



\$

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment Reserved on: 15.01.2026

Judgment delivered on: 12.02.2026

Judgment uploaded on: *As per Digital Signature~*

+

W.P.(C) 13179/2025VISION DIAGNOSTIC INDIA
PRIVATE LIMITED

.....Petitioner

versus

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES & ANR

.....Respondents

Advocates who appeared in this case

For the Petitioner : Mr Ankit Jain, Senior Advocate with Mr. Abhishek Kumar, Mr. Devesh Pratap Singh, Mr. Imtiyaz, Ms. Ankita Pandey and Ms. Aditi Kushwaha, Advocates.

For the Respondents : Mr. Anand Verma, Mr. Apoorva Pandey and Mr. Ayush Gupta, Advocates.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****V. KAMESWAR RAO, J.****CM APPL. 54020/2025 (for taking on record additional documents)**

1. For the reasons stated in the application, the same is allowed. The additional documents are taken on record.



2. The application stands disposed of.

W.P.(C) 13179/2025 and CM APPL. 64121/2025

3. This petition has been filed with the following prayers:

“a) Issue a writ of certiorari or any other appropriate writ, order, or direction, calling for records & to quash/set aside/strike off the impugned Notice Inviting Tender (NIT) bearing Tender Enquiry No. NCI-47/DTM/2024-25 dated 25.07.2025 issued by Respondents Annexed as Annexure P – 2.

b) To quash the impugned Notice Inviting Tender (NIT) dated 25.07.2025 as it imposes the disqualification condition requiring that “the bidder should submit an undertaking that no FIR/criminal proceedings are pending against them,” and declare the said condition as arbitrary, unconstitutional, unreasonable and disproportionate being violative of Article 14, 19(1)(g) & 21 of the Constitution of India, being repugnant to the fundamental principle of presumption of innocence ingrained in Indian criminal jurisprudence.

c) Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondents to process the Petitioner’s already scrutinised and negotiated L1 bid in Tender Enquiry No. NCI-47/DTM/2024-25 dated 06.12.2024, and issue the purchase order in accordance with law.

d) Direct the Respondents to refrain from taking any coercive or adverse action against the Petitioner, including but not limited to blacklisting, termination, or discontinuation of business relations, solely on account of the pendency of CBI-FIR No. RC0062024A0019 dated 23.07.2024, in which the Petitioner has neither been implicated as a prime accused nor has any adverse finding been made against it.

e) Grant any other relief(s) that this Hon'ble Court may deem just and proper in the facts and circumstances of the case.



4. The primary challenge in this petition is to a Notice Inviting Tender (NIT) bearing Tender Enquiry No. NCI-47/DTM/2024-25 dated 25.07.2025 issued by the respondents - All India Institute of Medical Sciences (AIIMS). The petitioner is seeking a direction to the respondents to process the already scrutinized, negotiated and concluded L1 bid in Tender Enquiry No.NCI-47/DTM/2024-25 dated 06.12.2024.

5. The case of the petitioner is that it is a leading private limited company engaged in specialised fields such as Cancer Diagnostics, Life Sciences, Transplant Diagnostics, Reproductive Health, Proteomics, and Genomics. Over the last two decades, it has established itself as a key supplier and service provider of advanced diagnostic and research solutions to premier institutions across India, with its products widely used in fertility clinics, ART centres, hospitals, universities, and research institutes. The respondent No.1 is AIIMS, New Delhi, a premier medical institution of national importance, established under the All-India Institutes of Medical Sciences Act, 1956. The respondent No.2 is the National Cancer Institute (NCI), which functions as an integral part of the respondent No.1.

6. At the outset, we may narrate the facts leading to the present controversy as seen from the petition. The respondents invited a Tender through the Central Public Procurement (CPP) Portal for the procurement of Digital PCR Systems through NIT *vide* Tender Enquiry No. NCI-47/DTM/2024-25, dated 25.07.2025 (second Tender), suppressing the previously floated Tender NCI-47/DTM/2024-25 dated 06.12.2024(first Tender) wherein the petitioner had already been declared L1 for procurement of the same product with identical specifications and terms, except for one material change i.e. the insertion of a new and additional



condition in Clause 5 of Section VIII, “*Qualification Criteria*” requiring that “*Bidder should submit an undertaking that no pending criminal proceedings / FIRs are pending against them.*” and “*...AIIMS reserve the right to reject a bid on account of any pending criminal proceeding(s)/FIR(s) against the bidders...*” and in Section VII stating that thereby indirectly barring the petitioner from participating in the Tender process, which the respondents could not have done legally merely on the basis of any pending FIR/Criminal proceedings against the petitioner. The details of both the previous and the impugned identical Tenders are as follows:

Tender Inviting Authority	Department Name	Procurement of Item Name	Tender No.	Date of Publication	Closing Date & Time	
AIIMS, NEW DELHI	NCI, AIIMS, Jhajjar	Digital PCR – 1 No.	NCI-47/DTM/2024-25	06.12.2024	06-01-2025 at 01:00 PM	Previous Tender
AIIMS, NEW DELHI	NCI, AIIMS, Jhajjar	Digital PCR – 1 No.	NCI-47/DTM/2024-25	25.07.2025	30.08.25 at 02:00 PM	Identical impugned Tender

7. The petitioner had submitted its bid for the previously floated Tender NCI-47/DTM/2024-25 dated 06.12.2024 wherein multiple bidders participated in the Tender process. Upon due technical evaluation by the competent authority, three bidders, including the petitioner, were shortlisted as technically qualified. Thereafter, the financial bids of the shortlisted bidders were opened in accordance with the terms of the Tender, the General Financial Rules, 2017, and the Purchase Manual of the respondent No.1 wherein the petitioner emerged as the lowest (L1) bidder. Pursuant to the same, a price negotiation meeting was convened, with the petitioner being



the sole L1 bidder, and subsequently, the petitioner submitted a proforma invoice at the revised/negotiated rates as asked by the respondents for the purposes of a purchase order, thereby fully complying with all Tender requirements.

8. The respondents instead of following the Procurement Rules and the terms and conditions of the Tender, which require the issuance of a purchase order to the petitioner being the L1 bidder, *vide* email dated 03.01.2025, informed the petitioner that an FIR bearing CBI/ACB FIR No.RC0062024A0019 dated 23.07.2024 had been registered against the petitioner, and directed the petitioner to provide classification with regard to the same within three days. Thereafter, on 16.01.2025, the petitioner received another email from the respondents with the subject "Reminder-I", reiterating the contents of the previous communication dated 03.01.2025 regarding the alleged registration of FIR dated 23.07.2024 and requesting the petitioner to investigate the matter and inform the Store Research Section.

9. On 21.01.2025, the petitioner responded to the respondents' emails, clarifying its position regarding the CBI, ACB FIR No. RC0062024A0019 dated 23.07.2024. The petitioner highlighted its longstanding reputation as a trusted vendor for various institutions across India, operating transparently and providing quality services for over two decades. It was specifically pointed out that while the FIR pertains to alleged anti-corruption activities, no adverse findings have been made against the petitioner in the CBI preliminary inquiry or the High-Level Committee report of the Council of Scientific and Industrial Research (CSIR). Moreover, the petitioner conveyed that it is not the prime accused in the FIR, and its inclusion is



solely based on a WhatsApp exchange regarding a standard business inquiry between its Area Sales Manager and a CSIR employee, Mr. Avinash Tambe. The petitioner further emphasized that its name appears in the FIR as a matter of procedure and precaution, similar to other entities engaged in business dealings with CSIR during Mr. Tambe's tenure.

