

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH  
AT JAMMU**

Case: WP(C) No. 2808/2024

Reserved on: 22.05.2025.

Pronounced on : 02.06.2025

Healthium Medtech Ltd.

....Petitioner/Appellant(s)

Through :- Mr. Rahul Pant Sr. Advocate with  
Mr. Varut Kumar Gupta, Advocate  
Ms Savita Sarna, Advocate  
Ms Anisha Mathur Advocate  
Mr. Umar Javed, Advocate  
Mr. Rajeev Chargoitra Advocate  
Mr. Mubasher Manhas Advocate.  
Mr. Druv Pant.

V/s

UT of Jammu and Kashmir and others

Through :- Mr. Raman Sharma AAG  
Mr. Pranav Kohli Sr. Advocate with  
Mr. Ashwin Sapra Advocate  
Ms Avantika Sharma Advocate  
Mr. Amjid Maqbool Advocate  
Mr. C.M.Koul Sr. Advocate with  
Mr. Farhan Mirza Advocate.  
Mr. Pratyaksh Deoria Advocate  
Mr. A.R.Bhat Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

**JUDGMENT**

1           The purpose of the tendering process is to promote competition among bidders, which can lead to lower prices while ensuring high quality of goods. It is intended to ensure transparency, accountability, and efficiency in procurement decisions. However, when a single company completely controls the market for a particular product or service, without letting any company entering into the arena of competition for decades and the Government acts as a shield for such practices, this amounts to favouritism, monopoly and destruction of competition, at the cost of public exchequer.

2 In this petition, petitioner, herein, is seeking the following reliefs:

(i) A Writ of Certiorari quashing the Tender Summary Reports issued by respondent No.2, to the extent that it has rejected the technical bid of the petitioner in response to the Notice Inviting Bid No. JKMSCL/SUTURE MATERIAL/604, dated 16.10.2023;

(ii) A Writ of Certiorari quashing the communication-cum-Minutes of Meeting dated 02.09.2024 issued by respondent Nos. 2 to 4, to the extent that respondent No.2 has approval the opening of financial bids of only respondents No. 5 and 6;

(iii) A Writ, Order or direction in the nature Mandamus, commanding and directing respondents No. 2 to 4 to stay the effect of the conclusion of financial bids in the aforesaid tender and/ or the awarding of the rate contract or supply orders to respondents Nos. 5 and 6;

(iv) A Writ, Order or direction in the nature of Mandamus, commanding and directing respondents No. 2 to 4 to treat the technical bid submitted by the petitioner as responsive in response to the Notice Inviting Bid No. JKMSCL/SUTURE MATERIAL/604, dated 16.10.2023, and to further direct them to open the financial bids submitted by the petitioner.

(v) Call for the records of the tender for the perusal and adjudication of present petition, as the approval granted by respondents No. 5 and 6 for the opening of financial bids was illegal, arbitrary, and unconstitutional; and

(vi) Pass such other or further orders as this Court may deem just and proper in the facts and circumstances of the case.

**Factual matrix:**

3 It is stated that the petitioner is a leading independent medical device company in India, particularly in the field of surgical consumables, and has gained significant credentials to its name :

- (i) No.1 surgical needles manufacturer (non-captive) worldwide by volume;
- (ii) No.4 suture manufacturer globally;
- (iii) Only Medtech company in India with 4 US-FDA registered facilities;

- (iv) First Indian class III medical device company to receive CE under MDR accreditation;
- (v) 1 in 5 surgeries globally uses a Heathium product;
- (vi) Largest exporter of surgical consumables from India, selling in 80+ countries (including regulated/developed nations);
- (vii) 90% Districts in India having secondary care facilities are covered by our 350+ trained direct sales force (largest among Independent Medtech players in India);
- (viii) 7 manufacturing facilities in India covering 40500 m2, having global accreditations and registrations, including with US FDA, CE, TGA, CDSCO and ISO.

4           The petitioner has participated in numerous tender process and has successfully executed various rate contracts across several States, including Andhra Pradesh, Telangana, Kerala, Punjab, Haryana, Gujarat, Rajasthan, Madhya Pradesh, Orissa, Tamil Nadu, etcetera. The petitioner operates a state-of-the-art manufacturing facilities in Karnataka, equipped with cutting-edge technology, capable of producing and supplying high-quality suture materials. It has been awarded various rate contracts and supply orders by the reputed hospitals such as PGIMER - Chandigarh, AIIMS-Delhi, AIIMS-Bhubaneswar, AIIMS-Patna, AIIMS-Raibareli, SGPGI-Lucknow, KGMU-Lucknow, RML-Lucknow, RML-Delhi, SCT-Thiruvananthapuram, and the Narayana Hrudayalaya Group of Hospitals, among others. He has successfully supplied suture materials, including those forming part of the subject matter of the present tender, to various State governments and reputed healthcare institutions.

5           The Jammu and Kashmir Medical Supplies Corporation Limited (hereinafter referred to as 'JKMSCL'), Respondent No. 2, is the nodal agency responsible for the procurement, supply, and distribution of drugs, medicines, medical equipment, surgical and suture items to all Government health institutions. Respondent No.2 issued a notice inviting tender having reference no. JKMSCL/ SUTURE MATERIAL/604, dated 16.10.2023, for procurement of suture materials. The tender invited e-bids from original manufacturers, direct

importers, and SSI units of Jammu and Kashmir for supply of various categories of suture materials. The tender was categorized into Group- A, Group- B, Group- C and Group- D. Group-A suture were subdivided into A-I, A-II, A-III, A-IV, A-V, A-VI, A-VII, A-VIII, A-IX, A-X. Group – B comprised of surgical stapling devices. Group-C comprised of haemostatic materials and Group-D comprised of meshes. The Tender prescribed specific eligibility criteria and conditions for participation, which, inter alia, included:

- (i) A valid drug sales licence along with requisite supporting documents;
- (ii) A valid drug manufacturing/import licence;
- (iii) An average annual turnover of Rs.20,00,00,000/- (Twenty Crores) for the last three financial years.

6 The date and time for online submission and opening of technical bids were extended multiple times by respondents No. 2 to 4, under the pretext of encouraging healthy participation among bidders. These extensions were issued vide circulars 18.11.2023, 05.12.2023, 21.12.2023, 03.01.2024, 16.01.2024, 07.02.2024, 27.02.2024, 07.03.2024, and 19.03.2024. Ultimately, the last date for submission of technical bids was fixed as 26.03.2024. Accordingly, respondents No. 5 and 6 submitted their technical bids for the tender on 23.03.2024 and 24.03.2024, respectively, whereas the petitioner had submitted its technical bid on 26-02-2024. It is stated that almost all the participating bidders had submitted their technical bids much prior to such extensions. The extensions appeared to be granted with the sole intent to include and accommodate much favoured bidders by respondent Nos. 2 to 4.

7 On 02.09.2024, respondents No. 2 to 4, held a meeting with the Technical Evaluation Committee (hereinafter referred to as the 'Committee') for considering and evaluating the technical bids of all the participating bidders, including that of the petitioner. In the Minutes of Meeting, the technical experts of

Jammu and Kashmir unanimously approved the names of two manufacturers, namely Johnson & Johnson Pvt Ltd and M/s Medtronic Inc, USA for supply of different categories of suture materials. However, for the categories under consideration, the experts recommended only M/S Johnson and Johnson, being it as a 'time-tested' manufacturer. It was further noted in the Minutes of Meeting dated 02.09.2024 that the recommendations were made on the basis of expert's past experience in performing various surgeries and observing patient outcomes.

8           It is stated that the arbitrary and biased conduct of respondents No. 2 to 4 is evident from the fact that M/S Johnson and Johnson Pvt. Ltd. was approved for opening of financial bid for supply of Group A-II (surgical gut/synthetic polyglytone sutures, when it did not even submit its technical bid for the said category. Similarly, S.R. Technomed was approved for opening of financial bid for supply of Group C, Haemostatic Materials, when it also did not submit the bid for the said category. However, the petitioner along with few bidders had submitted their bids for both of these categories. It is pointed out that, for the category related to Group-A-III pertaining to Polyglactin/Glycolide & Lactide braided absorbable suture (dyed), only Johnson and Johnson (respondent No.5) was approved among ten bidders, without assigning any reason. The petitioner, despite having significant experience and proficient expertise, was not approved for financial bid even after having successfully been declared technically responsive and qualified by respondents No. 2 to 4. The bidding process laid down in the tender states that respondent Nos. 2 to 4 shall have the right to take consent from L2, L3, L4 bidders etc to match rates of L1 bidder, but selection of only two entities, namely Johnson & Johnson and SR Technomed and approval of only single bid of respondent No.5 in case of Group A –III, for opening of financial bids, violates the condition laid down in the tender notice.

9           The petitioner pursuant to the receipt of Minutes of Meeting vide letter dated 02.09.2024, submitted its objections to the selection made by the technical committee of respondents No. 2 to 4, stating therein that the bid of the petitioner was rejected without assigning any defensible reason for rejection by the technical committee. The bid was approved for two multinationals, and no Indian company has been considered. The previous bids were also allotted to the same multinationals, without appreciating the fact that the petitioner company has been approved in all other institution/states across the country. The Government has procured goods at higher rate from the Multinationals. Petitioner also requested to declare the evaluation criteria and for revaluation of the samples of the petitioner.

