



2025:AHC-LKO:68984-DB

A.F.R.

Reserved on October 29, 2025

Delivered on November 4, 2025

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 4673 of 2025

M/S A.S. Traders Thru. Executive Partner Sri Rahul Singh
.....Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. Deptt. of Public Works Lko. and 6 others
.....Respondent(s)

Counsel for Petitioner(s)	: Manish Kumar Rai,
Counsel for Respondent(s)	: C.S.C., Dr. Pooja Singh

Court No. - 3

**HON'BLE SHEKHAR B. SARAF, J.
HON'BLE PRASHANT KUMAR, J.**

(Delivered by Hon'ble Prashant Kumar, J.)

1. The petitioner is engaged in the business of constructing roads and in furtherance of his business, he participated in an E-Tender dated February 6, 2025 invited by the Superintending Engineer, Public Works Department, District - Pratapgarh (hereinafter referred to as 'respondent no. 5'). As per the terms and conditions of the E-Tender notice, participants were required to upload their bids on the Prahari portal on March 12, 2025 on or before 12:00 noon. Accordingly, the petitioner submitted his bid on the Prahari portal after logging in through the 'Chankya Software'. The technical bids were opened on March 12, 2025 from 12:30 p.m. onwards. Thereafter all the participants of bid were given equal opportunity to raise objection (if any) against the other bidders within 72 hours of opening of the technical bid. The petitioner

submitted a written complaint against M/s Arunima Constructions (hereinafter referred to as 'respondent no. 7') on May 2, 2025, stating that the bid of respondent no. 7 was ought to be 'non responsive' as per Note-II of Clause 4.7 of Addendum/ Amendment of Instruction to Bidders (ITB). After completion of technical evaluation of the tender, the bid of the petitioner and four other bidders were rejected by the respondent authorities. On May 3, 2025, the financial bid was opened wherein respondent no. 7 was declared as L-1 bidder and consequently the tender was awarded to him on May 5, 2025. Against the rejection of the bid of the petitioner as well as grant of Letter of Acceptance (hereinafter referred to as 'L.O.A.') in favour of respondent no. 7, the petitioner herein has filed the instant writ petition with the following prayers:

"i. a writ, order or direction in the nature of CERTIORARI to quash the Impugned order dated 03.05.2025 passed by respondent No.5 in furtherance of Tender notice No 487/93C-PBH-FTP Circle/2024-25 dated 06.02.2025, by which petitioner firm has been declared "Non responsive" (disqualifed) after evaluation of the technical bid, contained as Annexure 2 to this writ petition.

ii. a writ, order or direction in the nature of CERTIORARI to quash the Impugned letter of acceptance dated 5.5.2025 issued by respondent No.5 in furtherance of Tender notice No 487/93C-PBH-FTP Circle/2024-25 dated 06.02.2025, by which the Bid of respondent No.7 has been accepted by the respondent No. 5 for the work of widening and strengthening of Badhani, Balipur, Babuganj Road in District Pratapgarh, contained as Annexure 3 to this writ petition.

iii. a writ, order or direction in the nature of MANDAMUS to direct the respondent No.1 to 5 to accept the technical bid of petitioner firm declaring Respondent no 7 as "non responsive" and proceed further from the stage of opening of financial bid in furtherance of Tender notice No 487/93C-PBH-FTPCircle/2024-25 dated 6.02.2025 (Annexure 1).

iv. a writ, order or direction in the nature of MANDAMUS to direct the respondent No.4 and Respondent no 5 to decide the objection of the petitioner dated 02 May 2025, contained as Annexure 12 to this writ petition.

v. a writ, order or direction in the nature of MANDAMUS to direct to the respondents concern to constitute a high level committee to enquire into the Malafide committed by erring PWD authorities, particularly by Sri SK Gautam, Superintending Engineer, Pratapgarh-Fatehpur Circle, PWD /Respondent no 6, in order to get contract awarded anyhow to respondent No.7.”

Arguments of the petitioner

2. Learned counsel for the petitioner submits that while evaluating the technical bid, Clause 4.7 has not been properly considered by the respondent authorities for which the petitioner gave a complaint. He further submits that the said complaint was not considered and the tender was awarded to the respondent no. 7.

3. He further submits that petitioner's disqualification was also not legally tenable and the same has been done with malafide intentions. The entire exercise of awarding L.O.A. to the respondent no. 7 was not correct and was done with the sole intention of providing benefits to the respondent no. 7. He also submits that once certain illegalities in the tender proceeding was brought to the notice of the respondents, it was the paramount duty of the respondents to have considered the same before awarding the tender.

