2026 INSC 1025

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C) No. 22161 of 2026)

MICKY TRADERS ... APPELLANT

Versus

L.R.Y. LABOUR CONTRACTOR & ORS. ... RESPONDENTS

WITH

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C) No. 23127 of 2026)

J U D G M E N T

Alok Aradhe, J.

1. Leave granted.

2. A tender begins with competition, but it proceeds upon rules. The present appeals concern the meaning of one such rule: a requirement prescribing the experience which a bidder must possess before it may compete for a public contract. The question is how that requirement is to be understood and applied.

3. These appeals take exception to the order dated 27.05.2026 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in CWP No.8671 of 2026, by which the High Court quashed the acceptance of the technical as well as the financial bid of Micky Traders (the H1 Bidder) and directed the Punjab State Agricultural Marketing Board (the Board) and the Market Committee, Ludhiana (the Committee) to issue a Letter of Acceptance (LoA) in favour of the eligible tenderer. The H1 Bidder, being aggrieved, has challenged the same in an appeal arising out of SLP (C) No. 22161 of 2026. The Board and the committee are also challenging the impugned order in appeal arising out of SLP (C) No. 23127 of 2026. L.R.Y. Labour Contractor (the H2 Bidder) is the primary respondent in both the appeals, who had filed the writ petition. In order to appreciate the grievance of the appellants, relevant facts need mention, which are stated *infra.*

FACTUAL MATRIX

4. On 13.02.2026, the Committee issued a Detailed Notice Inviting Tender (DNIT) inviting bids for recovery/realization of user charges for utilising Mandi infrastructure by retail and other vehicles of fruits, vegetables, eatables etc. for a period of twelve months, that is, from 01.04.2026 till 31.03.2027. Clause 11 of the DNIT required the bidders to submit the documents enumerated therein in digitally signed copies. The reserve price of the work was fixed at Rs.12,21,58,500/-

(Rupees Twelve Crore Twenty-One Lakh Fifty-Eight Thousand Five Hundred only) *per annum*.

5. In response to the DNIT, H1 Bidder, H2 Bidder and three other bidders submitted their bids. On evaluation, the technical bid of the H1 Bidder was found responsive and its financial bid of Rs.16,51,51,000/- (Rupees Sixteen Crore Fifty-One Lakh Fifty One Thousand only) was accepted, being the highest bid received as against the H2 Bidder's bid of Rs.15,03,33,000/- (Rupees Fifteen Crore Three Lakh Thirty-Three Thousand only).

6. The H2 Bidder addressed an e-mail to the Secretary, Tender Opening Committee, Market Committee, Ludhiana, stating that the H1 Bidder did not possess the requisite experience of collection of parking fees or user charges and that the Board had erred in issuing an Enlistment Certificate dated 24.02.2026 in its favour. The objection notwithstanding, a LoA was issued to the H1 Bidder on 20.03.2026.

7. The H2 Bidder challenged the acceptance of the bid of the H1 Bidder before the High Court in a writ petition filed on 19.03.2026, on the ground that the experience certificate of the

H1 Bidder reflected participation in cattle fairs from 16.12.2023 to 15.12.2024 and did not evidence two years' experience of collection of user charges or parking fees immediately preceding 31.12.2025, as required by Clause 9(c)(a) of the Instructions issued by the Board for enlistment of contractor firms.

8. The High Court, by the impugned order dated 27.05.2026, *inter alia* held that the technical bid of the H1 Bidder did not meet the eligibility criteria, and quashed the LoA dated 20.03.2026 as well as all the consequential actions. The Board and the Committee were directed to issue a LoA in favour of the eligible tenderer in accordance with law, and the writ petition was allowed. In the aforesaid factual background, Civil Appeals arising out of the Special Leave Petitions filed by the H1 Bidder and by the Board arise for our consideration.

<u>RIVAL SUBMISSIONS</u>

9. Mr. Siddhartha Iyer, learned counsel for the H1 Bidder, submitted that the impugned order is vitiated by non-application of mind and ignores the pleadings of the H1 Bidder as well as those of the Board and the Committee, who had themselves defended the eligibility of the H1 Bidder. It was submitted that the High Court exceeded the limited scope of judicial review by substituting its own interpretation of the eligibility clause for that of the tendering authority, in the absence of any finding of *mala fide*, arbitrariness, irrationality or perversity[1].