10. However, on 25.07.2025, the respondents issued a fresh and identical Tender bearing the same Tender Enquiry No.NCI- 47/DTM/2024-25, for the same item, with the same specifications without cancelling the earlier Tender. The only material change in the second Tender was the insertion of a new qualification criteria requiring an undertaking that no FIR/criminal proceedings were pending against the bidder, and granting AIIMS the right to reject bids on that basis.

11. The petitioner firmly asserted that mere allegations, without substantive evidence or conviction by a competent authority cannot justify prejudicial actions against it. Referring to settled legal principles, including the judgment of the Supreme Court in *Basayya Prabhayya Hallur v. State of Karnataka [(2009) 17 SCC 55]*, the petitioner stressed that an FIR is merely an initial investigatory step and does not establish guilt. The presumption of innocence, a fundamental principle of Indian criminal jurisprudence must be upheld, as reiterated by the Supreme Court in *Narendra Singh & Anr. v. State of M.P. (2004) Criminal Appeal No.298/1997*. Any adverse action against the petitioner solely on the basis of an FIR would be premature, unjustified, and legally untenable. The petitioner also assured its full cooperation with the investigation, expressing its willingness to provide any clarifications required by the authorities in the appropriate legal forum.



12. On 27.01.2025, an affidavit was executed by the Director of the petitioner wherein it was solemnly undertaken and declared that the CBI FIR, under which the Lucknow branch of the petitioner has been arraigned, has no connection or legal implication on the functioning of its Delhi branch. It was further clarified that the FIR concerning the Lucknow branch would have no bearing on any order of supply issued *via* the Delhi branch. The affidavit also stated that in the event of any irregularity in connection with any order of supply, the petitioner is fully prepared to face any legal consequences. As per the petitioner, the affidavit establishes beyond doubt that the allegations in the FIR are confined solely to the Lucknow branch and do not affect the operations, contractual obligations, or Tender participation of the Delhi branch.

13. Despite the detailed and well-reasoned representation submitted by the petitioner via email on 21.01.2025, the respondents, without any due consideration of the submissions made, sent yet another email on 11.02.2025, insisting that the petitioner submit a closure report of the FIR, failing which "necessary action" would be taken.

14. While the Tender (wherein the petitioner had already been declared L1) was still live on the CPP Portal, the respondents issued the fresh impugned NIT *vide* Tender Enquiry No. NCI-47/DTM/2024-25, dated 25.07.2025, for procurement of the same product with identical specifications and terms having same Tender Enquiry Number as that of the first Tender, except for one material change i.e. the insertion of a newly introduced "Qualification Criteria" under Clause 5 of Section VIII of the Tender Document, requiring that "*Bidder should submit an undertaking that no pending criminal proceedings/FIRs are pending against them.*" And a



condition under Section VII that “...AIIMS reserve the right to reject a bid on account of any pending criminal proceeding(s)/FIR(s) against the bidders...”.

SUBMISSIONS ON BEHALF OF THE PETITIONER

15. It is the case of the petitioner that the new additional clause, coupled with the issuance of the second Tender overlapping the first Tender is arbitrary, mala fide, and designed solely to disqualify the petitioner, despite it being the successful L1 bidder for the identical Tender. The respondents have issued the second Tender with the same Tender Number as that of the first Tender to keep the issuance of the purchase order on hold. This act of the respondents not only defeats the sanctity of the concluded Tender process but also confers an undue advantage upon the petitioner’s competitors, who had otherwise failed in the earlier Tender process wherein the petitioner turned out to be the L1 bidder.

16. Mr. Ankit Jain, learned senior counsel for the petitioner would submit that the respondents, with the sole intent to debar the petitioner, have added the following conditions:

- i. A new Qualification Clause (as part of Section VIII – Qualification Criteria) requiring an undertaking that no FIR/criminal proceedings were pending against the bidder.
- ii. Grant of unfettered discretion to AIIMS (as part of Section VII- Technical Specification) the right to reject bids on account of any pending criminal proceeding(s)/FIR(s) against the bidder.

17. He stated that the first Tender was never shown as cancelled on the Government e-Procurement / GeM Portal, and its status continued to reflect



“Opening in Progress”. He has placed on record a screenshot taken on 29.08.2025 at 12:45 PM, of the Government e-Marketplace (GeM) Portal, e-Procurement System, Government of India.

18. He submitted that the respondents were fully aware of FIR No. RC0062024A0019 dated 23.07.2024 well before the technical evaluation, financial bid opening, price negotiation, and declaration of the petitioner as L1 in the Tender dated 06.12.2024. Having proceeded with the process despite prior knowledge, shortlisted the petitioner as technically qualified, declared L1 status, further conducted negotiations and having accepted the proforma invoice, the respondents are estopped from withholding the purchase order or re-tendering on the ground of the FIR, rendering the action biased, arbitrary, mala fide, and violative of Article 14 of the Constitution of India. The respondents should have refrained from moving ahead with the Tender process after writing the e-mail dated 03.01.2025 to the petitioner and the action to cancel the Tender after further price negotiation and exposing the minimum possible rate of the petitioner, shows that the action is biased, arbitrary and mala fide. If the respondents were not satisfied with the response filed by the petitioner, they should have cancelled the Tender process without opening the Financial Bids. The bias and arbitrary action of the respondents is evident from the fact that they further entered into price negotiations with the petitioner and after having the best price offer from the petitioner, they floated a new Tender without cancelling the earlier one.

19. Mr. Jain has submitted that registration of an FIR under Section 154 of the Code of Criminal Procedure, 1973 is merely the recording of information relating to a cognizable offence and does not involve any adjudication on the merits or determination of guilt. Reliance on the mere



pendency of an FIR to disqualify a bidder is legally untenable and can be misused as a tool to arbitrarily eliminate competitors from the procurement process.

20. In fact, The FIR primarily implicates one Mr. Avinash Tambe, a CSIR employee, of corrupt practices involving non-official vendors at CSIR-IITR, Lucknow. It highlights a nexus between Mr. Tambe and suppliers, M/s Shipra Scientific and M/s N.D. Enterprises, through the manipulation of purchase orders and the receipt of monetary favors in exchange for unfair practices. The only reason as to why the petitioner has been arraigned in the FIR is because of the existence of a WhatsApp exchange regarding a standard business inquiry about product pricing between Mr. Gaurav, Area Sales Manager of the petitioner, and Mr. Tambe. This cannot reasonably form the basis for an accusation of corrupt practices. Hence, business entities holding any sort of business with CSIR during the course of employment of Mr. Tambe has been arraigned in the FIR as a matter of procedure and precaution. This cannot by any stretch of imagination, be construed as evidence of corruption or collusion.

