volume-II, OPWD Code.

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3. This has been concurred in by the Finance Department vide their U.O.R. No.206- WF-I, dated 31.08.2013.

EIC-cum-Secretary to Government"

Thus, applicability of said Clause 36 is to be treated to be not disputed by the State. The present case is not one of interpretation but of admitted non-compliance.

iv. The percentage of deviation being calculated, the comparative statement records excess/less in percentage. As such financial evaluation is clearly done with reference to the estimated cost/value of the project. The Government cannot deny the applicability of percentage-based restrictions contained in the codal provisions after having itself applied percentage analysis.

6.1. It is submitted by learned Senior Counsel that unfairness, lack of transparency in the decision making process and arbitrariness attracts *vice* of Article 14 of the Constitution of India, that renders the decision itself vitiated. He cited the following observations made in *Michigan Rubber (India) Limited Vrs. State of Karnataka, (2012) 8 SCC 216*:

"23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness,

it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

24. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

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

favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say:

"the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226."

7. *Per contra,* Ms. Aishwarya Dash, learned Additional Standing Counsel and Sri Pradipta Kumar Mohanty, learned Senior Advocate would submit that there is no illegality in the decision making process. In unison they stated that judicial review may be invoked in the event decision making process is erroneous or irregular; however, it need not be exercised unless the decision is tainted with *mala fide* or arbitrariness, even if the decision is flawed. It is submitted that the tendering authority is the best person to interpret the requirement of the turnkey project, and the Committee, comprising of experts, having taken conscious and conscientious decision to evaluate the financial bids in terms of the RfP, this Court ought to desist from invoking its extraordinary jurisdiction.

Analysis and decision:

8. Before embarking on a journey to examine the rival contentions, arguments and submissions, it may be apt to have regard to the following observations made in *Vedika Resources Vrs. National Aluminium Company Ltd., 2025 SCC OnLine Ori 4148*:

> *"7.1. As is held by this Court in AF Enterprises Limited Vrs. The State of Odisha, ILR (2023) 1 Cut 124 that an essential condition stipulated in NIT must be adhered to scrupulously and the authority issuing tender is required to enforce it with rigidity.*
>
> *7.2. The Hon'ble Supreme Court of India in the case of Banshidhar Construction Pvt. Ltd. Vrs. Bharat Coking Coal Limited, (2024) 10 SCC 273 observed that the writ Court does not sit as a Court of appeal in the matter of award of contracts and it merely reviews the manner in which the decision was made; and that the Government and its instrumentalities must have a freedom of entering into the contacts. However, it is equally well settled that the decision of the Government/its instrumentalities must be free from arbitrariness and must not be affected by any bias or actuated by mala fides. For better appreciations, the following is quoted from said reported judgment:*
>
> > *'22. At this juncture, we may reiterate the well-established tenets of law pertaining to the scope of judicial intervention in Government contracts.*
> >
> > *23. In Sterling Computers Ltd. Vrs. M & N Publications Ltd., (1993) 1 SCC 445, this Court while dealing with the scope of judicial review of award of contracts held:*

'18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process". In this connection reference may be made to Chief Constable of the North Wales Police Vrs. Evans, (1982) 1 WLR 1155 (HL) where it was said that:

'... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court.'

By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. *But at the same time as was said by the House of Lords in the aforesaid case, Chief Constable of the North Wales Police Vrs. Evans, (1982) 1 WLR 1155 (HL) the courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.'*

24. *In Tata Cellular Vrs. Union of India, (1994) 6 SCC 651, this Court had* ***laid down certain principles for the judicial review*** *of administrative action:*

> *'94. The* ***principles deducible*** *from the above are:*
>
> *(1) The modern trend points to judicial restraint in administrative action.*
>
> *(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
>
> *(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*
>
> *(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*
>
> *(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-*

administrative sphere. However, the decision must not only be tested by the application of Associated Provincial Picture Houses Vrs. Wednesbury Corpn., (1948) 1 K.B. 223 (CA) principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

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

25. It has also been held in ABL International Ltd. Vrs. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553, as under:

'53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution.'

26. In Jagdish Mandal Vrs. State of Orissa, (2007) 14 SCC 517, this Court after discussing number of judgments laid down two tests to determine the extent of judicial interference in tender matters. They are:

*'22. ****

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

or

(ii) Whether the process adopted or decision made is so arbitrary and irrational that the court can say:

'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached;

Whether public interest is affected.'

