

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.38140 OF 2025

DATE: 22ND DAY OF JANUARY, 2026

Between:

Telangana Small Scale Industries Steel and Wooden Furniture
Manufacturers Association and Others

... Petitioners

And

State of Telangana & Others

... Respondents

ORDER:

Heard Sri D.Prakash Reddy, learned Senior Designated Counsel representing Sri M.Pranav, learned counsel appearing on behalf of the petitioners on record and Sri T.Rajinikant Reddy, learned Additional Advocate General appearing on behalf of the respondent Nos.1 to 3 and Smt. B.Kavita Yadav, learned standing appearing on behalf of the respondent Nos.4 and 5 and Sri B.Chandrasen Reddy, learned Senior Designated Counsel representing Sri B.Vamshidhar Reddy, learned counsel appearing on behalf of the respondent Nos.6 to 8 on record.

2. The petitioners approached the Court seeking prayer as under:-

“to issue a writ, order or direction more particularly a writ in the nature of a mandamus declaring the action of the Respondent No.2 in issuing the letter dated 01.12.2025 along with entering the agreements dated 29.11.2025 with Respondent No.6 (Agreement No.8/2025-6) and Respondent No 7 Agreement No 7/202526 in connection with the Tender/ Bid Document bearing Bid Notice No.(NIT) 06/SS/ 2024-25 dated 26.04.2025 issued by the Respondent No.2 for Supply Commissioning and Installation of Bunker Beds in KGBVs in Telangana State as being illegal, arbitrary, and unconstitutional and consequently set aside the same...”

3. The case of the petitioners, in brief, as per the averments made in the affidavit filed by the petitioners in support of the present Writ Petition is as under:-

It is the case of the petitioners that the writ petitioners, Telangana Small Scale Industries Steel and Wooden Furniture Small Manufacturers Association and others, have filed the present writ petition challenging the actions of the respondents with respect to the supply of 45,360 bunker beds along with mattresses and pillows. The original tender conditions, as per clause 5 of the tender documents, required the supply to be completed within 120 days from the initial agreement dated 29.05.2025. No supplies were made by Respondents No. 6 and 7 within this period, and instead of retendering after expiry of the

120-day term, a supplementary agreement dated 29.11.2025 was executed, granting an additional 120 days, which contravened the original tender conditions and deprived petitioners of an opportunity to participate.

It is further the case of the petitioners that the reasons cited by the respondents for the delay, include pending color codes for the beds, government enquiries regarding pricing, and verification of space availability in KGBVS, which are unjustified. The tender conditions did not require post-bid determination of color codes. The alleged pricing enquiry was based on irrelevant comparisons, and the space verification should have been completed prior to tendering. No official orders or communications extended the time under the first agreement, making the second agreement arbitrary and beyond the tender terms.

It is further the case of the petitioners that, there was favoritism towards Respondent Nos. 6 to 8, noting that Respondent No. 8 participated actively in the pre-bid meeting, and its credentials were relied upon by Respondent Nos. 6 and 7 to qualify for the tender, thereby enabling multiple participation through the same entity. This arrangement contravenes clause 13(f) of the tender conditions and effectively ensures preferential

treatment for the respondents, undermining fair competition. Additionally, there were irregularities in pricing. Purchase orders dated 04.12.2025 and 05.12.2025 reflected exorbitant rates, including transportation. Post-agreement negotiations and supplemental agreements, including one dated 06.12.2025, were conducted without calling for fresh tenders, contrary to the Central Vigilance Commission guidelines and General Financial Rules that allow renegotiation only in exceptional cases where few suppliers are available. Prior supply records indicate significantly lower costs, reinforcing the petitioners' claim of inflated pricing.

In conclusion, the second supplementary agreements executed on 29.11.2025 materially altered the original tender terms, particularly the 120-day completion period, without proper justification or fresh competitive bidding. These actions were arbitrary, contrary to the tender conditions, show favoritism, and violate established procurement norms, thereby giving them sufficient locus to challenge the proceedings. The writ petitioners have thus sought relief from this Court to ensure adherence to the tender conditions, fair competition, and proper pricing in public procurement.

Few relevant dates and events in the present case are as follows:-

On 26.04.2025, the Respondent No.2 issued tender notification for supply of Bunker Beds to KGBV schools across Telangana.

On **20.05.2025** after evaluation and finalization of bids Respondent No. 6 and Respondent No 7 were awarded with the tender.

