



2026:DHC:1164-DB



\$~36 & 37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05th February 2026

+ W.P.(C) 1019/2026 & CM APPL. 5048/2026

M/S DHANVINE ENGINEERING PVT. LTD.

HOUSE No. 97, SECOND FLOOR,
BANK ENCLAVE, LAXMI NAGAR,
DELHI-110092.

THROUGH AUTHORIZED REPRESENTATIVE
MR. PANKAJ VERMA

.....**PETITIONER**

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Sanjeev Mahajan, Mr. Harsh
Bora and Ms. Simran Rao, Advocates

Versus

1. DELHI JAL BOARD

THROUGH CHIEF EXECUTIVE OFFICER
VARUNALAYA PH-II,, JHANDEWALAN, KAROL BAGH
NEW DELHI-110005

.....**RESPONDENT No.1**

2. GOVT. OF NCT OF DELHI

THROUGH CHIEF SECRETARY
INDRAPRASTHA BHAWAN
NEW DELHI-110003

....**RESPONDENT No.2**

Through: Mr. Tushar Sannu, Standing Counsel
with Mr. Priyankar Tiwary, Ms.
Pulak Gupta, Ms. Shambhavi Vatsa,
Ms. Rajbala and Ms. Fajallu Rehman,
Advocates.
Mr. Pankaj Kumar, EE, Mr. Ravinder
Kumar, AE and Mr. Anil Kharb, JE,
officers of DJB.



2026:DHC:1164-DB



Mr. Dinesh Malik, Panel Counsel
with Mr. Puneet Jain, Advocate for
Respondent No.2

37

+ W.P.(C) 1020/2026 & CM APPL. 4983/2026

M/S AYYAPPA INFRA PROJECTS PVT. LTD.

#2-40/20/101, ROAD NO.2,
SHILPA HILLS, KAHNAMET,
HYDERABAD-500084

THROUGH AUTHORIZED REPRESENTATIVE

VATHSAVI RAVI VARMA

.....**PETITIONER**

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Sanjeev Mahajan, Mr. Harsh
Bora and Ms. Simran Rao,
Advocates.

Versus

1. DELHI JAL BOARD

THROUGH CHIEF EXECUTIVE OFFICER

VARUNALAYA PH-II, JHANDEWALAN, KAROL BAGH

NEW DELHI-110005

.....**RESPONDENT No.1**

2. GOVT. OF NCT OF DELHI

THROUGH CHIEF SECRETARY

INDRAPRASTHA BHAWAN

NEW DELHI-110003

....**RESPONDENT No.2**

Through: Mr. Tushar Sannu, Standing Counsel
with Mr. Priyanka Tiwary, Ms.
Pulak Gupta, Ms. Shambhavi Vatsa,
Ms. Rajbala and Ms. Fajallu Rehman,
Advocates.

Mr. Pankaj Kumar, EE, Mr. Ravinder
Kumar, AE and Mr. Anil Kharb, JE,
officers of DJB.



2026:DHC:1164-DB



Mr. Dinesh Malik, Panel Counsel
with Mr. Puneet Jain, Advocate for
R-2

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. Since the issue involved in both these writ petitions is identical, both the writ petitions are tagged and heard together, by consent of the respective counsels and are disposed of by this common judgment.
2. For the purpose of convenience, the facts in W.P(C) No.1019 of 2026 are taken into account.
3. In the petition, the petitioner has come out with the following prayers:-

“(a) Issue a writ of Certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned eligibility condition contained in the tender dated 15.01.2026 and Last date and time for tender dated 09.02.2026. floated by Respondent No.1 under the heading ‘Eligibility Condition relating to Criminal Proceedings’, to the extent it disqualifies bidders solely on the basis of registration of FIR and/or filing of charge-sheet, without conviction or adjudicated misconduct;

(b) Issue a writ of Mandamus directing the Respondents, particularly Respondent No.1, to permit the Petitioner to



2026:DHC:1164-DB



participate in the tender process and to consider the Petitioner's bid to be submitted pursuant to NIT filed as ANNEXURE P-1 without reference to pendency of any FIR or charge-sheet;