If the answers are in the negative, there should be no interference under Article 226. *Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.'*

27. In Mihan (India) Ltd. Vrs. GMR Airports Ltd., (2022) 19 SCC 69, while observing that the Government contracts granted by the Government bodies must uphold fairness, equality and rule of law while dealing with the contractual matters, it was observed as under:

'50. In view of the above, it is apparent that in Government contracts, if granted by the

Government bodies, ***it is expected to uphold fairness, equality and rule of law while dealing with contractual matters. Right to equality under Article 14 of the Constitution of India abhors arbitrariness.*** *The transparent bidding process is favoured by the Court to ensure that constitutional requirements are satisfied.* ***It is said that the constitutional guarantee as provided under Article 14 of the Constitution of India demands the State to act in a fair and reasonable manner unless public interest demands otherwise.*** *It is expedient that the degree of compromise of any private legitimate interest must correspond proportionately to the public interest.'*

28. *It was sought to be submitted by the learned counsel for the respondents relying upon the observations made in Central Coalfields Ltd. Vrs. SLL-SML (JVC), (2016) 8 SCC 622, that whether a term of NIT is essential or not is a decision taken by the employer which should be respected. However, in the said judgment also it is observed that* ***if the employer has exercised the inherent authority to deviate from the essential term, such deviation has to be made applicable to all the bidders and potential bidders.*** *It was observed in paras 47 and 48 as under:*

'47. The result of this discussion is that the issue of the acceptance or rejection of a bid

or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty Vrs. International Airport Authority of India, (1979) 3 SCC 489 ***the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance.*** *As pointed out in Tata Cellular Vrs. Union of India, (1994) 6 SCC 651 there must be judicial restraint in interfering with administrative action.* ***Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision 'that no responsible authority acting reasonably and in accordance with relevant law could have reached'*** *as held in Jagdish Mandal Vrs. State of Orissa, (2007) 14 SCC 517 followed in Michigan Rubber (India) Ltd. Vrs. State of Karnataka, (2012) 8 SCC 216.*

48. *Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected.* ***Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made***

applicable to all bidders and potential bidders *as held in Ramana Dayaram Shetty Vrs. International Airport Authority of India, (1979) 3 SCC 489. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected.* ***The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot****.' ***'*

7.3. It may be pertinent to refer to judgment of the Hon'ble Supreme Court in Vidarbha Irrigation Development Corporation Vrs. Anoj Kumar Agarwala, (2020) 17 SCC 577, wherein it has been observed as follows:

'14. The law on the subject is well settled. In Bakshi Security & Personnel Services (P) Ltd. Vrs. Devkishan Computed (P) Ltd., (2016) 8 SCC 446, this Court held:

'14. The law is settled that an essential condition of a tender has to be strictly complied with. In Poddar Steel Corpn. Vrs. Ganesh Engg. Works, (1991) 3 SCC 273 this Court held as under:

*'6. *** The requirements in a tender notice can be classified into two categories— those which lay down the essential conditions of eligibility and the others*

which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance with the condition in appropriate cases.'

15. *Similarly in B.S.N. Joshi & Sons Ltd. Vrs. Nair Coal Services Ltd., (2006) 11 SCC 548 this Court held as under:*

'(i) if there are essential conditions, the same must be adhered to;

(ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

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

(iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply

with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;

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

16. We also agree with the contention of Shri Raval that the writ jurisdiction cannot be utilised to make a fresh bargain between parties.'

15. However, the learned counsel appearing on behalf of the appellant strongly relied upon Afcons Infrastructure Ltd. Vrs. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818, and paras 14 and 15 in particular, which state:

'14. We must reiterate the words of caution that this Court has stated right from the time when Ramana Dayaram Shetty Vrs. International Airport Authority of India, (1979) 3 SCC 489 was decided almost 40 years ago, namely, that the words used in the tender documents cannot be ignored or

treated as redundant or superfluous— they must be given meaning and their necessary significance. In this context, the use of the word "metro" in Clause 4.2(a) of Section III of the bid documents and its connotation in ordinary parlance cannot be overlooked.

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

16. *It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous— they must be given meaning and their necessary significance. Given the fact that in the present case, an essential tender condition which had to be strictly complied with was not so complied with, the appellant would*

*have no power to condone lack of such strict compliance. Any such condonation, as has been done in the present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court.' ***"*

9. Having taken note of the above principles as enunciated by the Hon'ble Supreme Court of India and noticed by a co-ordinate Bench of this Court in the case of *Vedika Resources Vrs. National Aluminium Company Ltd., 2025 SCC OnLine Ori 4148* referred to *supra*, on scrutiny of the papers enclosed with the writ petition, it would transpire that:

i. Clause 2.1 of Annexure-I to ITB speaks of payment of the EMD or Bid Security along with the bid at 1% of the estimated contract value (ECV) or as mentioned in the bid document.

ii. Clause 16.1 of Annexure-III to ITB spells out that the bidder shall furnish, as part of his Bid, a Bid Security for an amount of Rs.2,15,40,000/- for this particular work in online mode.

iii. Clause 13 of Section 1 of ITB under the Heading "Preparation of Bids" specifically employs the expression *"the contract shall be for the whole work as described in sub-clause 1.1, based on the Lump-*

Sum Price Bid submitted by the Bidder" and *"the bidder shall fill the total bid price as Lump-Sum Price (both in figures and words) for execution of work on Lump-Sum/Turnkey basis including all items of works as specified in the Bid document"*.

