



2026:AHC-LKO:39249-DB

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**WRIT - C No. - 5810 of 2026**

M/S Konkan Railway Corporation Ltd. Thru. Auth.  
Mr. Om Prakash Verma

.....Petitioner(s)

Versus

Union Of India Thru. General Manager (N.E.R.)  
Gorakhpur U.P. And 5 Others

.....Respondent(s)

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Counsel for Petitioner(s) : Alok Kumar Singh, Kazim Ibrahim  
Counsel for Respondent(s) : A.S.G.I.

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**Court No. - 3**

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

**HON'BLE ABDHESH KUMAR CHAUDHARY, J.**

1. Supplementary affidavit filed today in Court by the petitioner is taken on record.
2. Heard Sri Sudeep Seth, learned Senior Advocate assisted by Sri Alok Kumar Singh and Kazim Ibrahim, learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondents.
3. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has made the following main prayers:-

"i. Issue a writ, order or direction in the nature of Certiorari quashing the impugned rejection of the Techno-Commercial Bid (Technical Bid) of the Petitioner, submitted in furtherance of Tender No.EPC-PSI-GKC-CHPG-NER, dated 30.09.2025, floated by the Respondent No. 2 (Annexure No. 1 - as communicated to Petitioner vide e-mail dated 19.05.2026 sent at 17:30 by the Respondent No. 2);

ii. Issue a writ, order or direction in the nature of Certiorari quashing the impugned opening of financial bids, as notified on 19.05.2026 at 19:59:57 hours, i.e., within a span of three hours after the Petitioner was informed via impugned email regarding the rejection of its technical bid. (contained as Annexure No. 2);

iii. Issue a writ, order or direction in the nature of mandamus directing the

Respondent No. 2 to re-evaluate the Techno-Commercial Bid (Technical Bid) of the Petitioner, submitted in furtherance of Tender No. EPC-PSI-GKC-CHPG-NER, dated 30.09.2025, floated by the Respondent No. 2;

iv. Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to not proceed in furtherance of tender process including declaration, execution and issuance of work order in favour of L-1 or any other consequential action in the tender process."

4. The bid of the petitioner had been rejected on the technical ground that it "did not fulfill the eligibility criteria". In the said impugned e-mail dated May 19, 2026, nothing further had been stated, as had been pointed out by us in our earlier order dated May 26, 2026. Thus, while staying the earlier tender process as no further action had been taken by the authority after opening of the financial bid, we also directed the respondents to provide a copy of the reasoned order, within 24 hours to the petitioner.

5. Subsequently, on May 26, 2026, pursuant to the order passed by this Court, a further explanation was provided by the North Eastern Railway, wherein it was submitted as follows:-

"As pr our tender conditions and as per the legal opinion of North Eastern Railway/Gorakhpur Legal Cell obtained in similar instances, the stamp paper for the Bank Guarantee should have been as per UP Stamp Act. However, you have not submitted the Stamp Paper of the requisite amount. Therefore, there was a legal lacuna in considering your case. In our tenders, rejection on this ground has been done for all non-conforming tenders on this count."

6. Sri Sudeep Seth, learned Senior Advocate appearing on behalf of the petitioner has submitted that adequacy of stamp duty is a curable defect and the Stamp Act is a fiscal measure enacted to secure revenue for the State and time and again the Courts have held that the provision of Stamp Act has not been enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. To buttress his aforesaid argument, learned Senior Advocate appearing on behalf of the petitioner has relied on a judgment rendered by Hon'ble the Supreme Court in **Hindustan Steel Ltd. vs. M/s. Dalip Construction Company** reported in (1969) 1 SCC 597.

7. It has been next submitted by the learned Senior Advocate appearing on behalf of the petitioner that an authority inviting tenders is not bound to give effect to every term and condition mentioned in the notice and is entitled to

waive its condition even on technical irregularity. To buttress his aforesaid argument, learned Senior Advocate appearing on behalf of the petitioner has relied on a judgment rendered by Hon'ble the Supreme Court in **Poddar Steel Corporation vs. Ganesh Engineering Works and others** reported in **(1991) 3 SCC 273**. The relevant paragraph of the aforesaid judgment is delineated below:-

"6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories — those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in *C.J. Fernandez v. State of Karnataka* [(1990) 2 SCC 488] a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the impugned decision, relied upon *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489] but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs."

8. On the other hand, learned counsel appearing for the respondents has submitted that the financial bid has already been opened and L-1 had been

declared and as such a right has accrued in favour of the L-1 in the present tender.