21. He stated that the respondents never formally cancelled, withdrew, or annulled the first Tender wherein the petitioner had already been declared L1. Further upon cancelling the Tender, the security deposit was not refunded to the petitioner. The respondents have never issued any formal order or communication cancelling the first Tender in which the petitioner was declared L1. He also stated that the respondents' reliance on the internal file notings to say the competent authority approved the cancellation is wholly misconceived, as such notings are merely intra-departmental opinions and do not constitute any binding decision, order, or communicated



policy. It is settled law that internal notings, unless crystallized into a formal and reasoned order, confer no legal rights and cannot be relied upon to justify arbitrary cancellation or exclusion of a successful bidder. Reliance in this regard is placed on *Sethi Auto Service Station and Anr. v. Delhi Development Authority & Ors., (2009) SCC 180*.

22. He has also submitted that as per Clause 5.29 of the AIIMS Purchase Manual, 2018 read with Rule 151 of the General Financial Rules, 2017, debarment from bidding can be resorted to only upon conviction for an offence and not merely on the basis of allegations or pendency of an FIR, as sought to be incorporated by the respondents. Any exclusion of a bidder without a finding of guilt by a competent Court is, therefore, arbitrary, illegal, and contrary to the governing procurement framework. The respondents later amended this clause again, pursuant to the observations of this Court during the hearing, to restrict the ineligibility to: i) Conviction for serious offences, or ii) FIRs under the Prevention of Corruption Act, 1988. These successive changes demonstrate that-

- a) The qualification criteria were not based on procurement requirements;
- b) They were reactive, not principled; and
- c) They were tailored to suit the respondents' objective of excluding the petitioner from participating in the Tender process by any means.

23. From the official website of the Government, the petitioner has verified the Tenders floated by AIIMS after the Tender dated 25.07.2025 and the conditions relating to FIR is not uniform in all the Tenders. This shows the bias and arbitrary action of the respondents. Mr. Jain has attached a list of Tenders where these conditions have been incorporated and also



excluded. He has filed details of equipments *qua* which the services are being provided by the petitioner to AIIMS, which according to him, shows that the act of the respondents in introducing the further condition is deliberate and smacks of malice and bias against the petitioner.

24. Further, it is stated that Clause 10.1.3 of the AIIMS Purchase Manual, 2018 provides that all the bids are to be evaluated strictly on the basis of the terms and conditions incorporated in the Bidding Document. No new bid condition should be brought in while evaluating the bids. As such, after having further negotiated the price with the petitioner pursuant to the L1 declaration, the respondents' act of cancelling the Tender only shows their bias and *mala fide* intent.

25. That apart, Rule 173(xii) (Transparency, Competition, Fairness and Elimination of Arbitrariness in the Procurement Process) of the General Financial Rules, 2017 read with Clause 1.4.6 (xii), Clause 30.1 and Clause 10.1.3 of the AIIMS Purchase Manual, 2018 mandate that no new condition will be brought in while scrutinising and evaluating the bids. The imposition of an additional requirement, one that was never contemplated in the terms of the Tender, amounts to an illegal and unilateral modification of the contractual framework, which is impermissible in law. The respondents cannot introduce conditions to justify an unjustified and extrajudicial action, especially when such an imposition violates the fundamental principles of fair play, transparency, and adherence to contractual terms. This act not only undermines the sanctity of the Tender process but also amounts to *mala fide* interference in a legally binding contractual relationship, warranting judicial intervention. He stated that the insertion of the new condition, without any authority under the original Tender terms, and without adherence to the



provisions of the AIIMS Purchase Manual, 2018, the General Financial Rules, 2017, and the governing Tender conditions, amounts to a colourable exercise of power. The respondents, instead of complying with the settled norms of procurement and ensuring fairness and transparency in public contracting, have acted in a manner designed to defeat the petitioner's legitimate expectation of receiving the award of contract as an L1 bidder, thereby rendering their conduct arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India.

26. He has also contended that the introduction of such 'Qualification Criteria' requiring an undertaking related to pending FIRs unfairly restricts the petitioner and other bidders from participating in the Tender process, which is an attempt by the respondents to indirectly debar or blacklist the petitioner and similarly situated bidders. This amounts to achieving indirectly what they cannot do directly, thereby violating the doctrine of colourable legislation. He has placed reliance on the judgment of the Supreme Court in *Erusian Equipment & Chemicals Ltd. v. State of West Bengal*, AIR 1975 SC 266 wherein it was held that blacklisting a party is a serious matter that adversely affects the party's reputation and business prospects. The Court emphasised that such an action cannot be taken without adhering to the principles of natural justice, which mandate that the affected party must be given a fair opportunity to be heard. Moreover, the Court observed that pending investigations or mere allegations are insufficient grounds for blacklisting; concrete evidence and due process are necessary before implementing such punitive measures. It is the contention of Mr. Jain that therefore, non-consideration of the representation of the petitioner by the respondents amounts to a blatant violation of the principles



of natural justice, fairness, and due process. The arbitrary refusal to acknowledge or deliberate upon the petitioner's submissions reflects a premeditated intent to impose punitive consequences without any legal basis. Such an approach is not only unjust but also vitiates the entire decision-making process, rendering it perverse and unsustainable in the eyes of law. Any adverse action, including restricting business dealings with the petitioner based solely on unproven allegations and without following due process, would be premature and legally untenable.

27. He has sought the prayers as made in the petition.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

28. *Per contra*, Mr. Anand Verma, learned counsel for the respondent AIIMS, would submit that it is a matter of record that the Tender dated 06.12.2024 has been cancelled by the respondents on 05.06.2025 which was followed by the issuance of the Tender dated 25.07.2025. As such, the petitioner cannot agitate any alleged rights flowing from the same. It is a settled position of law that even the highest/lowest bidder cannot claim any vested right to do business with the government, until the contract or Letter of Intent has been issued in its favour.

29. He stated that as per Clause 40 of the Tender, the purchaser (AIIMS) reserved the right to accept in part or full, any bid or reject any or more bid(s) without assigning any reason or to cancel the Tender process and reject all bids at any time prior to the award of the contract. Clause 40 reads as under:

“40. Purchaser’s Right to accept any bid and to reject any or all bids. 40.1. The purchaser reserves the right to accept in part or in full any bid or reject any or more bid(s)



without assigning any reason or to cancel the Tender process and reject all bids at any time prior to the award of the contract, without incurring any liability, whatsoever to the affected bidder(s)."

30. Pertinently, while submitting a bid, prospective bidders have to submit a Tender Acceptance Form as provided under Section IX of the Tender dated 06.12.2024. In the said Form, the bidders expressly acknowledge the following:

*"We further understand that you are not bound to accept the lowest or any bid you may receive against your above-referred advertised tender enquiry. ...
We confirm that we fully agree to the terms and conditions specified in above mentioned Tender document, including amendment/ corrigendum if any. ..."*

31. In view of the above clear stipulations in the Tender dated 06.12.2024 and the undertaking given by all prospective bidders, it is evident that the respondents are not under any obligation to accept any bid, even the lowest / L1 bid, and that the said Tender can be cancelled at any time. Reference in this regard is made to the judgment of the Supreme Court in ***Indore Vikas Praadhikaran (IDA) v. Shri Humud Jain Samaj Trust, 2024 SCC OnLine SC 3511.***

32. Mr. Verma submitted that on 25.03.2025, the Technical Specification and Evaluation Committee (TESC) of the respondents held a meeting wherein it was decided that the competent authority shall finally decide whether the Tender dated 06.12.2024 should be cancelled and re-tendered. As such, the matter was submitted to the competent authority which conferred its approval for cancellation of the said Tender on 05.06.2025 and for floating a new / fresh Tender for procuring a single unit of Digital PCR.