10           It is stated that no heed has been paid to the representation filed by the petitioner by the respondents no. 2 to 4. It is further stated that in the year 2019, a tender was floated by respondent No. 2 for procurement of suture material under NIT no. JKMSCL/SUTURE MATERIAL/358 dated 04-09-2019, wherein the technical bid of the petitioner was selected. However, the respondents, without any justified reason, cancelled the said tender. In the year 2021, a tender was floated by respondent No.2 for the procurement of suture material (2021-2023) vide bid no. JKMSCL/SUTURE MATERIAL/450, dated 03.03.2021, wherein many bidders had participated, including the petitioner. A similar process through a Technical Evaluation Committee was followed for selection of technical bids, wherein the Technical Committee unanimously only approved Johnson & Johnson, respondent No.5 herein and S.R Technomed, respondent No.6 herein as the only bidders for opening of the financial bids.

11           Petitioner has challenged the impugned actions on the ground of lack of transparency in the tendering and bidding process. It is stated that the action of respondents No. 2 to 4 in approving the bids of respondent no. 5 and 6 is arbitrary,

illegal, and is in clear violation of Articles 14 and 19 of the Constitution of India. These companies have been selected for opening of financial bids, excluding the other eligible Indian entities and manufacturers who are similarly and better placed and offer suture materials at competitive and reasonable rates. The repeated and unjustified extensions of date and time for submission and opening of technical bids, without providing any cogent reason reflects lack of transparency in the procurement process and raises legitimate apprehensions of mala fide intent and collusion between respondent no.2 and the approved bidders. The selection of respondent No.5 for the supply of Group A-II and Group-C, respectively, lacks accountability. It not only violates the principles of fair competition, but also undermines the integrity of the procurement process. It is stated that the Government agencies, being public authorities, are expected to uphold fairness, equality and public interest. Even while dealing with the contractual matters, the right to equality under Article 14 of the Constitution abhors arbitrariness. Public authorities must ensure that no bias, favouritism or arbitrariness is shown during the bidding process and that the entire bidding process is carried out in a transparent and accountable manner. Every action of the executive must be informed with reason and should be free from arbitrariness.

**12** *Per contra*, in their reply, respondents No. 2 to 4 have stated that the technical bids were opened on 28.03.2024 at 11.00 AM. After opening of e-bids, a compilation, preliminary scrutiny, and evaluation of the technical bid documents was carried out by the Technical Evaluation Sub-Committee constituted for the purpose. As per the report of the Committee, few bids were not recommended for want of documents, whereas rest of the bids were declared qualified for further course of action by the Sub-Committee which included 10 companies. Thereafter the matter was placed before Technical Evaluation Committee in its meeting held on 02.09.2024, where experts (specialist surgeons from various specialties and

departments), from both the regions interacted with each other. Due deliberations were held about all the issues with regard to utilization of suture materials in their respective specialties. The experts from both the regions were unanimous in selecting only two manufacturers for supply of different categories of sutures, i.e., M/s Johnson and Johnson Private Ltd, Mumbai and M/s Medtronics INC, USA except Group-A-III for which committee recommended only Johnson and Johnson, being time tested. It is further stated that the technical experts from both the regions, Jammu as well as Kashmir, in the best interest of patient care, and keeping in view, pre-operative/post-operative complications, optimum outcome after various life saving surgical procedures, durability, and surgical safety based on the long experience of the experts in their respective specialties unanimously declared and approved M/S Johnson and Johnson Private Limited and M/s Technomed Jammu for opening of financial bids. The details of the recommendations for the supply of different categories of sutures by the aforementioned companies are as follows:

| S.NO. | Group   |                                                                     | Recommendations of the Technical Experts for opening of financial bids. |
|-------|---------|---------------------------------------------------------------------|-------------------------------------------------------------------------|
| 1     | A-I     | Braided silk sutures                                                | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 2     | A-II    | Surgical gut/synthetic polyglytone sutures                          | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 3     | A-III   | Polyglactin/Glycolide and lactide braided absorbable sutures (dyed) | M/S Johnson and Johnson                                                 |
| 4     | A-IV    | Nylon Polyamide Monofilament non absorbable sutures                 | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 5     | A-V     | Polyglecaprone/Glycomer Monofilament (undyed) sutures               | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 6     | A-VI    | Polydioxanone/Polyglyconate Monofilament sutures                    | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 7     | A-VII   | Polypropylene non absorbable Monofilament (dyed) sutures            | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 8     | A-VIII  | Polyester Braided Silicone Coated non absorbable sutures            | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 9     | A-IX    | Knotless sutures                                                    | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 10    | A-X     | Miscellaneous                                                       | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 11    | Group B | Surgical stapling devices                                           | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |
| 12    | Group C | Haemostatic materials                                               | M/S Johnson and Johnson and M/S SR Technomed Jammu                      |

|    |         |        |                                                    |
|----|---------|--------|----------------------------------------------------|
| 13 | Group D | Meshes | M/S Johnson and Johnson and M/S SR Technomed Jammu |
|----|---------|--------|----------------------------------------------------|

13                    It is stated that, in order to provide fair assessment in taking such decisions in future and to ascertain the outcome of product being manufactured by other manufacturers, it was recommended by the Surgeons from various specialties that the bidders may be asked to provide sufficient samples for the categories in which they have proficiency. Once the samples are provided, the same shall have to be distributed. It was also unanimously recommended by the experts that the manufacturers have to undertake that the safety of the patient and any complication arising out of usage of their suture material shall be the sole responsibility of the bidders. On 04-12-2024, letters were issued to all the bidders to provide the samples with full details.

14                    Accordingly, the Minutes of the Meeting held on 02.09.2024, were uploaded on the procurement portal of NIC for the information of all participants. The financial bids of two recommended bidders were opened on 08.09.2024 at 4:00 pm. The representations made by the bidders were considered and disposed of in a meeting held on 13.09.2024 with technical experts from the end-user departments. It was reiterated during the meeting that they stand by their decision taken on 02.09.2024. Experts opined that due to critical nature of requirements and usage of bid items in the patient care, it is essential to have field data for longer period of time. Moreover, the experts also stressed that the quality and other standards of these products cannot be assessed merely by appearance or feel, which poses a risk to precious lives. The decision of the Technical Evaluation Committee, along with the recommendations of the technical experts after reviewing the representation, was placed before the Purchase Committee of

JKMSCL for approval and based on the authorization of the Purchase Committee, the rate contract for the suture materials was issued.

15 It is further stated that respondents No. 2 to 4 have acted strictly in accordance with the recommendations of the technical experts from various specialties during the meeting held on 02.09.2024. Based on the extensive experience of the experts in their respective fields, the Committee unanimously recommended both of the mentioned bids for opening of financial bids for each tender category in which they participated. This was not limited to any specific category, including Group A-II and Group C. The financial bids were opened only for those bidders whose technical bids were accepted by the Technical Evaluation/Advisory Committee and recommended by the end-user department's technical experts. The rates were discovered on the basis of competitive bidding among qualified bidders, except in the case of Group A-II, Group A-III and Group-C, which were finalized only after ensuring the reasonableness of the rates offered by the bidders, in comparison with the other premier institutes and the previous rates approved by JKMSCL.

16 In the reply filed by Respondent no.5, it is stated that petitioner was declared unsuccessful on the basis of the recommendations of technical experts from the regions covered under procurement. These technical experts, doctors and surgeons from both Jammu and Kashmir, who were also the end users recommended the technical bid of respondent no.5. Accordingly, the financial bid of respondent No.5 was opened, in the best interest of patient care, minimizing pre-operative and post-operative complications, ensuring optimum outcomes after various life-saving surgical procedures, as well as ensuring product durability and surgical safety. It is stated that respondent no. 5, M/S Johnson and Johnson Pvt. Ltd, is a Fortune 500 company with a history of over 130 years in the global

healthcare sector. The company has been operating in India for more than 70 years and provides high quality healthcare to over 10 million patients annually. The said company supplies surgical sutures and related products to multiple Government healthcare institutions. The tender process was conducted as an online and open bid procedure. It involved an initial review of bids for documentary compliance, followed by a technical evaluation, following which the financial bids of those who qualified the technical stage were opened. Respondent No. 5 submitted its bid in the same manner as the petitioner. The documents and the technical bids of both respondent no. 5 and the petitioner, along with those of other bidders, were evaluated in the same manner by the technical experts i.e the end users.. The technical experts gave recommendations based on their experience and provided well-reasoned justification for approving the technical bid of respondent No.5 and opening its financial bid.

17 It is also mentioned that a similar technical evaluation was conducted by JKMSCL in the year 2021 for a comparable procurement under tender reference No. JKMSCL/suture materials/450, dated 03.03.2021. In that tender, the experts indicated their preference and accordingly, made recommendations in favour of the products of respondents No. 5 and 6. During the technical deliberations, there were differences of opinion among the experts, which were thoroughly discussed before final recommendations were made. It is stated that the doctors have expressed their comfort and familiarity with the products of respondent No.5., as such, it would be logically against the patients' interests to compel them to use alternative products, until they attain a similar level of comfort and familiarity with the same. It is also stated that merely quoting a lower price for a particular product does not necessarily justify its procurement if it does not meet the required technical specifications. The technical experts have based their recommendations on their day-to-day experience with the products and

confirmed the efficacy and reliability of those products. The technical committee, comprising of experienced and reputed doctors and surgeons, have upheld the aforesaid findings. Therefore, safety, efficacy, and quality were the primary considerations, while price was a secondary factor.

