

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11886 of 2025

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Basant Kumar Son of Sri Ram Chandra Prasad Resident of Kailash Nagar,
Gali No.-1, Old G.T. Road, P.S.- Sasaram, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer- In- Chief, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer-2, Rural Works Department (Gaya), Government of Bihar, Patna.
4. The Superintending Engineer, Work Circle- Sasaram, Rural Works Department, Government of Bihar, Patna.
5. The Nodal Officer, MMGSUY, Rural Works Department, Government of Bihar, Patna.
6. The Executive Engineer, Rural Works Department, Works Division- Sasaram-1, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Adv. Mr. Ansh Prasad, Adv. Mr. Shubham Prakash, Adv.
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General Mr. Vikas Kumar, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA)

Date : 09-10-2025

Heard the parties.

2. The petitioner in the present writ application seeks the following main relief:

*“(i) Quashing of the decision of the
Technical Evaluation Committee as contained
in Memo No. 2469 dated 30.06.2025*



(Annexure P/6) (uploaded on 01.07.2025) by which mechanically differing with the report of the jurisdictional Executive Engineer with regard to the insufficient bid capacity of the Respondent No. 6 and without assigning any reason the technical bid of the Respondent No. 6 was declared to be responsive.

(ii) Quashing of the decision of the Technical Evaluation Committee as contained in Memo No. 2477 dated 01.07.2025 (Annexure P/7) by which in the absence of any objection and on the same day on which the earlier proceeding was uploaded, without there being any change in circumstance, the technical evaluation committee has reconvened its meeting and reiterated the earlier decision with regard to the declaration of responsiveness of the technical bid of Respondent No. 6.

(iii) Quashing of the decision of the Technical Bid Evaluation Committee bearing Memo No. 2611 dated 14.07.2025 (Annexure P/9) by which after financial bid evaluation, the Respondents have re-evaluated the technical bid of the Lowest Bidder (L-1) and subsequently, declared his technical bid responsive on account of insufficient bid capacity, and entire tender has been recommended to be canceled with the further recommendation for re-advertisement for the



reason that the rates have been opened and the confidentiality of the tender stands vitiated.

(iv) Directing the Respondents to consider the Representation/ Request dated 16.05.2025 (Annexure P/10) wherein, the petitioner has requested for award of work in his favour as he was the 2nd Lowest Bidder and has consented to complete the work at the lowest evaluated price as quoted by L-1; and

(v) Restraining the Respondents from giving effect to the decision contained in Memo No. 2611 dated 14.07.2025 during the pendency of the present writ application and/or the without the leave of this Hon'ble Court.

(vi) Quashing of the Short Notice Inviting Tender No. RRRSMP-15/2025-26 dated 22.07.2025 signed by the Engineer In-Chief and uploaded on 26.07.2025 by which giving effect to the Impugned Order of cancellation of the earlier tender, the work which is the subject matter of the present writ application has been re-advertised on the same terms and conditions; and”

3. Learned counsel for the petitioner, while assailing the impugned decisions of the Respondents, has set out the broad facts and grounds upon which the present writ application rests. It is submitted that the petitioner is a contractor registered in Class-I



under the Bihar Contractors Registration Rules, 2007 and has been engaged in execution of various works on behalf of governmental organizations.

4. The genesis of the controversy, as canvassed by the petitioner, lies in the issuance of Notice Inviting Tender No. RRRSMP-15/2024-25 dated 27.02.2025 for “*Initial Rectification, Minor Improvement, Surface Renewal, Construction of Bridge/Drainage/Protection Work including Operation and Management for the Rural Road Strengthening and Management Program under the component of Mukhya Mantri Gramin Sadak Unnayan Yojana (GEN) (MMGSUY),*” with special reference to Package No. RRRSMP/24-25 Sasaram-1/11 at Serial No. 1, the total contract value being Rs. 3520.452 Lacs (Annexure: P/1).

