2026:UHC:10178-DB

# 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 (PIL)No.149 of 2026

**4th NOVEMBER, 2026**

Raj Ruhela --Petitioner

**Versus**

State of Uttarakhand and another --Respondents

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|---|---|---|
| Counsel for the petitioner | : | Mr. M.C. Pant and Mr. Rakshit Joshi, learned counsel |
| Counsel for the State/respondent no.1 | : | Mr. Amarendra Pratap Singh, learned Additional Advocate General. |
| Counsel for respondent no.2 | : | Mr. Rahul Consul, learned counsel. |

**The Court made the following:**

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

By means of this writ petition, petitioner has sought the following reliefs:-

> *"a) Issue an appropriate writ, order or direction quashing the impugned RFP dated 11.09.2026 titled "Request for Proposal for Laboratory Services (Annexure P 8, Page No.139) under Free Diagnostic Services Initiative FDSI NHM Uttarakhand", bearing Tender Reference Number NHMUK/FEDSI/2026-27/2858 and Tender ID 2026_NHMUK_100033_1, to the extent the same contains arbitrary. unreasonable, disproportionate and unduly restrictive pre-qualification, eligibility, financial security and evaluation conditions;*
>
> *b) Issue a writ of mandamus or any other appropriate direction commanding the Respondents to reframe the tender conditions in a fair, transparent, proportionate and competition-friendly manner consistent with Articles 14 and 19(1)(g) of the Constitution of India;*
>
> *c) Declare that the requirements and conditions stipulated under the impugned RFP, upon judicial review, to be arbitrary, irrational, disproportionate and unnecessarily restrictive, without a rational*

*nexus to the procurement's legitimate objectives and are unconstitutional and unenforceable to that extent;*

*d) Stay the finalization of the bid, letter of award, execution or further processing of the impugned tender pursuant to the RFP dated 11.09.2026, pending disposal of the present petition;*

*e) Issue an appropriate writ, order or direction calling for the records pertaining to the impugned Request for Proposal titled "Request for Proposal for Laboratory Services under Free Diagnostic Services Initiative FDSI NHM Uttarakhand" (**"RFP"**), bearing Tender Reference Number: NHMUK/FEDSI/2026-27/2858 and Tender ID: 2026_NHMUK_100033_1; to produce the complete tender record, including file notings, approval notes, evaluation criteria, comparative statement, pre-bid queries, responses, and all amendments / corrigenda before this Hon'ble Court;*

*f) Direct the Respondents to reconsider the amounts prescribed under the Earnest Money Deposit and Performance Bank Guarantee requirements under the impugned RFP and to rationalise and reduce the same to levels, so as to eliminate under financial barriers, promote wider participation of eligible bidders and ensure a fair, transparent and competitive bidding process in furtherance of the public interest;*

*g) Direct the Respondents to reconsider the blanket prohibition on joint ventures provided under the impugned RFP and to promote wider participation of competent and eligible bidders in the bidding process;*

*h) Direct the Respondents to reconsider the requirement of engagement of the bidder for at least 10 years in direct clinical pathology / laboratory diagnostic testing through bidder-operated laboratories and reduce the same to reasonable levels to promote participation of competent bidders who possess substantial but comparatively shorter experience;*

*i) Direct the Respondents to reconsider the requirement of the bidder operating and managing full-scope clinical pathology laboratories in at least 10 government hospitals / institutions during the last 3 completed financial years and reduce the same to reasonable levels to promote participation of completed bidders who possess substantial experience in government healthcare projects but*

*have not operated laboratories in 10 separate government institutions within the specified period;*

*j) Direct the Respondents to reconsider the requirement of the bidder directly owning / operating one or more clinical pathology laboratories with valid NABL accreditation for at least 8 out of the last 10 years preceding the Bid Due Date and also have experience of getting at least 5 government labs NABL, accredited and reduce the same to reasonable levels so as to eliminate a further unnecessary, arbitrary and restrictive layer of eligibility of the bidders;*