(c) Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

4. Brief facts necessary for deciding the present petition are as under:-
- That the petitioner, a company incorporated under the Companies Act, is claimed to be a leading provider of comprehensive construction services in the field of civil engineering, infrastructure, development, and construction projects. The services provided by the petitioner encompass design, engineering, procurement, construction, operation and maintenance, planning, and project management.
 - The petitioner claims that it has established credentials in executing complex and challenging projects in all kinds of environments and has earned goodwill, particularly a benchmark in the water and wastewater management industry.
 - According to the petitioner, it has successfully completed and commissioned several projects, including contracts awarded by respondent no. 1, the Delhi Jal Board. The petitioner has given the details of the projects completed by it to respondent no. 1.
 - Respondent no. 1, a statutory corporation, floated a tender for the construction of four Decentralized Sewage Treatment Plants and Sewage Pumping Stations at various locations, as it discharges the



2026:DHC:1164-DB



public function of supplying clean drinking water and treating sewage for Delhi. The tender work includes operation and maintenance, including a two year Defect Liability Period.

- e. The last date of submission of tender was 9th September, 2025, which provides for detailed technical, financial and eligibility criteria.
- f. The petitioner, through its joint venture submitted its bid pursuant to the notice issued by respondent no. 1 inviting offers. The bid process was in two parts, viz., eligibility and qualification of the bidder were first to be examined on the basis of the details submitted under the technical bid with respect to the eligibility and qualification criteria prescribed in the tender. In case the tenderer was found eligible and qualified as per the technical bid, the financial bid under the second part was to be opened in respect of those bidders who were found to be technically eligible and qualified.
- g. The first round of bidding process was, for technical reasons, withdrawn by the respondent, which resulted into re-inviting bids in January, 2026.
- h. Certain new eligibility conditions were incorporated in the bid in relation to which, the petitioner is agitating his grievance through these petitions, the same reads as under:-

“Eligibility Condition relating to Criminal Proceedings

(a) Any bidder shall be ineligible to participate in this tender if it has been convicted of any economic offence by a court of



competent jurisdiction. A bidder shall also stand disqualified where, as on the date of submission of the bid, a First Information Report has been registered or a chargesheet has been filed against the bidder, or against any person who is currently, or who was at the time of commission of the alleged offence a Proprietor, Partner, Director, or Key Managerial Personnel (as defined in the Companies Ad, 2013) of the bidder; provided that such FIR or chargesheet relates to allegations of fraud, corruption, financial irregularity, or any other economic offences arising directly out of or in connection with the execution of works, procurement, contractual dealings, or financial transactions of the Delhi Jal Board.

(b) Any bidder shall also be ineligible to participate in this tender if on the date of submission of the bid, a First Information Report has been registered against the bidder, or against any person who is currently a Proprietor, Partner, Director, or Key Managerial Personnel of the bidder, or against any former holder of such office who was serving in that capacity at the time of commission of the alleged offence, by the Delhi Jal Board or by a specialized investigative agency such as the Anti-Corruption Branch, Central Bureau of Investigation, Enforcement Directorate, Economic Offences Wing, or any other competent statutory authority in respect of offences involving corruption, fraud or economic offences.

(c) Eligibility Condition relating to Criminal proceedings The bidder shall submit a duly sworn affidavit, affirming compliance with the above conditions and confirming that no such chargesheet or FIR, as specified herein, is pending against the bidder or any of the persons referred to above.

(d) Any suppression, concealment, or misrepresentation of facts in the affidavit or bid document shall entail immediate rejection of the bid, forfeiture of the earnest money deposit/bid security, and may further result in blacklisting, debarment, or other penal



2026:DHC:1164-DB



action in accordance with the applicable policies of the Delhi Lal Board and relevant provisions of law.”

