2025:AHC-LKO:76168-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 10836 of 2025

Kasana Builders Pvt. Ltd. Thru. Authorized Signatory Vikram Singh
…..Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. Deptt. of Planning Lko. and 3 others
…..Respondent(s)

Counsel for Petitioner(s)	:	Sachin Upadhyay, Abhishek Khare, Shivendra S Singh Rathore
Counsel for Respondent(s)	:	C.S.C.,

Court No. - 3

**HON'BLE SHEKHAR B. SARAF, J.
HON'BLE MANJIVE SHUKLA, J.**

(Judgment dictated in open Court)

1. Heard Shri Abhishek Khare, learned counsel for the petitioner and Shri Pritish Kumar Singh, learned Additional Advocate General assisted by Shri Sandeep Sharma, learned Standing Counsel appearing for the State.

2. Documents filed by the respondent no.2 are taken on record.

3. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner is challenging the order dated October 27, 2025 passed by the Chief Engineer, Technical Cell, EPC Mission, Planning Department, Government of Uttar Pradesh (hereinafter referred to as ‘respondent no.2’) wherein the financial bid of M/s G.S. Express Pvt. Ltd. (hereinafter referred to as ‘respondent no.3’) has been accepted by the authority concerned.

4. The factual matrix as narrated in the writ petition is as follows:

A. The technical Cell, EPC Mission, Planning Department, Lucknow acting as an executing agency of Department of Law, Government Uttar Pradesh floated an e-tender No. 473 (SE)/General/technical Cell/2025 dated September 15, 2025 (Tender ID 2025-DPUP-1074856_1) inviting bids for "Design, Engineering and Procurement for; (i) Construction of 25 number of residences at Hahnemann Crossing, Gomtinagar, Lucknow for Hon'ble Judges of Hon'ble High Court of Allahabad, Lucknow Bench, Lucknow, U.P., India and (ii) Construction of 14 Bungalows for Hon'ble High Court Allahabad on Plot No. 19, Clive Road, Prayagraj, U.P. on EPC Basis.

B. As per the notice inviting e-tender dated September 15, 2025 estimated cost amount was mentioned to be Rs 143 Crores and the work was to be completed within 18 months plus defect liability period of three years to remove all the defects. It was further provided that Rs. 143.00 Lakhs (Rs 50.00 lakhs shall be paid online through the payment gateway by net banking/RTGS on e-tender portal i.e. www.etender.up.nic.in and rest amount of Rs. 93.00 Lakhs in the form of e-Bank Guarantee/Bank Guarantee from any Scheduled Commercial Bank). Last date of filing bid through e-tendering was fixed to be October 8, 2025 at 3.00 pm.

C. Accordingly, pursuant to the said invitation to file e-tender, petitioner submitted its Bid bearing Bid No. 5589822 on October 8, 2025 at 01:36 pm. The respondent no. 3 was the last to file bid on October 8, 2025 at 2:37 pm. i.e. just 23 minutes prior to closing of bid submission at 3.00 pm.

D. On October 17, 2025 the tender summary report was issued on the portal of the respondent no.2 wherein it indicated that the petitioner and respondent no.4 had technically qualified for the bid while the respondent no.3 was technically disqualified on the ground that the bank guarantee towards the remaining amount of EMD of Rs.93.00 lakhs had not been uploaded on e-tender portal along with technical bid documents.

E. On October 17, 2025 itself the respondent no.3 had uploaded the bank guarantee towards the remaining amount of EMD of Rs.93.00 lakhs.

F. It is to be noted that the original bank guarantee had been submitted physically on October 8, 2025 which had been sent by the authorities for verification to the bank authorities. Thereafter, on October 24, 2025 notice was issued to the petitioner and respondent nos.3 and 4 and it was stated that all the three parties had been found technically qualified and the financial bid opening for the aforesaid work which was earlier scheduled on October 21, 2025 would now be opened on October 27, 2025 at 3.30 P.M. On October 27, 2025 all the three parties, including the petitioner participated in the financial bid and the results of the bid were announced on October 27, 2025, wherein the financial bid of respondent no.3 being M/s. G. S. Express Pvt. Ltd., was accepted.

G. The present writ petition has been filed on November 4, 2025 challenging the acceptance of the financial bid of the respondent no.3.

5. Counsel appearing on behalf of the petitioner has submitted that having stated that the respondent no.3 was technically disqualified on October 17, 2025, it was not legally correct for the authorities to allow the respondent no.3 from participating in the financial bid. Counsel appearing on behalf of the petitioner submits that the requirement of uploading the bank guarantee towards the remaining amount of EMD of Rs. 93.00 lakhs was a mandatory requirement under Clause 1.12 (ii). He further submits that as per Clause 1.13 the bid submitted would become invalid and cost of Bid & e-Tender processing fee shall not be refunded

if the bidder was found ineligible or the bidder does not upload all the documents as stipulated in the bid documents.