10. It was contended that a provision must be construed purposively and not literally where a literal reading defeats its object or produces an unreasonable result[2]. It was urged that the High Court adopted an ultra-technical view of Clause 9(c)(a) by reading the requirement of two years' experience up to 31.12.2025 as one of a continuous contract ending in December 2025, whereas the clause requires only a minimum of two years' experience prior to that date. It was pointed out that the Board has also taken a stand that Instructions for enlistment are directory and not even part of DNIT. It was contended that the scope of judicial review in tender matters is extremely circumscribed. It was argued that experience of a partnership firm is attributable to its partner/proprietor. It was

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[1]**Afcons Infrastructure Ltd.** v. **Nagpur Metro Rail Corpn. Ltd. & Anr., (2016) 16 SCC 818** and **Silppi Constructions Contractors** v. **Union of India & Anr., (2020) 16 SCC 489**
[2]**K.P. Varghese** v. **Income Tax Officer, Ernakulam & Anr., (1981) 4 SCC 173**

pointed out that the bid of H1 Bidder was rejected on account of the interim order of the High Court dated 20.03.2026. It was urged that the bid of the H1 Bidder was higher by about Rs.1.5 crore its rejection would cause substantial loss of public revenue while rendering many experienced firms ineligible. In support of aforesaid submissions, reliance has been placed on the decisions of this Court[3].

11. Mr. Jagjit Singh Chhabra, learned counsel for the Board in the connected appeal arising out of S.L.P. (C) No.23127 of 2026, submitted that in the absence of illegality, bias or *mala fide*, the High Court ought not to have interfered with the commercial wisdom of the tendering authority. It was contended that the enlistment instructions are directory in nature, being intended to secure uniformity, better competition and greater revenue for the Board, and were wrongly treated as mandatory. It was urged that the H1 Bidder was rightly declared as such after due evaluation and assessment and the

[3] **K.P. Varghese** (supra); **Tata Cellular** v. **Union of India, (1994) 6 SCC 651; New Horizons Ltd. & Anr.** v. **Union of India & Ors. (1995) 1 SCC 478; Air India Ltd.** v. **Cochin International Airport Ltd. & Ors., (2000) 2 SCC 617; Jagdish Mandal** v. **State of Orissa & Ors. (2007) 14 SCC 517; Maa Nabadurga Construction** v. **Saroj Kumar Jena & Ors., 2015 SCC OnLine SC 1933**; **Afcons Infrastructure Ltd**. (supra); **Silppi Constructions Contractors** (supra)**; Galaxy Transport Agencies v. New J.K. Roadways, (2021) 16 SCC 808; Agmatel India Pvt. Ltd.** v. **Resoursys Telecom & Ors., (2022) 5 SCC 362** and **Surguja Bricks Industries Co**. v. **State of Chhattisgarh & Ors.**, **2025 SCC OnLine SC 2916**

rejection of the H1 Bidder's bid by other Marketing Committees has no bearing to the present proceeding. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court[4].

12. On the other hand, Mr. Amit Rawal, learned senior counsel for the H2 Bidder, who is the respondent in both the appeals, submitted that the H1 Bidder produced no experience certificate of two years up to 31.12.2025 as Clause 9(c)(a) requires and the certificates produced by it relate to separate contracts executed through different entities. It was pointed out that the said certificates neither establish the work nor the bidder as well as the period. It was urged that a cattle fair contract does not evidence collection of user charges, since under the statutory scheme, the contractor pays rent and does not collect any charge. It was submitted that the construction advanced by the H1 Bidder converts the clause into one requiring any two years' experience at any time before 31.12.2025, which the clause does not intend. It was further

[4]**Jagdish Mandal (**supra); **Silppi Constructions Contractors** (supra); **Galaxy Transport Agencies** (supra); Utkal Suppliers v. Maa Kanak Durga Enterprises & Ors., **(2021) 14 SCC 612**; **Agmatel India Pvt. Ltd** (supra)**; Tata Motors Ltd.** v. **Brihan Mumbai Electric Supply & Transport Undertaking**, **(2023) 19 SCC 1** and **N.G. Projects Ltd.** v. **Vinod Kumar Jain & Ors., (2022) 6 SCC 127**

submitted that the Board itself had rejected the bids of the H1 Bidder at Rajpura and Patiala on an identical clause, and a norm cannot be mandatory against one bidder and directory in favour of another[5]. In support of his submissions, reference has been made to two decisions of this Court[6].

