2026:UHC:10183-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE ACTING CHIEF JUSTICE MR. MANOJ KUMAR TIWARI

AND

THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY

November 04, 2026

Writ Petition (M/B) No.500 of 2026

Basant Ballabh Punetha ----Petitioner

Versus

State of Uttarakhand & Ors. ----Respondents

Presence:-

Mr. Shobhit Saharia, learned counsel for the petitioner

Mr. Puran Singh Bisht, learned Chief Standing Counsel with Mr. B.P.S. Mer, learned Standing Counsel and Mr. M.S. Bisht, learned Brief Holder for the State

Mr. S.S. Chauhan, learned counsel for

The Court made the following:

JUDGMENT: **(per Hon'ble Justice Sri Manoj Kumar Tiwari, A.C.J.)**

1. Petitioner is a registered contractor in 'A' category with State Public Works Department. He responded to a Notice Inviting Tender by submitting bid in Two-Bid System. His technical bid, however, was declared to be non-responsive by the Technical Evaluation Committee, vide order dated 11.05.2026.

2. In this writ petition, petitioner has challenged the decision, whereby his technical bid was declared to be non-responsive. The reasons indicated for declaring petitioner's

bid as non-responsive are mentioned in the Bid Evaluation Report of Part I of Bids, which are as follows:-

S.No.	Name of Bidder	Brief reasons for rejection
1.	Basant Ballabh Punetha	1. Submitted similar nature of certificate is inappropriate (not fulfilling the criteria as per NIT clause No.-19) (P-19,21)
		2. Suspicious technical person details submitted P-110

3. Petitioner submitted representation against rejection of his technical bid. His representation was also rejected by a reasoned order, which is extracted below:-

> *"Contractor have stated that the experience certificate was attached as per the tender requirements, a detailed scrutiny reveals that the work executed does not align with the specific technical parameters defined in* ***Clause No.19 of NIT***
>
> ***"Bidder should have completed as single work of Complete Stage as per SBD having hill side cutting component equal 1/3 of the hill side cutting value as per BOQ***
>
> ***OR***
>
> ***Bidder should have completed a single work of Stage-II or Complete Stage of value as mentioned in SBD and an additional work of Stage-I having hill side cutting***
>
> *Component equal to 1/3 of the hill side cutting value as per BoQ" of the Notice Inviting Tender (NIT).*
>
> *The nature of the work mentioned in your submitted certificate (P-19, 21) does not fulfill the eligibility criteria required for this specific project. Consequently, it has been marked as* ***inappropriate****.*
>
> *Regarding the degree certificates and affidavits provided for technical staff, the department noted discrepancies that raise concern regarding the authenticity and current engagement of the personnel listed.*
>
> *Upon verification, the details provided at* ***Page 110*** *were found to be* ***suspicious/non-verifiable*** *in accordance with the department's standard verification protocols. Merely attaching an*

affidavit does not override the requirement for verifiable and credible document."

4. Learned counsel for the petitioner submits that petitioner's technical bid was wrongly declared to be non-responsive, inasmuch as, as sub-contractor, petitioner had executed the work of hill side cutting on behalf of another firm, namely, M/s Ganga Prasad Punetha, in respect of contract no.UT-09-515, Upgradation of Madkot to Bauna Motor Road, Block Munsyari, District Pithoragarh under PMGSY and the benefit of experience earned by petitioner in the said work was wrongly overlooked.

5. It is further contended that petitioner had named a technical person and also uploaded his affidavit stating he is willing and would be available for discharging duties as Site Engineer, in case contract is awarded to the petitioner, however, the nomination made by petitioner was brushed aside by saying that the detail of technical person was found to be suspicious.

6. Mr. S.S. Chauhan, learned counsel appearing for Uttarakhand Rural Roads Development Agency (respondent nos.2 and 3) submits that experience of hill side cutting work, alleged to be done by the petitioner, was of much lesser value than what was required. He drew attention of this Court to

Clause 19 of the NIT, which is reproduced below :-

> *"19. Bidder should have completed a single work of Complete Stage as per SBD having hill side cutting component equal to 1/3rd of the hill side cutting value as per BoQ."*

7. Learned counsel for the parties are unanimous on the point that the value of work of hill side cutting in the contract in question is ₹ 96,12,788; thus, 1/3rd of the said amount would be ₹ 32,04,262.67.