On 29.05.2025, the Respondent No 2 entered into agreement with Respondent No 6 for supply of the bunker beds for the value of works awarded to Respondent No. 6

On **10.06.2025**, the Respondent No.2 entered into agreement with Respondent No 7 for supply of the bunker beds for the value of works awarded to Respondent No. 7.

On 22.10.2025, in view of the complaints received by the state government, the state government called for a report from the Managing Director, Telangana Education Women Infrastructure Development Corporation and the same was submitted.

On 08.11.2025, Revised letters of acceptance were issued to Respondent No 6 and Respondent No.7

On 24.11.2025, the colour codes were communicated to the Respondent No 6 and Respondent No. 7

On 29.11.2025, the Supplementary Agreements were into by the Respondent No 2 and Respondent Nos. 7 and 8 separately for their respective value of works awarded.

4. PERUSED THE RECORD:-

A) Clause 16 of the Tender document is extracted hereunder:

PRE QUALIFICATION CRITERIA: To qualify for consideration of award of the contract each bidder should fulfill the following criteria:

The bidder shall upload online on e-procurement platform, the following particulars in the formats enclosed, supported by documentary evidence as specified in the formats.

I) The Bidder/OEM should be a Company registered under Indian Companies Act 1956/2013 and should be in existence from last 7 years from the date of bid calling period. The Bidder should furnish valid Incorporation certification along with PAN and GST certificates

II) The Bidder/OEM should have an average annual turnover of a minimum of INR 160 crores of last three (3) financial years. i.e. 2021-22, 2022-23 and 2023-24. Copies of the Audited Financial Statements of last three (3) financial years to be furnished.

III) The net worth of the Bidder/OEM in the last three financial years, (as per the last published audited balance sheet) should be positive. The bidder should be profitable and should not be in loss in last Three (3) financial years (as per the last published audited balance sheet) i.e., 2021-22, 2022-23 and 2023-24. Copy of Balance Sheet and CA Certificate with 18-digit UDIN number to be furnished.

IV) The Bidder/OEM must have successfully undertaken in any one financial year (in last 7 years) at least the following numbers of Similar assignments of value specified herein: a) One project value not less than of Rs.128,00,00,000/- b) Two projects of each value not less than Rs.80,00,00,000/- c) Three projects of each value not less than of Rs.64,00,00,000/-

(Similar Experience assignments defined as: Supply of furniture for school hostel as on bid publish date) and experience certificate relating to bidders Work Order Completion Certificate to be furnished.

V) The Bidder/OEM should have successfully undertaken following numbers of similar product (Bunker beds in any one of the financial years from last 7 years)

a. Should have executed Single order more than 20000 bunker beds to State/Central Movement Organizations. Or

b. Should have executed at least two orders, each order should have more than 15000 bunker beds to State/Central government organizations.

c. Should have executed at least three or above orders, each order should have more than 10000 bunker beds to state/Central government organizations.

Experience certificate relating to bidders Work Order/Completion Certificate to be furnished.

VI) A) The Bidder/OEM must have a valid certificate: Bidder should have Griha council certification for bunker beds & Green Co certification from CII, All certificates should be visible on online portal.

B) MSME units need to submit valid ZED Gold certification & for large manufacturers IEM certificate need to be submitted.

VII) Bidder/OEM should demonstrate: Availability of Liquid Assets/Credit Facility (letter of Credit or Solvency Certificate from any Nationalized Bank/scheduled bank) of Rs.64 Crore. The date of solvency certificate issued by bank should not be older than 3 months from the date of issue of bid.

VIII) Bidder/OEM must submit the samples as per the scope of work as per Annexure - I. Samples to be submitted on or before the last date of bid submission. (Non submission of the samples is liable for rejection of the bids)

IX) OEM/their authorized agencies/Authorized dealer can bid for the tender. In case the bidder is an agency or dealer, the turnover of OEM and agency/dealer both shall be considered. Singly/multiple dealers may be participated in the tender.

X) Authorization letter from OEM shall be submitted by the bidder, in case of authorized agencies/Authorized dealer.

XI) The Bidder/OEM should have capability to provide after sales service for the maintenance period of i.e., defect liability period (Warranty for Project period) and should be able to offer Annual maintenance contract thereafter.

XII) Notwithstanding anything stated above, the Tender Inviting Authority reserves the right to assess the Bidders capabilities, capacity to perform the contract and to offer Warranty and AMC, should circumstances warrant such an assessment in the overall interest of the tender Inviting Authority deciding on award.