Consequently, with the due approval of the competent authority i.e., Dr. Alok Thakar, the then Head of respondent No. 2-NCI, AIIMS floated the second Tender dated 25.07.2025 after cancelling the Tender dated 06.12.2024. In the second Tender Clause 5 under Section VIII (Qualification Criteria) the following condition was added:

“5. Bidder should submit the undertaking that that no pending criminal proceedings(s)/FIR(s) against bidder(s)”

33. The end date of submission of bids for the Tender dated 25.07.2025 was extended on two occasions by AIIMS to 30.09.2025 and 15.10.2025. It is submitted that due to inadvertence, the status of the Tender dated 06.12.2024 as being cancelled was not updated on the portal. However, the same is not in any manner indicative of the said Tender being active / pending / being kept in abeyance.

34. As the Tender dated 06.12.2024 was duly cancelled with the approval of the competent authority, it is entirely incorrect and flawed for the petitioner to claim that the respondents have kept the said Tender in abeyance. The inadvertence in updating the (cancelled) status of the Tender on the website cannot be relied upon by the petitioner for substantiating any alleged arbitrariness /mala fide / unreasonableness on the part of the respondents.

35. Further, he submitted that AIIMS being an instrumentality of the State and an institute of national importance, took a conscious decision to float a fresh/new Tender, keeping in view the nature of contract as its main consideration. The subject matter of both Tenders involves not just provision of a single unit of Digital PCR but also further services (warranty and



comprehensive Annual Maintenance Contract) over a period of 10 years from the date of installation of the Digital PCR. Considering the nature of the Tender and the services required, AIIMS took a considered decision that it will require a long-term contractual arrangement from all prospective bidders and any pending criminal proceedings/FIRs may impact the same. Notwithstanding this, AIIMS also considered it appropriate as a matter of precaution to not engage in contracts with any entities against whom any criminal proceedings/FIRs are pending. The same is not borne out of any alleged arbitrariness / *mala fide* or other extraneous consideration to favour another bidder. To support his stand, he has referred to the judgments of this Court in ***Deepak and Co. v. IRCTC, WP(C) No. 6460/2024*** dated 22.04.2025 and ***Sahakar Global Ltd. v. MCD, 2025 SCC OnLine Del 2273***.

36. While the petitioner has not been convicted under the FIR dated 23.07.2024, the respondents are entitled to adopt a precautionary eligibility qualification whereby they do not enter into a long-term contract with entities against whom any criminal proceedings/FIRs are pending. Moreover, the condition for the subject Tender is general in application and not directed against any particular bidder, including the petitioner, and cannot amount to blacklisting/debarment by AIIMS.

37. He has referred to a Full Bench decision of the High Court of Orissa in ***Nanda Infra Construction Pvt. Ltd. v. State of Orissa & Ors., WP(C) No. 5790 & 5535 of 2024*** wherein the law laid down by the Supreme Court in this regard has been summarised as under:

“43. In view of the above discussion and the decisions of the Supreme Court referred to above , we answer the questions referred to the Full Bench as under:- ...



(ii) Before cancellation of a tender notice, there is no requirement of giving an opportunity of hearing or prior notice to the highest / lowest bidder, as such bidder does not acquire any vested right to have the auction confirmed in his / her / its favour on that basis alone.”

38. That apart, he has submitted that the Tender condition being a commercial decision does not require interference of the Court. He has contested the submission of the learned counsel for the petitioner that the now amended Clause 5 of Section VIII of the Tender dated 25.07.2025 is in violation of the General Financial Rules, 2017 and the AIIMS Purchase Manual, 2018, by stating that the AIIMS Purchase Manual, 2018 itself states that it is meant as a “guide” and not a mandatory rule/regulation in the preface that *“Since, all situations cannot be foreseen and laid down in the Purchase Manual; the persons involved in the procurement process are expected to take decisions exercising normal commercial prudence taking into consideration the canons of financial propriety and move forward.”*

39. His contention is that once the respondents’ Technical Specification and Evaluation Committee has, after application of mind and as a measure of precaution, recommended to introduce a clause for disqualifying bidders having FIR(s)/criminal proceedings against them (Clause 5 under Section VIII), and the same ought not to be interfered with.

40. He has referred to the judgment of the High Court of Judicature at Allahabad in ***Jain Video On Wheels v. State of U.P. & Ors., 2014 SCC OnLine All 17866*** wherein the Court has upheld disqualification of bidders on account of pending criminal proceedings. Relevant part of the judgment reads as under:



“12. Since these issues are interrelated, it would be appropriate for the convenience of the exposition to deal with them seriatim. The first issue pertains to the rejection of the bid submitted by the petitioner. Clause 2.3.6.2 of the RFP document specifically provides that an entity, which has been punished for any offence or if the Director/President/Chairperson/Trustee of that entity is convicted, or against whom any criminal case is pending before the competent Court, shall not be eligible to submit a proposal. Essentially, clause 2.3.6.2 is in three parts. The first part pertains to a situation where a bidding entity has been punished for an offence. The second part refers to a situation where one or more of the named personnel of the bidding entity are convicted of any offence. The third refers to the pendency of a criminal case. Now, in the present case, it is not in dispute that a First Information Report was lodged on 5 March 2012 under Section 120- B read with Sections 409 and 420 of the Penal Code, 1860, both against the Company and Atul Prakash Nigam, who is described as the Vice President of the Company.

xxxx

26. In the present case, the challenge to clause 2.3.6.2 cannot be considered in the abstract, but regard must be had to the nature of the allegations in the charge sheet which has been filed against the This Procurement Manual will provide the essential information and will serve as step-by-step guide for procurement of goods and services. The earlier version has been modified and new processes I chapters have been added and explained taking into account technical complexity of procurement activities. Procurement is a complex process and it is unique for different categories of items. Since, all situations cannot be foreseen and laid down in the Purchase Manual; the persons involved in the procurement process are expected to take decisions exercising normal commercial prudence taking into consideration the canons of financial propriety and move forward petitioner and its CEO. It must be noted that the charge sheet which has been filed relates specifically to allegations of wrong doing in regard to the operation of



mobile and medical units in the course of the programmes of the National Rural Health Mission itself. Undoubtedly, at this stage, the allegations have to be proved in the Court of competent criminal jurisdiction. However, the issue before the Court is as to whether a party against whom a criminal case is pending before the competent Court on an allegation pertaining to commission of offences under the Penal code in collusion with officers of the State against whom, in addition, there are charges under the Prevention of Corruption Act, should be regarded as eligible, notwithstanding the pendency of the criminal case. In our view, the State is entitled to prescribe such a norm of eligibility so as to ensure that the bidding process is not tainted. There is nothing arbitrary or improper in the action of the State in excluding such a bidder from the fray of contesting parties.

xxxx

In the circumstances, we dispose of the petition in terms of the following conclusions: (i) The rejection of the bid submitted by the petitioner for the reasons, as communicated on 15 January 2014, is held to be valid and proper”

41. A challenge preferred to the said judgment has been rejected by the Supreme Court in ***SLP(Crl) No. 3750/2014***.
42. He has submitted that the petitioner has sought to downplay the allegations in the FIR dated 23.07.2024, where it has been arrayed as an accused and its role has been clearly made out. The said FIR has been registered due to a complaint dated 05.07.2024 by the CSIR, is he has drawn our attention to the following:



Orders issued to these suppliers. The High Level Committee report has also advised for further investigation from an appropriate authority for further investigation as the investigation involves vendors/suppliers (non-officials) and validation of WhatsApp chat/ conversation of Sh. Tambe with non-officials or those involving examination of non-Government records.

