

2026 SCC OnLine Utt 233

In the High Court of Uttarakhand
(BEFORE MANOJ KUMAR TIWARI AND SIDDHARTHA SAH, JJ.)

Super Construction Associates ... Petitioner;

Versus

State of Uttarakhand and Others ... Respondents.

Writ Petition No. 482 of 2024 (MB)

Decided on January 19, 2026, [Reserved on: 10.01.2026]

Advocates who appeared in this case :

Mr. DCS Rawat, Mr. Ketan Joshi and Mr. Hemant Singh Mahra, Advocates for petitioner.

Mr. J.C. Pande, Standing Counsel for the State of Uttarakhand.

Mr. S.S. Chauhan, Advocate for respondent Nos. 2 and 3.

Mr. Shobhit Saharia, Advocate for respondent No. 4

The Judgment of the Court was delivered by

MANOJ KUMAR TIWARI, J.:— Chief Engineer, Uttarakhand Rural Roads Development Agency issued a Notice Inviting Tender on 02.03.2024, inviting item rate bids in two bid system for various construction works under Pradhan Mantri Gram Sadak Yojna (PMGSY). Pursuant to said notice, petitioner submitted bid in respect of work of up-gradation of Khunt-Kakrighat Motor Road to Charnbend Motor Road.

2. Procurement Evaluation Committee recommended to reject the technical bid of petitioner and the said recommendation was accepted by the Bid Accepting Authority vide order dated 12.08.2024. Reasons indicated by the Procurement Evaluation Committee for making recommendation to reject petitioner's bid are as follows:

- (i) Same evidences for key machineries are submitted by other bidders for different works
- (ii) Certificate of 01 No. diploma holder not readable.
- (iii) Bank Certificate submitted, but not as required.
- (iv) Authority to seek reference submitted, but not as required.

3. Feeling aggrieved by rejection of his technical bid, petitioner has approached this Court. Petitioner has also challenged the decision taken by competent authority whereby technical bid of respondent No. 4 was found to be responsive. Reliefs sought in the writ petition are extracted below for ready reference:

- i. Issue a writ, order or direction in the nature of certiorari quashing the impugned order/bid evaluation report 12/08/2024 (annexure - 2) issued by respondent department and impugned

order/resolution dated 23/08/2024 (annexure-6) qua the respondent M/s Dalip Singh in as much as these orders declare the technical bid of respondent M/s Dalip Singh Adhikari as responsive.

- ii. Issue a writ, order or direction in the nature of certiorari quashing the impugned order/bid evaluation report 12/08/2024 (annexure-2) issued by respondent department and impugned order/resolution dated 23/08/2024 (annexure 6) qua the petitioner in as much as these orders declare the technical bid of the petitioner as non-responsive.
- iii. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to declare the technical bid of the petitioner as responsive and bid of respondent M/s Dalip Singh Adhikari as non-responsive and to open the financial bid of the petitioner.

4. Sub clause (d), (e), (g) and (h) of Clause 4.2 of Section 2 of Standard Bidding Documents which was produced in Court by learned counsel for respondent No. 2, read as under:

" 4. Qualification of the Bidder

4.2 All bidders shall include the following information and documents with their bids in Section 3, Qualification Information unless otherwise stated in the Appendix to ITB:

- (a)
- (b)
- (c)
- (d) evidence of ownership of major items of construction equipment named in Clause 4.4 B (b) (i) of ITB or evidence of arrangement of possessing them on hire/lease/buying as defined therein.
- (e) details of the technical personnel proposed to be employed for the Contract having the qualifications defined in Clause 4.4 B(b) (ii) of ITB for the construction.
- (f)
- (g) evidence of access to line(s) of credit and availability of other financial resources/facilities (10 percent of the contract value) certified by banker (the certificate being not more than 3 months old.)
- (h) authority to seek references from the Bidder's bankers;

5. Sub clause (g) and (h) require every bidder to obtain certificate/authority letter from a banker and submit the same with his bid. The format, in which certificate/authority letter has to be obtained from the bank is also given in the Standard Bidding Document. The Procurement Evaluation Committee has found the certificate and the

authority letter issued by the banker not as per the format given in the Standard Bidding Document.

6. As regards the first ground taken for rejecting petitioner's bid, learned counsel for petitioner submits that Standard Bidding Document nowhere provides that owner of the construction equipment/machinery cannot give the equipment/machinery on rent to other contractors; all equipments/machineries are not used simultaneously during the course of executing the work and the construction equipments/machineries are used in phases at different times, therefore leaving machinery idle on the construction site is not desirable as it would amount to wastage of resources.