5. It is submitted that altogether ten bidders, including the petitioner, participated in the tender process. The Five-Member Technical Bid Evaluation Committee, chaired by the Departmental Engineer In-Chief, convened on 06.05.2025 for evaluation of technical bids, and vide Memo No. 1643 dated 08.05.2025 (Annexure: P/1) declared seven bidders, including M/s Shanti Construction, technically responsive, while three bidders were declared non-responsive. An option was granted to file objections within five working days. Exercising such option, the petitioner



filed a detailed objection on 16.05.2025 (Annexure: P/3) against the declaration of technical eligibility of three bidders, namely, M/s Shanti Construction, M/s Govind Madhav, and V.S. Construction, inter alia contending that M/s Shanti Construction lacked the requisite bid capacity.

6. It is urged that despite this objection, the Technical Bid Evaluation Committee, upon re-convening on 10.06.2025, vide Memo No. 2220 dated 12.06.2025 (Annexure: P/4), reiterated its earlier decision without properly dealing with the contentions raised. Once again, the petitioner was constrained to file another affidavit-ed objection on 13.06.2025 (Annexure: P/5) specifically pointing out insufficiency of bid capacity of M/s Shanti Construction and requesting re-calculation after taking into account works already allotted in Aurangabad Division. On the basis of this objection, a report was called from the jurisdictional Executive Engineer, who categorically reported that M/s Shanti Construction lacked the requisite bid capacity. Notwithstanding this, vide Memo No. 2469 dated 30.06.2025 (Annexure: P/6), the Technical Bid Evaluation Committee reiterated its earlier stand, declaring the bid of M/s Shanti Construction technically responsive without assigning any reason for disregarding the Engineer's report. The said decision was followed by yet another



decision bearing Memo No. 2477 dated 01.07.2025 (Annexure: P/7), passed in undue haste on the very day the earlier decision was uploaded and without waiting for the objection period to lapse.

7. Learned Counsel for the petitioner further submits that on 05.07.2025, the financial bids were opened. M/s Shanti Construction was declared as the lowest bidder (L-1) having quoted 5.77% below the estimated rate, while the petitioner was declared the second lowest bidder (L-2), having quoted 5.05% below the estimated rate. The grievance of the petitioner, as urged by learned counsel, is that surprisingly, after opening of financial bids and declaration of the lowest bidder, the Committee, in the absence of any objection, re-convened on 12.07.2025, this time without one of its prominent members, and re-calculated the bid capacity of M/s Shanti Construction. It was then found that the said bidder did not, in fact, possess the requisite bid capacity, as the petitioner had consistently maintained. Consequently, vide Memo No. 2611 dated 14.07.2025 (Annexure: P/9), the Committee decided to recommend cancellation of the tender and re-advertisement of the work on the ground that confidentiality of financial bids had already been compromised.



8. Aggrieved thereby, the petitioner vide communication dated 16.07.2025 (Annexure P/10) expressed willingness to execute the work at the L-1 rate quoted by M/s Shanti Construction. The Respondents, however, declined to consider such willingness and instead proceeded with their decision to cancel the tender.

Learned counsel for the petitioner contends that the impugned decisions contained in Memo Nos. 2469 dated 30.06.2025, 2477 dated 01.07.2025, and 2611 dated 14.07.2025 are wholly arbitrary, contrary to the established principles of tender law, dehors the Standard Bidding Document, and vitiated by non-application of mind. It is submitted that:

(i) The decisions of 30.06.2025 and 01.07.2025 are non-speaking and contrary to the materials on record, particularly the report of the Executive Engineer, which clearly held that M/s Shanti Construction lacked bid capacity.

(ii) The decision dated 01.07.2025 was premature, being passed without lapse of the objection period, and further suffers from procedural irregularity due to absence of a key committee member.

(iii) The decision dated 14.07.2025 is vitiated by the principle of coram non judice and is without jurisdiction, inasmuch



as there is no provision in law for re-evaluating the technical bid after the financial bid has been opened and the lowest bidder declared.

(iv) The Respondents acted illegally in ignoring the objections filed by the petitioner thrice, only to later accept the same objections after financial bids had been opened, thereby causing prejudice to the petitioner.