- i. It is the case of the petitioner that the petitioner and its two directors, *i.e.*, Mr. Pankaj Verma and Mr. Deepak Kumar Jain, are accused in a Prevention of Money Laundering case registered *vide* ECIR/DLZO-I/12/2024, bearing Complaint Case No. 51/2025. The aforesaid case is based on a predicate offence, which was registered on 11th May, 2024 *vide* FIR No. 10/2024 by the Anti-Corruption Branch, Delhi, for offences punishable under Sections 7A, 9 and 13 of the Prevention of Corruption Act, 1988 read with Sections 420, 409, 418 and 120B of the Indian Penal Code, 1860, in relation to the award of tenders for STPs.
 - j. It is the case of the petitioner that the aforesaid conditions, which were introduced in the second notice inviting tender/offers, have resulted into its disqualification because of aforesaid criminal proceeding. As such, the petitioner has approached this Court questioning the said conditions.
5. According to *Mr. Amit Sibal*, learned Senior Counsel appearing for the petitioner, under Article 77(3) of the Constitution of India, the President is empowered to frame rules for the transaction of Government business. According to him, Article 266(3) of the Constitution of India mandates that no money from the Consolidated Fund of India or of any State may be appropriated except in accordance with law. He would submit that clause (1)



of Article 283 regulates the custody, payment, and withdrawal of public monies through Parliamentary enactments and, in the absence thereof, through Presidential Rules.

6. He would urge that in exercise of these powers, the General Financial Rules, 2017 (hereinafter referred to as “GFR”) have been framed by the Government of India, which are binding on autonomous bodies, including respondent no. 1. He would further urge that, in view of the Office Memorandum dated 3rd November, 2021 issued by the Ministry of Finance, debarment is prescribed under Rule 151 of the GFR, which reads thus:

“Rule 151 Debarment from bidding.

(i) A bidder shall be debarred if he has been convicted of an offence—

(a) Under the Prevention of Corruption Act, 1988; or

(b) The Bharatiya Nyaya Sanhita or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Expenditure (DoE) will maintain such list which will also be displayed on the Central Public Procurement Portal.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.



(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.”

7. Based on the aforesaid Rule 151 of the GFR, he would urge that debarment is attracted only in cases where: (a) there is a conviction of a person or a company under the Prevention of Corruption Act or the Indian Penal Code and (b) such debarment shall be for a maximum period of three years and can be imposed only after affording a reasonable opportunity of representation. He would submit that clause 16, which is the subject matter of challenge in the present petitions and has been implemented in the case at hand, has resulted in pre-conviction exclusion without adhering to the safeguards provided under the GFR. According to him, clause 16, as such, runs contrary not only to the GFR by expanding its scope, but is also without any legal basis. He would further add that respondent no. 1 cannot impose a stricter implementation of clause 16, which runs contrary to the statutory mandate under Rule 151 of the GFR. That being so, he would urge that clause 16 is arbitrary and disproportionate and is liable to be struck down. Drawing support from the observations made in paragraphs 52 and 56 of *Om Kumar v. Union of India & Ors.* (2021) 2 SCC 386, he would try to substantiate his aforesaid contentions. He would further urge that the Central Vigilance Manual mandates debarment strictly in accordance with the aforesaid Rule 151.

8. *Mr. Sibal* has also drawn support from clause 9.9.3(aa) of Chapter IX of the CVC Vigilance Manual, 2021. According to him, once the GFR has been adopted by the Central Vigilance Commission, there is no escape for



respondent no. 1 to implement the same and it cannot travel beyond the said framework by incorporating clause 16, which is the subject matter of challenge in the present petition.

9. According to *Mr. Sibal*, the mere pendency or registration of an FIR or a charge-sheet, by itself, does not constitute proof of guilt so as to justify a disqualification like the one in the present case. He would strenuously urge that such conditions violate the presumption of innocence guaranteed under Article 21 of the Constitution of India and further result in a pre-conviction civil death. According to him, clause no. 16, which is under challenge in these petitions, is required to be held arbitrary and discriminatory in exercise of the powers of judicial review. He would further add that such conduct of the respondent amounts to blacklisting/debarment, having grave civil consequences. Such conduct of respondent no. 1 cannot be sustained, as the same is arbitrary and imposes disqualification without there being any finding of guilt by a competent criminal court.