Further, the information related to above 04 suppliers and full address of Sh. Avinash Tambe is as under:-

Sl. No.	Name of the Firm	Address	Owner Name	Phone Number
1.	M/s RNA Technology	M-1/59, Rajani Khand Sharda Nagar, Lucknow - 226002.	Sh. S.K. Mukharji	9839221419
2.	M/s N.D. Enterprises	Shop No. 2, 1 st Floor Vivek Khand-3 Opp Union Bank of India, Gominagar, Lucknow	Sh. Srinivas	8953272727
3.	M/s Vision Diagnostic India Pvt Ltd.	Sector-9C/63, Vrindavan Colony Near Vrindavan Eye Hospital Lucknow -226029.	Sh. Gaurav Agarwal	8369048166
4.	M/s Shipra Scientific	38-39, Ramadin Singh Market Complex Near IT Crossing Babugarh, Lucknow -226020	Sh. Tushar	9415015963

43. In fact, the recommendations of the committee constituted for vigilance in CSIR specifically recorded that “(ii) the matter may be referred to an appropriate authority for further investigation”.

44. Mr. Verma has drawn our attention to a judgment of the Allahabad High Court of Judicature at Allahabad in **Rajan Construction v. State of UP & Anr., Writ-C No.34248/2024**, wherein it has been held as under:

“24. This Court is of the view that the impugned conditions are tailor-made and incorporated with a specific motive for public interest and no material has been placed on record to show as to how the petitioner has been targeted for their exclusion in the tender process. There is no material to show that the impugned condition is designed to favour a particular bidder. For want of necessary particulars, we are not inclined to accept the submissions of the learned counsel for the petitioner.

xxxx

26. The tender condition is also in consonance with the policy of the Government. The purpose of incorporating such conditions can be clearly understood from the policy framed by the Government, followed by the advisory issued in this regard. The respondent, in its counter affidavit, has



also averred that the purpose behind incorporating such stringent clause as a pre-qualifying condition of the tender is the distressing environmental condition in the NCR region. This indicates that the raison d'être of imposition of a stringent condition, that is, allowing only the existing pellet manufacturers having their plant location in NCR region or within 100 km from the truck gate of the power station to participate in the tender process is to reduce stubble burning by farmers which is the persistent and root cause for air pollution in the NCR region.

27. Ergo, the restrictive condition in the tender cannot be considered to be arbitrary and discriminatory. It is within the wisdom and discretion of the employer to determine the conditions/clauses that are best suited for the work to be performed in the public interest.

28. In the present case, respondent no.3 floated a tender dated July 10, 2024 for supply of biomass pellets at Harduaganj Thermal Power Station. Clause 3(i) of the tender imposes restrictions on participants to keep a tight rein on persistent obnoxious air condition in the NCR region. This clause is also at consensus with the revised Model Contract dated January 6, 2023 issued by the Ministry of Power, Government of India. It is the prerogative of the respondents to frame the terms and conditions of the tender in accordance with policy decisions. We, therefore, do not find any substance in the arguments raised on behalf of the petitioner.

29. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest. It is a well settled principle that judicial review in contractual matters is limited, particularly when the decision of the tendering authority is bona fide and taken in the public interest.”

45. He stated that as is clear from the above, AIIMS as the Tendering Authority is entitled to prescribe Tender conditions, as a commercial decision, it deems fit and necessary to ensure the sanctity of the Tender process and in public interest, and such commercial decision may not



require interference in the absence of arbitrariness, *mala fides* and unreasonableness. In short, his contention is that Courts should not interfere with commercial transactions. To buttress this, he has relied upon the judgments of the Supreme Court in *Tata Cellular v. Union of India*, (1994) 6 SCC 651; *Air India Ltd. v. Cochin International Airport Ltd.*, (2000) 2 SCC, 617; *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517; *Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8 SCC 216 and *N.G. Projects Ltd. v. Vinod Kumar Jain*, (2022) 6 SCC 127.

46. Mr. Verma has also submitted that the inclusion of Clause 5 in the Tender dated 25.07.2025 cannot be treated as an amendment to the previous Tender dated 06.12.2024, when the latter already stands cancelled and cannot be acted upon. The petitioner's allegations regarding the insertion thereof amounting to a colourful exercise of power are consequently, misconceived and without any basis in fact and in law.

47. He also submitted that the petitioner's reliance upon the General Finance Rules, 2017 and AIIMS Purchase Manual, 2018 is irrelevant as the previous Tender already stands cancelled, and as such no issue of amendment to the said Tender conditions can arise. Any alleged arbitrariness in a Tender process which has since been cancelled is irrelevant *vis-a-vis* the qualification criteria in a fresh / new Tender since the alleged cause of action for both the Tenders are entirely distinct and separate.

48. It is also submitted that the petitioner does not have any fundamental right to conduct business with the respondents/Government. Notwithstanding this, the said clause has been amended *vide* Corrigendum IX dated 12.01.2026 by which AIIMS has relaxed Clause 5 to allow bidders having FIR(s) of minor offences to participate in the Tender, in accordance



with the observations of this Court during the hearings held on 15.12.2025 and 16.12.2025. He submitted that the same ought not to be interfered with, especially considering that the condition for disqualifying bidders who have FIR(s) registered against them is a condition adopted by several government organisations in the Tenders issued by them.

49. He stated that there is no inconsistency with Clause 23 under Section VII and Clause 5 under Section VIII of the Tender dated 25.07.2025. Clause 23 merely provides AIIMS with the power to reject a bidder on account of any pending criminal proceedings/FIRs against them. The same does not operate as a disqualification. Whereas, the amended Clause 5 under Section VIII allows bidders without any conviction under offences for imprisonment for more than 3 years and with FIRs other than under the Prevention of Corruption Act, 1988 to participate in the Tender. A harmonious reading of the said clauses clearly shows that AIIMS is empowered to reject a bidder who has any pending criminal proceeding(s)/FIRs against them whereas, bidders who have been (i) convicted under any offence and imprisoned for a period of more than 3 years and (ii) those who are being investigated / under trial arising out of an FIR involving allegations of Prevention of Corruption Act, 1988 are disqualified from the subject Tender. Clause 5 of Section VIII operates as an objective curtailment of the discretion to be exercised by the respondents under Clause 23 of Section VII, and there is no conflict between the two clauses. As such, the respondents will have to exercise their discretion to reject bids/bidders against whom there are FIRs other than under the provisions the Prevention of Corruption Act, 1988, as opposed to an overarching/wide discretion.

50. It is also his case that the inclusion of the impugned Clause 5 in the



subject Tender does not operate as a bar to the petitioner specifically. It is a general clause in the subject Tender meant to safeguard public interest. There is no arbitrariness or unreasonableness in the said stipulation which entails interference under Article 226 of the Constitution of India.