ANALYSIS

13. We have considered the rival submissions and have perused the record.

THE LIMITED SCOPE OF JUDICIAL REVIEW IN TENDER MATTERS

14. The contours of judicial review in the matters of tender are well-settled and need only brief restatement. The principles governing judicial review of the award of a contract are well-settled. A three-Judge Bench of this Court in ***Tata Cellular*** (supra) held that the Court is concerned with the manner in which the decision is taken and not with the decision itself, that review lies on the grounds of illegality, irrationality and procedural impropriety, and that the tender floating authority

[5]**West Bengal State Electricity Board** v. **Patel Engineering Co. Ltd. & Ors., (2001) 2 SCC 451; Ramana Dayaram Shetty** v. **International Airport Authority of India, (1979) 3 SCC 489**

[6]**Patel Engineering** (supra)**; Matadeen** v. **Pointu [1999] 1 AC 98; R (Gallaher Group Ltd) & Ors.** v. **CMA [2018] UKSC 25**

is the best person to interpret the terms of its tender. In ***Sterling Computers Ltd.*** v. ***M&N Publications Ltd.***[7], it was held that what the Court examines is whether the decision-making process was reasonable, rational and not arbitrary or violative of Article 14, and not whether the decision was correct. In ***Air India Ltd.*** (supra), it was held that the State is free to enter into commercial transactions without undue interference by the courts, provided its action is fair and free from arbitrariness.

15. In ***Jagdish Mandal*** (supra), the test was stated to be whether the process or decision is *mala fide* or intended to favour someone or is so arbitrary and irrational that no responsible authority acting reasonably and in accordance with law could have reached it, and whether public interest is affected. The question is whether the decision is lawful, not whether it is sound. In ***Michigan Rubber (India) Ltd.*** v. ***State of Karnataka & Ors.***[8], it was reiterated that the courts do not sit in judgment over the technical or commercial wisdom of the tendering authority unless the process is arbitrary or *mala fide.*

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[7] **(1993) 1 SCC 445**
[8] **(2012) 8 SCC 216**

16. In ***Afcons Infrastructure Ltd.*** (supra), it was held that the employer, having authored the tender document, is the best person to understand and interpret it. In ***Silppi Constructions Contractors*** (supra), it was reiterated that the Court does not sit as a court of appeal over the authority, that where two interpretations are possible, the interpretation of the author must be accepted, and that the courts interfere only to prevent arbitrariness, irrationality, bias, *mala fides* or perversity. The same view has been taken in later decisions[9], including by a three-Judge Bench in ***Galaxy Transport Agencies*** (supra).

17. The position was summarised in ***Agmatel India (P) Ltd.*** (supra), where it was held that the author of the tender document is the best judge of its requirements; that if its interpretation is manifestly in consonance with the language of the document, or subserves the purpose of the tender, the Court will keep restraint; that technical evaluation or comparison by the Court is impermissible; and that an interpretation which the constitutional court may not itself find

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[9]**Utkal Suppliers** (supra)**; State of Madhya Pradesh & Anr.** v. **Uttar Pradesh State Bridge Corporation Ltd. & Anr., (2022) 16 SCC 633; Surguja Bricks** (supra)**; Prakash Asphaltings and Toll Highways (India) Ltd.** v. **Mandeepa Enterprises & Ors., (2026) 4 SCC 310**

acceptable is not, for that reason alone, a ground for interference.

18. This deference, however, is not unqualified. The requirement in ***Agmatel India (P) Ltd.*** (supra), that the interpretation be manifestly in consonance with the language of the tender document itself shows that where the interpretation cannot be traced to that language, the protection is not available. The exception was recently restated in ***Kimberley Club (P) Ltd.*** v. ***Krishi Utpadan Mandi Parishad & Ors.***[10] thus: -

> *"11. In tender matters, the Court exercising judicial review does not sit in appeal over the decision of a tendering authority regarding disqualification of bid. Only in cases where such decision is dehors the terms of the NIT or is patently arbitrary would the Court exercise powers of judicial review and set aside such a decision."*

19. To the same effect is ***Vidarbha Irrigation Development Corporation & Ors.*** v. ***Anoj Kumar Agarwala & Ors.***[11], where it was held that the words of a tender document cannot be treated as redundant or superfluous but must be given their meaning, and that an essential condition not complied with cannot be condoned by the tendering authority, such

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[10] 2025 INSC 1276
[11](2020) 17 SCC 577, para 16

condonation amounting to perversity which a constitutional court must correct. The rule which emerges is a short one. The reading given by an authority to its own tender is ordinarily final, provided that reading is one which the words it has chosen can bear and is not unfair, perverse or arbitrary.