7. Learned counsel for petitioner further submits that M/s Sugam Infratech, to whom the construction equipment/machinery was leased out by the owner thereof, has not participated in the bidding process for the work in question and M/s Sugam Infratech has not been awarded any contract pursuant to the bidding process initiated on 02.03.2024, therefore, the apprehension that the same equipment would be used simultaneously by two contractors, is unfounded. He also submits that petitioner had an understanding with M/s Sugam Infratech that they will co-ordinate timing of works in such a manner that machines would be needed by them at different times.

8. As regards the second ground of rejection, learned counsel for the petitioner submits that in the resolution passed by the bid evaluation committee, name of diploma holder technical person proposed to be employed by petitioner for the contract is mentioned, therefore petitioner's bid could not have been rejected on the ground that his name is not readable.

9. Learned counsel for the petitioner further submits that the certificate and authority letter in term of clause (g) & (h) of ITB, were issued in favour of petitioner by Haldwani Branch of Bank of India, on the letterhead of the concerned branch, in which phone number of the branch concerned was clearly mentioned. Thus he submits that petitioner's bid could not have been rejected on the ground that it does not meet the requirement of sub-clause (g) and (h) of Clause 4.2 of Section 2 of Instructions to Bidder (ITB) contained in Standard Bidding Document for PMGSY.

10. Learned counsel appearing for Pradhan Mantri Gram Sadak Yojna (PMGSY), however, submits that as per sub clause (d) of Clause 4.2 of Section 2 of ITB, every bidder is required to furnish evidence of ownership of major items of construction equipment or evidence of arrangement of possessing them on hire or lease.

11. Learned counsel for PMGSY submits that petitioner furnished a certificate from the owner of construction equipment that it has been

given on rent to the petitioner, however, another contractor, namely, M/s Sugam Infratech who submitted bid for some other work pursuant to same NIT also produced evidence that the same construction equipment has been given on rent to him by the owner thereof.

12. He submits that condition mentioned in sub clause (d) is meant to allay the apprehension of the employer that the construction work would not be delayed due to lack of machinery/equipment with the successful bidder, therefore rejection of petitioner's bid, is justified as two bidders, including the petitioner, were claiming that one set of machinery has been given on rent to them by the same person.

13. He further submits that if same set of machinery is leased out to two bidders, then it would not be readily available to both in times of need and one of them will have to wait till the other is done with his work. He submits that since this will affect the quality and pace of work, therefore employer was well within his right to reject the bid submitted by petitioner for non-compliance of sub clause (d) of Clause 4.2 of Section 2 of ITB. He further submits that ground of rejection is referable to express conditions of ITB, therefore any interference in the matter would be uncalled for.

14. Learned counsel appearing for respondent No. 2 further submits that in the Diploma enclosed by petitioner with his bid, name of technical person proposed to be employed by him is not readable and the ground of rejection also clearly indicates so. Therefore, merely because name of technical person is mentioned in the resolution passed by the department will not improve the case of petitioner as his name was mentioned at various places in petitioner's bid, and the employer has to be satisfied about the qualification possessed by the technical person.

15. He further submits that the person proposed to be employed for contract must have the qualification prescribed in Clause 4.4(B)(b)(ii) of Instructions to Bidders (ITB). He submits that, with a view to substantiate the claim that the person so employed possess necessary qualification, every bidder is required to submit the diploma/degree issued by the competent authority.

16. Learned counsel for respondent No. 2 submits that if the name of technical personnel is not legible in the diploma/degree, then even if name of technical person is readable elsewhere will not be sufficient and the bidder will have to satisfy the employer that the technical person possesses all requisite qualifications for such appointment, therefore diploma/degree of the person proposed to be appointed has to be readable.

17. Regarding third and fourth ground of rejection, learned counsel appearing for respondent No. 2 refers to Annexure-8 to the writ petition and submits that the certificate issued by petitioner's banker regarding

evidence of access to line(s) of credit in terms of sub clause (g) and authority to seek references in terms of sub clause (h) of Clause 4.2 of ITB was not in the format given in Standard Bidding Document.

18. He has produced in Court the format of bank certificate and the letter to be issued by the bank regarding authority to seek references. As per the format, the Senior Bank Manager is required to issue the authority letter/certificate on the letterhead of the bank, in which telephone number, fax number and email details of the bank have to be clearly mentioned.

19. The documents enclosed as Annexure-8 to the writ petition were issued by Chief Bank Manager, Bank of India, Aishbagh Branch, Kaladhungi Road, Haldwani; however, in the bank certificate, as well as the letter regarding authority to seek references, fax number and email i.d. of the concerned branch is altogether missing.