Note: a. All the participating bidders should mandatorily pay electronically the transaction fee to TGTS Hyderabad through "Payment Gateway Service on e-procurement Platform". The scanned copy of payment receipt shall be uploaded by the bidder."

b. The bidder is subjected to be black listed and the EMD forfeited if he is found to have mislead or furnished false information in the forms / statements 7 certificates

submitted in proof of qualification requirements or record of performance.

c. Further, the bidder has abandoned works, non-completion of works properly in time in earlier contracts, inordinate delays in completion of the works, litigation history and/or financial failures and/or participated in the previous bidding for the same work and had quoted unreasonably shall also be blacklisted and EMD forfeited.

d. The bidder should submit signed undertaking of bid online.

5. Clause 25 and 26 of the tender document dated 26.04.2025 is extracted hereunder:

“25. Delays and Extension of Time

No claim for compensation on account of delays or hindrances to the work from any cause whatever shall lie, except as hereafter defined. Reasonable extension of time shall be allowed by the State project Director, Samagra Shiksha, Telangana, Hyderabad for any additional number of units that may result from causes, which in the opinion of the State Project Director, Samagra Shiksha, Telangana, Hyderabad, are undoubtedly beyond the control of the Bidder. The State Project Director, Samagra Shiksha, Telangana, Hyderabad shall assess the period of delay hindrance caused by any written instructions issued to the bidder.

26. Liquidated Damages

a. Notwithstanding Authority's right to cancel the order liquidated damages for late delivery at 1% (One percent) of the undelivered portion of the order value per week shall be charged for every week's delay in the specified delivery schedule subject to a maximum of 10% of the value of the order value. E.g. If the Desktop is delivered but the delivery of the power cord, to be supplied along with the Desktop, is delayed then LD would be calculated on the total cost of the Desktop and not on the cost of the power cord alone.

b. Liquidated damages for late commissioning at 1% (One percent) of the order value per week shall be charged for every

week's delay in commissioning to a maximum of 10% of the value of the order value.

c. Please note that the above LD for the delay in delivery and delay in commissioning are independent of each other and shall be levied as the case may be Authority reserves its right to recover these amounts by any mode such as adjusting from any payments to be made by Authority to the Bidder. Liquidated damages shall be calculated on per weekly basis and recovered from next release bills."

DISCUSSION AND CONCLUSION:-

6. The learned Senior Designated Counsel appearing on behalf of the petitioners mainly puts-forth the following submissions:

i) As per the clause 5 of tender, the scope of completion of work is 120 days from the date of agreement. If the respondents could not have executed the contract agreement, a new tender ought to have been floated.

ii) As per clause 1 and clause 16(I) the bidder should be a registered company in existence for more than 7 years from the date of calling of the bid, but the respondent Nos.6 was incorporated only in the year 2022, hence, the respondent No.2 ought to have rejected the bid pertaining to respondent No.6.

iii) The respondent Nos.6 to 8 are making exorbitant profits, the tender ought not to have been awarded to the

respondent Nos.6 and 7 as the OEM for supplying the respondent Nos.6 & 7 is the respondent No.8 and that the respondent No.6 is not independently qualified for meeting the eligibility criteria laid down in the tender for participation in the tender.

iv) The time period specified in the tender document and the agreement dated 29.05.2025 for supply of bunker beds is 120 days and the respondent Nos.6 to 8 did not supply the bunker beds in the said period of 120 days. As such, the action of entering supplementary agreement extending the time is impermissible as per the tender document.

Based on the aforesaid submissions and further relying on the averments made in the affidavit filed by the petitioner in support of the present Writ Petition, the learned Senior Designated Counsel appearing on behalf of the petitioners contended that the petitioners are entitled for grant of the relief as prayed for by the petitioners in the present writ petition.