18           Respondent no.5 has stated that that company was previously selling products identified in Group-A-II, but no longer does so, and, therefore, did not submit a bid for those products in the tender in question. The tender award does not mention those products. The entire tender process was conducted online and transparently and the bid of the petitioner was not approved solely based on the technical experts' opinion.

19           In the reply filed by Respondent no. 6, it is stated that the petitioner has raised disputed questions of fact in the present petition, which are not amenable to determination under writ jurisdiction, as such, the instant petition is not maintainable. It is further submitted that the suture and allied material manufactured by Medtronic Inc., USA, of which respondent No.6 is the authorized supplier/distributor, has proven to be highly effective, time-tested, durable and of superior quality. The said material has consistently provided comfort to doctors and operating surgeons, with no reported post-operative complications over the past decade in the healthcare units of Jammu and Kashmir. Upon a thorough evaluation of all the relevant factors, and particularly considering the sustained trust and confidence developed in the suture material manufactured by Medtronic Inc. USA, the contract for the said material, previously advertised, was awarded to respondent No.6. The entire process carried out by respondent Nos.2 to 4 in the evaluation and awarding of the tender was completely transparent.. All relevant information, including facts, circumstances, and tender details, were duly uploaded on the official website of JKMSCL for public access and to ensure transparency among all the bidders. It is further stated

that respondent no.5 participated in Group-C and has got the approval solely in the said category, whereas respondent no.6 has got the approval in the category of Group-A II. Based on the technical experts' assessment, it was decided to open the financial bids of only two bidders, namely, M/S Johnson and Johnson Pvt. Ltd. and M/S S.R. Technomed (Medtronic Inc. USA) in light of their prior experience and performance outcomes, in the best interest of patient care. Respondents no. 2 to 4 have conducted the procurement process in a fair, transparent and unbiased manner. It is submitted that there has been no violation of Articles 14 or 19(1)(g) of the Constitution of India. Additionally, critical dates for submission of bids were extended to ensure that all the eligible bidders had the opportunity to participate, thereby fostering healthy competition. The bids of those declared L1(lowest bidders) were forwarded to the State Level Purchase Committee, comprising Heads of Departments, administration, finance, and the Drug and Food Control Organization, for their formal approval and issuance of the Letter of Intent. The Letter of Intent and the rate contract have already been issued in favour of respondent Nos.5 & 6.

**Submissions made by learned counsel for the petitioner.**

20 Mr Rahul Pant, learned Senior Counsel, has argued that the tender dated 16.10.2023 was an open bid, which had two bid format, technical and commercial. Bidders had to upload a declaration form-cum- checklist consisting of 31 documents, which included at item 21, the requirement that *"All the quoted items should have USFDA (United States Food and Drug Administration) or CE (Conformité Européenne) certification."* This standard was prescribed for all participating bidders. The petitioner has strong credentials, being the world's number one manufacturer of surgical needles by volume. The petitioner's company ranks fourth globally as a manufacturer of sutures. It is the only medical

device company in India with four USFDA-registered facilities. It is also the first Indian Class III medical device company to receive CE (European) certification under MDR accreditation. One in every five surgeries performed globally uses a Healthium product. It is the largest exporter of surgical consumables from India, operating in 80 countries. Its extensive distribution network covers 90% of India's Districts with secondary care facilities, supported by a direct sales force of over 350 trained professionals. The company has seven manufacturing facilities in India, covering 40,500 square meters, and holds global accreditations and registrations including USFDA, CE, TGA, CDSCO, and ISO. The petitioner thus has a prominent market presence with exceptional and proven credentials and expertise in the field.

21 Mr. Pant learned Senior Counsel, has further stated that, in terms of Clause 13 of the e-bid document, the official respondents were under an obligation to inform bidders about the L1 status, and the JKMSCL was required to seek consent from L2, L3, L4, etc., bidders to match the L1 rates in order to ensure continuity in supply. However, in the instant case, Clause 13 has not been followed. He relied upon Clause 15 of the e-bid document which provides that "Bidders who qualify in the technical evaluation have to deposit the samples of their respective quoted items, if, when, and where asked for.". In this case, only respondents No. 5 and 6 qualified the technical evaluation, based on the expert opinion wherein it was stated that the suture materials of these two companies were in the best interest of patient care, considering factors such as preoperative/post-operative complications, optimal outcomes in life saving surgical procedures, durability, and surgical safety. These conclusions were based on the long standing experience of experts in their respective specialties. Consequently, it was unanimously recommended and approved that the financial

bids of respondents No. 5 and 6 be opened, as such, there was neither any occasion, nor necessity to call for or submit samples, the suture materials of respondents No. 5 and 6 had already been accepted and validated by the experts without assessing the materials submitted by the other bidders.

22 Mr. Pant has also stated that the official respondents have failed to comply with Clause 16 of the e-bid document, which requires that the bidders shall submit samples of all quoted items within ten days, as and when requested by the Committee, in accordance with the specifications or descriptions mentioned in the bid document. Moreover, the said Clause provides that JKMSCL may grant an extension of time for submission of samples if requested by the bidders, not later than two days before the date of opening of financial bids. Unfortunately, the official respondents did not call for any samples and without following the procedure laid down in the bid document approved the technical evaluation on the basis of expert opinion. According to the learned counsel, this constitutes a clear violation of the bid conditions. Mr. Pant has relied upon Clause 16 of the bid document, which reads as under:

**“16. SUBMISSION AND RETURN OF SAMPLES DEMONSTRATIONS:**

- (i) Bidder should sent Samples of all the quoted items free of cost, within ten days, IF, WHEN AND WHERE desired by the committee as per the specifications or descriptions etc. of the items are mentioned in the bid document. No sample will be accepted after due date. In the event of non-submission of samples within the prescribed period, the tender shall not be considered and Earnest Money shall be forfeited. However, JKMSCL may grant extension of time for submission of samples on the request of Bidder but not later than the two days before the date of opening of Financial bids.
- (ii) Samples of the unsuccessful Bidder may be collected back from the GM (ADM), JKMSCL, within the period intimated to him. The corporation will not be responsible for any damage, wear and tear or loss during the course of testing examination etc. The corporation for a period of one month would retain sample of approved items after the expiry of contract. The corporation shall

not be responsible for any damage, wear & tear or loss in stipulated period. The corporation will not make any arrangement for return of samples even if the Bidder agrees to pay the cost of transportation. The uncollected samples shall stand forfeited to the corporation after the period allowed for collection and no claim for cost etc. shall be entertained.

(iii) The tenderer may be asked to demonstrate the technique, procedure and utility of item(s) as per specification of tender document before the technical committee of corporation at store of corporation.

(iv) Samples should be strictly according to the items quoted in the tender form, failing which these will not be considered. Such sample must be delivered free of charge to the GM(ADM), JKMSCL, Jammu. Sample must be submitted duly sealed and marked suitably either by writing on the sample or on a slip or durable paper securely fastened to the sample with the particulars as mentioned below:-

(A) Name and full address of the firm.

(B) Catalogue No. and name of item.

(C) Name of section.

(D) Name of manufacturer

(E) Brand

(v) No change in marking on samples will be allowed after the submission of the sample. Samples should be submitted along with separate challan in triplicate. Samples without challan will not be accepted.

(vi) Each & every item to be supplied shall have to be accompanied with batch wise quality testing and Analytical report from NABL accredited Labs notified under Medical Devices Rules 2017.

Note: The Copy of NABL accreditation of the laboratory and notification under Medical Devices Rules 2017 from where the samples are tested for quality shall be submitted along with documents. Validity of accredited NABL laboratories shall be upto the complete period of contract.

(vii) Original Brochures / catalogues / product information, etc. shall be submitted in separate envelop along with drafts in Jammu Corporate Office to facilitate the technical evaluation committee in evaluation of the product. The brochures, catalogues and other product information submitted should be signed by the authorized signatory of the company / vendor / manufacturer”.

23 He has further pointed out a Note mentioned in the bid document which states that “Experts may call for samples of quoted items, and the bidders shall submit the samples as desired by the experts to the Jammu corporate office of JKMSCL, specifically mentioned in the Notice Inviting Bid (NIB). Original

Brochures/catalogues/Product information, etc., shall be submitted in a separate envelope along with drafts to the Jammu corporate office to facilitate the Technical Evaluation Committee in the evaluation of the product”.

24 From the aforesaid Note, it transpires that JKMSCL had to call for samples and to place them before the experts and then after proper evaluation of all the samples submitted by the ten companies, the Technical Committee had to approve and declare the qualified companies for the opening of financial bids. However, this procedure has not been followed by respondents No. 1 to 4. Instead, bidders were directed to submit samples only after the conclusion of the bidding process on 04-12-2024, allegedly for future reference merely as a means to circumvent the stipulations of the bid document. It has been alleged that the Technical Committee is complicit in this scheme and has participated in fraudulent conduct. The Technical Evaluation Committee evaluated the technical bids in a mechanical manner. Moreover, the Minutes of the Meeting dated 02.09.2024, do not mention any evaluation of samples submitted by the bidders. This entire process appears to be a mere formality, raising serious doubts and clearly indicating arbitrary action and favoritism towards respondents No. 5 and 6. In support of his case, learned counsel for the petitioner has relied upon the following judgments:

**(i) Jbmd Enterprises vs Sr. Dy. CGDS an AN & ors, 2024 SCC Online Del 4281, (ii) PKF Sridhar and Santhanam v Airports Economic Regulatory Authority of India, 2022 SCC Online Del 122, (iii) Maa Binda Express Carrier and Another vs. North East Frontier Railway and others, (2014) 3 SCC 760, (iv) Banshidhar Construction Pvt. Ltd vs. Bharat Coking Coal Ltd, 2024 SCC Online SC 2700, (v) Kumari Shrilekha Vidyarthi and others vs. State of UP and others, (1991), 1 SCC 212, (v) Siemens Publici Communiton Networks Pvt. Ltd vs. UOI and others (2008) 16 SCC 215, (vii) Tata Cellular vs UOI (1994) 6 SCC 651**

**Submissions made by learned senior counsel Mr Pranav Kolhi on behalf of Respondent no.5.**

25 He states that formation of the tender and the recommendations made by the experts, for evaluating the technical bids are not amenable to writ Jurisdiction. He has referred to Clause 53 of the e-bid document, which states as under:

“Any condition (s) which may be left out in this tender document, the same condition (s) shall also constitute the part of the tender document as per its mention in Standard Procurement Procedure (SPP) of JKMSCL.”