10. Drawing support from the judgment of the Apex Court in *Satender Kumar Antil v. Central Bureau of Investigation* (2022) 10 SCC 51, particularly paragraphs 14, 15, and 19, he would claim that for the presumption of innocence of a person, the fundamental rights guaranteed under Article 21 is required to be relied upon. The burden of establishing guilt is on the prosecution and this principle is of great significance having regard to the criminal jurisprudence adopted in our country. In case of implementation of impugned tender condition, the pre-trial disqualification results in reversing the burden and amounts to imposing the punishment. He



2026:DHC:1164-DB



would claim that an FIR is not a substantive piece of evidence and it only sets investigation in motion, whereas a charge-sheet is the bundle of facts collected by the Investigating Office based on his opinion. He has placed reliance on the judgment of Apex Court in the case of ***Rajesh Yadav & Anr. Vs. State of Uttar Pradesh*** (2022) 12 SCC 200.

11. He would urge that the implementation of clause no. 16 against the petitioner results in blacklisting, which has enduring consequences and a cascading effect on the future business of the petitioner with Government entities. As such, he would submit that the impugned tender condition is arbitrary and is liable to be quashed and set aside.

12. As against the above, *Mr. Tushar Sannu*, learned Senior Standing Counsel appearing for respondent no. 1, Delhi Jal Board, in support of the tender condition to be not arbitrary or discriminatory, submitted that the tender authority is the best judge of its requirements and of the person with whom it chooses to enter into a business. Drawing support from the judgments of the Apex Court in ***Shilpi Construction v. Union of India*** (2020) 16 SCC 489 and ***Monte Carlo Limited v. National Thermal Power Corporation*** (2016) 5 SCC 272, he would urge that so long as the tender condition is not tailor-made or *mala fide*, this Court cannot interfere with the tender process.

13. According to him, the tender condition, in any case, cannot be said to be discriminatory, arbitrary, or *mala fide*, as tender condition, clause no. 16, which is impugned herein, creates an altogether independent class of parties



2026:DHC:1164-DB



against whom an FIR, charge-sheet, or prosecution is pending at the behest of the respondent. According to him, it is an admitted position on record, as could be substantiated from the very pleadings of the petitioner himself, that the petitioner and its Directors are accused in a substantive offence referred to in the foregoing paragraphs, not only under the provisions of the Prevention of Corruption Act but also under the Indian Penal Code.

14. He submitted that since there is an element of money laundering, the provisions of the PMLA have been invoked and an ECIR is already pending against the petitioner. He would urge that since the respondents have sufficient material against the petitioner to form an opinion that the petitioner and its directors have indulged in criminal activity in the execution of contracts with respondent no. 1, they are justified in imposing the impugned condition. He would submit that such a condition is in the better interest of the execution of Public works like the one which has a large scale ramification over the living conditions. He would further urge that this Court should always give weight to the opinion of experts and should not sit in an appeal over the decision of the authority in framing tender conditions, as in the matter of framing the tender condition, the respondent are the best placed to appreciate its requirement.

15. According to him, similar conditions were the subject matter of challenge before this Court so also before the High Court of Allahabad. This Court in the matter of *Trident Infosol Pvt. Ltd. Vs. Union of India* 2022 SCC OnLine Del 2314 not only held that the condition is neither arbitrary or violative of Article 14, but also observed that same constitutes to maintain



legitimate integrity in the matter of execution of sensitive project like the one in hand. He has also drawn support from the judgment delivered by High Court of Allahabad in the matter of *Kkspun India Ltd. Vs. U.P. Jal Nigam* (2021) SCC OnLine All 1219 in support of the very same proposition.

16. Furthermore, according to him, the petitioner was involved in large-scale corruption in its establishment in relation to the work of augmentation and upgradation of ten sewage treatment plants across four packages, valued at approximately Rs. 1,493 crores. The petitioner company and its Directors were alleged to have functioned as a conduit for illegal gratification, resulting into registration of FIR No.10/2014 (referred supra).

17. Drawing support from the Apex Court's judgment in the matter of *Jagdish Mandal Vs. State of Orrisa* (2007) 14 SCC 517, he would urge that judicial review cannot be invoked to protect private commercial interest at the cost of larger public interest. According to him, in exercise of judicial review, this Court cannot re-write or relax the tender condition unless such tender conditions are arbitrary or *mala fide*. In view of above, he has sought dismissal of both these petitions.