51. He seeks dismissal of the petition.

52. At this juncture, it is necessary to state that Mr. Jain for the petitioner has contested the reliance placed by Mr. Verma on the judgments above to justify the impugned re-tendering and withholding of the purchase order. According to Mr. Jain, these judgments are distinguishable on facts and in law, and in several instances, actually reinforce the petitioner's case that arbitrary actions in Tender processes, without due process or rational basis, warrant judicial intervention under Article 226 of the Constitution of India. He has provided a concise refutation of the judgments, reproduced as below:

a. Jain Video On Wheels (supra): This case involved the cancellation of a Tender for ambulance services under NRHM due to serious irregularities, including cartel formation and manipulation by the bidder, leading to a fresh Tender after proper inquiry. The Court upheld the State's discretion to cancel Tenders in public interest where malpractices were evident. There was specific clause 2.3.6.2 in the contract which provided as under:

“2.3.6.2 Any Entity which has been punished for any offence or the Director/President/Chairperson/Trustee of the that entity is convicted for any offence or against whom any criminal cases is/are pending before competent court, shall not be eligible to submit the proposal. The Bidder or each member of Consortium (if Consortium is Bidder), as the case may be, shall have to submit an affidavit to this effect as per Format 4 as part of the Qualification Proposal.”



As is clear from this, here there was a specific provision relating to punishment and conviction, or pendency of case before the competent Court. In the present case, only an FIR has been registered and even the charge sheet has not been filed against the petitioner. The said judgment is distinguishable on the facts of the present case. Further, there is no inquiry or finding of irregularity against the petitioner, and no refund of security deposit has been made, apart from non-communication of cancellation of Tender process. The re-Tendering was not in “public interest” but *mala fide* to exclude the petitioner based on a mere FIR (with no adverse findings in the CSIR High-Level Committee Report or the CBI preliminary inquiry). Far from supporting the respondents, this judgment underscores that Tender cancellations must be reasoned and non-arbitrary, which is not the case here, as evidenced by the portal status showing the first Tender as “Opening in Progress” even post re-tendering.

b. ***Jain Video On Wheels, SLP(Crl) No. 3750/2014 (supra)***: The Supreme Court order dismissed the special leave petition challenging the High Court's refusal to quash criminal proceedings linked to Tender irregularities in the above case. It emphasizes that criminal probes into Tender frauds should not be interfered with prematurely. This is wholly distinguishable, as the petitioner here faces no conviction or even charge-sheet but only a peripheral mention in an FIR arising from routine business communication. The respondents' reliance misconstrues it to justify disqualification on mere FIR pendency, which violates General Financial Rule 151 and AIIMS Manual Clause 5.29. This order



actually bolsters the petitioner's stance that presumptive guilt from an FIR cannot override Tender finality without due process.

c. *Deepak and Co. v. IRCTC*, dated 22.04.2025 in WP(C) No. 6460/2024: The Court here upheld IRCTC's decision to reject a bid due to noncompliance with essential conditions and emphasised limited judicial interference in Tenders unless arbitrariness is proven. It is inapposite, as the petitioner fully complied with the original Tender, and the impugned re-tender introduced a post-facto disqualification clause absent in the first. The successive corrigenda and further amendment on 12.01.2026 (restricting to convictions or PC Act FIRs) reveal reactive tailoring to exclude the petitioner, evidencing arbitrariness warranting interference contrary to the respondents' claim.

d. *Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517*: This seminal Supreme Court judgment limits judicial review of Tenders to cases of arbitrariness, bias, or *mala fides*, stressing that administrative decisions should not be substituted unless they are Wednesbury unreasonable. The judgment supports the case of the petitioner, as the respondents' actions of re-tendering without cancelling the first, Tenderer withholding PO despite its L1 status, and inserting the FIR-based disqualification mid-process are patently arbitrary and *mala fide* (no public interest rationale in file notings).

ANALYSIS AND CONCLUSION

53. The issue that arises for consideration is whether, when the bidding process is complete and a bidder is successfully declared as the lowest bidder (L1), the same can be cancelled and a fresh Tender can be issued by



the Tender Inviting Authority for the same subject matter, with revised eligibility/qualification criteria that no criminal proceedings/FIRs should be pending against potential bidders.

54. The respondents issued the first Tender on 06.12.2024 and the second Tender on 25.07.2025, for the same product with the same Tender number. The petitioner was declared as L1, however, no purchase order or letter of intent was issued pursuant to the same. It is the case of the respondents that the first Tender has been cancelled by the competent authority, which resulted in the issuance of the second Tender. It is also averred that the respondents had cancelled the Tender without issuing any letter of intent or purchase order. They have endeavored to justify the same by stating that Clause 40 of the Tender Conditions states that the purchaser has the right to accept in part or in full any bid, and reject any bid without assigning any reason, and to cancel the Tender process and reject all bids at any time. Though the case of the petitioner is that the cancellation of the first Tender was not communicated to it.

55. We note that the first Tender did not have any stipulation of ineligibility owing to pendency of criminal proceedings/FIR. Though no reason has been recorded by the respondents for cancelling the first Tender, it is a settled law that the Tender Inviting Authority is within its rights to cancel/reject the Tender at any stage. Even the lowest bidder (L1) does not have any vested enforceable right to have their Tender accepted. We may refer to the judgment of this Court in *PKF Sridhar and Santhanam v. Airports Economic Regulatory Authority of India*, WP(C) 12385/2021 in this regard.

56. So it follows that this Court shall only examine the *vires* of the



qualification criteria as amended by the respondent, which we have already reproduced above.

57. There is no doubt that the respondent – AIIMS has been established under the All-India Institutes of Medical Sciences Act, 1956, and is an instrumentality of the State within the meaning of Article 12, Part-III of the Constitution of India. Suffice it to state, any decision taken by the respondents therefore, needs to be free from arbitrariness, unreasonableness, *malafide* and discrimination. We shall examine the impugned prescription of qualification criteria in terms of the above.

58. Now the question is whether the respondents are justified in prescribing the qualification criteria that no criminal proceedings/FIRs should be pending against the bidders. Suffice it to state, the Tender Inviting Authority is entitled to prescribe Tender conditions it deems fit and necessary to ensure sanctity of the Tendering process. The court only examines the decision making process, and does not sit in appeal to review the merits of such decision. However, when the process or the decision is vitiated by arbitrariness, unfairness, illegality, irrationality or the principle of *Wednesbury* unreasonableness, the same can be subjected to judicial review. The law in this regard is well-settled by the judgment of the Supreme Court in *Tata Cellular (supra)* wherein it has been observed as under:

“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.”

(emphasis supplied)

59. Further, in the judgment titled *Erusian Equipment & Chemicals Limited (supra)*, the Supreme Court has held that the activities of the government, having a public element, should be undertaken with great fairness and equality. It observed that the State need not enter into any contract with anyone, but if it does, it must do so in a fair manner without any discrimination.

60. In view of the law which has enunciated by the Supreme Court on the scope and limitations of the judicial review of administrative action of the



State in the matters of Tender, we need to examine the consequences of the qualification criteria prescribed by the respondents.