*k) Direct the Respondents to reconsider the requirement of the bidder having minimum INR 100 Crore average overall annual turnover during the last 3 completed financial years under the impugned RFP and to rationalise and reduce the same to reasonable levels, so as to eliminate undue financial entry barriers and promote wider participation of eligible and competent bidders in furtherance of the public interest:*

*L) Pass any such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

2. Learned counsel appearing for respondent no.2 / National Health Mission submits that PIL would not be maintainable for the reliefs sought in the writ petition. He submits that only a person, who is aggrieved by conditions of tender, can question the eligibility condition. He relies on a Division Bench Judgment of Hon'ble Rajasthan High Court rendered in case of *Gyanesh Kumar Sharma Vs. State of Rajasthan [2026:RJ-JP:43698-DB].* Paragraph nos.11 to 20 of the said judgment are reproduced hereunder:-

*"11. The question whether a stranger may, by way of a PIL, challenge a purely commercial contract is*

*no longer res integra. In* ***Villianur Iyarkkai Padukappu Maiyam v. Union of India***[2]*, the Hon'ble Supreme Court held as under:*

> *"**113.** As far as second preliminary objection regard-ing locus standi of the appellant to challenge the award of the contract for the development of the Pondicherry Port to Respondent 11 is concerned, this Court finds that the contract assailed in the writ petitions is purely commercial in nature. Neither the parties, which had participated in the process of selection of the consult-ant/developer nor one of those, which had expressed desire to develop the Pondicherry Port but was not se-lected, has come forward to challenge the selection procedure adopted by the Government of Pondicherry or the selection of Respondent 11 as developer of the Pondicherry Port.*
>
> ***114.** The question of locus standi in the matter of awarding the contract has been considered by this Court in BALCO Employees' Union v. Union of India [(2002) 2 SCC 333]. This Court, after review of law on the point, has made following observations in para 88 of the judgment: (SCC p. 381)*
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> > *"88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are un-able to come to court due to some disadvant-age. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person per-sonally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation can-not per se be on behalf of the poor and the downtrodden, unless the court is satisfied. that there has been violation of Article 21 and the persons adversely affected are unable to approach*

*the court."*

*From the passage quoted above it is clear that the only ground on which a person can maintain a PIL is where. there has been an element of violation of Article 21 or human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to the court due to some disadvant-age."*

*12. In* ***Rajeev Suri v. Delhi Development Authority***[3]*, the Hon'ble Supreme Court considered the locus standi of a third party to challenge a commercial transaction and the scope of judicial review in such matters. The Court observed as under:*

*"547. It is relevant to note that the question of locus in considering an argument of this nature cannot be sidelined. For, such arguments call upon the Court to expand the contours of its jurisdiction to venture into strictly private commercial matters. A litigant, not being a party to the transaction, cannot be heard in ordinary circumstances. What needs to be established is substantial and demonstrable public interest on the basis of a concrete factual position. The jurisprudence evolved by this Court in such matters looks for substantial public interest, to be shown on the basis of violation of Part III or arbitrariness in Government action. In the absence thereof, it becomes the duty of the Court to preserve free commercial relations. Law has a substantial interest in preserving the freedom of contract.*

*548. As long as there is fair play in Government action, it is no one's concern to assail a commercial transaction by levelling vague and unsubstantiated allegations. The genesis of a public interest litigation lies in public interest; and public interest lies in vindicating the rights of those who lack the wherewithal to reach the Court to remedy injustice against them. The tool of public interest litigation or "social interest litigation", as it is more appropriately called, was devised to open the doors of the constitutional courts for remedying glaring injustices against humans, that is, for securing constitutional rights. It was never meant to transform the constitutional court as a superlative authority over day-to-day governance. Judicial time is not meant for undertaking a roving enquiry or to adjudicate upon unsubstantiated flaws or*

*shortcoming in policy matters of Government of the day and politicise the same to appease the dissenting group of citizens - be it in the guise of civil society or a political outfit."*

*13. In* ***The Travancore Devaswom Board v. Ayyappa Spices & Ors.***[4]*, the Hon'ble Supreme Court while dealing with a PIL arising out of a tender, reiterated that the Courts must exercise restraint where public interest jurisdiction is invoked in contractual and tender matters, and that such a petition ought not to be entertained unless the decision under challenge is shown to be arbitrary, irrational, unreasonable, malafide or illegal.*