7. The learned Additional Advocate General appearing on behalf of the official respondent Nos.1 to 3 mainly puts-forth the following submissions:-

- i) The petitioners have no locus to challenge the supplementary agreements or the tender process**
- ii) The petitioners had not participated in the tender pursuant to the tender notification, dated 26.04.2025.**
- iii) A person who did not participate in tender cannot challenge the same as they would not be aggrieved with the action of the tendering authority in view of the non-participation. The petitioners have no locus standi to file the present writ petition seeking prayer as sought for in the present writ petition, since petitioners have not participated in the tender, hence writ petition is not maintainable.**
- iv) The Writ petitioners in the present writ petition are challenging the action of the state in entering into supplementary agreements with respondent Nos.6 & 7. The petitioners are not party to the said supplementary agreements and hence, cannot challenge the same. Seeking to set-aside the supplementary agreements which is contractual in nature is not permissible in writ petition.**

v) The petitioners are only challenging the supplementary agreements, dated 29.11.2025 and not challenging the initial agreements, dated 29.05.2025, 10.06.2025. The petitioners without laying any challenge to the first agreement or initial act of awarding the contract to respondent Nos.6 to 8 cannot challenge the supplementary agreements.

vi) As per the tender document, there is a quantity variation clause along with specific clause of extension of time and also levy of liquidated damages for delay supplies, hence, there is no illegality, committed by the official respondents as alleged by the petitioners herein.

Based on the aforesaid submissions, the learned Additional Advocate General contends that the present writ petition needs to be dismissed in limine.

8. The learned senior designated counsel appearing on behalf of the respondent Nos.6 to 8 mainly puts-forth the following submissions:-

i) There is delay of 3 months on the part of respondent No.2 in approving the colour codes and logo and there is

no delay on the part of the respondent Nos.6 to 8 in manufacturing or supply of bunker beds.

ii) As per clause 25 and 26 of the Tender Document, if time for completion can be extended by tendering authority and if the delay is attributable to the tendering authority liquidated damages can be levied. Further, as per point 4 of the bid document the validity of tender period is 5 years and 45 days. Therefore, it is settled law that when there is an extension clause and liquidated damages time will not be the essence of the contract.

iii) That as per Clause 16 the "Bidder or OEM" should be incorporated for 7 years. The respondent No. 6 and 7 are the authorized suppliers of the Respondent No. 8 (OEM) which is established in year 1960, hence they satisfy the condition.

iv) That the delay is not attributable to the answering respondents as a complaint was filed on 27.05.2025 alleging exorbitant price to favourable Institutions. Accordingly a committee was formed and an enquiry was

conducted and the report was filed on 22.10.2025 by observing that the tender process was conducted fairly and accordance with the norms and the respondents No. 6 and 7 agreed to execute the work at the modified rate which resulted in saving of 7 % @ Rs. 10.72 crores. It was also observed that cancellation of tenders will lead to considerable delay in supply of bunker beds. Thereafter, revised LOI was signed on 08.11.2025 followed by the subject supplementary agreements dt. 29.11.2025. Hence there is no delay.

v) As per the tender document, there is a quantity variation clause along with specific clause of extension of time and also levy of liquidated damages for delay supplies, hence, there is no illegality, committed by the official respondents as alleged by the petitioners herein.

Based on the aforesaid submissions, the learned Senior Designated Counsel appearing on behalf of respondent Nos. 6 to 8 contended that the Writ Petition needs to be dismissed.

9. This Court opines that there is no material on record that indicates that the action of the official respondents

herein is illegal or perverse or malafide or intended to favour the unofficial respondents herein as urged by the learned senior designated counsel appearing on behalf of the petitioners.

10. The three main pleas urged by the learned senior designated counsel appearing on behalf of the petitioners are :

- i) As per clause 5, the scope of completion of work is 120 days so supplementary agreement could not have been executed and new tender ought to have been floated.**
- ii) Respondent Nos.6 to 8 are not in existence for more than 7 years and respondent No.6 was incorporated only in 2022.**
- iii) Respondent Nos.6 to 8 are being favoured.**

The aforesaid pleas put-forth by the petitioners are discussed and answered as under

11. A bare perusal of the reasons explained in the counter affidavit filed on behalf of respondent Nos.1 to 3 clearly indicate that the main reason for extending 120 days time period and entering into supplementary agreements dated 29.11.2025 are due to conduct of enquiry, calling for report on the subject issue

by TGEWIDC and letters from schools for space and colour codes and duly considering the said reasons, and the averments made in the counter affidavit filed by the official respondents herein, this Court opines that the contention of the petitioners that the extension of time beyond 120 days and entering into supplementary agreement is not legal is not tenable.

12. On bare perusal of clause 25 and 26 of the tender document notification dated 26.04.2025(referred to and extracted above) it is evident that the respondent No.2 has a contractual power and the discretion for extending time and time is certainly not the essence of the contract. This Court opines that there is no illegality on the part of the respondent No.2 in exercising its right under a clause in the agreement which governs the parties to it and the said extension is purely contractual in nature.