61. It may be stated here that during the pendency of the petition, pursuant to the observations of this Court, the respondents amended the eligibility/qualification criteria by way of a Corrigendum in the following manner:-

Particular	Existing clause	Amended clause												
Clause 5 (under Section VIII (Qualification Criteria	<u>Qualification Criteria</u> 5. The following bidder(s) shall not be eligible to participate in the present tender; (i) who have been convicted under the provisions of Prevention of Corruption Act, 1988. (ii) are being investigated and/or pending trial arising out of an FIR involving allegations of Prevention of Corruption Act, 1988. NOTE: All Eligible Bidders shall submit an undertaking as per the format given below: [NAME OF BIDDER] certifies that: (i) Our Partnership firm/ Company / Society / Trust / Joint Venture / or promotor, director, key managerial personnel thereof has not been convicted of any offence under the Prevention of Corruption Act, 1988 (ii) There are no pending FIRs / criminal proceedings against NAME OF BIDDER or its promoters, directors, key managerial personnel, members or partners of the	5. The following bidder(s) shall not be eligible to participate in the present tender; (i) who have been convicted for any offence and sentenced to imprisonment for a period of three years or more. (ii) who are being investigated and/or pending trial arising out of an FIR involving allegations of Prevention of Corruption Act, 1988. NOTE: All Eligible Bidders shall submit an undertaking as per the format given below: [NAME OF BIDDER] certifies that: I. Our Partnership firm/ Company / Society / Trust / Joint Venture / or promotor, director, key managerial personnel thereof has not been convicted of any offence under the Prevention of Corruption Act, 1988 II. There are no pending FIRs / criminal proceedings against NAME OF BIDDER or its promoters, directors, key managerial personnel, members or												
	Partnership firm/ Company / Society / Trust / Joint Venture etc. under the Prevention of Corruption Act, 1988. (iii) NAME OF BIDDER or its promoters, directors, key managerial personnel, members or partners of the Partnership firm/ Company / Society / Trust / Joint Venture etc. are arrayed as accused persons in the following pending FIRs/ criminal proceedings: <table><thead><tr><th>S. No.</th><th>FIR Details</th><th>Case Details</th></tr></thead><tbody><tr><td>1.</td><td>FIR No: Police Station: Acts and Sections: [A copy of the FIR/Chargesheet is also to be appended]</td><td>Court: Case Number: Case status as on the date of the Affidavit If there are quashing proceeding instituted by the bidder, then case details and status of those proceedings may also be provided.</td></tr></tbody></table>	S. No.	FIR Details	Case Details	1.	FIR No: Police Station: Acts and Sections: [A copy of the FIR/Chargesheet is also to be appended]	Court: Case Number: Case status as on the date of the Affidavit If there are quashing proceeding instituted by the bidder, then case details and status of those proceedings may also be provided.	partners of the Partnership firm/ Company / Society / Trust / Joint Venture etc. under the Prevention of Corruption Act, 1988. iii. NAME OF BIDDER or its promoters, directors, key managerial personnel, members or partners of the Partnership firm/ Company / Society / Trust / Joint Venture etc. are arrayed as accused persons in the following pending FIRs/ criminal proceedings: <table><thead><tr><th>S. No.</th><th>FIR Details</th><th>Case Details</th></tr></thead><tbody><tr><td>1.</td><td>FIR No: Police Station: Acts and Sections: [A copy of the FIR/Chargesheet is also to be appended]</td><td>Court: Case Number: Case status as on the date of the Affidavit If there are quashing proceeding instituted by the bidder, then case details and status of those proceedings may also be provided.</td></tr></tbody></table>	S. No.	FIR Details	Case Details	1.	FIR No: Police Station: Acts and Sections: [A copy of the FIR/Chargesheet is also to be appended]	Court: Case Number: Case status as on the date of the Affidavit If there are quashing proceeding instituted by the bidder, then case details and status of those proceedings may also be provided.
S. No.	FIR Details	Case Details												
1.	FIR No: Police Station: Acts and Sections: [A copy of the FIR/Chargesheet is also to be appended]	Court: Case Number: Case status as on the date of the Affidavit If there are quashing proceeding instituted by the bidder, then case details and status of those proceedings may also be provided.												
S. No.	FIR Details	Case Details												
1.	FIR No: Police Station: Acts and Sections: [A copy of the FIR/Chargesheet is also to be appended]	Court: Case Number: Case status as on the date of the Affidavit If there are quashing proceeding instituted by the bidder, then case details and status of those proceedings may also be provided.												

62. Further, in Section-VII of the Tender dated 25.07.2025 under the head ‘Technical Specifications’, it has been stated that “*AIIMS reserve the right*



to reject a bid on account of any pending criminal proceeding(s)/FIR(s) against bidder(s)".

63. The above reveals that a bidder shall not be eligible to participate in the Tender in two eventualities –

- (i) when it has been convicted for any offence and sentenced to imprisonment for a period of three years or more; and
- (ii) when it is being investigated and / or pending trial arising out of an FIR involving allegations under the Prevention of Corruption Act, 1988.

64. Though the prayer sought for by the petitioner with regard to the qualification criteria prescribed in the second Tender, was later amended during the pendency of this writ petition, as the parties proceeded to argue the case even on the amended conditions, we heard them extensively. In so far as prayer (c) of the petition is concerned, it is the eventuality (ii) as described above, that would arise.

65. Now, the issue that needs to be decided is whether the qualification criteria with regard to eventuality (ii) above, is justified or not. It is a conceded case that it is the pendency of a CBI FIR dated 23.07.2024 in relation to the Prevention of Corruption Act, 1988 which is being read against the petitioner. The contention of the petitioner is that under Section 154 of the Code of Criminal Procedure, 1973, an FIR is merely the recording of information relating to a cognizable offense and does not involve any adjudication of merits or determination of guilt. As such, reliance on the mere pendency of an FIR to disqualify is unfair, and could potentially be used as a tool to arbitrarily eliminate competitors from the procurement process. Further it has been contended that the petitioner is not



the prime accused in the said FIR, rather it is registered against one Mr. Avinash Tambe, an employee of CSIR, suspected of corrupt practices. The petitioner has been mentioned as an accused in the FIR only as a precautionary measure on the basis of the certain *WhatsApp* chats with Mr. Avinash Tambe.

66. The stand of the learned counsel for the respondents is that the petitioner is downplaying the allegations in the FIR and that its role has been clearly made out. In fact, the High Level Committee Report of CSIR has recommended further investigation into the petitioner with respect to the complaint that lead to the filing of the FIR. He stated that the respondents have taken an informed decision with approval of the competent authority to alter Clause 5 under Section VII of the Tender to exclude bidders who are being investigated/ under trial in relation to FIRs involving the Prevention of Corruption Act, 1988, to safeguard the sanctity of the Tender and public interest.

67. We are in agreement with the learned counsel for the petitioner that a mere registration of the FIR cannot be construed to be a conclusive evidence of guilt. No doubt, the allegations in the FIR, under the provisions of the Prevention of Corruption Act, 1988 are serious in nature; however, it is settled law that an FIR is not an encyclopedia disclosing all facts and details relating to the offence. It is neither meant to be a chronicle of all intricate and minute details, nor is it considered to be a substantive piece of evidence and can be only used to corroborate or contradict the informant's evidence in the court. (***Ref: Dharma Rama Bhagare v. State of Maharashtra, (1973) 1 SCC 537***). It is merely a starting point for investigation and does not by itself constitute the formal institution of criminal proceedings.