18. We have considered the rival claims.

19. In both these petitions, the petitioner-company and/or its directors are accused of offences punishable under Sections 7A and 9 and 13 of the Prevention of Corruption Act, 1988 and Sections 420, 409, 418, and 120B of the IPC, for which the substantive offence was registered on 11th May,



2026:DHC:1164-DB



2021. The period during which the alleged offences were committed is stated to be from October, 2021 onwards.

20. The complainant in the aforesaid case is *Mr. Praveen Jain*, Assistant Director (Vigilance). The said complaint is based on an alleged scam involving hundreds of crores of rupees, allegedly committed by officials of the respondent as well as the petitioner-company and its directors, in relation to the augmentation of ten Sewage Treatment Plants.

21. Based on the aforesaid predicate offence, the Directorate of Enforcement has registered ECIR No. ECIR/DLZO-I/12/2024 in respect of offences being committed under the provisions of the Prevention of Money Laundering Act, 2002 (*'PMLA'*). The said ECIR is pending consideration before the Court of the Special Judge, PC Act, Rouse Avenue District Courts, New Delhi.

22. Identical and similar appears to be the case, in both the petitions.

23. The learned senior counsel for the petitioner has relied upon the provisions of Rule 151 of the General Financial Rules framed by the Ministry of Finance, as well as the Central Vigilance Commission Manual, to contend that the debarment contemplated in the present tender process, pursuant to the mandate of Clause 16 framed by the respondent, is in excess of the aforesaid rules.

24. The fact remains that the provisions contained in the GFRs, particularly Rule 151, as well as those in the Central Vigilance Commission Manual, can be termed as basic requirements. However, there is no embargo



created by the aforesaid rule on the right of the respondents to frame additional tender conditions which suits its requirement.

25. The Apex Court in the matter of the *Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd. & Anr.* (2016) 16 SCC 818 has held that the tendering authorities and the technical experts are the best judge of the project requirements and the Courts should be slow in causing interference involving the technical, financial and commercial evaluation. The Court is not an expert body and should not substitute its own decision for that of the tendering authority.

26. The Apex Court in the matter of *Jagdish Mandal vs. State of Orissa* (2007) 14 SCC 517 has consistently held that the judicial review in the contractual matter should be based on the principles of self-restraints by the Courts.

27. Furthermore, it is a consistent view of the Apex Court, starting from *Tata Cellular v. Union of India*, (1994) 6 SCC 651 that the terms of invitation to a tender are generally not open to judicial scrutiny, as the invitation to the tender is in the realm of the contract and the parties like the respondent should have free hand in setting the terms of the tender.

28. The same view has been reiterated by the Apex Court in *M/S Michigan Rubber (I) Ltd vs State Of Karnataka & Ors* 2012 (8) SCC 216, wherein the aforesaid principles have been reaffirmed.

29. The only rider to judicial interference with tender conditions is in the case if such conditions are arbitrary, discriminatory, *mala fide*, or actuated



by bias. The only issue sought to be raised in these petitions is that the condition in question is arbitrary.

30. Though the learned senior counsel for the petitioner, by relying on the judgment of the Apex Court in *Om Kumar*(supra), has sought to impress upon this Court that clause no. 16 of the tender conditions is arbitrary and disproportionate, however, we are equally required to be sensitive to the nature of the conduct of the petitioner and the nature of the work sought to be executed under the tender by the respondents.

31. With regard to the conduct, the petitioners are not disputing that they are accused in the aforesaid offences, for which the complaint was registered at the behest of the DJB.

32. The fact that the petitioners have not been convicted and as such are entitled to participate in the tender process in view of the Rule 151 of the GFRs, when evaluated in light of their conduct as reflected in the ECIR and the FIR, reveals that the petitioners have allegedly engaged in activities prejudicial and detrimental to the interests of the DJB, respondent herein.

33. Based on its past experience with contractors such as the petitioners, the respondents have incorporated the condition which is under challenge in the present petition.

34. It is not the case of the petitioners that the respondents have sought to victimize them, or that there was any *mala fide* approach on the part of the respondent in filing a false complaint against them.