*14. Hon'ble Supreme Court, in* ***Uflex Ltd. Vs. Government of Tamil Nadu & Ors.***[5]*, observed that commercial tender matters involve an element of commercial competitiveness, and that constitutional courts are not appellate authorities to scrutinise as to whom the tender should be awarded, hence the tendering authority is the best judge of its requirements. Hon'ble Supreme Court observed as under:-*

> *"42. We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters of commercial there is obviously an aspect competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for downplaying the freedom which a tendering party has, merely because it is a State or a public authority, making the said process even more cumbersome. We have already noted that element of transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examined are restricted as set out in Tata Cellular and other cases. The objective is not to make the Court an appellate authority for scrutinizing as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them."*

*15. In* ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.***[6]*, the Hon'ble Supreme Court 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 that constitutional courts must defer to such understanding unless malafides or perversity is shown. The same. principle applies to the formulation of eligibility conditions, as the procuring entity is best placed to determine the qualifications re-quired for the work. Further, in* ***Silppi Constructions Contract-ors v. Union of India***[7]***,*** *the Hon'ble Supreme Court reiterated that, while arbitrariness, irrationality, malafides or bias warrant Judicial interference, the Court must exercise restraint in contrac-tual matters and should not interfere merely because another view. is possible.*

*16. Role of constitutional courts in reviewing tender processes again came up for consideration before the Hon'ble Supreme Court in the case of* ***VC & MD CIDCO Vs. Shishir Realty Pvt. Ltd.***[8]***,*** *wherein it was observed as under :-*

> *"27. Being governed under "rule of law" every action of the State or its instrumentality while exercising its executive powers must met the aforesaid requirements. While recognising the existing principle of freedom to enter or not to enter into contracts by the state and its Instrumentalities, the manner, method and motive behind the aforesaid decision can be subjected to judicial review on the touchstone of equality, fairness, proportionality and natural justice. The decision of the executive must strike a balance with the alleged violation with that of the penalty imposed.*
>
> *28. This Court, in many of its orders reviewing tender conditions, has vouched for providing sufficient discretion and independence to administrative authorities so as to enable them to perform their duties in the interest of the public. Further, the observation of judicial restraint while reviewing such contracts is a continuing trend which can be seen in a catena of cases. The power of judicial review accorded to Constitutional Court of India and its jurisdiction is supervisory."*
>
> *30. In this context, this court in Tata Cellular v. Union of India, observed certain principles elucidated as under (SCC pp.687-88, para 94)*

*"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 Wednesbury 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."*

*31. These principles acquire importance as the efficacy of commercial activities in the public sector increases greatly. It appears that public interest litigation has opened a large window to entertain any tender, regardless of scale, which are now sought to be challenged as a matter of routine. Such disruption could hardly have been the objective of expanding the need of Constitutional Review. Close scrutiny of minute details, contrary to the view of the tendering authority, makes execution of contracts in the public sector a cumbersome exercise. Often, it is the case that parties entertain the idea of a long-drawn-out litigation at the very threshold itself. The purpose of imbibing the spirit of competition in a process such as that of the bidding process, is lost in this meandering exercise and delays suffered due to pending litigation. This causes great disadvantage to the government and public sector in general. This Court, in appropriate cases while*

*interpreting the contract, can restrict the review mechanism by not inuring to the interpretation so provided by third parties or parties competing for the tender, unless the impugned. interpretation is shown to be gross abuse of law. The object of judicial review cannot be that in every contract where some parties lose out, a second opportunity is provided to such parties to pick holes so as to disqualify successful parties, on grounds which even the party floating the tender find to be without merit. With this brief background on the standard of judicial review, we may analyze the case at hand."*

*17. The principles emerging from the aforesaid judgments are Cool that judicial review under Article 226 examines the legality and fairness of the decision-making process, and not the merits of the decision. The tendering authority is entitled to frame eligibility conditions according to the nature and requirements of the work, provided they are not arbitrary, discriminatory, malafide or contrary to law. A tender cannot be interfered with merely because its conditions have been modified, or because different conditions could have been prescribed.*