13. This Court takes note of the fact as borne on record that the respondent No.8 on 24.06.2025 had addressed a letter to the respondent No.3, requesting respondent No.3 to give approval with regard to the three priority colour codes for bunker beds and it is only on 25.11.2025 the respondent No.3 had issued proceedings vide Lr.No.634/SS/CW/2025-26-2 in favour

of respondent No.7 thereby approving the colour codes and logo on the bunker beds and also has approved the dark brown and cream colour for the bunker beds. A bare perusal of the aforesaid communication dated 24.06.2025 and 25.11.2025 clearly indicates that there is a lapse of three (3) months on the part of respondent No.2 for approving the colour codes and logo and there is no delay on the part of respondent Nos. 6 to 8 in manufacturing or supplying bunker beds.

14. In the judgment of the Apex Court reported in (1994) 6 SCC 651 in Tata Cellular Vs. Union of India, dated 26.07.1994 and in particular para No.94, it is 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.

Based on the aforesaid principles laid down by the Apex Court and on examination of the facts of the present case, applying the aforesaid principles and testing the alleged action of the official respondents in entering into the Second agreement after the expiry of 120 days period as stipulated in the first contract agreement dated 29.05.2025, this Court opines that there is no unreasonableness, or bias, or malafide or arbitrariness on the part of the official respondents herein as alleged by the petitioners. Since, as per clause 25 & 26 of the tender document dated 26.04.2025 (referred to and extracted above), time for completion of the contract can be extended by the Tendering Authority and if delay is attributable to the Tendering Authority Liquidated damages can be levied.

15. A bare perusal of the tender document, in particular point No.4 of the bid document clearly indicates that the validity of tender period is five (5) years and 45 days and clause 25 and 26 of the tender document, dated 26.04.2025 (referred to and extracted above) refers to delays and extension of time and clause 26 provides for levy of liquidated damages and therefore, it is settled law that when there is an extension clause and liquidated damages, time will not be the essence of the contract as held at Para 11, 32 and 35 of the Judgment of the Apex

Court reported in (2022) 2 SCC 382 in Welspun Speciality Solutions Limited v. ONGC referred to and extracted hereunder:

“11. The Arbitral Tribunal, on hearing the parties, had framed 17 issues, of which we are concerned only with the following:

- (i) Was time the essence of the Agreement to make supplies under the four Purchase Orders and was the delivery date to be reckoned from the date of the supply order?
- (ii) Was ONGC justified in recovering liquidated damages of US \$8,07,804.03 and Rs.1,05,367/-?
- (iii) Was the Claimant entitled to extension of delivery dates without levy of liquidated damages on account of force majeure condition as stated in paragraphs 12.D.3 and 12.D.4 of the Statement of Claim?
- (iv) Was ONGC entitled to impose liquidated damages on the basis of the entire value of the Purchase Orders?
- (v) Is the Claimant entitled to refund of any part of the amount recovered by ONGC as liquidated damages?
- (vi) Is the Claimant entitled to US \$2,44,121.03 and Rs.5,76,244.21 as interest on delayed payment as in Exhibit 'H' to the Statement of Claim?"
- (vii) Whether the Claimant is entitled to any interest? If so, at what rate and for what period?

32. In *Saw Pipes case* (supra), impugned clause for liquidated damages was considered and upheld by this Court in the following manner:

46. From the aforesaid sections, it can be held that when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss which naturally arises in the usual course of things from such breach. These sections further contemplate that if parties knew when they made the contract that a particular loss is likely to result from such breach, they can agree for payment of such compensation. In such a case, there

may not be any necessity of leading evidence for proving damages, unless the court arrives at the conclusion that no loss is likely to occur because of such breach. Further, in case where the court arrives at the conclusion that the term contemplating damages is by way of penalty, the court may grant reasonable compensation not exceeding the amount so named in the contract on proof of damages.

However, when the terms of the contract are clear and unambiguous then its meaning is to be gathered only from the words used therein. In a case where agreement is executed by experts in the field, it would be difficult to hold that the intention of the parties was different from the language used therein. In such a case, it is for the party who contends that stipulated amount is not reasonable compensation, to prove the same.