(v) Upon disqualification of the lowest bidder, the Respondents ought to have invited the petitioner, being the second lowest bidder, to express willingness to perform the work at the L-1 rate. Instead, they arbitrarily recommended cancellation and re-advertisement, which is against both settled practice and departmental precedents (Memo No. 448 dated 05.05.2025 and Memo No. 2206 dated 21.06.2025).

9. It is thus urged by the learned counsel for the petitioner that the Respondents, by cancelling the tender process, have sought to take advantage of their own wrong, to the detriment of the petitioner. The decision also entails avoidable delay, re-advertisement formalities, and cost escalation, all to the prejudice of public interest. It is thus submitted that the relief sought by the petitioner would not adversely affect the Respondents; rather, it would serve the larger public interest by avoiding unnecessary



procedural duplication and ensuring timely execution of the project. The learned counsel for the petitioner, therefore, prays for quashing of the impugned decisions and for issuance of appropriate directions to the Respondents to allot the work to the petitioner at the L-1 rate quoted by M/s Shanti Construction.

10. Learned counsel for the respondents has filed a detailed counter affidavit traversing the allegations made in the writ application. It has been submitted at the very outset that the impugned decisions of the Technical Bid Evaluation Committee are in conformity with the Standard Bidding Document, the governing provisions of the Notice Inviting Tender (NIT), and the settled norms for disposal of tenders.

11. It is the stand of the respondents that pursuant to the Notice Inviting Tender bearing No. RRRSMP-15/2024-25 dated 27.02.2025 in relation to the works under the Mukhya Mantri Gramin Sadak Unnayan Yojana (MMGSUY), a total of ten bidders including the petitioner had submitted their bids. The Technical Bid Evaluation Committee, in its meeting dated 06.05.2025, evaluated the technical bids and declared nine bidders, including the petitioner, to be technically responsive, which was communicated through Memo No. 1643 dated 08.05.2025 (Annexure: R/A).



12. Learned counsel for the respondents submits that objections were thereafter filed by certain bidders including the petitioner, and the same were duly considered by calling for reports from the jurisdictional Executive Engineer. On the basis of such reports, the Technical Bid Evaluation Committee re-convened its meetings on 10.06.2025 and 27.06.2025 and reiterated its findings, declaring the petitioner qualified, as reflected in Memo Nos. 2220 dated 12.06.2025 and 2469 dated 30.06.2025 respectively.

It has further been submitted that upon noticing a defect in the calculation of bid capacity of M/s Shanti Construction, the Committee again re-convened on 01.07.2025 and issued Memo No. 2477, reaffirming its earlier conclusions. The respondents assert that the Committee acted within its jurisdiction in correcting technical assessments and ensuring conformity with bid capacity requirements. The financial bid was thereafter opened on 05.07.2025, wherein M/s Shanti Construction was declared as the Lowest Bidder (L-1), while the petitioner was ranked second (L-2). However, upon further scrutiny of the bid capacity of M/s Shanti Construction, and after recalculation, it emerged that the said bidder lacked the requisite capacity as the works already allotted to it had substantially reduced its permissible capacity.



13. Learned counsel for the respondents submits that in such circumstances, the Technical Bid Evaluation Committee, by its meeting held on 12.07.2025, recommended cancellation of the tender process and re-advertisement of the work, which decision was communicated vide Memo No. 2611 dated 14.07.2025. The said recommendation, it is urged, was made strictly in light of Clause 33 of the NIT which reserves to the Engineer-in-Chief the right to reject any or all bids and to cancel the bidding process at any time prior to the award of contract without assigning any reason. It is the stand of the respondents that once the financial bids had been opened and the confidentiality of rates stood compromised, there was no alternative available except to cancel the tender and proceed for re-tendering. In such a situation, awarding the work to the petitioner as L-2 could not have been considered in the absence of any enabling provision in the Standard Bidding Document or the NIT.