4. Learned counsel for the petitioner has relied upon the judgement of Hon'ble Supreme Court in the case of ***B.S.N. Joshi & sons Ltd. v. Nair Coal Services Ltd.; (2006) 11 SCC 548***, which has emphasised certain principles for judicial review in contractual matters. The relevant para of the judgement is delineated below:

“66. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under:

- i) If there are essential conditions, the same must be adhered to;*
- ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;*
- iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;*
- iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction.*
- v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with.*
- (vi) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.*
- (vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint.”*

5. He has also relied upon the judgement passed by the Hon’ble Supreme Court in the case of ***Banshidhar Construction Pvt. Ltd. v. Bharat Coking***

Coal Limited; AIR 2024 SC (Civil) 2929, wherein it has been held as follows:

“21. There cannot be any disagreement to the legal proposition propounded in catena of decisions of this Court relied upon by the learned counsels for the Respondents to the effect that the Court does not sit as a Court of Appeal in the matter of award of contracts and it merely reviews the manner in which the decision was made; and that the Government and its instrumentalities must have a freedom of entering into the contracts. However, it is equally well settled that the decision of the government/ its instrumentalities must be free from arbitrariness and must not be affected by any bias or actuated by malafides. Government bodies being public authorities are expected to uphold fairness, equality and public interest even while dealing with contractual matters. Right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process and that the entire bidding process is carried out in absolutely transparent manner.”

Arguments of the respondents

6. Per contra, Shri Prakhar Mishra, learned Additional Chief Standing Counsel appearing for the State respondent nos. 1 to 5 submitted that in pursuance of the E-tender notice dated February 6, 2025, eight contractors had participated and technical bid was submitted by them. Under the ‘Prahari’ portal any bidder can raise objection within 72 hours of filing of bids and the same would be considered by the Tender Committee. In the present case, the petitioner had raised objection against three bidders with regard to the documents uploaded by them. The objections raised by the petitioner and other bidders was referred to the Tender Evaluation Committee, who declared the bid of five bidders to be non responsive. However, the bid of three bidders were declared responsive, and therefore, the financial bid was opened on May 3, 2025. As the bid of the respondent no. 7 was found to be the lowest, ‘L.O.A.’ was issued to him and agreement of bond was executed on May 9, 2025.

7. He further submits that in relation to declaring the petitioner's firm as non-responsive, it is to be noted that two complaints were made by respondent no. 7 against the petitioner firm to the effect that under the head of "Existing Commitment and ongoing works", the following ongoing works were concealed by the petitioner firm:

“(i) Providing and fixing of Boundary Wall around Defence Corridor periphery in Village Bhatgaon, Tehsil Sarojni Nagar, District Lucknow (Tender Id-2023_UPID_873503_2)

(ii) Package No. UP7554 Amethi.”

8. On the complaint of respondent no. 7, the Executive Engineer, Construction Division, P.W.D., Pratapgarh conducted an inquiry and found that the petitioner had not uploaded certain critical information under the heading of 'Existing Commitment and ongoing works'. The complaint of respondent no. 7 against the petitioner was found to be correct and the bid of the petitioner was found to be non responsive/disqualified.

9. He further submitted that as per Government Order dated August 25, 2020, any bidder can file a complaint on the 'Prahari' Portal against other bidders within a period of 72 hours, however, it was not open for the petitioner to file a complaint thereafter. The period of three days for filing a complaint is critical. He submitted that if there is no cap then the addressing of complaints procedure would be a never ending process and no tender could be finalized. The counsel for the respondent has placed reliance on the judgment passed by a Coordinate Bench of this court passed in ***Energo Constructions Private Limited v. Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited and Others***; Neutral Citation No.:2024:AHC:30429-DB.

10. Dr. Pooja Singh, learned counsel appearing for the respondent no. 7 vehemently argued that after completion of scrutiny, the bid of the

respondent no. 7 was found to be responsive and the L.O.A. was issued to the respondent no. 7 and the agreement was executed on May 09, 2025. Subsequent to the same, the respondent no. 7 has mobilized its team and has completed approximately 90 percent of the work awarded for widening of the road.

11. She further submits that it is an infrastructure project and cannot be stopped on mere technicalities. She has placed reliance on the judgement of Hon'ble Supreme Court passed in ***N.G. Projects Limited v. Vinod Kumar Jain and others***; (2022) 6 SCC 127, wherein it has been held as under:

“10. We find that the interference in contract awarded to the appellant is wholly unwarranted and has caused loss to public interest. Construction of roads is an essential part of development of infrastructure in any State. The learned Single Bench and the Division Bench of the High Court were exercising power of judicial review to find out whether the decision of the State was manifestly arbitrary or unjust as laid down by this Court in Tata Cellular v. Union of India; (1994) 6 SCC 651 and to act as appellate authority over the decision of the State... ”

13. This Court sounded a word of caution in another judgment reported as Silppi Constructions Contractors v. Union of India; (2020) 16 SCC 489, wherein it was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters could cause. In contracts involving technical issues, the Courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above, the Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference would cause unnecessary loss to the public exchequer.

21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India.”

Analysis

12. Heard learned counsel for the parties and perused the pleadings along with annexures filed by them and the records.

13. Before going into merits of the matter, this Court would like to scrutinize the scope of judicial review in the matter of infrastructure contracts.

14. In the matter of ***Sterling Computers Ltd v. M & N Publications Ltd.***; (1993) 1 SCC 445, the Hon’ble Supreme Court observed:

“18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the “decision making process.” the courts can certainly examine whether 'decision making process' was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.”