64. Under Section 73, when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss caused to him which the parties knew when they made the contract to be likely to result from the breach of it. This section is to be read with Section 74, which deals with penalty stipulated in the contract, inter alia (relevant for the present case) provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, whether or not actual loss is proved to have been caused, thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. Section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation. ... But if the compensation named in the contract for such breach is genuine pre-estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him.

66. In *Maula Bux* case [(1969) 2 SCC 554] the Court has specifically held that it is true that in every case of breach of contract the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree and the court is competent to award reasonable compensation in a case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. The Court has also specifically held that in case of breach of some contracts it may be impossible for the court to assess compensation arising from breach.

Although the aforesaid case was cited by the Arbitral Tribunal, it distinguished the same by observing that the aforesaid case was silent on the aspect. We need to accept the aforesaid distinction based on the different set of circumstances this case emanates from. In *Saw Pipes* (supra), the purchaser therein had extended the time for supply of goods subject to the specific condition that purchaser would recover the agreed stipulated damages from the contractor. Thus, the aspect of waiver is an important distinguishing factor, which was not dealt with in the earlier judgment.

35. This Court cannot interfere with this award, as the award is a plausible view for the following reasons:

a. **The Arbitral Tribunal's interpretation of contractual clauses having extension procedure and imposition of liquidated damages, are good indicators that 'time was not the essence of the contract'.** b. **The Arbitral Tribunal's view to impose damages accrued on actual loss basis could be sustained in view of the waiver of liquidated damages and absence of precise language which allows for reimposition of liquidated damages. Such imposition is in line with the 2nd para of Section 55 of the Indian Contract Act.** c. **The Arbitral Tribunal was correct in distinguishing the dictum of this Court in *Saw Pipes* (supra), which validated imposition of liquidated damages in a similar contract.** d. The High Court and District Court strayed beyond the limitation under Section 34 and 37 of the Arbitration Act. e. **Other aspects of the**

award also do not require interference of this Court, in view of the law laid down in the Project Director, National Highways No.45E and 220, National Highways Authority of India v. M. Hakeem.”

16. In the judgment of the Apex Court reported in (2022) 2 SCC 382 in Welspun Specialty Solutions Limited Vs. Oil and Natural Gas Corporation Limited, dated 13.11.2021 and in particular para No.35, it is observed as under:-

30. It is now settled that ‘whether time is of the essence in a contract’, has to be culled out from the reading of the entire contract as well as the surrounding circumstances. Merely having an explicit clause may not be sufficient to make time the essence of the contract. As the contract was spread over a long tenure, the intention of the parties to provide for extensions surely reinforces the fact that timely performance was necessary. The fact that such extensions were granted indicates ONGC’s effort to uphold the integrity of the contract instead of repudiating the same.

The above referred two judgments of the Apex Court and the observations thereunder negative the specific pleas of the petitioner that as per Clause 5, the scope of the completion of work is 120 days so supplementary agreement could not have been executed and new tender ought to have been floated.

17. In so far as the second plea of the petitioners is concerned, that as per clause 1 and 16(I), respondent Nos.6 to 8 are not in existence for more than 7 years, this plea is untenable, since as

per clause 16(I) the bidder or OEM should be incorporated for seven (7) years and it is the specific case of the respondent Nos.6 and 7 that they are the authorized suppliers of the respondent No.8 (OEM) which is established in the year 1960.

18. A bare perusal of clause 16 of the tender document (referred to and extracted above) clearly indicates that tender document dated 26.04.2025 categorically permits the authorized agencies/authorized dealers of OEM to bid for tender and in case, the bidder is an agency or dealer, the turnover of OEM and dealer/agency, both shall be considered and further the aforesaid clause also explicitly makes clear that the tender document permits the participation of single or multiple dealers of one OEM in the tender.

19. A bare perusal of the content of Clause 16 (referred to and extracted above) above clearly indicates that clause 16 prescribes pre-qualification criteria for bidders and also in all the sub-clauses of Clause-16 mentions it for "Bidders/OEM" and hence all the clauses read together clearly indicates that one OEM can authorize two (2) dealers to participate in the tender and in such case turnover of OEM and agencies both will be

considered while evaluating their pre-qualification criteria as per clause 16 of tender document.

20. In the light of the discussion and conclusion as arrived at Para Nos. 17, 18 and 19 of the present judgment, this Court negatives the specific plea of the petitioners that the respondent No.6 is not in existence for more than 7 years and respondent No.6 was incorporated only in 2022 and hence the action of the official respondents in awarding the contract in favour of the unofficial respondents is illegal, and the said, second plea urged by the petitioners is declared as unsustainable.