6. *Per contra*, counsel appearing on behalf of the respondents submits that the respondent no.3 had filed his Bid documents in time on the online portal as well as provided the relevant documents in the physical format except for the bank guarantee for the EMD of Rs.93.00 lakhs, that was not uploaded. It is, however, submitted that the physical document was provided and authorities had sent the same for verification. He further submits that the requirement of uploading the bank guarantee for EMD was not a mandatory condition and the failure of the respondent no.3 to upload the same would only be a procedural irregularity as the original documents had already been deposited with the respondent no.2. It is further submitted that the document of bank guarantee was uploaded on October 17, 2025 and the Committee evaluating the bids was of the opinion that the failure to upload the bank guarantee document was only a technical error and the same could be waived. This was a decision taken after due consideration amongst the committee deciding on the technical bid. Counsel further submits that on October 24, 2025, notice was given to all the parties that the financial bid would be opened on October 27, 2025 and it was open for all the parties to raise objections. Since no objection was received by any of the parties, including the petitioner, the financial bid had been opened and the lowest bid was found to be that of the respondent no.3, and the same was accordingly accepted.

7. Counsel appearing on behalf of the respondents further submits that having participated in the financial bid without making any objection, the stand now being taken in the writ petition cannot be allowed as the petitioner is an unsuccessful bidder. Any objections to the tender process should have been raised before the opening of the financial bid.

8. Counsel appearing on behalf of the respondents submit that if the Court interferes, at this stage, the infrastructure project would be delayed. He further submits that the petitioner has in no manner indicated any *mala fide* that has been practiced by any of the respondents. He further submits that it is the authority that is floating the tender that has all rights to decide on small technical infractions and allow all participants to participate for the benefit of the said project. He submits that the petitioner has not made out a case of any patent illegality and/or *mala fide* having been practiced by the respondent no.2 and accordingly, the writ petition deserves to be dismissed.

9. In reply, learned counsel on behalf of the petitioner has submitted that the letter received on October 24, 2025 did not call for any objections to be raised by the parties. He, accordingly, submits that they were not aware that they could have raised objections, and therefore, they simpliciter participated in the financial bid.

10. Upon analysis of the terms and conditions of the bid document and upon hearing the arguments of learned counsel appearing on behalf of the parties, we find that the irregularity of not uploading the bank guarantee was merely a technical irregularity and the decision to allow the respondent no.3 to participate in the tender process was made by the respondent no.2 for the benefit of the infrastructure project as a whole. Furthermore, it is clear that the original copy of the bank guarantee had been submitted on October 8, 2025, and therefore, the terms and conditions of the tender had been satisfied, with a mere irregularity of having not uploaded the same on the portal. We are also of the view that the petitioner could have raised objection after receipt of the notice dated October 24, 2025 wherein it was made categorical that the respondent no.3 had qualified in the technical bid. As the information with regard to technical disqualification of the respondent no.3 was available to the petitioner on October 17, 2025, the petitioner could have raised the specific objection to the same. However, no objection was raised by the petitioner and the petitioner participated in the financial

bid. The argument of the petitioner that no objections were specifically called for in the letter dated October 24, 2025 is of no material relevance as the petitioner could very well have raised the objection before himself participating in the financial bid.

11. It is trite law that the Writ Court should be slow to interfere in commercial matters especially in relation to tenders issued by the Government. The Supreme Court in **Tata Motors Limited vs. The Brihan Mumbai Electric Supply and Transport Undertaking (Best) and others,** reported in **(2023) 19 SCC 1** has categorically held as follows :-

> *"55. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in* ***Association of Registration Plates v. Union of India and Others, reported in (2005) 1 SCC 679****.*
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> *56. The law relating to award of contract by the State and public sector corporations was reviewed in* ***Air India Ltd. v. Cochin International Airport Ltd., reported in (2000) 2 SCC 617*** *and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of*

public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

57. As observed by this Court in ***Jagdish Mandal v. State of Orissa and Others, reported in (2007) 14 SCC 517,*** *that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes."*

12. Furthermore, the Supreme Court in **Travancore Devaswom Board v. Ayyappa Spices,** reported in **(2024) 7 SCC 543** discussed in detail the principles that would apply in relation to judicial review in tender matters. The relevant paragraph is delineated below :-

"20. The principle that in matters of public tenders for procurement, judicial review is restrained is well established. In cases where a party invoking writ jurisdiction has been a participant in the tender process, courts should be slow and cautious in exercising the power of judicial review. In a recent decision, ***UFLEX Ltd. v. State of Tamil Nadu,*** *this Court has held that constitutional courts should exercise caution while interfering in contractual and tender matters, disguised as public interest litigations.*

21. The following observations are important for the purpose of this case :

"1. The enlarged role of the Government in economic activity and its corresponding ability to give economic "largesse" was the bedrock of creating what is commonly called the "tender jurisdiction". The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, beyond the issue of strict enforcement of

contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The public interest litigation (PIL) jurisdiction is also invoked towards the same objective, an aspect normally deterred by the Court because this causes proxy litigation in purely contractual matters.