20. At this stage, it is apposite to notice the Instructions issued by the Board for Enlistment of Contractor Firms in PMB-Marketing Branch, 2025, applicable from 01.02.2026. Clauses 3(d), 4(1) and 6(a), which are relevant, read as under:-

> **"PUNJAB STATE AGRICULTURAL MARKETING BOARD**
>
> (Instructions regarding Enlistment of Contractor Firms in PMB-Marketing Branch)
>
> **3(d).** The enlistment of a Firm is a prerequisite to bid/tender for the PMB-Marketing Branch Works.
>
> **4(1)** – Scope
>
> (a) The Enlisted Firm shall only be eligible to bid in office of market committee of Punjab State.
>
> (b) The Enlisted Firm shall be borne on the register of Enlisted Firms to be maintained in PMB Marketing Branch.
>
> **6.** Enlistment Period
>
> (a) The enlistment shall be valid for a period of one year that is 01.02.2026 to 31.01.2027."

21. Clause 9(c)(a) of the said instructions, which lies at the heart of the controversy and is referred to in the impugned judgment as Clause 9(a), requires the bidder to: -

> *"...submit the copy of respective completion certificate(s) indicating the successful execution of annual collecting User Charges/Parking Fees work in Govt./Semi Govt./PSU organizations during last 2 years (upto 31.12.2025)."*

22. The eligibility criteria prescribed in the DNIT read as under: -

> "[11]. Technical Bid: The Bidder will submit the following documents in the Digitally Signed copies;
>
> [i]. Copy of the Enlistment of the Firm in the Punjab Mandi Board in Market Wing for the concerned Tender.
>
> [ii] Copy of the Challan/Bank RTGS as proof of having deposited the amount on account of Earnest Money/Biyana.
>
> [iii] The Bid given by the Bidder, will be valid for a minimum of 120-Days from the last date of submission of the Bid [As per Annexure-3].
>
> xxx xxx xxx
>
> **[ix]. Experience certificate regarding works done in various government institutions Board Corporation/Punjab Mandi Board Market Committees (Annexure-2b)."**

23. Thus, a tenderer, in order to be eligible, has to satisfy the following conditions:-

(i) it must be a firm enlisted with the Board in the Marketing Wing, enlistment being a prerequisite to bid;

(ii) it must, under Clause 11(ix) of the DNIT, upload with its technical bid, an experience certificate in Annexure 2-b of works done in Government institutions, Board Corporations, the Punjab Mandi Board or Market Committees;

(iii) the experience so certified must, under Clause 9(c)(a), be of successful execution of the work of annual collection of user charges or parking fees;

(iv) such work must have been executed in a Government, Semi-Government or PSU organisation; and

(v) such execution must be "during last 2 years (up to 31.12.2025)", proved by completion certificate(s) of the organisation concerned.

24. It is well-settled in law that requirements in a tender notice can be classified into the following two categories: (i) those which lay down the essential condition of eligibility; (ii) the other which are merely ancillary or subsidiary to the main object sought to be achieved by the condition. In the first case, the authorities issuing the tender may be required to enforce the condition rigidly whereas in other cases, it may be open to the authority to deviate from it and not to insist upon strict literal compliance of the condition[12]. It is an equally established legal proposition that any non-conformity with or relaxation in the prescribed standard allowed in case of any tenderer, if not resulting in substantial prejudice or injustice to any of the parties or to public interest in general would not be bad[13]. It is equally well-settled in law that where upon due consideration of the tender document submitted by all the tenderers on their own merits, if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which the essential conditions were laid down, the same may not ordinarily be interfered with[14].

I. THE NATURE OF THE EXPERIENCE REQUIRED UNDER CLAUSE 9: A SPECIALISED ONE?

25. Clause 9(c)(a) of the Board's instructions required a bidder to furnish completion certificate(s) evidencing "successful execution of annual collecting User Charges/Parking Fees work" in Government, Semi-Government or PSU

[12] **Poddar Steel Corporation** v. **Ganesh Engineering Works and Ors., (1991) 3 SCC 273; Om Prakash Sharma** v. **Ramesh Chand Prashar & Ors., (2016) 12 SCC 632; Central Coalfields Ltd. & Anr.** v. **SLL-SML (Joint Venture Consortium) & Ors., (2016) 8 SCC 622; Bakshi Security & Personnel Services Pvt. Ltd.** v. **Devkishan Computed Pvt. Ltd. & Ors., (2016) 8 SCC 446** and **Vidarbha Irrigation Development Corporation & Ors.** (supra)