He states that as per Standard Procurement Procedure (SPP) 7.1 5.11, it is mentioned that the Tender Inviting Authority's decision on the tender submitted shall be based on decisions taken by various technical committees and otherwise as per clauses as mentioned above. As such, according to the SPP, the decision of the Technical committee was binding on JKMSCL. Respondents no.2 to 4, held a meeting on 02.09.2024, with the Technical Evaluation Committee for considering and evaluating the technical bids of all the participating bidders, including that of the petitioner. The Minutes of the Meeting state that the Committee, constituted by respondent No.2, considered the commendations from various designated hospitals, including PGIMER Chandigarh. It is also recorded in the Minutes of Meeting that the samples would be taken from the bidders. It is stated in the petition that no samples were taken by respondent 2 to 4 for evaluating the technical bids. However, in terms of the bid document, only those bidders who qualify in the technical evaluation had to deposit the samples of their respective quoted items. The bid of the petitioner was initially evaluated by the subcommittee, but was not approved by the Technical Committee, which comprised of technical experts. It is, thus, submitted that the procedure has been properly followed by respondents No. 2 to 4.

26 Mr. Kohli, learned Senior Counsel, has produced the Minutes of the 3<sup>rd</sup> Board Meeting of the Jammu and Kashmir Medical Supplies Corporation Ltd.

(JKMSCL) dated 13.12.2016, wherein, in terms of Clause 3.3.8.2.2, the Technical Advisory/ Evaluation Committee (Drugs) has been given the mandate for compilation of requisitions received from various intending departments as per the Central Drug List, evaluation of technical bid documents, and making necessary recommendations to the Purchase Committee or JKMSCL for the formation of tender documents and other related works. He states that, in terms of this Board Meeting, the Technical Evaluation Committee was vested with the authority to assess the bids based on expert opinions from specialists in the field. He further states that the samples were called from all the bidders by respondent number 2 to 4 on 05.12.2024, but the petitioner has chosen not to submit the samples as desired by the official respondents. Since the petitioner has challenged the decision and not the decision-making process, therefore, the instant petition is not maintainable. It is also argued by the learner Senior counsel that in the tender issued in the year 2021, the petitioner had also participated. There was a difference of opinion among the experts, and after due deliberation, the Technical Evaluation Committee approved and declared respondents No. 5 and 6 eligible for the opening of the price bid. The petitioner, however, did not object to the same at that time. It is stated that the decision of the committee is neither arbitrary nor irrational. Given the limited scope of judicial review and in the absence of any violation of Articles 14 and 19 (1)(g) of the Constitution of India, this petition is not maintainable. He has further stated that Judicial review is not permissible in such cases. He has relied upon the judgments passed by the Division Bench of this Court in the case titled '**Johnson & Johnson Limited versus State of J&K** 2010 SCC Online JK 12, and the judgments passed by the Supreme Court in the cases of **Tata Motors Limited vs Brihan Mumbai Electric Supply and Transport Undertaking and others**, 2023, SCC Online SC 671, **Jagdish Mandal vs. State of Orissa**, (2007) 14 SCC 517, **Association of Registration**

**Plates vs. Union of India, (2005) 1 SCC 679 , AIR India Ltd vs. Cochin International Airport Ltd, (2000) 2 SCC 617, Raunaq International Ltd vs. IVR Construction Ltd (1999) 1 SCC 492 and Tata Cellular vs Union of India (1994) 6 SCC 651 .**

27            Learned Senior counsel Mr. C.M Koul appearing for respondent No.6, stated that the evaluation has been conducted by the technical experts who have chosen the best suture material based on their extensive experience and practical usage by surgeons. In the last tender also, respondents No.5 and 6 were awarded the contract, and the comparison of price bid was made only between these two companies. He has further stated that the judicial review cannot be made with respect to the evaluation made by a committee of experts, as such, the instant petition is not maintainable. He has reiterated what has been argued by Mr. Kohli, learned Senior Counsel.

28            Mr. Raman Sharma Learned AAG appearing for the official respondents, has stated that since 2015, respondents No. 5 has been awarded contracts for suture materials by JKMSCL. In the year 2021, respondents No. 5 and 6 were again awarded tenders, but no samples were called at that time, in accordance with the tender notification. He has further submitted that no mala fides have been alleged by the petitioner against the members of the Technical Committee, and even the constitution of the Committee has not been challenged. He has also relied upon the minutes of the 3<sup>rd</sup> Board Meeting of JKMSCL held on 13.12.2016, on the basis of which the Technical Advisory/Evaluation Committee was constituted for making recommendations to the Purchase Committee of JKMSCL.

29            In the interim order dated 27-11-2024, passed by this court, Mr Raman Sharma stated that the rate contract has already been finalized in

favour of respondent no 5&6, however, he assured the Court that the official respondents shall not place any orders with respondent no 5 & 6. It is stated that the Letter of Intent (LOI) was issued to respondents no. 5 & 6 on 27.11.2024, and the rate contract agreement was made between the parties on 29.11.2024, however, no order has been placed by respondents No. 2 to 4 till date.

30            Heard learned counsel for the parties, considered the submissions, and perused the material on record.

31            This is a case where one company, Respondent no.5 M/S Johnson & Johnson Pvt. Ltd., has consistently been allotted tenders by the Government for the supply of suture materials from the last more than 35 years in the then State, now UT of J&K. It is claimed that Johnson & Johnson is the only company which provides the best suture material till date, and the contracts have been awarded to it irrespective of price, even at the cost of the public exchequer.

32            JKMSCL was constituted in the year 2015. Since its inception till date, Johnson and Johnson and now Respondent no.6 (S.R.Technomed) are the only companies in whose favour contracts have been allotted by the Government of J&K. In the year 2010, respondent no.6 had challenged the allotment of tender to Respondent no. 5. The writ Court had allowed the writ petition, thereby setting aside the allotment order in favour of respondents no 5. However, the said decision was later on set aside by the Division Bench of this court. Both learned counsel for the petitioner as well as the respondents are relying upon the same judgment.

33            It was contended by respondent No. 6 (S R Technomed) herein, in the Judgment (supra) that the suture materials manufactured and sold by them had no complaints as regards their quality, but, the tender submitted by SR

Technomed was not accepted and instead, the tender submitted by respondent no. 5 (Johnson and Johnson) was accepted, despite the fact that the price offered by S.R Technomed was almost 40% lower than the price offered by the Johnson and Johnson. It was further contended that the Technical Committee did not properly evaluate the quality of the products offered. The recommendation of the Technical Committee would clearly demonstrate that there is nothing from which one could even infer that the Committee had considered the quality of materials proposed to be supplied by its client. In response to the letter from the purchase committee, six letters were submitted by the recipients of the said communication, who were requested to provide their remarks/comments in light of the recommendation they had previously made as part of the Technical Committee. It was stated that no prudent person could take a decision as was ultimately taken by the Technical Committee. At that time, the State Government had also taken same stand that expert doctors had opined that they had used similar material and would be using such material in future also. It was stated that the suture material proposed to be supplied by M/S Johnson and Johnson Pvt.Ltd. is time-tested and flawless, and, accordingly, the recommendation was made in favour of M/S Johnson and Johnson Pvt. Ltd. only. Relevant extracts of the judgment are reproduced here-in-below:

*“The State contested the writ petitioner by filing an affidavit. It brought to the notice of the Court dealing with the matter that after tenders submitted by the tenderers were opened, a comparative statement of the tenders was prepared. A copy of that comparative statement has been produced before us, wherefrom it appears that, apart from the appellant and the respondent writ petitioner, two other tenderers submitted tenders for supply of Suturing materials. It was brought to the notice of the Court that after such comparative statement was prepared, the same was placed before a Technical Committee comprising of Doctors in the employment of the State, who had used similar materials and would be using such materials in future also. It was also brought to the notice of the Court that the said Committee opined that Suturing materials proposed to be supplied by appellant is time tested and flawless and, accordingly,*

*they recommended in favour of appellant. It was also brought to the notice of the Court that, after this recommendation of the Technical Committee was received, the Tender Committee did not accept the same, except in respect of one, and kept the matter pending for further consideration. It was also brought to the notice of the Court that the Tender Committee then approached the members of the Technical Committee with a request to give in writing their further views in the matter. It was also brought to the notice of the Court that members of the Technical Committee by six letters in writing gave their views. Upon consideration of such original opinion given by the Technical Committee and supported by further opinions given in those six letters, the Tender Committee recommended acceptance of tender of appellant. With the counter affidavit those six letters were not annexed. Those were subsequently brought on record by a supplementary affidavit. The writ petitioner-respondent dealt with the said supplementary affidavit by a further affidavit. In that affidavit, respondent -writ petitioner sought to highlight that the opinions expressed in those letters are not adverse to respondent writ petitioner. In respect of two of those six letters, which mentioned respondent- writ petitioner, in the said further affidavit respondent-writ petitioner merely denied the said letters.*