2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.

3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, "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."

13. The Division Bench of this High Court after relying on several **Supreme Court's judgments in Moksh Innovations Inc. v. State of U.P. and others** reported in **2021 SCC OnLine All 206** also held as follows :-

"10. The first and foremost question which falls for our consideration is as to what is the scope of judicial scrutiny in relation to a challenge made by an unsuccessful bidder, to a tender condition. There is no doubt that in regard to allotment of contract the action of the Government or its instrumentality are subject to judicial review, however, it is also equally well settled that a tender submitted in response to a NIT is only an offer which the Government or its instrumentality are under no obligation to accept. It is only that the participating tenderer should be dealt with in a fair and non-discriminatory manner in the matter of evaluation of tenders. Ordinarily

> *scope of judicial scrutiny of a tender matter implies that terms of tender are not open to judicial scrutiny unless it is found that the same have been tailor-made to benefit a particular party or class of tenderers. It is also equally settled by a long line decisions by Hon'ble Supreme Court that a party having participated in the tender knowing that it was unsuccessful ordinarily, cannot be permitted to challenge the conditions of tender, as such after thought action on the part of the unsuccessful bidder is impermissible to be entertained by the Courts. It is trite law that a tenderer having accepted the tender conditions and submitted the tender does not have locus to challenge the conditions of tender for the reason that in such a situation any party aggrieved by the conditions of tender ought to have challenged the NIT before submitting its tender pursuant to such notice."*

14. The above judgments that have been cited above were considered by the Division Bench of this Court (wherein one of us was part of the quorum) in ***Avani Paridhi Energy and Communications Pvt. Ltd. vs. State of U.P. and others in Writ-C No.9597 of 2025,*** decided on October 6, 2025 and the Court had made the following observations:-

> *"10. The principles that emerge from a reading of the above judgments is crystal clear that the Writ Court should ordinarily refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. Furthermore, a person who has participated in the tender process is barred from challenging the said tender conditions at the closing stages when it is clear that the person is unsuccessful. Any such challenge to the tender conditions is required to be made by the person at the very first instance and an unsuccessful tenderer cannot raise a ground that the tender conditions were in any manner unlawful so as to reverse the decision at the eleventh hour. "*

15. Upon perusal of the umpteen judgments and sifting through the ratios laid down by the Apex Court the following principles emerge with regard to the scope or judicial intervention in tender matters:-

A. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest;

B. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere;

C. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes;

D. The judicial review of contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance;

E. A tenderer or contractor with a grievance can always seek damages in a civil court. Ergo, 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 should not persuade courts to interfere by exercising power of judicial review; and

F. It is also equally settled by a long line of decisions by the Hon'ble Supreme Court that a party having participated in the tender knowing that it was unsuccessful, ordinarily, cannot be permitted to challenge the conditions of tender, as such after thought action on the part of the unsuccessful bidder is impermissible to be entertained by the Courts.

16. In the present facts and circumstances, we are of the view that a case being made out by the petitioner that the authority has acted in *mala fide* manner is not substantiated. It is clear that the only document that was not submitted was the bank guarantee for the EMD of Rs.93.00 lakhs that was not uploaded on the portal. However, it is clear that the said document had been filed along with all other tender documents on October 8, 2025 itself. In light of the same, the decision of the respondent no.2 to allow the respondent no.3 to participate in the said tender process cannot be faulted on the grounds of being *mala fide* or patent illegality. The failure of the respondent no.3 to not upload the Bank Guarantee, in our view, is a mere technical irregularity that was allowed to be cured by the respondent authority. By allowing curing of the defect, no prejudice whatsoevever was caused to any of the other bidders including the petitioner.

17. The present project being an infrastructure project, we are bound by the Supreme Court judgements that the High Court should be slow to interfere in the said tender process unless manifest injustice is being caused due to any malpractice having been committed by the employer. Furthermore, the petitioner having participated in the entire tender process, including the financial bid and having the opportunity of raising an objection within a period of three days from the date of announcement of the technically qualified participants cannot now be allowed to raise objections once the financial bid has been accepted. The

petitioner by means of the instant writ petition is trying to make a mountain out of a mole hill by pointing out some technical/procedural violation, and persuade the Court to interfere by exercising power of judicial review. Any interference by this Court would amount to holding up public works and would cause huge loss to the State exchequer. The Hon'ble Supreme Court in a smorgasbord of judgements has held that infrastructure project should not be halted for mere technicalities. The Supreme Court has categorically deprecated the practice of interference by the High Court simipliciter as a matter of course. Unless specific and cogent grounds are made out that indicate arbitrariness and/or mala fide, no interference is warranted.

18. In light of the above findings, we come to the inexorable conclusion that the writ petitioner has only managed to make a kerkuffle without providing any potent evidence to rule in his favour. Ergo, the writ petition is **dismissed**.

November 21, 2025
akhilesh

(Manjive Shukla, J.) **(Shekhar B. Saraf, J.)**