[13] **G.J. Fernandez** v. **State of Karnataka & Ors., (1990) 2 SCC 488; Indian Railway Catering and Tourism Corporation Ltd. & Anr.** v. **Doshion Veolia Water Solutions Pvt. Ltd. & Ors.,(2010) 13 SCC 364** and **National High Speed Rail Corporation Ltd.** v. **Monte Carlo Ltd. & Anr. (2022) 6 SCC 401.**

[14] **B.S.N. Joshi & Sons Ltd.** v. **Nair Coal Services Ltd. & Ors., (2006) 11 SCC 548** and **National High Speed Rail Corporation Ltd.** (supra)

organisations, for the last two years up to 31.12.2025". This condition cannot be read in the abstract. It has to be read against the subject-matter of the tender itself, which is the collection, on behalf of a public market committee, of user charges from a high volume of retail and commercial vehicles entering Mandi premises on a daily basis, over a twelve-month contract period, for a consideration exceeding Rs.16 crores. A contract of this description calls for demonstrated competence in gate management, ticketing or token systems, cash handling and daily reconciliation, accounting to the authority, and supervision of collection staff across an entire working year, a specialised, continuous, revenue-facing operation in which the collection of user charges is not incidental to some other engagement, but is itself the bidder's principal contractual obligation to the authority that appoints it.

26. Organising a cattle fair is a fundamentally different undertaking. Under the Punjab Cattle Fairs (Regulation) Rules, 1968, the sites required for commercial or other purposes in connection with a cattle fair are allotted by the fair officer by auction, and Rule 6(1) requires the successful bidder to pay the full amount of the rent offered at the fall of the hammer. The organiser of a cattle fair is, in other words, a lessee who pays the authority for the privilege of using the fairground for the duration of the fair; he is not an agent appointed by a public body to collect, account for and remit a statutory user charge on its behalf. That such an organiser may, in the course of running the fair, himself levy some charge on those who park vehicles or set up stalls within the fair ground is not disputed; but that charge is levied by him for his own account, as an incident of a wholly different commercial arrangement, the temporary lease of fair-ground space, and not in the discharge of a specialised contractual duty owed to, and monitored by, a public authority of the kind that Clause 9(c)(a) contemplates.

27. The distinction is not a semantic one. If experience of the incidental kind were treated as equivalent to experience of the specialised kind that Clause 9(c)(a) requires, the eligibility condition would be rendered practically meaningless, for it is difficult to conceive of any commercial engagement of scale, a fair, a festival, an exhibition, even a wedding venue, that does not involve the organiser collecting some charge from someone in the course of running it. To hold that any such incidental collection satisfies a clause that, in terms, requires proven experience of collecting "User Charges/Parking Fees work" for Government, Semi-Government or PSU organisations, is to empty the clause of the very specialisation it was designed to test. The object of Clause 9(c)(a) is to ensure that the entity to which the collection of a substantial public revenue is to be entrusted has previously discharged that very kind of duty, collection on behalf of, and accountable to, a public body, and not merely some activity that happens, in passing, to involve the handling of money.

28. The H1 Bidder's experience, on its own showing, lies in organising cattle fairs as a fair contractor/lessee; it does not lie in collection of user charges or parking fees as a contractual duty owed to a Government, Semi-Government or PSU body. The two are not interchangeable, and the Committee's letter dated 09.03.2026, treating them as such without more, discloses no application of mind to the language of its own clause.

II. <u>THE CERTIFICATES DO NOT ESTABLISH THE EXPERIENCE OF THE H1 BIDDER</u>

29. A distinct and equally fatal infirmity attaches to the certificates themselves. The experience certificate reproduced in paragraph 15 of the impugned judgment is not a certificate of work executed by Micky Traders. It records participation, for fragmented periods between 11.07.2018 and 15.12.2024, by three separate names, “Shadab Rainder & Company, Rajpura", "Rajpura, Mukatsar Cattle Fair, Rajpura" and "Capital Cattle Fair, Rajpura”, none of which is Micky Traders, that is, the H1 Bidder. The explanation offered is that one Ravinder Singh, the sole proprietor of Micky Traders, was a partner in these firms, and that their experience should accordingly be treated as his own.

30. Even taking that explanation at its highest, it does not carry the H1 Bidder’s case very far. As a matter of fact, no material was placed before the Committee, or before the High Court, to substantiate the claimed nexus, no partnership deed, no certificate of registration under the Indian Partnership Act, 1932, nothing to show the extent, nature or duration of Ravinder Singh's association with these firms. An eligibility criterion cannot be satisfied by an unverified assertion of identity between a bidder and unrelated third parties.

