HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI
AND
HON'BLE SRI JUSTICE SUBHASH UPADHYAY

Writ Petition (M/B) No. 169 of 2025

28 October, 2026

In the matter of Yogesh Tewari --Petitioner

Versus

State of Uttarakhand and others --Respondents

Counsel for the petitioner :	Mr. Saurabh Kumar Pandey, learned counsel.
Counsel for the Respondent nos. 1 to 3:	Mr. J.C. Pandey, learned Standing Counsel for the State of Uttarakhand.
Counsel for respondent no. 4:	Mr. Naresh Pant (through V.C) and Mr. Raunak Pant, learned counsel.

The Court made the following:

JUDGMENT: **(per Hon'ble The Acting Chief Justice Sri Manoj Kumar Tiwari)**

Petitioner responded to a Notice Inviting Tender dated 16.01.202"5, issued by Chief Engineer, 1st Circle, Public Works Department, Almora, for 'Holistic Development Work of Surya Dev Mandir, Katarmal under Manaskhand Mandir Mala Mission".

2. His technical bid was declared to be non-responsive by the Technical Evaluation Committee, vide order dated 04.04.2025. The reason for declaring petitioner's bid as non responsive is that as per Section 3, Clause 2.4.2 of the bidding document, every bidder was required to give details of any one work of similar

nature, along with certificate, which was to be given in Form Exp-2, however, the experience certificate furnished by petitioner is not as per the bidding document.

3. Since Clause 2.4.2 of Section 3 of bidding document has been referred to for declaring petitioner's bid as non-responsive, therefore, for ready reference Clause 2.4.2 of Section 3 is reproduced below:-

"2.4.2 Specific Construction Experience: (a) Contracts of Similar work and Nature

Participation as contractor or subcontractor in at least one contract that was started and has been substantially or successfully completed with in the last five years, and that are similar to the proposed works. The similarity shall be necessarily based on the physical size, complexity, methods, technology or other characteristics as described in section 5, employer's requirements, and must have executed works worth Rs. 137.25 Lakh (Inclusive of escalation) in any one financial year within these five years.	Must meet requirement	Must meet requirement	Not Applicable	Not Applicable	Forms given in Section 4 **EXP 2**

* The escalation shall be calculated as per the procedure described under para 2.3.2 of this section. (Base Year 2023-24)."

4. Perusal of Clause 2.4.2 of Section 3 reveals that every bidder is required to give details of at least one contract of similar nature that was started and has been substantially or successfully completed within the last five years. It further indicates that every bidder is required to have executed works worth Rs. 137.25 lacs in any one financial year within last five years.

5. Section 4 of the bidding document contains the format in which information under various heads is to be supplied by a bidder. Form Exp-2 of Section 4 provides a format in which specific construction experience has to be submitted. For ready reference, Form Exp-2 is reproduced below:-

Form EXP-2; Specific Construction Experience
Fill up one (1) form per contract.

	Contract of Similar Size and Nature	
Contract No.....of.....	Contract Identification	
Award Date		Completion Date
Role in Contract	☐ Contractor	Su☐ontractor
Total Contract Amount		INR
If partner in a JV or subcontractor, specify participation of total contract amount	Percent Total	Amount
Employer's Name Address Telephone/Fax Number E-mail		
Description of the similarity in accordance with Criteria 2.4.2 of Section 3		

Physical-Experience			
Sl No.	Major Components	Unit	Quantity Executed
1	CC/RCC	Cum	
2.	Steel Work	M.T.	
3.	Masonry work	Cum	
4.	Flooring/Clading work	Sqm	

Financial-Experience		
Sl. No	Financial Year	Amount (in Lacs)
1	2019-20	
2	2020-21	
3	2021-22	
4	2022-23	
5	2023-24	
6.	2024-25 (Current Financial Year upto 21/01/2025)	

Attached copies of certificates of accreditation for the project listed above.

6. The experience certificate submitted by petitioner with his technical bid is enclosed at page 421

of the writ petition, which was issued by Kumaon Mandal Vikas Nigam Ltd. on 17.02.2025. Perusal of the certificate reveals that petitioner was awarded contract for construction of Yodha Bhawan, Ma Barahi Temple at Devidhura; the date of commencement of the said work was 11.09.2017 and contract period was nine months and contract price as per agreement was Rs.1,22,30,291.91/- and the revised contract price was Rs.4,40,42,215/-. The break-up of the value of work done by petitioner under the said contract in different financial year, is given below in tabular format:-

Sl. No.	Financial Year	Amount (Rs.)
1.	2018-19	1,44,79,804.00
2.	2019-20	1,98,73,003.00
3.	2020-21	96,89,408.00

7. Learned State Counsel submits that as per Clause 2.4.2 of Section 3 of the bidding document, every bidder is required to have executed work worth Rs.137.25 lacs (inclusive of escalation) in any financial year within the last five financial years, however, petitioner does not meet the said condition as per the certificate submitted by him with his technical bid. Learned State Counsel further submits that as per Clause 2.4.2 of Section 3 of the bidding document,

every bidder is required to have completed at least one contract that was started and was completed within last five years, while as per the experience certificate produced by petitioner, work of construction of Yodha Bhwan, Ma Barahi Temple at Devidhura commenced on 11.09.2017 that is much before the five years period, as required by Clause 2.4.2. Learned State Counsel further submits that even the experience certificate submitted by petitioner was not in the prescribed format i.e. Form Exp-2, but it was in the shape of a letter issued by General Manager, Kumaon Mandal Vikas Nigam, therefore, the employer had no other option, but to reject petitioner's technical bid for non-compliance of the relevant clauses of the bidding document.