2026:DHC:1164-DB



35. Furthermore, the respondent-Delhi Jal Board, intends to execute the work in question, which is a high-value public health and sanitation project. They have specifically contended that for the purpose of execution of the work in question, which is of great public importance and directly impacting health and sanitation conditions, they are required to exercise due caution and preventive measures in the matter of selection of the tenderer. The nature of the work involves the design, build, and operation of Decentralized Sewage Treatment Plants and pumping stations.

36. It also includes long-term operation and maintenance. In case the work is not executed within the stipulated time and with the utmost quality, it would directly affect sewage treatment outcomes, the quality of groundwater being getting polluted and adversely impact the pollution levels of the *Yamuna* River, which will have a large-scale effect on the public health of the urban population.

37. The decision of respondent to implement and execute the project is to safe-guard and guarantee Fundamental Rights of the citizens. To maintain adequate public health, sanitation, and sewage facilities is a part of the constitutional obligation of the respondents, as can be read from Articles 21 and 47 of the Constitution of India.

38. The said work under the tender has a direct impact on environmental safety. In such an eventuality, the contractor who is required to execute the work should be a person of integrity and capable of discharging the duties, which are to be entrusted under the tender in question. As such, the respondents are required to adopt a cautious and preventive approach.



2026:DHC:1164-DB



39. In this background, if we appreciate the condition incorporated by the respondent in the tender documents, the very object sought to be achieved is the execution of a project of public importance with qualitative approach and to ensure that the work is taken to its logical end within the time stipulated.

40. As such, once the petitioners have come out with a case that they are not alleging any *mala fides*, victimization, or that they are being targeted through the present tender conditions, it is not in the interest of the respondent, which is executing a project of public importance, to hold that the tender conditions have been framed so as to non-suit the petitioners.

41. The petitioners have relied upon the constitutional mandate under Article 21 of the Constitution of India to contend that they are entitled to participate in the tender process. It is well settled that participation in a tender or compelling the Government to enter into a business relationship with an individual is not a fundamental right. In this regard, appropriate support can be drawn from the judgment of the Apex Court in *Eurasian Equipment & Chemicals Ltd. v. State of West Bengal & Anr.*, (1975) 1 SCC 70, in paragraph No. 14.

42. The petitioners have further relied upon the judgment of the Apex Court in *Satender Kumar Antil* (supra) to claim that unless and until they are convicted, the presumption of innocence operates in their favour. Reliance has also been placed on the Constitutional mandate of Article 21 of the Constitution of India in support of the said contention.



43. The presumption of innocence sought to be relied upon is attracted only in the context of criminal trials and criminal proceedings.

44. The provisions of Section 24 of the PMLA under which the petitioner or its directors are being prosecuted is worth referring to. The same reads thus:

“24. Burden of proof.--In any proceeding relating to proceeds of crime under this Act,--

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.”

45. Section 24 of the PMLA provides for a presumption against parties, like the petitioner, in case if they are charged with the offence of money laundering under Section 3 of the PMLA, it contemplates the proceeds of crime are involved in the money laundering. It is for the parties like present petitioner or its marital, in the capacity of accused persons, to discharge the burden during the course of trial.

46. This can be considered as one of the reason why the condition which is under challenge was incorporated.

47. As regards the tender matter, the issue of eligibility is distinct from the principles governing criminal law and the same are based on the provisions of the commercial contracts.



48. The work executed under such contracts is in the fiduciary capacity and it is always open to the respondents to adopt principles of preventive governance and to take decisions based on risk assessment.

49. The respondent – DJB, being the executing agency, which has invited the tender in question, has every right to frame tender conditions within its realm to suit its requirements.

50. No doubt, the contention of the petitioners holds good, particularly with respect to whether they can be said to have been convicted or not.

51. DJB, a statutory body, have noted that the conduct of the petitioners is not above board and that the petitioners acted in connivance with the officials of the DJB by indulging in cheating and practicing fraud, thereby involving in a criminal offence. Merely because the petitioners have not been convicted, or because a conviction may lead to disqualification for a period of three years, does not by itself confer any leverage upon the petitioners to claim that they are being discriminated against or treated arbitrarily.

52. The respondent, in our opinion, while framing the condition in question, adopted a preventive and not a punitive approach against the petitioners. The same is in the nature of a prophylactic measure so as to avoid the future damages which shall be caused to the public interest.