20. Learned counsel for respondent No. 2 contends that condition mentioned in sub clause (g) and (h) of Clause 4.2 of Section 2 of ITB is meant to protect interest of the employer in case of need and employer can invoke its power under these clauses only by a written communication to the Banker of the Contractor. He thus submits that since power available to the employer under sub clause (g) and (h) has to be used by written communication only, therefore the prescribed format given in the Standard Bidding Document requires that certificate referred to in sub clause (g) and the authority letter issued in sub clause (h) must contain fax number and email i.d. of the concerned branch of the bank.

21. He submits that in the certificate and authority letter of his banker submitted by petitioner, fax number and email i.d. is not mentioned and in the absence of fax number and email i.d., employer would be prevented from invoking the powers available to him as per the Standard Bidding Document. Thus he submits that technical bid of the petitioner was rightly rejected for not confirming to the express conditions of the ITB and there is no arbitrariness or illegality whatsoever in the decision taken by the competent authority.

22. Hon'ble Supreme Court in the case of *N.G. Projects Limited v. Vinok Kumar Jain*, (2022) 6 SCC 127, after considering the law on the point, held as under:

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.

22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e. not satisfying the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.

23. In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work.

23. In the case of *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517, Hon'ble Supreme Court summarised the legal position as follows:

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind.

A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.

24. In the case of *Uflex Limited v. Government of Tamil Nadu*, (2022) 1 SCC 165, in para 42 following observation is made:

42. We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters there is obviously an aspect of commercial competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for downplaying the freedom which a

tendering party has, merely because it is a State or a public authority, making the said process even more cumbersome. We have already noted that element of transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examined are restricted as set out in *Tata Cellular* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651] and other cases. The objective is not to make the Court an appellate authority for scrutinising as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them.

25. From the judgments referred to above, it is evident that in tender matters, the satisfaction whether a bidder satisfies the conditions of tender, is primarily upon the authority which invites tender. Scope of judicial review is very limited in such matters.

26. We find substance in the submission made by learned counsel for respondent No. 2 that petitioner's bid failed to meet the conditions mentioned in sub clause (d), (e), (g) and (h) of Clause 4.2 of Instructions to Bidders contained in Standard Bidding Document. Thus the decision taken by competent authority of rejecting bid of the petitioner, cannot be faulted.

27. In view of the law of the land, we do not find any scope for interference with the decision taken by the employer of rejecting petitioner's bid.

28. Petitioner has also challenged the decision taken by competent authority of declaring respondent No. 4 as technically qualified.

29. It is alleged that respondent No. 4 has not disclosed his litigation history in his bid and the technical personnel alleged to have been employed by him is also claimed to be employed by another contractor, namely, Roop Singh Kathayat.

30. This Court is not inclined to go into the question, as to whether respondent No. 4 was rightly declared to be technically qualified for the following reasons:

i) Decision taken by the employer regarding eligibility of a bidder has to be respected, as the employer, having authored the tender document, is the best person to understand and appreciate its requirements and interpret its documents.

This view is supported by a judgment rendered by Hon'le Apex Court in the case of *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited*, (2016) 16 SCC 818. Para 13 and 15 of said judgment are reproduced below:

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.

- ii) Against the decision taken by Bid Accepting Authority on 12.08.2024, whereby technical bid of petitioner was rejected and that of respondent No. 4 was accepted, petitioner made representation on 18.08.2024, within the window period provided to every bidder who was declared ineligible. The representation made by him was rejected and rejection order is also challenged in this petition. In his representation, petitioner did not raise this issue that the technical personnel proposed to be employed by respondent No. 4 is claimed as employee by another bidder (Roop Singh Kathayat), even though petitioner raised various other issues against acceptance of technical bid of respondent No. 4. Thus petitioner cannot be permitted to raise an issue at this belated stage which was not canvassed by him before the competent authority.
- iii) Petitioner's technical bid was rejected for certain grounds as discussed above. Upon rejection of his technical bid, petitioner became disqualified to participate in the next stages of bidding process. This Court has declined to interfere with the decision taken by competent authority of rejecting petitioner's technical bid, therefore the issue regarding qualification of respondent No. 4 to participate in the bidding process raised by petitioner would be of academic interest only. Petitioner loses *locus standi* also after rejection of this technical bid. Thus, we are not inclined to go into the question of eligibility of respondent No. 4, as raised by petitioner.

31. Thus we do not find any merit in the writ petition. The writ petition therefore fails and is dismissed.

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