III. <u>THE H1 BIDDER CANNOT APPROBATE AND REPROBATE ON THE MEANING OF AN IDENTICAL CLAUSE</u>

31. An independent sufficient ground is furnished by the H1 Bidder's own conduct. It is on record, and noticed in paragraph 5 of the impugned order, that the H1 Bidder participated in tenders floated for the very same nature of the work by the Marketing Committee, Patiala and the Marketing Committee, Rajpura under Enlistment Instructions requiring an identical experience criterion, and that its bids were, on both occasions, held technically non-responsive on the ground of lack of experience. The H1 Bidder did not challenge either determination.

32. We are conscious that the Committee is a distinct statutory authority, not bound by the view taken by the Market Committee, Patiala or the Market Committee, Rajpura, and that ordinarily the decision of one tendering authority does not fetter the discretion of another acting under its own notice. But the point made against the H1 Bidder is not one of institutional precedent; it is one of consistency in its own conduct. Having accepted, by not challenging it, the construction placed upon an identically worded experience clause when that construction operated to its disqualification at Patiala and Rajpura, the H1 Bidder cannot be heard, before a different authority applying the same clause in substantially the same terms, to press for the opposite construction merely because it now happens to serve its interest. A party cannot approbate and reprobate on the meaning of the very same contractual language according to the side of the fence on which it finds itself convenient to stand. That the H1 Bidder's own past conduct reflects an understanding of the clause different from the one it now advances is, moreover, itself telling evidence that the construction now pressed is not the more natural or the only reasonable one available, reinforcing, rather than merely accompanying, the conclusion already reached.

33. Thus, each of the grounds noticed above independently supports the conclusion arrived at by the High Court; taken together, they leave no room for doubt. The reading given by an authority to its own tender document is ordinarily final and is not open to re-appraisal by a writ court exercising jurisdiction under Article 226, or by this Court in appeal, provided that reading is one that the words of the clause can reasonably bear. That deference, as ***Agmatel India (P) Ltd.*** (supra), itself makes clear, is available only where the interpretation is "manifestly in consonance with the language of the tender document" and subserves its purpose. The interpretation adopted by the Committee here satisfies neither test. It treats an incidental collection made in the course of an unrelated commercial engagement as equivalent to the specialised, accountable collection of user charges that Clause 9(c)(a) in terms requires; it attributes to the H1 Bidder the institutional experience of firms with which no proved nexus exists; and it does so notwithstanding the H1 Bidder's own acquiescence, on two prior occasions, in a contrary reading of the identical clause. No reasonable authority, applying its mind to the language it had itself prescribed, could have arrived at the conclusion that the H1 Bidder possessed the requisite experience. The interpretation is accordingly patently arbitrary and is dehors the terms of the DNIT and falls squarely within the narrow exception recognised in ***Kimberley Club (P) Ltd.*** (supra) and in ***Jagdish Mandal*** (supra). The High Court was, therefore, right in exercising the power of judicial review and in declining to extend to the Committee's interpretation the ordinary deference that authorship of a tender document commands.

34. The submission that the H1 Bidder's bid, being higher by about Rs.1.5 crore, ought to be preferred in the interest of the public exchequer, does not assist the H1 Bidder. Revenue considerations cannot cure ineligibility. Bids can be compared only among bidders who are eligible to be compared in the first place; to hold otherwise would be to allow every eligibility condition to yield to the highest figure quoted, and would render the tender document, and the enlistment instructions framed to secure competence and accountability in the collection of public revenue, wholly illusory. The public interest that the H1 Bidder invokes is served, not disserved, by holding the Committee to the conditions it has itself prescribed.

35. We find no merit in the contention that the enlistment instructions are merely directory. The Committee itself proceeded on the footing that the experience criterion was mandatory, it did not accept the bid of any bidder that failed to furnish the certificate at all; it merely erred in its assessment of whether the particular certificate furnished by the H1 Bidder satisfied that mandatory requirement. A condition cannot be mandatory in the abstract and directory only in its application to a favoured bidder.

36. For the aforementioned reasons, we do not find any infirmity in the order of the High Court. In the result, the appeals fail and are hereby dismissed. There shall be no order as to costs.

37. Pending interlocutory applications, if any, shall stand disposed of accordingly.

... J.
[K.V. VISWANATHAN]

... J.
[ALOK ARADHE]

NEW DELHI;
SEPTEMBER 21, 2026.