53. That being so, it cannot be said that the petitioners are proceeded against, under tender clause no. 16, on the premise that they are convicts and



2026:DHC:1164-DB



are accordingly being punished by not permitted to participate in the tender process.

54. Apart from above, the offences are registered based on the complaint, which preceded with technical audit, vigilance enquiries, financial scrutinies and the multiple analytical approvals.

55. The respondents, perhaps, were of the considered view that the very basis on which the petitioners are proceeded against through an ECIR for offences punishable under the provisions of the PMLA and the predicate offences under the IPC and the Prevention of Corruption Act, 1988 is founded upon the material available with the respondent-DJB against the petitioners.

56. Perhaps, the aforesaid has prompted the respondents to frame the impugned tender conditions, which in any case, in our opinion, is based on the contractual principles.

57. Rightly so, the respondents have contended that the tender condition has been framed in public interest. It is not the case that the condition debars only the petitioners but it is equally applicable to all such parties intending to do business with the respondent who are facing criminal investigation/inquiry, as in the present case upon the complaint by the respondent, DJB.

58. In such an eventuality, the claim put forth by the petitioner that the conditions are unreasonable, discriminatory, or arbitrary cannot be accepted.



59. The next limb of submission of *Mr. Sibal*, Senior Advocate is that the act of the respondents amounts to blacklisting and same has adverse civil consequences.

60. In support of aforesaid contention, *Mr. Sibal*, Senior Advocate has drawn support from the judgment of the Apex Court in the matter of ***Gorkha Securities Services vs Govt of NCT of Delhi and ors.***(2014) 9 SCC 105.

61. The element of blacklisting presupposes serious and intentional failure on the part of the parties, such as the petitioners, to perform obligations agreed by them under the orders of the respondent. There is no question of the petitioner being blacklisted in the case in hand. The fact remains that there is no concluded contract in favour of the petitioner owing to which the petitioner was proceeded for blacklisting. Rather we have already observed that petitioner can do business with other parties.

62. The claim that the decision to frame tender clause no. 16 amounts to blacklisting the petitioners, in our opinion, cannot be accepted, for the reason that as already observed that the petitioners cannot claim any fundamental right to participate in the tender process or to carry on business with the respondents. We have equally observed that it is within the realm of respondent to frame the tender conditions which are suited to it.

63. We have already held the impugned clause no. 16 to be non-arbitrary, as the respondent has created a separate class of parties such as the petitioners based on an *intelligible differentia*, as the parties like the



2026:DHC:1164-DB



petitioners are facing investigation based on the vigilance complaint lodged by the respondent.

64. That being so, the contention that the respondent's decision has adverse civil consequences or that the incorporation of clause no. 16 has resulted in the civil death of the petitioners, cannot be said to rest on any legal foundation. With such a background, the contention that the petitioners have been blacklisted without adhering to the principles of natural justice, cannot be accepted. Rather, the petitioners can continue to carry on their business with other entities, and the respondents, as already observed herein, were justified in framing the tender conditions having regard to its past experience.

65. In any case, where a conflict is noticed between private commercial interests and public interest, the latter must always prevail.

66. The Apex Court in the matter of the *Tejas Construction And Infrastructure Private Limited Vs. Municipal Council, Sendhwa*, 2012 6 SCC 464 has held that the Court must follow judicial restraint as the interference by the Court results into the delaying of the critical project affecting public health and welfare.

67. In our opinion, the decision taken by the respondent in framing clause no. 16 is not a targeted one and is a *bona fide* decision taken in the public interest, which does not warrant any interference. Apart from above, the specific work of public importance, like that of essential public services in relation to the water supply, will always have overriding public interest.



2026:DHC:1164-DB



68. The Court is required to resist interference at the instance of an unsuccessful or prejudiced bidder to protect private commercial interests at the cost of public interest.

69. For the reasons stated hereinabove, we are of the view that no case for interference in the exercise of extraordinary jurisdiction is made out. These petitions, as such, fail and stand dismissed.

70. Pending applications, if any, stand disposed of.

71. Judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**AJAY DIGPAUL
(JUDGE)**

FEBRUARY 05/ 2026/ay/sky/pr/sk