21. This Court opines that the present writ petition is not maintainable since the Writ Petitioners in the present Writ Petition are challenging the action of the state in entering into Supplementary Agreements with Respondents Nos. 6 and 7. The Petitioners are not party to the said supplementary agreements and cannot challenge the same. Seeking to set aside the supplementary agreements which is contractual in nature is not permissible in a Writ Petition. The Petitioners are only challenging the Supplementary Agreements dated 29.11.2025 and not challenging the initial agreements

dated 29.05.2025 and 10.06.2025. Admittedly the initial agreements are pursuant to awarding the contract to Respondent No. 6 and Respondent No.7 and supplementary agreements are only for extension of time for supply of bunker beds. This Court opines that the Petitioners without laying any challenge to the 1st agreement or initial act of awarding the contract to Respondent Nos. 6 to 8 cannot challenge the supplementary agreements.

22. In the Division Bench judgment of the High Court of Patna in Civil Writ Jurisdiction Case No.14030 of 2025 dated 24.09.2025, under identical circumstances an issue framed thereunder was decided as hereunder:-

Issue 1: Whether the present writ petition can be entertained, particularly when it has been instituted after the declaration of the result of the financial bid?

The law is well settled that writ jurisdiction under [Article 226](#) is primarily preventive and not curative in matters relating to tenders. Where the tender process has already reached its logical conclusion and contractual rights have crystallized, courts have consistently

exercised restraint in entertaining belated challenges. It is by now trite law that once the tender process has culminated into a concluded contract, ordinarily no writ would lie to annul the same, except in cases where the action of the State or its instrumentalities is shown to be vitiated by mala fides, arbitrariness, or violation of statutory/constitutional provisions.

In the present case, the petitioner has approached this Court only after the declaration of the financial results and the contract has already been executed, by which stage a vested right has accrued in favour of respondent no. 4 and corresponding obligations have arisen on the part of the University. Interference at this juncture would not only unsettle a concluded contract but also cause administrative chaos and financial loss to the public exchequer.

In view of the above discussion, this Court is of the opinion that the writ petition, having been instituted after the declaration of the financial bid and there is a subsequent execution of agreement dated 30.08.2025, and thus, cannot be entertained at this stage. The

challenge is belated, seeks to unsettle a concluded contract, and does not warrant interference.

23. This Court, applying the principle laid down in the above Division Bench judgment of High Court of Patna under identical circumstances opines that since even in the present case, the tender process has already reached its logical conclusion and contractual rights have crystallized, this Court cannot annul the concluded contracts and agreements.

24. This Court opines that in view of the fact as borne on record that the petitioners had not participated in the tender pursuant to the tender notification dated 26.04.2025, It is settled law that the person who did not participate in tender cannot challenge the same as they would not be aggrieved with the action of the tendering authority in view of the non-participation. The Apex Court in its catena of judgments had very clearly held that the person who did not participate in the tender cannot challenge the tender. The following judgments given below clearly indicate reiteration of the said view of the Apex Court :-

- (i) **National Highways Authority of India vs Gwalior Jhansi Expressway Limited, (2018) 8 SCC 243- Para 20**
- (ii) **Shikar Swayamrozgar Seva Sahakari Sanstha Maryadit Nashik vs Commissionerate Social Welfare, W.P No 9837 of 2022- Para's 9 and 11.**
- (iii) **Subir Ghosh vs The State of West Bengal, F.M.A No 910 of 2020- (Unnumbered Paragraph 5,6 & 7)**

25. The pleas of the petitioners that the official respondents are favoring respondent Nos.6 to 8 and enabling them to make exorbitant profits is without any basis, since there is no material on record evidencing the same as urged and alleged by the petitioners.

26. In view of the fact as borne on record, the tender notification and also the agreement categorically provides for extension of time by the state, duly considering the averments made in the counter affidavit filed by the Respondent Nos.1 to 3, this Court finds that the pleas put forth by the petitioners pertaining to variation in the price is baseless, since as per the tender document, the consequential main agreement and supplementary agreement in Clause No.1 to "Annexure for Contract Agreement", the quantities to be supplied are purely tentative /provisional and subject to change. The quantity variation clause along with specific clause of extension of

time and also levy of liquidated damages for delay of supplies, as reflected in the tender document, and the consequential main agreement and the supplementary agreement clearly indicates that the pleas of the petitioners on the grounds as alleged in the present Writ Petition against the official respondent herein are in fact without any basis.