*When the matter was taken up for final consideration by the learned Single Judge, his Lordship felt that when the price advantage was in favour of petitioner-respondent, unless a comparison in between the products of the writ petitioner-respondent and appellant is made, in public interest, the decision to purchase from appellant at a higher price cannot be justified. On that premise, the learned Judge concluded the matter”.*

34 It was stated by the then learned Advocate General, appearing on behalf of the then State of J&K, that the Technical Committee deliberated on the matter and recommended M/S Johnson and Johnson Pvt. Ltd., as the most suitable supplier among four bidders. The committee did not at that stage proceed to accept such recommendation blindly; instead, it asked the experts to give their further views in writing. These views were obtained and it transpired from those views that while everyone is *ad idem* that there is no complaint pertaining to the products by M/S Johnson and Johnson Pvt. Ltd., as used by experts, but there are complaints with regard to suture material proposed to be supplied by S.R Technomed, as such, keeping in mind the public health, the Government decided to buy the best at a little higher price. At this stage, the relevant extracts of the judgment (*supra*) are reproduced hereunder:

*“In reply, learned Senior counsel appearing on behalf of appellant submitted that a look at these six letters would clearly demonstrate that the writers thereof, while expressing their opinion expressed a comparative advantage of the product offered to be supplied by appellant. It was submitted by him that it being not a case pleaded in the writ petition or in any of the pleadings connected therewith, that the mind of the experts, being members of the Technical Committee, was closed, it is now not open for the petitioner-respondent to make any submission in that regard. Learned counsel lastly submitted that the tender was for financial year 2008-09 and before the judgment and order under challenge was passed, almost the entire work under the contract had been executed and, in such view of the matter, the learned Judge, in any case ought not to have interfered with the order placed by the State in the manner his Lordship has done.*

*A Government of a democratic society, while making purchase on behalf of people, has an obligation towards the people to buy the best at the cheapest. The outcome of its action of placing order on a supplier should be deemed in law to be an action based on the principle that the product proposed to be purchased is the best and cheapest. Offers to sell may not be at the same price and products offered for sale may not be of same quality. The Government is therefore required to weigh quality vis-a-vis price.*

*At the same time, a tenderer responding to a Government tender has right of equal and fair treatment at the time of consideration of tenders. Because his price was cheaper will not show that his such right has been infringed. He would be required to show that not only his price was cheaper, but his quality was also equal. If he fails to show the same, he fails to establish that the Government has deviated from the principle the best at the cheapest, inasmuch as cheaper product of lesser quality is not comparable with an expensive product of better quality.*

*In the event, every parameter of the product intended to be purchased is specified, it becomes easier for comparison of the product proposed to be sold by diverse tenderers. In its absence, one has to apply its prudence. In the instant case, the product proposed to be purchased is Suturing material which is nothing but silk or non-silk threads required for stitching human flesh. On the records of this case, no acceptable specified parameters of the subject material has come. In other words, it has not come on record that these materials have been standardised by giving standard prescription by an Authority as that of Indian Standard Institution. Not even by the person inviting tender. In the ancient times, hair on the tail of horses was used as suturing material. Today, there are certain*

*suturing materials which are absorbable, that means it becomes part of the human body. Science has refined these materials to a great extent. In the absence of any specified standard of these materials, it cannot be said that a decision taken to have quality of these materials, to be supplied by various tenderers, verified by those who are accustomed to use them on daily basis in their day to day professional conduct was not a prudent decision. Therefore, constituting a Technical Committee to evaluate efficacy of the materials proposed to be supplied by different tenderers by a Technical Committee comprising of Surgeons of repute and employed with the Government for a long period of time, cannot be questioned. The same was also not questioned.*

*The Technical Committee made its recommendation to the Purchase Committee in favour of the products to be supplied by appellant but did not utter a single word about the products of other three tenderers. In the recommendation, the Committee concluded in favour of appellant by holding out that they are using the materials of appellant for more than two decades with satisfactory result. With that, they indicated that they are concerned about patients safety but did not indicate that patients safety would be affected in the event materials proposed to be supplied by other tenderers, is used on the patients.*

*A look at this recommendation would show that the members of this Committee recommended in favour of appellant in view of the fact that they are used with appellant and nothing more than that. It further indicates that they do not want to take chance, inasmuch as, patients safety is involved”.*

35           From the above, it transpires that in 2010, M/S Johnson and Johnson Pvt. Ltd., was declared as the best company from last two decades, meaning thereby that the Government of Jammu and Kashmir is accepting and procuring the suture material only from M/S Johnson and Johnson Pvt. Ltd., since 1999 till date, i.e 35 years as on date. It was also stated in the judgment (supra) that the Government, while making purchase on behalf of the people, has an obligation towards the people to buy best at the cheapest rates and also required to weigh quality vis-à-vis price. The tenderer responding to a Government tender has also a right of equal and fair treatment. At the time of consideration of tenders, he would

be required to show that not only his price was cheaper, but his quality was also equal and if he fails to show the same, he fails to establish that the Government has deviated from the principal, the best at the cheapest, inasmuch as cheaper product of lesser quality is not comparable with an expensive product of better quality. It was further argued that it is easier for comparison of the product proposed to be sold by diverse tenders, but in its absence, one has to apply its prudence. The Technical Committee in the said case made its recommendation to the purchase committee without uttering a single word about the products of other tenderers, thereby concluding that the suture materials of M/S Johnson and Johnson Pvt. Ltd., are being used for more than two decades with satisfactory result, which indicate that they are safe and reliable. It is stated in the judgment (supra) that the recommendation is only based on the usage of the suture materials being supplied by M/S Johnson and Johnson Pvt. Ltd. Out of the six letters which were submitted by the experts, the opinions/comments did not inspire any confidence. It was held that the writers do not want to come out from their shells. Only two of the writers stated with regard to the quality of the product of M/S Johnson and Johnson Pvt. Ltd., whereas three doctors pointed out various deficiencies in the product of SR Technomed (respondent No.6).

36           The original recommendation along with the contract was finalized in favour of M/S Johnson and Jonson Pvt. Ltd. It was contended that if some doubt was created in the mind of the Technical Committee with respect to the quality of other products, the Government could have directed that samples be tested in a laboratory. Only after specifying standard, they could take assistance of Indian Standard Institution. They could also approach many other bodies in India and abroad. They could devise a mean for the purpose of making it absolute doubt free the quality of other tenderers was much better than M/S Johnson and Johnson Pvt.

Ltd. However, the same was not done by the Government at that point of time, as such, there was no subjective satisfaction with regard to the suture materials which are being provided by M/S Johnson and Johnson Pvt. Ltd. (respondent No.5) from last so many decades. Relevant paras of the judgment are extracted hereinbelow:

*“We emphasis that in the matter of purchase of materials by the Government, price is not the one and the only criteria always. At times more important may be quality of the materials proposed to be purchased. In such situation endeavour should be to buy the best. Having regard to the proposed user of the material to be purchased, the Government may either sacrifice on the price front or on the quality front within the permissible limit. If it proposes to sacrifice on the price front on consideration of that the material proposed to be purchased would be used to treat human being, the decision to do so cannot be said to be unreasonable. The moment an attempt is made to buy the best, it becomes obligatory to find the better. Once it is decided that one is better than the other, if no one else is available, then the better should be adjudged as the best. If better quality of material is the criteria and, if that quality of material can only be supplied by a particular person, the logical conclusion would be that the same being not available from any other source, the price quoted by the supplier of that material is the cheapest price available therefor.*

*In the instant case, having regard to the fact that the materials sought to be purchased are to be used for treatment of human body, great emphasis was given to find out what was the best available. The materials on record do suggest th at while the materials proposed to be supplied by the appellant, are blemish free and, accordingly, can be safely used for the purpose the same were proposed to be purchased, there is doubt about the materials to be supplied by others. A decision to award contract at a higher price to get the better or the best material found on consideration of materials and application of mind, we are of the opinion, cannot be interfered by taking recourse to judicial review.*

*We, accordingly, allow the appeal, set aside the judgment and order under appeal and dismiss the writ petition.*

*We would have awarded some costs in favour of the appellant but we have restrained ourselves from doing so, for, most of the time of the Court has been taken by the appellant”.*

37           The Division Bench of this Court held that, in the matter of purchase of materials by the Government, price is not the sole criterion. The more important maybe the quality of the materials propose to be purchased. While the Government should aim to procure the best, it is also obligated to identify the better option when no one else is available, treating the better as the best in such circumstances. In this case, it was held that there is no other competitor in the market who can compete with M/S Johnson and Johnson Pvt. Ltd. As such respondent No. 5 was declared as the best and cheap. Since the doubt was being created by the Government with respect to S,R Technomed, as such, taking into account public interest, the decision to award contract at a higher price to get the best material was found to be based on application of mind of the Technical Committee and the Court refused to interfere by taking to judicial review.