14. Learned counsel for the respondents has thus emphasized that the grievance of the petitioner is misconceived inasmuch as the petitioner's objections were duly considered on multiple occasions, reports were called for and examined, and the process was reviewed no less than five times before arriving at the final decision. It is contended that the petitioner cannot seek



enforcement of a claim for award of contract as L-2 in the absence of a statutory or contractual provision to that effect. It is thus urged that the writ application is devoid of merit, as the decision impugned has been taken in public interest, to preserve the integrity of the tender process, and strictly in terms of the powers reserved under the NIT.

ISSUES IN QUESTION:

1. Whether the decision of the Technical Bid Evaluation Committee declaring the technical bid of Shanti Constructions as responsive, despite the contrary report of the jurisdictional Executive Engineer regarding insufficient bid capacity, suffers from arbitrariness or non-application of mind?
2. Whether the subsequent re-evaluation and reiteration of the decision of the Technical Bid Evaluation Committee on 01.07.2025, without any material change in circumstances, is legally sustainable?
3. Whether the final decision of the Technical Bid Evaluation Committee dated 14.07.2025, cancelling the entire tender process on the ground of insufficient bid capacity of the Lowest Bidder (L-1) and breach of confidentiality of the tender, was in accordance with Clause 33 of the Notice Inviting Tender (NIT)?



4. Whether the petitioner, being the second lowest bidder and having expressed willingness to execute the work at the rate quoted by the Lowest Bidder (L-1), has any enforceable legal right to claim award of the contract in his favour?

5. Whether this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, has the power to interfere in the decisions of the Technical Bid Evaluation Committee and the tendering authority, particularly in matters involving evaluation of bid capacity, responsiveness, and cancellation of tender?

FINDINGS:

Issue No.1: Whether the decision of the Technical Bid Evaluation Committee declaring the technical bid of Shanti Constructions as responsive, despite the contrary report of the jurisdictional Executive Engineer regarding insufficient bid capacity, suffers from arbitrariness or non-application of mind?

Having considered the materials on record, it is evident that the jurisdictional Executive Engineer, by his report dated 26.06.2025, clearly pointed out that the bid capacity of Shanti Construction was deficient in comparison to the requirement prescribed under the Notice Inviting Tender. Notwithstanding the said report, the Technical Bid Evaluation Committee, in its



meeting held on 30.06.2025, proceeded to declare the bid of Shanti Construction as responsive, without recording any cogent reason for differing with the findings of the Engineer. This Court finds it difficult to hold such action as a proper exercise of discretion. The absence of reasoning, particularly when an adverse report was available on record, does reflect a degree of arbitrariness and non-application of mind.

At the same time, the subsequent conduct of the respondents cannot be overlooked. The Committee, upon further scrutiny and calculation of bid capacity, ultimately found that Shanti Construction did not meet the requisite bid capacity and, accordingly, in its meeting dated 12.07.2025, recommended cancellation of the entire tender, culminating in Memo No. 2611 dated 14.07.2025. Such cancellation was not only premised on the insufficiency of bid capacity but also on the breach of confidentiality of the financial bids already opened. In these circumstances, the decision to re-tender the work stands as a corrective measure.

It is settled law that the State or its instrumentalities are entitled to cancel a tender process if the integrity of the process is compromised, provided the action is not mala fide. In ***Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216***, the



Hon'ble Supreme Court held that in the matter of awarding contracts, the authority has the right to decide whether to accept or cancel bids, and interference is permissible only where the action is patently arbitrary or intended to favour someone. Likewise, in *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818*, the Court reiterated that a tendering authority is the best judge of its requirements and judicial review must remain limited. In *Montecarlo Ltd. v. NTPC Ltd., (2016) 15 SCC 272*, it was held "that in the competitive commercial field in the matter of award of contract through tender, the conditions regarding bidder's expertise and technical capability and capacity are decided by the experts"

Applying the above principles in the facts of the present case, though the declaration of Shanti Construction's bid as responsive on 30.06.2025 was not justified, the respondents, by cancelling the tender and opting for re-tender, have rectified the process. This subsequent corrective action militates against any allegation of malafides or arbitrariness in the ultimate decision.