9.1. From the undisputed facts adumbrated by the petitioner, it can be culled out from paragraph 9 of the writ petition that:

"That the Proceeding of Technical Evaluation Committee meeting held on 29.10.2025, wherein it was mentioned that the amount put to tender Rs.215.40 crores Lump-Sum. EMD required Rs.2,15,40,000/-. The Committee examined the technical bid documents of the bidders wherein seven bidders qualified in technical bid including the petitioner and the opposite party No.6, B.C. Bhuyan Construction Pvt. Ltd."

9.2. However, it is discernible by having a glance at paragraph 15 of the rejoinder affidavit filed by the petitioner that it construed the amount put to tender valued at "Rs.215.40 crores Lump-Sum", as if it is the "estimated contract value"; the reason being that Clause 2.1 of Annexure-I to ITB instructed to pay the EMD or the bid security along with the bid @ 1% of the estimate contract value and Clause 16.1 of Annexure-III to ITB specified that the bid security would be Rs.2,15,40,000/-. Nevertheless, it is clarified by Ms. Aishwarya Dash, learned Additional Standing Counsel that the "amount put to tender" at

Rs.2,15,40,000/-, as reflected in the Proceedings of Technical Evaluation Committee in its Meeting held on 29.10.2025, cannot be equated with the "Lump-Sum Price Bid" reflected in Clause 13 of Section 1 of ITB under the Heading "Preparation of Bids". Being the "Lump-Sum" amount to be quoted by the bidders for execution of works contract on turnkey basis, this Court finds force in her submission that the bidder is instructed to fill the total bid price as "Lump-Sum Price" for execution of work on turnkey basis, which includes all items of works as specified in the Bid document. It is highlighted that the ECV of the turnkey project has not been specified anywhere in the RfP. Thus, the Lump-Sum Price quoted in the bids has been taken as the basis for financial evaluation.

9.3. Misreading or erroneous reading of the RfP and its terms by the petitioner cannot grant it the benefit claimed. On a plain reading, if a literal construction of the terms of the RfP leads to no absurd or anomalous results, it is not for the Court to resort to external tools to interpret the contract. In *Punjab State Power Corporation Limited and another Vrs. EMTA Coal Limited, (2021) 11 SCR 772,* it has been re-stated thus:

> *"22. The principle of giving a plain and literal meaning to the words in a Statute is well recognized for ages. Though there are a number of judgments, we may*

gainfully refer to the judgment of this Court delivered by Das, J. as early as 1955 in the case of Jugalkishore Saraf Vrs. Raw Cotton Company Limited, (1955) 1 SCR 1369:

'The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. ***If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same.*** *But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation.'* ***

It is a settled principle of law that when, upon a plain and literal interpretation of the words used in a Statute, the legislative intent could be gathered, it is not permissible to add words to the Statute. Equally, such an interpretation which would make some terms used in a Statute otiose or meaningless, has to be avoided."

9.4. The petitioner participated in the process of tender with full knowledge of the terms of the RfP. The requisite compliance with the essential conditions is also not unknown to it at the time of preparing and submission of the bid. Thus, it cannot, when it is declared as the L-2 bidder on the basis of data provided by it to the tendering authority, turn around to contend that provisions of Clause 36 of Appendix-IX, Volume-II, OPWD Code being not adhered to, the process of tender is required to be scrapped. The following is succinctly said in *Municipal*

Committee Katra Vrs. Ashwani Kumar, 2024 SCC OnLine SC 840:

"18. The situation at hand is squarely covered by the latin maxim 'nullus commodum capere potest de injuria sua propria', which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of Union of India Vrs. Maj. Gen. Madan Lal Yadav, (1996) 4 SCC 127 observing as below:

'28. …In this behalf, the maxim nullus commodum capere potest de injuria sua propria — meaning ***no man can take advantage of his own wrong*** *— squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:*

'… it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.'

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that ***a man shall not take advantage of his own wrong to gain the favourable interpretation of the law.*** *In support thereof, the author has placed reliance on another maxim frustra legis auxilium invocat quaerit qui*

in legem committit. He relies on Perry Vrs. Fitzhowe [[L.R.] 8 Q.B. 757 : 15 LJ QB 239]. At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that ***"a wrong doer ought not to be permitted to make a profit out of his own wrong"****. At p. 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed.'*

19. *It is beyond cavil of doubt that* ***no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law.*** *It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make profit out of his own wrong'. The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition."*

9.5. Since the RfP does not admit of any inconsistency in perceiving that it is a turnkey project and the bidders are required to quote the Lump-Sum Price, the application of provisions of Clause 36 of Appendix-IX of Volume-II of OPWD Code could be dispensed with by the tendering authority, who is the best judge to understand the

requirements for identifying the lowest bidder. However, for the purpose of taking punitive measures like blacklisting, which provisions are provided under different Appendix/Chapter of the OPWD Code the RfP may have incorporated such provisions to apply, but that *ipso facto* does not give scope for the petitioner to contend that all other provisions of the OPWD Code under different Appendices contemplating very many other situations would apply to the RfP in question. In order to appreciate the stand taken by the petitioner, reference to Annexure-I to ITB with Heading: *"Procedure to participate In online bidding— e-procurement"* is not irrelevant, which stated thus:

> *"14.8Accordingly, the Officer Inviting Tender shall recommend to the Chief Manager (Tech) State Procurement Cell, Odisha for blocking of portal registration of bidder and simultaneously action shall also be initiated by Officer inviting tender for blacklisting as per Appendix-XXXIV of OPWD code Volume-II."*

9.6. The adoption of method for blocking portal registration[4] and blacklisting[5] of contractors for enforcement of timely execution of contract under different Appendices of the OPWD Code cannot have any impact on the evaluation

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4 See, Appendix-IX(A) of Volume-II of OPWD Code dealing with "Executive instructions regarding calling for and acceptance of tender in e-procurement" specifies in Clause 23 thereof modalities for "blocking of portal registration".

5 See, Appendix XXXIV of Volume-II of OPWD Code dealing with "Codal provisions for blacklisting contractors".

process of the Committee. Neither is *mala fides* attributed to any of the members of the Committee or tendering authority, nor is discriminatory treatment alleged by the petitioner *vis-à-vis* other participants. The procedure for taking coercive measures, as provided under the OPWD Code, has been adopted to prevent default by the contractors. This aspect has no bearing on the evaluation process undertaken to identify the lowest bid. Minute excursion of the RfP under the Heading "Bid Datasheet" given Annexure-III to ITB in Clause 22.3 clarifies that *"The "Financial Bids" of the responsive bidders shall be opened online. During detail evaluation of the "Financial Bid" of the lowest evaluated bidder, the responsiveness of the bid will be further examined and if required, the bidder shall be asked to clarify its offer through further negotiation"*.

9.7. On the facts emerging from the documents available on record, it can safely be said that merely because for the purpose of taking punitive action against the bidder/ contractor with respect to any specific default the procedure laid in the OPWD Code is activated, this alone is not germane consideration, to contend by the petitioner, that the tendering authority could not be selective in application of provisions of the OPWD Code. It is, therefore, emphatically submitted placing heavy reliance on said Clause 36 by Sri Prafulla Kumar Rath,

learned Senior Advocate that as the rate quoted by the opposite party No.6 is not in consonance with the mandate contained in Clause 36 of Appendix-IX, Volume-II of the OPWD Code, such a bid ought to have been rejected and the tender should have been finalized basing on merits of rest of the bids. Much stress has been laid by the learned Senior Advocate that the tendering authority could not be allowed to adopt the fragmented and selective method of tender norms, which has the effect of defeating the doctrine of a level playing field, violating legitimate expectation of uniform evaluation, and such a recourse results in denial of equal treatment under Article 14 of the Constitution of India.

9.8. Such a stance of the petitioner has no substance. It is not the case of the petitioner that the tendering authority/ Financial Evaluation Committee has adopted different standards for different bidders in the present case. The Proceedings of the Committee in the instant case demonstrates that the Lump-Sum Price quoted by individual bidders (seven bidders) was the basis for deciding lowest tenderer.

9.9. In *Punjab State Power Corporation Limited Vrs. EMTA Coal Limited, (2021) 11 SCR 772* it has been made clear that:

> *"26. The issue with regard to legitimate expectation has been recently considered by a bench of this Court to which one of us (L. Nageswara Rao, J.) was a*

member. After considering various authorities on the issue, in the case of Kerala State Beverages (M and M) Corporation Limited Vrs. P.P. Suresh, (2019) 9 SCC 710 = (2019) 17 SCR 164, it was observed thus:

> *'20.* ***The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation.*** *[Findlay, In re, 1985 AC 318 = (1984) 3 WLR 1159 = (1984) 3 All ER 801 (HL)]. So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated."*

9.10. In view of the scope of judicial review as delineated in *Agmatel India Pvt. Ltd. Vrs. Resoursys Telecom, (2022) 18 SCR 861*, this Court feels it apposite to give deference to the understanding and appreciation of the tender documents by the tendering authority, who is the best person to interpret them. Court is not expert in commercial tenders, so it should trust the judgment of the authority that issued the tender. Unless there is *mala fide* or perversity in the understanding or appreciation or in the application of the terms of the tender conditions, it is not apt for the Court to substitute its own view for that of the technical experts, who have evaluated the bids. In

Om Gurusai Construction Company Vrs. V.N. Reddy, (2023) 11 SCR 379 it has been reiterated as follows:

"25. In this case, the tendering authority, after due verification, about the non-operation of the banks on 15.03.2021 and 16.03.2021 due to the strike by the bank employees, had accepted the additional performance security on 17.03.2021 and awarded the work to the appellant. It is well settled by a long line of judgments that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. It has also been held that the constitutional courts must defer to this understanding and appreciation of the tender documents by the employer unless there is mala fide or perversity in the understanding or appreciation. [See Afcons Infrastructure Limited Vrs. Nagpur Metro Rail Corporation Limited and Another, (2016) 16 SCC 818 and Uflex Limited Vrs. Government of Tamil Nadu and Others, (2022) 1 SCC 165)].