38           The distinction between the instant petition and the judgment passed by the Division Bench of this Court in the case of Johnson and Johnson vs State and others is that there were some complaints against S.R.Technomed which were duly noticed by the experts. In that case, there was no competition against M/S Johnson & Johnson Pvt. Ltd.. Moreover, the contract was already executed. In this case, there is no complaint against the petitioner company. The contract has not yet been initiated by respondents No. 5 and 6. There is no independent expert opinion which could exclude the petitioner company on the ground of unreliability of its product. The Technical Evaluation/Advisory Committee has not delved into the assessment of suture material of the petitioner. The process appears to be designed only to favour respondents No. 5 and 6 which clearly reflects arbitrariness, discrimination and a colourable exercise of power by the Technical Committee duly constituted by respondents No. 2 to 4.

39           Indeed, monopoly is the inevitable end of competition. A single entity-respondent No.5, M/S Johnson and Johnson Pvt. Ltd. is controlling a significant share of a particular product or service by dictating prices and restricting supply. It has created entry barriers for other competitive companies, and as such, a monopoly has been made possible only by an act of the Government.

40           As Ovid aptly said, **“A horse never runs so fast as when he has other horses to catch up and outpace.** However, in the present case, the Government is allowing only one horse to win the race, promoting restraints on all others permitting them only to participate, but not to compete or win the race. Respondent no.5, M/S Johnson and Johnson Pvt. Ltd. is supplying material in the erstwhile State (now UT of J&K), from last more than three decades. There is no competition, but the supply of the suture materials have been monopolized by the Government, thereby providing same excuses by the technical experts that they have used only products of respondents No. 5 and 6, as such, they do not want any other company to enter into the arena of competition in UT of J&K. The domination of a single entity, M/S Johnson and Johnson Pvt. Ltd along with S.R.Technomed since 1999 till date has had severe negative consequences, including higher prices and reduced innovation. The Government is stifling competition, limiting economic growth, and promoting selective allocation of resources. Competition forces the companies to do their best, whereas a monopoly, renders, people satisfied with the product being supplied by a single entity. Respondents No. 5 and 6 are indirectly participated and supplying suture materials as if they are a single entity.

41           Mr. Kohli, learned senior counsel appearing for the respondent no.5, has vehemently argued that the petitioner has no right to challenge the constitution

of the Technical Committee on the ground that the same has not been specifically challenged in the instant petition. Moreover, no prayer has been made in this petition to that extent. Tender document is a two-pack bid, Technical and Commercial. However, there is no reference in the bid document with respect to the Technical Evaluation/Advisory Committee, which was constituted in the 3<sup>rd</sup> Board Meeting of JKMSCL, it had to assess and further to take a final decision for technical approval and to declare qualified technical bids to be opened for financial bids. The Minutes of 3<sup>rd</sup> Board meeting of JKMSCL, was produced by learned counsel for respondents during arguments, as such, were not part of the record. The petitioner had no knowledge of these Minutes of 3<sup>rd</sup> Board meeting of JKMSCL at all, therefore, he couldn't have challenged the same. However, the petitioner has challenged the decision-making process of the Technical Committee in his prayer B, whereby the validity of the Minutes of the Meeting dated 02.09.2024, has been questioned. Clauses 3.3.8.2, 3.3.8.2.1 & 3.3.8.2.2 of the minutes of 3<sup>rd</sup> Board Meeting of Jammu and Kashmir Medical Supplies Corporation Ltd., are relevant to the context and the same are reproduced hereunder:

**Clause 3.3.8.2 Purchase Committee of JKMSCL:**

The Purchase committee shall have the mandate of acceptance/declining the recommendations made by respective Technical Advisory/Evaluation Committees for the bidders as qualified for opening of financial bid; approval of L1, matched L1 bidders and annual rate contracts, besides permitting the JKMSCL to issue purchase orders accordingly, as per the requisitions/indents made by various users.

The Committee shall comprise of:

|   |                                                |             |
|---|------------------------------------------------|-------------|
| 1 | Managing Director, JKMSCL                      | Chairperson |
| 2 | Controller, Drug and Food Control Organization | Member      |

|    |                                                                                                                                |                  |
|----|--------------------------------------------------------------------------------------------------------------------------------|------------------|
| 3  | General Manager (Administration) JKMSCL                                                                                        | Member Secretary |
| 4  | General Manager (concerned group) JKMSCL                                                                                       | Member           |
| 5  | Chief Accounts Officer, JKMSCL                                                                                                 | Member           |
| 6  | Representative from Department of Industries and Commerce, J&K (not below the rank of General Manager DIC)                     | Member           |
| 7  | Executive Engineer (Mechanical). GMC Jammu or Srinagar (case to case basis in case of Machinery and equipments/furniture etc.) | Member           |
| 8  | Representatives(s) from Principal GMC Jammu or Srinagar (not below the rank of Assistant Professor)                            | Member           |
| 9  | Representative from Director Health Services, Jammu or Kashmir (not below the rank of Dy.Director, Health Services)            | Member           |
| 10 | Minimum two experts/specialists from Medicine, Surgery etc (to be drawn from the technical panels)                             | Member           |
| 11 | Any other experts Co-opted by the Corporation                                                                                  | Member           |

The quorum of the meeting shall be 2/3 members. The Purchase Committee shall be assisted by following subcommittees:

- (i) Technical Advisory/Evaluation Committee (EPM)
- (ii) Technical Advisory/Evaluation Committee (Drugs)

#### **Clause 3.3.8.2.1 Technical Advisory/Evaluation Committee**

The Technical Advisory/Evaluation Committee shall have the mandate of standardization of technical specifications of equipments, machinery, furniture and other related items, formulation of tender documents, technical bid evaluation and making necessary recommendation to the Purchase Committee and other related works. The Committee shall comprise of:

|   |                                 |             |
|---|---------------------------------|-------------|
| 1 | General Manager (EPM)           | Chairperson |
| 2 | Executive Engineer (Mechanical) | Member      |

|   |                                                                                                        |                  |
|---|--------------------------------------------------------------------------------------------------------|------------------|
|   | GMC, Jammu or Kashmir                                                                                  |                  |
| 3 | Medical Officer, JKMSCL                                                                                | Member Secretary |
| 4 | Bio Medical Engineer, JKMSCL                                                                           | Member           |
| 5 | Representative from Department of Industries and Commerce (now below the rank of General Manager, DIC) | Member           |
| 6 | Minimum two experts/specialists (to be drawn out of the technical panel)                               | Member           |
| 7 | Accounts Officer/Assistant Accounts Officer, JKMSCL                                                    | Members          |
| 8 | Assistant Director, (QC) JKMSCL                                                                        | Members          |
| 9 | Law Officer JKMSCL                                                                                     | Members          |

The quorum of the meeting shall be 2/3 members.

**Clause 3.3.8.2.2 Technical Advisory/Evaluation Committee (Drugs)**

The Technical Advisory/valuation Committee (drugs) shall have the mandate of compilation of requisitions received from various indenting departments as per the Essential Drug List, Evaluation of Technical Bid documents and making necessary recommendations to Purchase Committee of JKMSCL for formulation of the tender documents and other related works.

The Committee shall comprise of:

|   |                                                                                                           |                  |
|---|-----------------------------------------------------------------------------------------------------------|------------------|
| 1 | General Manager (Drugs) JKMSCL                                                                            | Chairman         |
| 2 | Medical Officer, JKMSCL                                                                                   | Member Secretary |
| 3 | Incharge Quality Control cell/Assistant Director, (QC) JKMSCL                                             | Member           |
| 4 | Law Officer, JKMSCL                                                                                       | Member           |
| 5 | Representative from Drug and Food Control Organization J&K (not below the rank of Deputy Drug Controller) | Member           |
| 6 | Two experts/ specialists (out of the technical panel)                                                     | Member           |

|   |                             |        |
|---|-----------------------------|--------|
| 7 | Accounts Officer/AAO-JKMSCL | Member |
|---|-----------------------------|--------|

42            Learned counsel representing respondent 1 to 4 has stated that what is relevant with respect to the subject matter of the writ petition is clause 3.3.8.2.2 that is Technical Advisory/Evaluation Committee (Drugs). It was given the mandate of compilation of requisition received from various intending Departments as per the Essential Drug List, evaluation of technical documents, and making necessary recommendations to the Purchase Committee of JKMSCL for finalizing the tender documents and other related work. It was mandatory, as per the minutes, for the Committee to have a representative from the Drug and Food Control Organization, J&K, not below the rank of Deputy Drug Controller. However, in the present case, the Technical Committee comprised of an officer, namely Tejveer Singh Sodhi, DCO (District Control Officer) whose status is equivalent to a Drug Inspector, and not of a Deputy Drug Controller. The constitution of the Committee required the inclusion of two experts/specialists from the approved technical panel, and the quorum for the meeting was fixed at two-third of its members, whereas 16 experts from Jammu and Srinagar participated in the Minutes of Meeting, which was virtually held on 02.09.2024.

43            The learned counsel for the official respondents have argued that the inclusion of a large number of experts was intended to ensure transparency in the decision-making process. Admittedly, the constitution of the Committee was not as per the mandate of the 3<sup>rd</sup> Board Meeting of JKMSCL, which, as per respondents no. 1 to 4, was the prime requirement for evaluating the technical bids of the bidders.