Accordingly, while the action of the Technical Bid Evaluation Committee dated 30.06.2025 in declaring Shanti Construction responsive cannot be sustained as a reasoned decision, the later step of cancelling the tender and proceeding for



re-tender reflects fairness, transparency, and due compliance with Clause 33 of the Notice Inviting Tender.

Issue No. 2. Whether the subsequent re-evaluation and reiteration of the decision of the Technical Bid Evaluation Committee on 01.07.2025, without any material change in circumstances, is legally sustainable?

The record reflects that after the Technical Bid Evaluation Committee declared Shanti Construction's technical bid as responsive vide Memo No. 2469 dated 30.06.2025, the Committee re-convened on 01.07.2025 and reiterated the earlier decision through Memo No. 2477. It is pertinent to note that this reiteration was undertaken on the same day the earlier decision was uploaded and without any fresh objection, supplementary report, or change in factual circumstances. The Executive Engineer's report, which had pointed out that the bid capacity of Shanti Construction was insufficient, was already available on record, yet no further reasoned discussion was recorded in the proceedings of 01.07.2025.

This Court observes that from a procedural standpoint, the reiteration of the earlier decision without any new material consideration cannot be said to constitute an exercise of administrative discretion in its ideal form. The principles of



reasoned decision-making require that where an authority departs from or differs with the recommendations of a subordinate officer, particularly in matters such as technical evaluation of bids, such divergence should be expressly recorded with reasons. In this case, the Technical Bid Evaluation Committee did not indicate why the Executive Engineer's report was not being accepted, nor did it elucidate why the earlier decision required reiteration.

Applying the principles of arbitrariness, mala fide conduct, or non-application of mind, the reiteration of order dated 01.07.2025, standing alone, may be viewed as procedurally flawed because it did not adequately address the concerns raised by the Executive Engineer and did not provide a reasoned basis for repeating the earlier decision. But this could have been a matter of judicial review when the tender process would have been concluded declaring L1 as the successful bidder despite these lapses. However, the Court also notes that this procedural lapse was immediately rectified by the respondents. Upon further scrutiny, including detailed calculation of Shanti Construction's bid capacity and consideration of the breach of confidentiality arising from the opening of financial bids, the Committee, in its meeting dated 12.07.2025, and subsequently via Memo No. 2611 dated 14.07.2025, recommended cancellation of the tender and re-



advertisement. This subsequent corrective action demonstrates that the respondents recognized the inadequacy of the earlier procedural step and took appropriate measures to ensure fairness, transparency, and integrity in the tendering process.

It is well established that the tendering authority has the discretion to cancel a tender if it is found that the integrity of the process is compromised, provided such discretion is exercised in good faith. The principle that the authority inviting tenders is the best judge of its requirements, and judicial interference is warranted only in cases of malafide action or perversity has been reiterated in a catena of judgments by the Hon'ble Apex Court.

In the present case, while the decision dated 01.07.2025 was not fully reasoned and arguably procedural impropriety existed, the respondents have rectified the lapse by cancelling the tender and initiating a fresh bidding process. This corrective step effectively neutralizes any adverse effect arising from the reiteration and upholds the overall fairness and legality of the tender process. The Court is therefore satisfied that no prejudice has been caused to the petitioner or to the other stakeholders, and the respondents' final action ensures compliance with the principles of natural justice, transparency, and reasoned decision-making.



In conclusion, the reiteration of the decision on 01.07.2025, standing alone, is not fully sustainable as a reasoned administrative action. However, in view of the corrective measures taken by the respondents through cancellation and re-tendering of the work, the lapse is rendered harmless, and the exercise of discretion by the Technical Bid Evaluation Committee is validated in the ultimate analysis.

Issue No. 3. Whether the final decision of the Technical Bid Evaluation Committee dated 14.07.2025, cancelling the entire tender process on the ground of insufficient bid capacity of the Lowest Bidder (L-1) and breach of confidentiality of the tender, was in accordance with Clause 33 of the Notice Inviting Tender (NIT)?