26. In this case, no mala fide has been alleged and the interpretation as adopted by the tendering authority cannot be said to be perverse. We also do not find that the decision to accept the additional performance security on 17.03.2021 and the issuance of the work order was arbitrary and irrational. We also do not find it to be a decision, which no responsible authority acting reasonably and in accordance with law could have reached. On facts, no case of prejudice to public interest by the award of the work has also been made out. In such circumstances, the High Court ought not to have interfered with the acceptance of

the tender and the issuance of the work order in the present case."

10. The next plank of submission of the learned Senior Counsel for the petitioner is that irrespective of nature of tender, the provisions of the OPWD Code are required to be scrupulously followed by the tendering authority without any deviation. Quintessentially it is urged that in the event of confusion or difficulty in the terms of the RfP and the provisions of the OPWD Code, the latter should prevail.

10.1. This question does not require extensive deliberation by this Court. Suffice it to refer to *Akshay Kumar Rout Vrs. State of Odisha, 2026 ILR-CUT ONLINE 3566*[6], wherein it has been held as follows:

> *"4. In course of hearing of the instant writ petition, an additional affidavit is filed disclosing the letters issued subsequently by the authority calling upon the petitioner to appear and attend for negotiation which again has been read and construed as a mandatory direction to execute the work at the rate and the price quoted by the lowest bidder.* ***A plea is taken before us that the OPWD Code is merely an executive instruction having no force of law*** *and, therefore, the authorities cannot compel the second lowest bidder to execute the work at a price not quoted by the second lowest bidder and in support of the said contention the reliance is placed upon the three judge*

[6] See also, *Binodini Infrastructure Pvt. Ltd., Bhawanipatna Vrs. State of Odisha, 2026 ILR-CUT ONLINE 3252.*

Bench decision of the Supreme Court in the case of G.J. Fernandez Vrs. State of Mysore and others, reported in AIR 1967 SC 1753 = 1967 SCC OnLine SC 68.

5. *Such being the only argument advanced before us, let us examine whether on a factual matrix, the law as argued by the petitioner has any relevance or applicability? It is no gain saying that in absence of any statutory rule framed under Article 309 of the Constitution of India in respect of a particular area, aspect/subject the executive powers conferred under Article 162 of the Constitution to make any provision is eminently and evidently conferred upon the State. The three judge Bench in G.J. Fernandez (supra) held that the executive power of the State shall extend to the matters with respect to which legislature of the State has a power to make laws, which is further indicative of the fact that such power is restrictive and does not confer any power to issue a rule thereunder. It is aimed to issue any executive instructions but cannot be exercised to issue statutory rules and, therefore, has its applicability in relation to its enforcement between the State Government and the servant and cannot be imposed upon a third party not confers any power of its enforceability in the following:*

> *'12. *** Thus under Article 162, the State Government can take executive action in all matters in which the legislature of the State can pass laws. But Article 162 itself does not confer any rule making power on the State Government in that behalf. We are therefore of opinion that instructions contained in the Code are mere*

administrative instructions and are not statutory rules. Therefore even if there has been any breach of such executive instructions that does not confer any right on the appellant to apply to the court for quashing orders in breach of such instructions. It is unnecessary for us to decide whether there has been in fact a breach of any instruction contained in the Code with respect to tenders and we do not therefore so decide. But assuming that there has been any breach that is a matter between the State Government and its servant, and the State Government may take disciplinary action against the servant concerned who disobeyed these instructions. But such disobedience did not confer any right on a person like the appellant, to come to court for any relief based on the breach of these instructions. It is for this reason that we are not referring to the Code, though the High Court did consider whether there was any breach of these administrative instructions and came to the conclusion that there was no breach. In the view we take it is unnecessary for us to consider this, for we are of opinion that no claim for any relief before a court of law can be founded by a member of the public, like the appellant, on the breach of mere administrative instructions.'

6. *In a subsequent judgment rendered in the case of P. Tulsi Das and others Vrs. Government of Andhra Pradesh and others, reported in AIR 2003 SC 43 = (2003) 1 SCC 364, the Apex Court held that there is no fetter put on the State to take recourse to the executive powers enshrined under Article 162 of the Constitution in absence*

of any Rules framed under Article 309 of the Constitution and, therefore, appears to be co-extensive with the legislative powers laying down the conditions of service and the right accrued to or acquired by the citizen in the following:

'14. On a careful consideration of the principles laid down in the above decisions in the light of the fact situation in these appeals we are of the view that they squarely apply on all fours to the cases on hand in favour of the appellants. The submissions on behalf of the respondent State that the rights derived and claimed by the appellants must be under any statutory enactment or rules made under Article 309 of the Constitution of India and that in other respects there could not be any acquisition of rights validly, so as to disentitle the State to enact the law of the nature under challenge to set right serious anomalies which had crept in and deserved to be undone, does not merit our acceptance. It is by now well settled that in the absence of rules under Article 309 of the Constitution in respect of a particular area, aspect or subject, it is permissible for the State to make provisions in exercise of its executive powers under Article 162 which is coextensive with its legislative powers laying conditions of service and rights accrued to or acquired by a citizen would be as much rights acquired under law and protected to that extent. The

orders passed by the Government, from time to time beginning from February 1967 till 1985 and at any rate up to the passing of the Act, to meet the administrative exigencies and cater to the needs of public interest really and effectively provided sufficient legal basis for the acquisition of rights during the period when they were in full force and effect. The orders of the High Court as well as the Tribunal also recognised and upheld such rights and those orders attained finality without being further challenged by the Government, in the manner known to law. Such rights, benefits and perquisites acquired by the teachers concerned cannot be said to be rights acquired otherwise than in accordance with law or brushed aside and trampled at the sweet will and pleasure of the Government, with impunity. Consequently, we are unable to agree that the legislature could have validly denied those rights acquired by the appellants retrospectively not only depriving them of such rights but also enact a provision to repay and restore the amounts paid to them to the State. The provisions of the Act, though can be valid in its operation "in futuro" cannot be held valid insofar as it purports to restore status quo ante for the past period taking away the benefits already available, accrued and acquired by them. For all the reasons stated above the reasons assigned by the majority opinion of the Tribunal could not be

approved in our hands. The provisions of Sections 2 and 3(a) insofar as they purport to take away the rights from 10.02.1967 and obligate those who had them to repay or restore them back to the State are hereby struck down as arbitrary, unreasonable and expropriatory and as such are violative of Articles 14 and 16 of the Constitution of India. No exception could be taken, in our view, to the prospective exercise of powers thereunder without infringing the rights already acquired by the appellants and the category of the persons similarly situated whether approached the courts or not seeking relief individually. The provisions contained in Section 2 have to be read down so as to make it only prospective, to save the same from the unconstitutionality arising out of its retrospective application.'

7. *In an earlier decision rendered in the case of Ramana Dayaram Shetty Vrs. International Airport Authority of India and others, reported in AIR 1979 SC 1628 = (1979) 3 SCC 489, the apex Court held that when the obligation of the State to follow a norm, gives rise to co-extensive right of a citizen; it imbibed within itself a right on the citizenry to invoke judicial review for enforcing such right. However, in the decision rendered in the case of R. Sai Bharathi Vrs. J. Jayalalitha and others, reported in AIR 2004 SC 692 = (2004) 2 SCC 9, the apex Court held that, even if the Government order is traced to have been issued under the executive power of the State*

emanating from Article 162 of the Constitution, the Code will not be enforceable if the language used therein is not in mandatory terms and intended to issue mere guidelines or the instructions to the person concerned or the authority.

8. *We do not find any trace of a legislative power to make the rules exercised by the authority while issuing the OPWD Code as the same is an executive instruction/guidelines issued by the authority for its adherence in relation to the subject and/or aspect engulfed therein in the event any departure is made. We do not find any fetter having put in the above noted decision seeking a strict adherence thereof provided the language used in the executive instruction is in mandatory form. We did not dialect much on the aspect and limit open to be discussed in another case as we find from the facts germinating from the record that the same can be decided on the basis thereof."*

10.2. This apart, one must bear in mind that the codal provisions contained in the OPWD Code are executive instructions and they are mere procedures to facilitate smooth functioning of works entrusted to the contractors. It is well settled that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress. *[See, Sardar Amarjit Singh Kalra Vrs. Pramod Gupta, (2003) 3 SCC 272, N. Balaji Vrs. Virendra Singh, (2004) 8 SCC 312 and Kailash Vrs. Nanhku, (2005) 4 SCC*

480]. This Court in *Akbar Mohammed Vrs. State of Odisha, 2006 SCC OnLine Ori 33* held,

> *"9. The Supreme Court in the case of G.J. Fernandez Vrs. State of Karnataka, AIR 1990 SC 958, laid down that it is not that the authority inviting tenders cannot deviate or relax the prescribed standard in any situation. But any deviation if made, should not result in arbitrariness or discrimination where it results in arbitrariness or discrimination, the law as laid down by the Supreme Court in the case of Ramana Dayaram Shetty Vrs. The International Airport Authority of India, AIR 1979 SC 1628 comes in for application.*
>
> *10. In the case of Raunaq International Ltd., AIR 1999 SC 393, the Supreme Court has cautioned that intervention by the Court in contractual matters may lead to considerable delay in execution of the project and consequent escalation of cost and, therefore, unless there is a substantial amount of public interest or the transaction is entered into mala fide, the Court should not intervene under Article 226 of the Constitution in disputes between two rival tenderers."*

10.3. The contention of the petitioner is that invariably in every tender wherever the rate is required to be quoted by the bidder, it should be less than l5% of the amount put to tender as per Clause 36 of Appendix-IX, Volume-II, OPDW Code. In view of the position discussed *supra*, it is fallacious to argue that in the event the rate is more, *i.e.*, not in consonance with said Clause 36, such a bid is required to be rejected. The tendering authority, being the

author, is the best person to understand and appreciate its requirements and interpret its documents. This Court, having no technical expertise, should not delve into the arithmetical precision of the evaluation process adopted by the Committee.