44            Mr. Kolhi, learned senior counsel for respondent no. 5, has stated that clause 3.3.8.2.2 has to be read in conjunction with the other clauses quoted

(supra), which indicates that the recommendations were to be made by the technical committee to the purchase committee and the mandate of acceptance/declining the recommendations made by respective Technical Evaluation Committee for the bidders as qualified for opening of the financial bid have to be decided by the committee in terms of clause 3.3.8.2. Since the purchase committee had accepted the recommendations made by the experts who were part of the technical committee, therefore, the constitution of the committee and the decision of that Committee cannot be questioned and reviewed by this Court. He has cited judicial precedents to argue that disputes arising out of contracts entered into by the State or its instrumentalities are not ordinarily amenable to writ jurisdiction under Article 226 of the Constitution of India.

45           Judicial review of the actions of the Government in matters relating to contracts/tenders under writ jurisdiction has already been explained by the Supreme Court in a number of judgments. In **Tata Cellular vs UOI, (1994) 6 SCC 651**, the Supreme Court has held that the principle of judicial review is concerned not with the merits of the decision itself, but with the decision-making process. The judicial review applies even to the exercise of contractual powers by the Government bodies, to prevent arbitrariness and favouritism. In **Ramana Dayaram Shetty v. International Airport Authority of India, AIR 1979 SC 1628**, the Supreme Court ruled that the Government must act in a non-arbitrary and non-discriminatory manner, and that even in contractual matters, the actions of the State are amenable to judicial review where public law elements are involved. In **ABL International Ltd. v. Export Credit Guarantee Corporation of India, (2004) 3 SCC 553**, the Supreme Court reiterated that writ jurisdiction can be invoked in matters involving contracts where there is violation of constitutional or statutory provisions, arbitrariness, mala fides, or

unreasonableness, **and that** technicalities cannot override constitutional mandates.

46 In **M.P Power Management Company Ltd Jabalpur vs. Sky Power Southeast Solar India Pvt. Ltd. and others, (2023) 2 SCC 703**, the Supreme Court, in paragraphs 81 & 82, has held that administrative decisions of the State are subject to judicial review on the grounds of fairness, transparency, equality, and reasonableness. The aforesaid paragraphs are reproduced as under:

*“81. We have already concluded that PPA is not a Statutory Contract. However, that would not be the end of enquiry. Dr. A.M. Singhvi, learned Senior Counsel, would point out that the contract, not being a statutory contract, assumes relevance only for the purpose of deciding as to whether the Court should relegate the writ applicant, to alternate remedies. In other words, while the Court would retain its discretion to entertain the petition or decline to do so, in the facts of each case, there is no absolute taboo against the Court granting relief, even if the challenge to the termination of a contract is made in the case of a contract, which is not statutory in nature, when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of [Article 14](#) of the Constitution of India. The State, he points out, cannot play the Dr. Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of [Article 14](#) to act fairly. There has been a stunning expansion of the frontiers of the Court’s jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, per se, arbitrary.*

*82. We may cull out our conclusions in regard to the points, which we have framed:*

*82.1 It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.*

82.2. The principle laid down in *Bareilly Development Authority* (supra) that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including *Radhakrishna Agarwal* (supra), may not continue to hold good, in the light of what has been laid down in *ABL* (supra) and as followed in the recent judgment in *Sudhir Kumar Singh* (supra).

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/ inaction is, per se, arbitrary.

82.4. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into [See *R.D. Shetty* (supra)]. This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in *Tata Cellular vs. Union of India*<sup>26</sup>.

82.5 After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.

47 Accordingly, judicial review may be exercised where the administrative action is arbitrary, discriminatory, capricious, or unreasonable. The rule of law must be preserved, and the individual's rights are to be protected. The method, motive, and decision of the government are subject to review on the grounds of relevance, reasonableness, fair play, natural justice, equality, and non-discrimination. It has also been held by the Supreme Court that the jurisdiction of the courts cannot be ousted by technicalities, especially where the action of the State involves a public law element or public character. Such actions, by their very nature, are required to be just, fair, reasonable, and in the interest of public, as such, are thus amenable to judicial review. It is also held that every action of the State, having some degree of impact on public interest, can be challenged under writ jurisdiction to the extent that it is arbitrary, unfair, or unreasonable.

48 In the present case, tenders for procurement of suture materials are being floated by respondents no.1 to 4, in every two years and the same is being allotted to M/s Johnson and Johnson Private Limited, Mumbai (respondent No.5) and S.R Technomed (respondent No.6) on the pretext that experts are comfortable with the products and have confidence in using them. The same practice is being followed from last more than 35 years in case of respondent no.5. No one has challenged this action of the Government in allotting tenders in favour of M/s Johnson and Johnson except SR Technomed who had challenged the allotment of tender to respondent no.5, M/s Johnson and Johnson Private Ltd, in the year 2009. The writ petition of S.R Technomed was allowed, but the same was set aside by the Division Bench of this Court vide the judgement (supra), thereafter S.R Technomed is also being allotted tenders with respect to certain products. The petitioner participated in the tender process of 2019, however, the tender was subsequently cancelled without assigning any reason.

49 This Court has gone through the allotment of suture materials and the price bids submitted by respondents no. 5 & 6, which clearly indicates that, out of 32 number of suture materials, 22 have been allotted to respondents no. 5 and 10 to respondent no.6. M/s Johnson and Johnson had not submitted its bid for Group A-II, but it was shown qualified by the Technical Evaluation Committee, whereas SR Technomed had not submitted its bid for Group- C, yet it was also shown qualified by the Technical Evaluation Committee under the said category. This clearly reflects non-application of mind of the Technical Evaluation Committee, which also comprised of experts.

50 It is stated by the learned Counsel representing official respondents that though the Technical Evaluation Committee had shown respondents no. 5 & 6 as qualified under Group C and Group A-II, but after the assessment of the

financial bids on 07.09.2024, M/S Johnson and Johnson was allotted the contract for Group C and SR Technomed for Group A-II. As far as Group A-III is concerned, only one bidder M/s Johnson & Johnson has been considered. This indicates that for these groups, only one single bid of the bidder has been considered, without any comparative price assessment of other bidders. This amounts to violation of Clause 13 of the bid document which expressly provides that JKMSCL shall have the right to seek consent from L2, L3, L4, etc. bidders to match the L1 rate, in order to ensure regular supply. However, orders may be placed with L2, L3, etc. at the matched L1 rates only in the following circumstances:

- (a) If the L1 bidder fails to supply the required ordered quantity;
- (b) If the L1 bidder is declared a defaulter by the Corporation; or
- (c) If the L1 bidder is found to be barred or blacklisted by any other Department, NGO, Corporation, etc., within the Union of India, after finalization of the rate contract in its favour.

51 This Court has been informed that once the financial bids are opened on jktenders.gov.in portal, the system automatically generates comparative rates among technically qualified bidders i.e respondents No. 5 and 6, as such, the price bids of other participants become inaccessible on the NIC procurement portal. The petitioner, however, has submitted its financial bid in a sealed cover to this court, which is taken on record. The said bid clearly indicates that the prices quoted by the petitioner were significantly lower in many of the products for which the contracts have been awarded to respondents No. 5 and 6. The respondents no. 2 to 4 had an option to invite a proprietary bid, indicating the specific company whose products they intended to procure, but in the instant case, a two-pack bid system (technical and financial) was adopted, which required a comprehensive evaluation of both technical and financial bids.

52            Clause 16 of the tender document, which has been referred to in last few tenders issued by respondents no. 1 to 4, mandated that the samples were to be submitted within a prescribed timeline. However, this requirement was never adhered to. In the present tender process as well, samples were asked from the bidders who had already been disqualified by the Technical Committee, after respondents No. 5 and 6 were declared technically successful. The letter dated 05.12.2024, asking sample details for future consideration, was issued only after declaring the successful bidders. This decision-making process is not in consonance with the evaluation procedure, which was supposed to be done by the technical experts, the process prescribed in terms of the bid document has not been followed. Moreover, Minutes of Meeting dated 13-09-2024 issued, in response to the objections which were filed by the bidders, including petitioner, were never communicated to the petitioner, the same was only an afterthought and reiteration of the reasons as stated in the impugned Minutes of Meeting dated 02-09-2024. In terms of clause 7.15.1 and 7.15 of SPP, the official respondents were required to publish all the complaints/objections along with their findings on the official website. This mandatory requirement was also not complied with.

53            There is clear ambiguity in the tender conditions. In the tender document, there is no reference to the Committee constituted in terms of 3<sup>rd</sup> Board Meeting held on 13.12.2016. It is also not mentioned whether the decision of the said Committee would be binding or not. However, in terms of Clause 3.3.8.2, the Purchase Committee is empowered to accept or reject the evaluation made by the Technical Committee. In the present case, the Purchase Committee has merely endorsed the recommendation of the said Committee, which is not based on any reasonable justification. While clause 15 (at page 75 of the petition) states that only technically qualified bidders are required to deposit samples of their quoted

items. However, clause 16 (at page 83 of the petitioner) states that all bidders are required to submit samples of all quoted items, free of cost within 10 days, and not later than two days prior to the opening of the financial bids. The Note (at page 122 of the petition) states that experts may call for samples of quoted items which bidders shall submit the samples to JKMSCL, to facilitate technical evaluation. This contradiction indicates that all the bidders had to submit the samples and then after assessment of the samples, evaluation had to be made by the Technical Committee. These procedural safeguards have been violated by the respondents no. 2 to 4. Even in the previous tender process, though there was a provision for submission and assessment of samples, yet, it was not adhered to by either the Technical Evaluation Committee or by respondents No. 2 to 4. In this current procurement process, while samples were only invited for future assessment, few companies have submitted the samples, but the same have still not been assessed by the end-users. No adverse findings have been made against the petitioner with respect to the quality of its suture materials by respondents No. 2 to 4. No complaints have been received from hospitals or institutions where the petitioner has regularly been supplying such materials. Furthermore, the experts have not furnished any independent opinion and reasoning for approving respondents No. 5 and 6.