8. Learned State Counsel further submits that against rejection of his technical bid, petitioner made a representation, which was also decided by reasoned order. Decision taken by three member technical evaluation committee on 05.04.2025 is on record as Annexure-5 to the writ petition. The reason assigned for declaring petitioner's bid as non-responsive is that as per the experience certificate submitted by

petitioner with his bid, the date of commencement of the work of construction of Yodha Bhawan at Ma Barahi Temple, Devidhura is not within last five years, as required by the Clause 2.4.2.

9. We find substance in the contention raised by learned State Counsel. Admittedly, the experience certificate submitted by petitioner with his technical bid is not in the prescribed proforma. The experience certificate submitted by petitioner reveals that date of commencement of work at Ma Barahi Temple, Devidhura was not within the last five years, but was much earlier. Thus, the decision taken by the technical evaluation committee of rejecting petitioner's technical bid cannot be faulted. A bid, which is not supported by necessary documents as per conditions of the bid document, is liable to be declared as non-responsive. The experience certificate submitted by petitioner was not as per the conditions of the bid document and experience claimed by petitioner was not within last five years. Moreover, the certificate was not submitted in the prescribed format, therefore, the technical evaluation committee was justified in declaring petitioner's bid as non-responsive.

10. Law is well settled that in tender matters, scope of judicial review is very limited and the interpretation to the conditions of bidding document, as given by employer/project proponent has to be respected. In the present case, the employer has found the technical bid of petitioner as non-responsive due to certain defects in his experience certificate, therefore, there is hardly any scope for interference in the view taken by Technical Evaluation Committee.

11. Hon'ble Supreme Court, in the case of *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Ltd., reported in (2016) 16 SCC 818*, has held as under:-

> "**13.** In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision."

12. In *Afcons Infrastructure Limited (supra),* it was further held that the owner or employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. Constitutional Courts must defer to his 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, which is not acceptable to the Constitutional Courts, but that by itself is not a reason for interfering with the interpretation given.

13. In *Raunaq International Ltd vs I.V.R. Construction Ltd. And Ors reported as (1999) 1 SCC 492,* Hon'ble Supreme Court held as under:-

> "**11.** When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.
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> **12.** …..
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> **13.** Hence before entertaining a writ petition and passing any interim orders in such petitions, the court must carefully weigh conflicting public interests. Only when it comes to a conclusion that there is an overwhelming public interest in entertaining the petition, the court should intervene.
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> **14.** Where there is an allegation of mala fides or an allegation that the contract has been entered into for collateral purposes and the court is satisfied on the material before it that the allegation needs further examination, the court would be entitled to entertain the petition. But even here, the court must

weigh the consequences in balance before granting interim orders.

15. Where the decision-making process has been structured and the tender conditions set out the requirements, the court is entitled to examine whether these requirements have been considered. However, if any relaxation is granted for bona fide reasons, the tender conditions permit such relaxation and the decision is arrived at for legitimate reasons after a fair consideration of all offers, the court should hesitate to intervene."

14. In the case of *Air India Ltd. v. Cochin International Airport Ltd. and others, reported as (2000) 2 SCC 617*, Hon'ble Supreme Court has held as under:-

"**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 v. International Airport Authority of India [(1979) 3 SCC 489] , Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India [(1981) 1 SCC 568] , CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] , Tata Cellular v. Union of India [(1994) 6 SCC 651] , Ramniklal N. Bhutta v. State of Maharashtra [(1997) 1 SCC 134] and Raunaq International Ltd. v. 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."

15. Hon'ble Supreme Court in the case of *M/s N.G. Projects Ltd. vs. Vinod Kumar Jain & others*, reported as (2022) 6 SCC 127 has held that the constitutional Courts should refrain from interfering with tender process for infrastructure projects, as interference in such matters stalls projects of national importance and results in cost overrun. Paragraph nos. 21 to 23 of the said judgment are extracted below:-

> **21.** Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the writ court while exercising its jurisdiction under Article 226 of the Constitution of India.
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> **22.** The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e. not satisfying the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.
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> **23.** In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If

> the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work."

16. In the case of M/s *Michigan Rubber (India) Ltd. Vs. State of Karnaaka & others, reported as (2012) 8 SCC 216*, Hon'ble Supreme Court while considering validity of pre-qualification criteria inserted in a tender notice for supply of tyres, tubes and flaps by Karnataka Road Transport Corporation held as follows:-

> **"20.** In Reliance Airport Developers (P) Ltd. v. Airports Authority of India [(2006) 10 SCC 1] this Court held that while judicial review cannot be denied in contractual matters or matters in which the Government exercises its contractual powers, such review is intended to prevent arbitrariness and must be exercised in larger public interest.
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> **21.** In Jagdish Mandal v. State of Orissa [(2007) 14 SCC 517] the following conclusion is relevant: (SCC pp. 531-32, para 22)
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> > "22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court

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

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

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached';

(ii) Whether public interest is affected.

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

22. The same principles have been reiterated in a recent decision of this Court in Tejas Constructions & Infrastructure (P) Ltd. v. Municipal Council, Sendhwa [(2012) 6 SCC 464] .

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 the 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 the 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 a 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 the negative, then there should be no interference under Article 226.”

17. For the aforesaid reasons, this Court do not find any scope for interference in the matter.

18. Accordingly, writ petition fails and is dismissed.

19. Interim order dated 23.04.2025 stands vacated.

MANOJ KUMAR TIWARI, A.C.J.

SUBHASH UPADHYAY, J.

Dt: 28.10.2026
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NAVEEN CHANDRA