10.4. It is, therefore, in the opinion of this Court, that where two views are possible, the one taken by the tendering authority is to be respected. There is no, nor can there be any, quarrel with the broad proposition of law in this regard. Nevertheless, it cannot be an absolute proposition that a writ court is barred from interfering with an administrative action when manifest arbitrariness, irrationality, unreasonableness, or perversity is evident in the action of the authorities. Hence, if the language used in a document is susceptible to two meanings or interpretations, the one adopted by the authorities does not invite any interference, even if the Court feels that the other interpretation could have been more conveniently adopted. Needless to say, where the language of the document is unambiguous and leaves no room for alternative interpretations, any contrary interpretation by the authority would remove any inhibition on the writ court to interfere.

Conclusion:

11. Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim it as a fundamental right to carry on business with the Government. All that he can claim is that in competing for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest. Reference may be made to the decisions in *Air India Ltd. Vrs. Cochin International Airport Ltd., (2000) 2 SCC 617; Asia Foundation & Construction Ltd. Vrs. Trafalgar House Construction (I) Ltd., (1997) 1 SCC 738; Krishnan Kakkanth Vrs. Govt. of Kerala, (1997) 9 SCC 495; Ugar Sugar Works Ltd. Vrs. Delhi Admn., (2001) 3 SCC 635; Sterling Computers Ltd. Vrs. M&N Publications Ltd., (1993) 1 SCC 445; Union of India Vrs. Dinesh Engg. Corpn., (2001) 8 SCC 491*.

11.1. Keeping abreast of the legal perspective delineated in the afore-referred cases and having examined the factual aspect obtained on record, this Court conceived that the tendering authority has proceeded on the basis of the total bid price disclosed as Lump-Sum Price in terms of Clause 13.2 of “Preparation of Bids” *vide* Annexure-III to

ITB. The terms of the RfP being unambiguous and the tendering authority having understood the requirement in the manner spelt out therein, in the absence of any allegation of fraud, *mala fides*, or misrepresentation, the petitioner has failed to successfully question the propriety and legality of the decision of the tendering authority. Apart from this, no procedural irregularity or vitiating factor is discernible in the decision-making process of the tendering authority or the Committee.

11.2. It may not be out of place to have reference to the following observation contained in *Air India Ltd. Vrs. Cochin International Airport Ltd., (2000) 2 SCC 617*:

> *"7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty Vrs. International Airport Authority of India, (1979) 3 SCC 489, Fertilizer Corpn. Kamgar Union (Regd.) Vrs. Union of India, (1981) 1 SCC 568, CCE Vrs. Dunlop India Ltd., (1985) 1 SCC 260, Tata Cellular Vrs. Union of India, (1994) 6 SCC 651, Ramniklal N. Bhutta Vrs. State of Maharashtra, (1997) 1 SCC 134 and Raunaq International Ltd. Vrs. I.V.R. Construction Ltd., (1999) 1 SCC 492. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is*

not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. ***Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily.*** *Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned.* ***Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point.*** *The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."*

11.3. The following observations in *Monarch Infrastructure (P) Ltd. Vrs. Ulhasnagar Municipal Corpn., (2000) 5 SCC 287* are significant:

"10. There have been several decisions rendered by this Court on the question of tender process, the award of

contract and have evolved several principles in regard to the same. ***Ultimately what prevails with the courts in these matters is that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike.*** *We may sum up the legal position thus:*

(i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest.

(ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate.

(iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons."

11.4. The Hon'ble Supreme Court of India in *Jespar I. Slong Vrs. State of Meghalaya, (2004) 11 SCC 485*, observed as follows:

"It is seen from the above directions issued by the Court that the High Court left open the question of reassessing the value of the tender to the State authorities. However, it directed them to take into consideration the report submitted by the Enforcement Inspectors of the Motor Vehicles Department. It did not prohibit the said authorities from taking into consideration any other material which was also available. Therefore, in our opinion, it was open to the authorities to rely upon such other material as was

available to it while reassessing the value of the tender but, of course, it also had to consider the report submitted by the Enforcement Inspectors. By its order the High Court had also not specifically held that the reasonable assessment of the tender value made by it at Rs 40,29,600 was a conclusive value and the authorities were bound by the same, because if it was so then there was no need to give the direction to the State authorities to make a reassessment on the material available to it. We think it is clear from the above judgment that the reasonable assessment of the tender value made by the High Court at Rs 40,29,600 was only a tentative expression of opinion. ***That apart, fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable.*** *From the above findings of ours, it is clear that the Tender-Acceptance Committee had the necessary authority to reassess the value of the tender which it did by fixing the value at Rs 2 crores. This value was fixed after taking into consideration the report submitted by the Enforcement Inspectors as also the report and data supplied by PWD and if the said authorities thought it fit and safe to rely upon the data supplied by the PWD authorities, we can find no fault with the same. In this context in our opinion, the Minister who disagreed with the recommendation of the Tender-Acceptance Committee was in error in coming to the conclusion that the figure of Rs 40,29,600 fixed by the learned Single Judge in his order was a final value and the State authorities had no right to differ from the same."*

11.5. In the instant case, all the participants are treated alike and were given equal opportunity to participate in the

tender process. The Lump-Sum Price quoted by the bidders were taken into consideration for evaluation of financial bids submitted by all the seven bidders who qualified in the technical evaluation stage. As the bid of the opposite party No.6 was found to be the lowest bid, he was declared successful and placed as L-1. The opposite party No.6 having disclosed lowest Lump-Sum price compared to six others including the petitioner, there is no scope for this Court to interfere with the decision taken by the tendering authority.