68. Criminal prosecution in law, for most purposes, begins when the police investigates the allegations in the FIR, files the final report / charge sheet and the Court takes cognizance of it. The principle that criminal proceedings begin only when the court takes cognizance of the offences can be found laid down by the Supreme Court in ***R.R. Chari v. State of Uttar Pradesh, AIR 1951 SC 207*** and ***Hardeep Singh v. State Of Punjab & Ors., AIR 2014 SC 1400***. It is also a known presumption in law that every person is innocent until proven guilty, and even when a statute or provision presumes guilt, it must do so while meeting the standards of reasonableness enshrined in the Constitution of India.

69. As on the date of Tender, the allegations read against the petitioner arises only from the FIR dated 23.07.2024. Investigation into such allegations with regard to the petitioner is yet to be completed, and offenses are yet to be made out for the FIR to culminate in a charge sheet to be laid before a court of law. Any final adjudication on the same would presumably take several years to culminate either in a conviction or an acquittal. The effect of the impugned qualification criteria is that till such time there is a final adjudication on the allegations contained in the FIR, the petitioner shall be barred from participating in the selection process. Practically, the consequence of the impugned qualification criteria is that the petitioner would be ousted from the scope of the current and potentially future Tenders issued by the respondents as long as the FIR persists, thereby debarring and/or blacklisting it for an indefinite amount of time, without saying as much.



70. The Supreme Court in *Erusian Equipment and Chemicals Ltd. (supra)* has discussed the concept of blacklisting and its consequences as under:

“12. Under Article 298 of the Constitution the Executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

....

14. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.

15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates; a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

16. In passing an order of blacklisting the Government department acts under what is described as a standardised Code. This is a Code for internal instruction. The Government departments make regular



purchases. They maintain list of approved suppliers after taking into account the financial standard of the firm, their capacity and their past performance. The removal from the list is made for various reasons. The grounds on which blacklisting may be ordered are if the proprietor of the firm is convicted by court of law or security considerations so warrant or if there is strong justification for believing that the proprietor or employee of the firm, has been guilty of malpractices such as bribery, corruption, fraud, or if the firm continuously refuses to return Government dues or if the firm employs a Government servant, dismissed or removed on account of corruption in a position where he could corrupt Government servant. The petitioner was blacklisted on the ground of justification for believing that the firm has been guilty of malpractices such as bribery, corruption, fraud. The petitioners were blacklisted on the ground that there were proceedings pending against the petitioners for alleged violation of provisions under the Foreign Exchange Regulations Act.

17. The Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do as fairly without discrimination and without unfair procedure. Reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation.

18. Exclusion of a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods by discriminating against him in favour of other people. The State can impose reasonable conditions regarding rejection and acceptance of bids or qualifications of bidders. Just as exclusion of the lowest tender will be arbitrary. similarly exclusion of a person who offers the highest price from



participating at a public auction would also have the same aspect of arbitrariness.

19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

71. Further, the Supreme Court, in the judgment titled ***Gorkha Security Services v. Government (NCT of Delhi) and Ors., (2014) 9 SCC 105***, described blacklisting as “civil death” of a person who is foisted with such an action and observed that that several evil consequences follow blacklisting.

72. We find that the effect of disqualifying/barring an entity from bidding for a Tender on the basis of an FIR is akin to blacklisting, whereby the bidder is precluded from participating in the tendering process.

73. At this juncture it is also necessary to reproduce Rule 151 of the General Financial Rules, 2017 and Clause 5.29 of the AIIMS Purchase



Manual, 2018, both *pari materia*, which contemplate debarment of a bidder as under:

“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 Indian Penal Code 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 Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.

(iii) AIIMS 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. AIIMS will maintain such list which will be circulated and also displayed on AIIMS website.

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

(emphasis supplied)

74. The above provision provides for debarment of a bidder only in the eventuality that it is convicted of an offence under the Indian Penal Code, 1860, or the Prevention of Corruption Act, 1988. It further states that a bidder shall not be debarred unless it has been given a reasonable opportunity to represent itself against such debarment. Pertinently, it does not contemplate debarment based on an FIR or pending criminal



proceedings. The qualification criteria in the present case has the effect of ousting those who have FIRs or criminal proceedings pending against them, practically debarring them from participating in the present and future Tender proceedings, without following the above stipulations. By cancelling the first Tender dated 06.12.2024 in which the petitioner was declared L1, and floating the second Tender dated 25.07.2025 with the new qualification criteria, the respondents have all but barred the petitioner from participating in the same, doing indirectly what they could not do directly. Such a colourable exercise of power cannot be permitted, more so on part of the State who must be held to a higher standard, and are expected to act in a fair and reasonable manner. The salutary principle laid down in *Nazeer Ahmad v. King Emperor, AIR 1936 PC 253* that where a power is given to do a certain thing in a certain way, it must be done that way or not at all and other methods of performance are necessarily forbidden, would apply here on all fours.

75. That apart, the above Rule 151 of the General Financial Rules, 2017 and Clause 5.29 of the AIIMS Purchase Manual, 2018 explicitly state that debarment from bidding shall only for a period not exceeding three years. The impugned qualification criteria is in direct contradiction with these provisions, inasmuch as it practically debar such people against whom FIRs have been lodged under the Prevention of Corruption Act, 1988 for an indefinite amount of time. If the contentions of Mr. Verma on behalf of the respondents are to be accepted, it would mean that a person/entity against whom an FIR has been filed would be worse off than a person/entity who has been found guilty under the Prevention of Corruption Act, 1988. Condemning the petitioner for an indefinite period time, only based on an



FIR, when even a conviction would only bring about debarment of three years, is *ex facie* arbitrary and discriminative. Such a scenario would strike at the very root of Article 14 of the Constitution of India, and does not stand the test of Wednesbury reasonableness.

76. Mr. Verma has endeavored to draw a distinction between the qualification criteria prescribed under Clause 5 of Section VIII and the condition added in Clause 23 of Section VIII under the title ‘Technical Specification’, by stating that the latter shall not act as a deterrent for the petitioner from participating in the Tender process, as it only states that the respondents reserve a right to reject any bid on account of any pending FIR/criminal proceedings against the bidders. However, we are not persuaded by the submission of Mr. Verma, as this condition also fails to meet the test of reasonableness and arbitrariness, for the reasons enunciated by us above.

77. He has referred to a catena of judgments to buttress his submission that this Court shall not interfere in the matter, as the same is essentially a commercial decision. There cannot be any cavil with the law laid down in those judgments. However, in view of the facts of this case, as we have found that the actions of the respondents are arbitrary, discriminative and unreasonable, they warrant interference.

78. As such, we are of the view that the impugned qualification criteria/conditions prescribed by the respondents in the NIT dated 25.07.2025 are unreasonable and discriminatory, and are *ultra vires* the Constitution of India. The same need to be struck down.

79. We state that our observations above shall not preclude the respondents from prescribing any conditions of Tender as they deem fit in



the future. However, such conditions must necessarily be within the contours of the above enunciated principles.

80. Accordingly, we set aside the impugned eligibility/ qualification criteria (as amended) prescribed in Clause 5, Section-VIII under the title 'Qualification Criteria' and also the condition mentioned in Section VII under the title 'Technical Specification', of the Tender bearing Tender Enquiry No. NVI-47/DTM/2024-25 dated 25.07.2025, to the extent that they oust those who have FIRs pending against them under the provisions of the Prevention of Corruption Act, 1988 from the bidding/ Tender process.

81. The petition is disposed of on the above terms. The pending application is disposed of as infructuous.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 12, 2026

PS