*18. Furthermore, the Supreme Court in the matter of **N.G. Projects Limited** (supra), while dealing with the construction of road for the exercise of jurisdiction under Article 226 of the Constitution of India, has held that construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, observed in para 21 as under:*

*"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."*

*19. Coming to the facts of the present case, it is quite vivid that in the instant case the JDA has come out with a specific reply that comprehensive traffic survey and Passenger Car Unit peak-hour volume analysis conducted by M/s Thought Consultants Jaipur Pvt. Ltd., established the absolute necessity for the unidirectional alignment from Sarathi Marg towards Susheelpura to resolve grade-level cross-weaving congestion at the Purani Chungi Triangle.*

> *The decision has been taken to construct the underpass, for which the administrative and technical approval was granted by the Public Works Committee on 13.11.2025, which constitutes valid binding statutory sanction under the provisions of Section 16 of the Act of 1982. As such, the decision of the JDA to construct the underpass at the impugned place is well considered executive policy decision of the JDA and in view of the decision of the Supreme Court in the matter of* ***N.G. Projects Limited*** *(supra) and in view of Section 41(ha) of the Specific Relief Act, 1963, it would be inappropriate to exercise the jurisdiction under Article 226 of the Constitution of India as no material has been brought on record to show that such a construction is contrary to the public interest.*
>
> *20. Similarly, in the matter of* ***Jagdish Mandal Vs. State of Orissa & Ors.***[9]***",*** *the Supreme Court has held that the Constitutional Courts should not interfere with technical evaluations, if the executive action is bona fide and in the public interest."*

3. Per contra, Mr. M.C. Pant, learned counsel for petitioner has, however, submitted that petitioner has a fundamental duty under Article 51A(h) & (i), which reads as under:-

> *"(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;*
>
> *(i) to safeguard public property and to abjure violence;"*

4. He has also relied upon judgment of Hon'ble Supreme Court rendered in the case of *Vinishma Technologies Pvt. Ltd. Vs. State of Chhattisgarh & Anr*. SLP(C) No.24075 of 2025 & connected petitions dated 06.10.2025 and submits that writ petition would be maintainable. Paragraph no.20 of the said judgment is reproduced hereunder:-

> "20. *Such a restriction, therefore, cannot be justified as reasonable within the meaning of 19(6) of the Constitution of India. The State while it enjoys the freedom to prescribe the conditions in the tender, cannot exercise that power in a manner that infringes upon constitutional guarantees, by closing the market to outsiders without just cause. The doctrine of level playing field requires that gates of competition be opened to all who are equally placed. The impugned tender condition excludes the competent and experienced suppliers, who may have executed contracts of far greater magnitude in other States or for the Central Government departments, from participating in the tender and has the impact of promoting cartelisation. The impugned condition operates as a closed door to outsiders and restricts the wider participation of bidders and restricts competition. The impugned tender condition, therefore, is violative of Article 14 and also offends Article 19(1)(g) of the Constitution of India."*

5. We are not impressed by the submissions made by learned counsel for the petitioner. The judgment rendered in the case of *Vinishma Technologies Pvt. Ltd.* (supra) is distinguishable on facts, as there, the tender condition excluded bidders from other States from participating in the tender process. Hon'ble Supreme Court in the case of *Directorate of Education & others Vs. Educomp Datamatics Ltd. & others* reported as (2004) 4 SCC 19 has held that terms of the invitation to tender are not open to judicial scrutiny, as the same are in the realm of contract. Para 12 of the said judgment is reproduced below:-

> *"12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to*

> *judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."*

6. Law is well settled that employer is entitled to formulate the conditions of eligibility, or terms of tender notice, having regard to its requirement and the nature of work which is proposed to be undertaken.

7. Writ petition is, accordingly, dismissed.

**MANOJ KUMAR TIWARI, A.C.J.**

**SUBHASH UPADHYAY, J.**

Dt: 04.11.2026
SS/PP