27. The observations of the Apex Court in the judgments given below are relevant for adjudication of the present case:-

A. In the judgment of the Apex Court reported in (2016) 16 SCC 818 in Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and Another, dated 15.09.2016 and in particular para No.15, it is observed as under:-

15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.

B. In the judgment of the Apex Court reported in (2007) 14 SCC 517 in Jagdish Mandal Vs. State of Orissa and Others, dated 11.12.2006, and in particular para No.22, it is observed as under:-

19. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

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

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

ii) Whether public interest is affected.

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

C. In the judgment of the Apex Court reported in (2018)

8 SCC 243 in National Highways Authority of India Vs.

Gwalior-Jhansi Expressway Limited, dated 13.07.2018 and

in particular at Para No.20, it is observed as under:-

18. While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent forum. Going by the terms and conditions in the tender documents, as already alluded to in paragraph 8 above, there is no title of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money. The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was to participate in the bidding process, it shall be deemed to fulfill all the requirements of the tender clauses 3 to 6 of the RFP, being the existing concessionaire of the Project, does not exempt the respondent from participating in the tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered as a responsive bidder, along with others. Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. **Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfillment or breach of any of the terms and conditions of the**

concerned tender documents. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.

D. In the judgment of the Apex Court reported in (2020) 16 SCC 489 in Silppi Constructions Contractors Vs. Union of India and Another, dated 21.06.2019 and in particular para No.20, it is observed as under:-

20. The essence of the law [laid down in](#) the [judgments referred to above](#) is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; **the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal.** The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. **The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity.**

E. In the judgment of the Apex Court reported in (2016) 15 SCC 272 in Montecarlo Limited Vs. National Thermal Power Corporation Limited, dated 18.10.2016 and in particular para No.26, it is observed as under:-

26. We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinized by the technical experts and sometimes third party assistance from those unconnected with the owner's organization is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. **Exercise of power of judicial review would be called for if the approach is arbitrary or malafide or procedure adopted is meant to favour one. The decision making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint.** Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.

F. In the judgment of the Apex Court reported in 2020 SCC Online SC 1035 in M/s. Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers, dated

18.12.2020 and in particular para No.14, it is observed as under:-

14. In a series of judgments, this Court has held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings.

The aforesaid observations of the Apex Court in the judgments(referred to and extracted above) clearly indicate that all the pleas put-forth by the petitioners are untenable and hence, rejected. This Court opines that there is no arbitrariness, irrationality, bias, malafides or perversity in the action of the official respondents herein as alleged by the petitioners which warrants interference by this Court since the action of the official respondents herein as borne on record is in consonance with the language of the subject tender document.

28. Taking into consideration:-

- a) The aforesaid facts and circumstances of the case.
- b) The submissions made by the learned counsel appearing on behalf of the petitioners, learned Additional Advocate General appearing on behalf of the respondent Nos.1 to 3, learned standing appearing on behalf of the

respondent Nos.4 and 5 and learned Senior Designated Counsel appearing on behalf of the respondent Nos.6 to 8 on record.

c) The observations in the various Court judgments (referred to and extracted above) which are enlisted below:-

- i. (2007) 14 SCC 517**
- ii. (2018) 8 SCC 243**
- iii. (2016) 16 SCC 818**
- iv. (2020) 16 SCC 489**
- v. (2016) 15 SCC 272**
- vi. 2022(2) SCC Page 382**
- vii. 1994(6) SCC Page 651**
- viii. 2020 SCC Online SC 1035**
- ix. The Division Bench judgment of the High Court of Patna reported in Civil Writ Jurisdiction Case No.14030 of 2025 dated 24.09.2025.**

d) The discussion and conclusion as arrived at Para Nos.6 to 27 of the present order.

This Court opines that the petitioners are not entitled for grant of the relief as prayed for in the present writ petition, and the Judgments relied upon by the learned senior designated counsel appearing on behalf of

the petitioners do not apply to the facts of the present case and accordingly, the pleas put-forth placing reliance on the said judgments are held as untenable and hence, rejected. Accordingly, the interim orders granted by this Court on 11.12.2025 stand vacated, and the writ petition is dismissed, since the same is devoid of merits. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 22.01.2026

Note: Issue CC by today

b/o

ADT