The record shows that after the financial bids were opened on 05.07.2025, Shanti Construction was declared the Lowest Bidder (L-1) with a quoted price 5.77% below the estimated rate, while the petitioner was the 2nd lowest bidder. Subsequent verification of the bid capacity of Shanti Construction revealed that its total bid capacity, when adjusted for already allotted works under Tender ID 139610 and Tender ID 139568, was insufficient to undertake the tendered work of Rs. 3714.50482 lakhs. In addition, since the financial bids had already been



opened, the confidentiality of the tender process stood compromised, as all bidders were now aware of the L-1 rates.

In view of these facts, the Technical Bid Evaluation Committee, in its meeting dated 12.07.2025, and by Memo No. 2611 dated 14.07.2025, recommended cancellation of the tender and re-advertisement of the work. The Committee acted under Clause 33 of the Notice Inviting Tender, which explicitly provides:

"The Engineer in Chief-cum-Additional Commissioner-cum-Special Secretary / Engineer in Chief reserves the right to accept or reject any bid and to cancel bidding process and reject all bids, at any time prior to the award of the contract without assigning any reason thereof."

Clause 33 clearly vests absolute discretion in the tendering authority to cancel the tender even prior to award, and such discretion can be exercised to maintain fairness, transparency, and integrity in the process. The Committee's decision to cancel the tender was based on two substantive grounds:

- (i) insufficiency of bid capacity of the L-1 bidder, and
- (ii) breach of confidentiality owing to prior opening of financial bids.



Both grounds fall well within the ambit of Clause 33 and are rational, objectively verifiable, and intended to safeguard the tender process.

The law is well-settled that cancellation of a tender in such circumstances is permissible and falls within the domain of administrative discretion. In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd (Supra)*, the Hon'ble Supreme Court held that the tendering authority is the best judge of its requirements and evaluation, and courts will interfere only in cases of mala fide action, perversity, or manifest arbitrariness. Similarly, in *Michigan Rubber (India) Ltd. v. State of Karnataka (Supra)*, it was held that the power to cancel a tender is an essential tool to ensure probity in public procurement, and mere dissatisfaction of bidders does not justify interference.

It is also noteworthy that the respondents conducted multiple technical reviews, including calling for detailed reports from the Executive Engineer, to ascertain the correctness of bid capacities and technical eligibility. The decision to cancel the tender, therefore, was not an arbitrary exercise but a considered action following repeated technical assessments and a transparent verification process.



In conclusion, the final decision dated 14.07.2025 cancelling the tender process on grounds of insufficient bid capacity of the L-1 bidder and breach of confidentiality is legally sustainable, exercised in accordance with Clause 33 of the NIT, and reflects a lawful and prudent exercise of administrative discretion to maintain fairness, transparency, and integrity in the tender process.

Issue No. 4. Whether the petitioner, being the second lowest bidder and having expressed willingness to execute the work at the rate quoted by the Lowest Bidder (L-1), has any enforceable legal right to claim award of the contract in his favour?

The petitioner contends that, as the second lowest bidder, he should have been awarded the work at the rate quoted by the L-1 bidder, relying on the argument of logical sequencing and fairness. It is, however, pertinent to note that the petitioner has not specifically prayed for a declaration that he be treated as L-1 or for an order awarding the contract to him in the present writ application. The relief sought primarily challenges the decision of the Technical Bid Evaluation Committee to cancel the tender and does not include a direct claim for assignment of the contract.



From a legal standpoint, no bidder, including the second lowest bidder, acquires an enforceable right to be awarded a contract merely because the lowest bidder is subsequently found to be technically non-responsive. The law on public procurement is clear that the tendering authority retains discretion to accept or reject any bid, and the right to cancel a tender, unless restricted by statute or contract, cannot be circumvented by invoking the position of the next lowest bidder. The relevant provisions in the Notice Inviting Tender (Clause 33) expressly empower the authority to cancel the tender without assigning any reason. There is no provision mandating that in case of disqualification of the L-1 bidder, the second lowest bidder must automatically be offered the contract. Judicial precedents reinforce this principle. In the case of ***W.B. State Electricity Board v. Patel Engineering Co. Ltd. And Others (2001) 2 SCC 451***, it was categorically held that:

“33. We may, however, clarify that the appellant is not obliged to award contract to any of the bidders at their quoted price bid.....”