15. In the matter of ***Tata Cellular v. Union of India***; (1994) 6 SCC 651, the Hon’ble Supreme Court referred to the limitations relating to the scope of judicial review of administrative decisions and exercise of powers in awarding contracts, and laid down the principles:

“94. The principles deducible are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.....”

16. In the matter of ***Raunaq International Ltd. v. I.V.R. Construction Ltd.***; (1999) 1 SCC 492, the Hon’ble Supreme Court dealt with the matter in some detail. The Supreme Court held as under:

“9. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount importance are commercial considerations. These would be :

(1) The price at which the other side is willing to do the work;

(2) Whether the goods or services offered are of the requisite specifications;

(3) Whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;

(4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;

(5) past experience of the tenderer, and whether he has successfully completed similar work earlier;

(6) time which will be taken to deliver the goods or services; and often

(7) the ability of the tenderer to take follow up action, rectify defects or to give post contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract; (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in re-doing the entire work - thus involving larger outlays or public money and delaying the availability of services, facilities or goods, e.g. A delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial

development, hardship to the general public and substantial cost escalation.

11. When a writ petition is filed in the High court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.”

17. In the matter of ***Air India Ltd. v. Cochin International Airport Ltd.***; (2000) 2 SCC 617, the Hon’ble Supreme Court summarized the scope of interference as enunciated in several earlier decisions and held as follows:

“ 7. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and

cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.”

[Emphasis added]

18. In the matter of ***Association of Registration Plates v. Union of India***; (2005) 1 SCC 679, the Hon’ble Supreme Court held as under:

“43. Article 14 of the Constitution prohibits government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contracts. At the same time, no person can claim a fundamental right to carry in business with the government. All that he can claim is that in competing for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest. ...”

19. In the matter ***B.S.N. Joshi v. Nair Coal Services Ltd.*** (Supra), the Hon’ble Supreme Court observed as follows:

“56. It may be true that a contract need not be given to the lowest tenderer but it is equally true that the employer is the best judge therefor; the same ordinarily being within its domain, court's interference in such matter should be minimal. The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record.”

20. The Hon'ble Supreme Court in the case of ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd and another***; 2016 (16) SCC 818 has held as follows:

“13. In other words, a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision.

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

Conclusion

21. The legal proposition drawn in the light of above judgements of the Hon'ble Supreme Court is that the judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether the decision is made 'lawfully' and not to check whether the decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere in exercise of power of judicial review, even if a procedural aberration or error in assessment or prejudice to a tenderer is made out.

22. In this case, the petitioner had the liberty to raise objections against the bid submitted by respondent no.7. In fact, the petitioner had raised objections against three other bidders, and those objections were placed before the Tender Evaluation Committee. On the Prahari Portal, to ensure transparency, it has been provided that any bidder may raise an objection against any of the other bidders within 72 hours of the uploading of the bids. However, in the present case, the petitioner did not raise any objection against the bid uploaded by respondent no. 7 within the stipulated time period.

23. The 72 hours period for filing objections is a critical timeline. If no time limit is prescribed, bidders could continue filing objections indefinitely, which would hinder the tender process and prevent finalization of the contract. Once the stipulated time has lapsed, it is not open to the petitioner to raise any fresh objection against the competing bidders. No reason for the delay, or for not availing the three-day period provided under the Government Order dated August 25, 2020, has been stated in the writ petition. Moreover, the allegations of mala fides raised in this writ petition are vague and ambiguous in nature.

24. As per ratio laid down in a catena of judgements of the Hon'ble Supreme Court, it is clear that the scope of judicial review in contractual matters is very limited. Moreover, the respondents have the freedom to award the contract. The fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere.

25. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. In this case, bid of the petitioner was rejected on the ground of concealment of relevant facts. No benefit

can be awarded to the bidder, who has not filed the bid with clean hands. The attempts of the unsuccessful bidder is with imaginary grievances, wounded pride and business rivalry. The petitioner by means of the instant writ petition is trying to make a mountain out of molehill by pointing out some technical/procedural violation, and persuade the court to interfere by exercising power of judicial review. Any interference by this Court would amount to holding up public works and would cause huge loss to the State Exchequer. The Hon'ble Supreme Court in a catena of judgements has held that infrastructure projects should not be halted for mere technicalities. The Supreme Court has categorically deprecates the practice of interference by the High Court simpliciter as a matter of course. Unless specific and cogent grounds are made out that indicate arbitrariness and/or mala fide, no interference is warranted.

26. In the instant matter, since the bid of the petitioner has been rejected on the ground of concealment and no objection on the bid of the respondent no. 7 was raised as per the time period provided, we do not deem it fit to intervene at this stage.

27. In view of the aforesaid facts and circumstances, we see no merit in this writ petition, and the same is accordingly, **dismissed**.

(Prashant Kumar,J.)

I agree.

(Shekhar B. Saraf,J.)

November 4, 2025
Anupam S/