54           Upon perusal of the record, it is noticed by this Court that six companies have submitted their samples for evaluation and two companies who had not participated in the NIT responded to the communication dated 04.12.2024. However, vide letter dated 10.12.2024, it was informed that since the matter is sub judice, they would await the directions of the Court and will act once the judicial proceedings would be concluded. The respondents no 2 to 4 have not acted upon any further after the collection of samples from the firms for

evaluation by the end-user departments till date, due to pendency of this petition, which means that, from last five months, no evaluation of the samples has been made by the end-user departments. Therefore, the purpose of calling for the samples was a mere eye wash and a sham intended to conceal the arbitrariness and favouritism shown by respondents No. 2 to 4.

55           The Supreme Court in **Subodh Kumar Singh vs Chief Executive Officer & anr, (2024 SCC OnLine SC 1682)** has held as under:

*65. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned action is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, the performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you. 66. Control of administrative discretion is an important concern in the development of Rule of Law. According to Wade and Forsyth, the Rule of Law has four meanings, and one of them is that “government should be conducted within a framework of recognized rules and principles which restrict discretionary power”.*

*67. To enthuse efficiency in administration, a balance between accountability and autonomy of action should be carefully maintained. Overemphasis on either would impinge upon public efficiency. But undermining the accountability would give immunity or carte blanche power to act as it pleases with the public at whim or vagary. Whether the public authority acted bona fide would be gauged from the impugned action and attending circumstances. The authority should justify the action assailed on the touchstone of justness, fairness and reasonableness. Test of reasonableness is more strict. The public authorities should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and*

*justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion has been established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason. [See: [Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors.](#) : (1993) 2 SCC 279]*

68. The dictum as laid in [Tata Cellular v. UOI](#) reported in (1994) 6 SCC 651 is that the judicial power of review is exercised to rein in any unbridled executive functioning. It was observed that the restraint has two contemporary manifestations viz. one is the ambit of judicial intervention and the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action. It was held that the principle of judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. It was held that the principle of judicial review would apply to the exercise of contractual powers by the Government bodies in order to prevent arbitrariness or favouritism. It was held that the duty of the court is to confine itself to the question of legality and its concern should be whether a decision-making authority exceeded its powers; whether it committed an error of law or committed a breach of the rules of natural justice or reached a decision which no reasonable tribunal would have reached or, abused its powers. The grounds upon which an administrative action can be subjected to judicial review are classified as illegality, irrationality and procedural impropriety. In that very decision, while deducing the principles from various cases referred, it was held that the modern trend points to judicial restraint in administrative action; that the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made; that the court does not have the expertise to correct the administrative decision and 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; that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract; and, that the government must have freedom of contract, i.e. a free-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, but must be free from arbitrariness not affected by bias or actuated by mala fides. Moreover, quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

69. To ascertain whether an act is arbitrary or not, the court must carefully attend to the facts and the circumstances of the case. It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action.

124. Public tenders are a cornerstone of governmental procurement processes, ensuring transparency, competition, and fairness in the allocation of public resources. It emanates from the Doctrine of Public Trust which lays down that all natural resources and public use amenities & structures are intended for the benefit and enjoyment of the public. The State is not the absolute owner of such resources and rather owns it in trust and as such it cannot utilize these resources as it pleases. As a trustee of the public resources, the State owes

(i) a duty to ensure that community resources are put to fair and proper use that enures to the benefit of the public as-well as (

ii) an obligation to not indulge in any favouritism or discrimination with these resources. The State with whatever free play it has in its joints decides to award a contract, to hold up the matter or to interfere with the same should be accompanied by a careful consideration of the harm to public interest.

125. Public tenders are designed to provide a level playing field for all potential bidders, fostering an environment where competition thrives, and the best value is obtained for public funds. The integrity of this process ensures that public projects and services are delivered efficiently and effectively, benefiting society at large. The principles of transparency and fairness embedded in public tender processes also help to prevent corruption and misuse of public resources. In this regard we may refer to the observations made by

this Court in *Nagar Nigam v. Al. Farheem Meat Exporters Pvt. Ltd.* reported in (2006) 13 SCC 382, which reads as under: -

*“16. The law is well settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject- matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution.”*

*126. The sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness. Once a contract has come into existence through a valid tendering process, its termination must adhere strictly to the terms of the contract, with the executive powers to be exercised only in exceptional cases by the public authorities and that too in loathe. The courts are duty bound to zealously protect the sanctity of any tender that has been duly conducted and concluded by ensuring that the larger public interest of upholding binding ness of contracts are not sidelined by a capricious or arbitrary exercise of power by the State. It is the duty of the courts to interfere in contractual matters that have fallen prey to an arbitrary action of the authorities in the guise of technical faults, policy change or public interest etc”.*

56           The Supreme Court in the judgment (supra) has held that judicial review applies to examine the decision-making process for any signs of arbitrariness or favouritism. It has been further held that while the Government has the freedom of contract, such freedom must not be exercised with malafide intentions or bias, and that actions of the Government must reflect application of mind, keeping in view public interest and rights of the parties. Any deviation reflects arbitrariness and non-transparency.

57           In the instant case, respondents no 2 to 4 have neither followed the bid document conditions, nor the Technical Committee was constituted, strictly in

accordance with rules. The reasons assigned by the Technical Evaluation Committee are primarily based on the past performance of respondent No.5, who is being allotted contracts from last more than three decades. Respondent No.6, S.R Technomed, has also continued to receive contracts despite having lost litigation in the year 2010. Since the inception of JKMSCL, respondent no.6 has been suitably accommodated on the same reasoning i.e continued use of their products by medical experts without any independent evaluation as to why their products have been preferred over others. The petitioner and nine other bidders who were shortlisted by the subcommittee have not even been assessed by the Technical Evaluation Committee. After 2010, it is for the first time some bidder has challenged the monopoly of respondents no.5 & 6. The credentials of the petitioner company clearly highlights the competency and durability of its suture materials on the basis of the contracts which have been allotted to the petitioner company in the various States in the country, but respondents No. 2 to 4 as well as the Technical Evaluation Committee has blindly accepted the bid of the respondents no 5 &6 with the same reasoning, which they are providing from the last so many years without even calling for the samples of the other bidders.

58           This Court is mindful of the fact that it is not supposed to delve into every new detail, but the instant case is a real example of arbitrariness, bias, and favouritism on the part of respondents no.2 to 4 as well as the technical committee towards respondents no. 5 &6. The petitioner has challenged the decision of the committee and has stated in para no.12 of the petition that committee is biased and its decision reflects mala fide intentions. It is pertinent to note that the rate contracts were issued in favour of the respondents no.5&6 after the filing of the present writ petition, but till date, no purchase order has been placed. If the decision of the Technical Committee is found to be arbitrary, then all the

consequential decisions, including the LOIs and Rate Contracts issued in favour of respondents No. 5 and 6 are also to be held unsustainable in law.

59           The validity of rate contract, as per the bid document, is for a period of two years from the date of issuance of the letter of Intent and may be extended for further 90 days with mutual consent of JKMSCL and the firms. The record reveals that letter of intents were issued in favour of respondent no.5 and 6 on 27.11.2024 and the rate contracts were issued on 11-11-2024. However, in view of the interim order of this Court, no supply orders have been placed by respondents No. 2 to 4 till date. The petitioner had approached this Court in November, 2024 and even after the passage of seven months, samples have not been evaluated. This Court had directed Mr. Raman Sharma, learned AAG to report instructions regarding the current requirement of suture materials in the UT of Jammu and Kashmir. In response, a letter dated 21.05.2025 was produced, stating that JKMSCL caters to the requirements of nine medical colleges and 1,154 users under the Directorate of Health Services across Jammu and Kashmir through its seven Drug Warehouses. It is also mentioned that as of now, the Drug Warehouses of JKMSCL have almost nil availability of suture materials. Only the Drug Warehouse in Jammu has a minuscule quantity of material available, for which orders were placed in February 2024.

60           In view of the above, this Court deems it appropriate to order as follows:

- (i) The Minutes of Meeting dated 02.09.2024, and all the consequent decisions made by respondents no. 2 to 4, which include the rejection of bids, finalization of the contract after opening of financial bids, issuance of Letters of Intent, and the execution of rate contracts in favour of respondents no.5 & 6, are set aside;

(ii) Respondent no 2 to 4 are directed to initiate a fresh tender process immediately upon pronouncement of this judgment. They shall also rectify all the ambiguities in the existing tender documents.

(iii) Respondents no. 2 to 4 are directed to invite samples of suture materials from all the interested companies/bidders. The samples shall be evaluated by the experts who are the end-users in the relevant departments.

(iv) The experts shall submit their reports after proper evaluation to respondents No.2 and 4.

(v) Till such time the samples are evaluated by the experts and fresh tenders are finalized, respondents no. 2 to 4 are free to make appropriate interim arrangements for the procurement of suture materials, as per requirement in accordance with transparent and lawful procedures.

The petition is disposed of accordingly.

The original record, if any, shall be returned to the concerned.

**(MOKSHA KHAJURIA KAZMI)**  
**JUDGE**

Jammu  
02.06.2025  
Sanjeev

*Whether order is reportable: Yes*