In the present case, the petitioner’s willingness to execute the work at the L-1 rate, expressed in his communication



dated 16.07.2025, cannot override the explicit discretion of the Technical Bid Evaluation Committee under Clause 33 of the NIT.

Also in a recent judgment by the Hon'ble Supreme Court in the case of ***Prakash Asphaltings And Toll Highways (India) Ltd. vs Mandeepa Enterprises & Ors Civil Appeal No. 11418 of 2025***, the Hon'ble Apex Court has explicitly held:

*“40. The above proposition has been followed by another three-Judge Bench of this Court in the recent case of **Subodh Kumar Singh Rathore Vs. Chief Executive Officer** , when it examined the concept of public interest in administrative decisions relating to award of contracts. This Court held that even assuming for a moment that there was technical fault in the tender, which if rectified had the possibility of generating more revenue, the same by no stretch could be said to be a cogent reason for concealing an already existing tender. This Court highlighted the importance of maintaining the sanctity of tenders in governmental procurement processes.*

Public tenders are the cornerstone of governmental procurement processes, being competitive and ensuring fairness and transparency in the allocation of public resources. Public tenders are designed to provide a level playing field for all potential



bidders, fostering an environment where competition thrives. The integrity of this process ensures that public projects and resources are delivered efficiently and effectively, benefiting the society at large. Therefore, sanctity of public tenders and contract is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. Infact this Court put in a word of caution that considerations of public interest should not be narrowly confined to financial aspect only.

41. Applying the above legal principles to the facts of the present case, we are of the view that the Division Bench of the High Court clearly fell in error in directing respondent No. 2 to 4 to allow rectification of the financial bid of respondent No. 1 by treating the amount offered by it as the per day figure and on that basis to compute the total amount for the entire contractual period of 1095 days. Such an exercise is clearly impermissible having regard to the terms and conditions of the contract which are required to be understood on the anvil of this Court's judgments.

The authority granted to the tendering authority by clause 5B (v) of the Instruction to Bidders cannot be stretched to construe the price bid of respondent No. 1 as



the per day offer, contrary to the bid declaration of respondent No. 1 itself, and thereafter, on that basis to work out a new bid amount for the entire contractual period making it the highest. In the present case, respondent No. 1 was not at all vigilant; rather, it displayed a very casual approach. In such circumstances, clause 5B(v) cannot be invoked to resurrect the bid of respondent No. 1 to make it H1. Clause 5B(v) of the Instruction to Bidders has to read conjointly with clause 4(g) of the notice inviting electronic bid.”

[Emphasis Supplied]

Relying on the aforesaid principles, it would be pertinent to say that any alteration in the Financial Bid already submitted would not be permissible in the eyes of law. Therefore, the willingness of the petitioner to work at the rate quoted by L1, expressed in his communication dated 16.07.2025 is impermissible in law. Merely a benefit to the public exchequer cannot be a reason to ignore the established law and rules subject to which bids are invited.

The respondents have acted within their authority in cancelling the tender after assessing the bid capacities and the breach of confidentiality. The petitioner's argument based on



“logical reasoning” does not translate into a legally enforceable claim, especially since the writ does not seek a relief for direct award of the contract in his favour. Courts have consistently held that relief in writ jurisdiction must be strictly confined to the reliefs claimed, and no additional entitlement can be read into the application absent specific prayer.

Therefore, the petitioner has no enforceable legal right to claim award of the contract merely on the basis of being the second lowest bidder. The discretion to re-tender, or to cancel and re-advertise, remains entirely with the respondents and is exercised in accordance with law and the NIT provisions. The petitioner’s arguments, while logically appealing, do not give rise to any legal entitlement enforceable in this Court.

Issue No. 5. Whether this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, has the power to interfere in the decisions of the Technical Bid Evaluation Committee and the tendering authority, particularly in matters involving evaluation of bid capacity, responsiveness, and cancellation of tender?