8. Learned counsel for respondent nos.2 and 3 further submits that the communication dated 16.06.2026 issued by General Manager (Civil), BRIDCUL Headquarters, clearly indicates that the value of work of hill side cutting in the contract which was awarded by BRIDCUL to M/s Ganga Prasad Punetha, was only ₹ 12,23,800.00 (exclusive of GST), therefore, the experience of the petitioner was not as required by the NIT.

9. Learned counsel for the petitioner, however, refers to Clause 6 of the communication dated 16.06.2026 issued by the General Manager (Civil), BRIDCUL Headquarters, wherein it is mentioned that value of hill side cutting work should have been mentioned as ₹ 6242515.32.

10. Learned counsel for respondent nos.2 and 3 further submits that the technical person, named by petitioner, in his

technical bid, who has to work as Site Engineer, is presently more than 79 years of age. Thus, it is contended that a person, who is that old, cannot efficiently discharge duties in a high altitude area and this was another reason for declaring petitioner's technical bid as non-responsive.

11. Learned counsel for the petitioner further submits that petitioner's technical bid could not have been declared to be non-responsive merely because technical person was an old man and, if at all it was creating a doubt, in that event also, petitioner should have been given an opportunity to replace the technical person by another technical professional, who is comparatively young.

12. We are not inclined to interfere in the matter as the reasons assigned for declaring petitioner's bid to be non-responsive cannot be said to be so arbitrary so as to warrant interference of this Court while exercising power of judicial review under Article 226 of the Constitution.

13. Even otherwise also, in such matters, scope of judicial review is very limited. In the case of ***Central Coalfields Limited & another vs. SLL-SML (Joint Venture Consortium) & others, reported as (2016) 8 SCC 622*** it was held that decision making process of the

employer or owner of the project in accepting or rejecting the bid of a project tender should not be interfered with and interference would be permissible only if the decision making process is mala fide or intended to favour someone. It was further held that the decision should not be interfered with unless it is so arbitrary or irrational that the court can say that the decision is one which no responsible authority acting reasonably and in accordance with relevant law could have reached.

14. In the case of **Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another,** reported as **(2016) 16 SCC 818.** Para 13 and 15 of said judgment are reproduced below:-

> *"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.*
>
> *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."

15. 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.

12. …..

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.

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."

16. In the case of **Air India Ltd. v. Cochin International Airport Ltd. and others, reported as (2000) 2 SCC 617,** Hon'ble Supreme Court 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."

17. 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.

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.

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."*

18. In the case of **Tata Motors Ltd. Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and others, reported as (2023) 19 SCC 1**, Hon'ble Supreme Court reiterated that ordinarily, a 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 unless something very gross or palpable is pointed out. Para 55 of the said judgment is reproduced below:

> *"55. Ordinarily, a 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 unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in Assn. of Registration Plates v. Union of India [Assn. of Registration Plates v. Union of India, (2005) 1 SCC 679]."*

19. Two reasons have been indicated for declaring petitioner's technical bid as non-responsive. Both the reasons are referable to the conditions of NIT. The first reason is that petitioner does not have sufficient experience of dealing with similar project. The opinion formed by the Technical Evaluation Committee cannot be said to be without any basis as the letter issued by General Manager (Civil), BRIDCUL Headquarters, indicates that the value of hill side cutting work done by petitioner as sub-contractor of M/s Ganga Prasad Punetha was less than ₹ 12.50 lakhs, while one should have minimum experience of undertaking hill side cutting work of the value of ₹ 3204262.67.

20. Similarly, the technical person named by the petitioner, who has to discharge duties as Site Engineer, was 79 years old. Petitioner contends that the same person is employed by him for the last six years. Since the road construction work under the contract in question has to be undertaken in adverse climatic conditions in a high altitude area, therefore, the opinion formed by the employer about the technical person named by petitioner, is not interferable under Article 226 of Constitution of India.

21. For the aforesaid reasons and in view of the legal position, as discussed above, we do not find any scope for interference in the matter. Writ petition fails and is accordingly dismissed. Interim order dated 30.06.2026 is vacated.

22. No order as to costs.

MANOJ KUMAR TIWARI, A.C.J.

SUBHASH UPADHYAY, J.

Dt: 04.11.2026
Rajni