11.6. In the case of *Gopal Chandra Sahu Vrs. State of Odisha, 2016 (I) ILR-CUT 439* the question arose whether the authority is required to consider according to conditions laid in tender *vis-a-vis* the OPWD Code, a Division Bench of this Court has expressed the following view:

> *"23. It is not disputed before us that the authorities have evaluated the price bids of the bidders in accordance with the terms and conditions of the tender. It is also not the case of the petitioner that his price bid has been improperly evaluated or worked out. The only plea of the petitioner is that as the rates offered by him was 14.99.02% less than the estimated cost and the rates quoted by the present opposite party no.6 was found to be 14.995% less than the estimated cost, both the bids should have been counted as 14.99% less than the estimated cost and the tender accepting authority should have finalized the tender through a transparent lottery system in terms of*

Clause36 of the OPWD Code, the provisions of which are applicable to the present tender.

24. *The terms and conditions of the tender cannot be expanded or diluted by application of the provisions of the OPWD Code, on the basis of a marginal note to the provisions for deposit of additional performance security in the contract data. Such marginal notes cannot be considered as a legitimate aid to construction of the provisions of the tender document. The side notes are not to be considered as part of the tender document and therefore such marginal notes cannot be referred to for the purpose of construction of the provisions of the tender document. (See-Guntaiah and others Vrs. Hamamma and others, (2005) 6 SCC 228).*

25. *It is trite law that the terms and conditions of an invitation to tender is not open to judicial scrutiny, as the same is in the realm of contract. It is reiterated at the risk of repetition that in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities and unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted.*

26. *The petitioner having failed to show as to how the authorities have acted in an arbitrary, unreasonable and mala fide manner in dealing with his bid and there being no impropriety or illegality in the selection of opposite party No.6, we do not find any scope for interference in exercise of extraordinary writ jurisdiction. The writ petition being devoid of merits, the same is accordingly dismissed. No costs."*

12. Careful reading of prayer(s) made in the writ petition percolates the impression that the petitioner has sought for quashing of Annexure-6, which is a self-serving document. While entertaining the writ petition, it was given to understand that the tender evaluation Committee instead of evaluating the bids on the basis of percentage on estimated contract value as per Clause 36 of Appendix-IX of Volume-II of OPWD Code, it erroneously taken the total bid price disclosed as Lump-Sum Price given at Clause 16.1 of Annexure-III to ITB. Enclosing the enumeration of financial evaluation (autogenerated BoQ) at Annexure-E/4 to the counter affidavit it is submitted by the learned Additional Standing Counsel that the petitioner has placed its own calculation at Annexure-6 of the writ petition, which does not match with the method adopted by the Committee. Said BoQ summary details depicts the following fact and figures:

"BoQ Summary Details
Tender Title:
Construction of New Banijyakar Bhawan at Chandrasekharpur, Bhubaneswar on turnkey basis in the State of Odisha
Tender ID: 2025_EICCL_113988_1

Sheet Name	Sl. No.	Bidder Name	Amount	Bid Rank
BoQ	1	BC Bhuyan Construction Pvt. Ltd. (BID ID 2995844)	1750000000	L-1
	2	Sunil Kumar Agrawal, LLP (BID ID 2975722)	1831115400	L-2
	3	V. Sathyamoorthy & Co. (BID ID 2981167)	1893000000	L-3
	4	BPC Infraprojects Private Limited (BID ID 2965777)	1973485000	L-4
	5	NJR Constructions Pvt. Ltd. (BID	2000635200	L-5

		ID 2996297)		
	6	KMV Projects Limited (BID ID 2993147)	2433804600	L-6
	7	DEE VEE Projects Limited (BID ID 2995275)	2500794000	L-7

12.1. In the wake of the aforesaid detailed discussions and the reasons ascribed in the foregoing paragraphs, this Court finds that the perception of the petitioner is wholly misconceived and without any valid foundational basis.

13. Under the above premise, having found no merit in the contention of the petitioner, there is no scope left for this Court to show indulgence in the matter by exercise of extraordinary writ jurisdiction. The writ petition, hence, stands dismissed.

14. In view of dismissal of the writ petition, interim order passed stands vacated and pending Interlocutory Application(s), if any, is disposed of. In the circumstances, there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

Signature Not Verified
Digitally Signed
Signed by: ASWINI KUMAR SETHY
Designation: Personal Assistant (Secretary in-charge)
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 12-Nov-2026 21:46:41