It is well-settled that the writ jurisdiction under Article 226 of the Constitution of India is a powerful constitutional remedy designed to protect fundamental rights and ensure legality,



fairness, and non-arbitrariness in administrative action. However, the exercise of such jurisdiction in matters relating to public procurement, tender evaluation, and contractual awards is circumscribed by well-established principles of administrative law and judicial restraint.

It is trite law that award of contracts, acceptance or rejection of tenders, and cancellation or re-tendering of public works are essentially commercial and administrative functions of the State and its instrumentalities. The scope of judicial review in such matters is narrow and circumscribed.

In ***Michigan Rubber (India) Ltd. v. State of Karnataka*** (2012) 8 SCC 216, the Hon'ble Supreme Court held that the Government must have freedom of contract and is entitled to prescribe conditions ensuring competition and safeguarding public interest. The Apex court observed that:

17) In [Jagdish Mandal vs. State of Orissa and Others](#), (2007) 14 SCC 517, the following conclusion is relevant:

“22. 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 malafide 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 blacklisting 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.”

In the case of ***Tata Cellular vs. Union of India (1994) 6 SCC 651***, the Supreme Court has held that:

“94. (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.

(5) The Government must have freedom of contract and that permits a fair play in the joints as a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. Hence, the Court has laid down that 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.”



The respondents in the present case are statutory authorities entrusted with the evaluation of technical bids, financial bids, and overall tender administration under the applicable rules and the Notice Inviting Tender (NIT). The law recognizes that procurement processes are complex and often involve technical assessments that are beyond the specialized knowledge of the Court. Evaluation of bid capacity, calculation of allotments, verification of eligibility, and determination of whether confidentiality is compromised are inherently administrative and technical functions. Courts are expected to ensure that the authority has acted in good faith, followed due process, and applied its mind, rather than substituting their own assessment of technical matters.

In the present case, the respondents undertook multiple rounds of technical scrutiny, reviewed reports of the Executive Engineer, considered objections filed by the petitioner and other bidders, and evaluated financial bids before ultimately cancelling the tender pursuant to Clause 33 of the NIT. The actions of the respondents indicate repeated application of mind and adherence to principles of transparency, fairness, and procedural propriety. There is no evidence of mala fide conduct, arbitrariness, or non-application of mind that would justify judicial intervention.



Applying the above principles, the Court recognizes that while it has the constitutional power to review administrative decisions, such power is exercised sparingly in the context of tender evaluation, and only when there is demonstrable arbitrariness, mala fides, or violation of statutory norms. In the instant matter, the respondents acted in a reasoned, transparent, and fair manner, and the procedural steps taken demonstrate application of mind and administrative prudence. Accordingly, judicial interference under Article 226 is neither warranted nor justified merely because the petitioner disagrees with the evaluation or believes he should have been awarded the contract.

Therefore, this Court is satisfied that there is no justiciable ground to interfere in the decision-making process of the respondents in this matter.

15. In view of the foregoing discussion on the major issues in question, it is apparent that the respondents have acted within the bounds of their statutory authority in re-evaluating the financial bids, and ultimately exercised their discretion to cancel and re-advertise the tender in accordance with Clause 33 of the Notice Inviting Tender. While certain procedural aspects, such as repeated re-evaluation of the technical bid, may appear irregular, these were corrective measures aimed at ensuring fairness and



transparency in the tender process. The petitioner, being the second lowest bidder, does not possess any enforceable legal right to claim award of the contract merely on the basis of his willingness to match the L-1 rate. Moreover, in the absence of mala fide action or manifest arbitrariness, this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, finds no justifiable ground to interfere with the considered decisions of the Technical Bid Evaluation Committee and the tendering authority.

16. Accordingly, the writ petition is devoid of merit and is accordingly dismissed, while leaving the respondents free to proceed with the re-tender process in accordance with law. All pending I.As if any will be deemed to have been disposed of.

17. There shall be no order as to costs.

(P. B. Bajanthri, CJ)

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	AFR
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