9. We have heard the learned counsel for the parties and on a careful consideration of the issues raised, we are of the view that apparently on May 19, 2026, when the technical bid of the petitioner was rejected the only reason provided by the authority was "does not fulfill the criteria", without any reason or whisper as to which criteria and in which manner the said criteria has not been fulfilled. However, subsequently it was only after a direction of this Court that on May 25, 2026, the authority came up with a reason to justify the aforesaid rejection dated May 19, 2026 as is apparent from the letter dated May 25, 2026 of the authority, wherein reasons of deficient stamp duty in the bank guarantee has been provided with. We do not appreciate this kind of improvement made by the authority in the reasoning of rejecting the technical tenders as the law stands settled that the authority cannot invent or add new justification for a decision already taken during legal proceedings (see **Mohinder Singh Gill v. Chief Election Commr.** reported in (1978) 1 SCC 405).

10. In any case, the above reason, namely that adequate stamp duty had not been paid in accordance with the U.P. Stamp Act, in our view, is at the most a lacuna and a curable defect which could have been sought to be cured by the authority concerned. It is further to be noted, as pointed out by Sri Sudeep Seth, learned Senior Advocate appearing on behalf of the petitioner, that in the past, for another tender, a similar bank guarantee of Rs.500/- had been accepted and the financial bid of the petitioner had been opened, wherein the petitioner had been declared L-3. These documents are annexed at Page Nos.159 and 163 of the supplementary affidavit.

11. In light of the above, it appears that the action of the authorities is mala fide and is merely an attempt to eliminate the petitioner, who has submitted the lowest financial bid.

12. As regards the contention of the learned counsel for the respondents that financial bid had been opened, it has to be understood that it is well settled that a bidder, even if declared the highest bidder, does not for that reason alone obtain an indefeasible right to insist upon award of the contract. Until the process matures into a concluded contractual relationship in accordance with the governing tender conditions, the bidder's position remains

provisional. The Supreme Court in **Meerut Development Authority v. Assn. of Management Studies** reported in (2009) 6 SCC 171 has held that State or authority under Article 12 of the Constitution of India is not bound to accept bid of L1 bidder, but is only bound to act without arbitrariness and favouritism. The relevant paragraphs of the aforesaid judgment are delineated below:-

"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

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29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism."

13. To the same effect, is the judgment of The Supreme Court in **State of Jharkhand v. CWE-SOMA Consortium** reported in (2016) 14 SCC 172, wherein it was held that there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. The relevant paragraphs of the judgment are quoted hereinbelow:

"13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide *Laxmikant v. Satyawani* [*Laxmikant v. Satyawani*, (1996) 4 SCC 208] , *Rajasthan Housing Board v. G.S. Investments* [*Rajasthan Housing Board v. G.S. Investments*, (2007) 1 SCC

477] and *U.P. Avas Evam Vikash Parishad v. Om Prakash Sharma* [*U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma*, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737] ).

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21. Observing that while exercising power of judicial review, the Court does not sit as appellate court over the decision of the Government but merely reviews the manner in which the decision was made, in *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651] , SCC in para 70 it was held as under: (SCC p. 675)

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State.* The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

(emphasis in original)

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23. The right to refuse the lowest or any other tender is always available to the Government. In the case in hand, the respondent has neither pleaded nor established mala fide exercise of power by the appellant. While so, the decision of the Tender Committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender."

14. The Supreme Court in **Indore Vikas Praadhikaran (IDA) v. Shri Humud Jain Samaj Trust** reported in 2024 SCC OnLine SC 3511 has recently reiterated the settled legal position reminiscing its precedents in *Tata Cellular v. Union of India*, (1994) 6 SCC 651]; *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.*, (2005) 6 SCC 138; *Meerut*

*Development Authority v. Assn. of Management Studies, (2009) 6 SCC 171; Laxmikant v. Satyawan, (1996) 4 SCC 208* that lowest bidder does not encompass an indefeasible right for issuance of letter of intent in its favour and has held as follows:

"14. Keeping in view of the aforesaid judgments, this Court is of the considered opinion that in the absence of allotment letter and acceptance of highest bid, no relief could have been granted in favour of respondent No. 1 as there was no concluded contract in the matter and the decision taken by the Tender Evaluation Committee to generate more revenues could not have been interfered with in the manner and method as has been done by the Division Bench of the High Court of Madhya Pradesh at Indore Bench. The bidder has no right in the matter of bid except of fair treatment and cannot insist for further negotiation as has been done in the present case. The terms and conditions of NIT, particularly condition No. 6, empowers the IDA to accept or reject any or all bids. In the present case, the bid was rejected for valid and cogent reasons and, therefore, the order passed by the Division Bench of the High Court of Madhya Pradesh is set aside."

15. Accordingly, in the peculiar facts and circumstances and keeping in view the arbitrary rejection of the technical bid on flimsy ground as mentioned herein above, the tabulation of the financial bid prepared on May 19, 2026 (page No.24 of the writ petition) is quashed and set aside, with a direction upon the authorities to once again reconsider the financial bids of all the tenderers, including that of the petitioner, without considering the impediment of inadequacy in stamp duty in the bank guarantee submitted by the petitioner.

16. Furthermore, we also direct the petitioner to make good the deficiency in stamp duty urgently on or before June 3, 2026, so that the exercise of consideration of the financial bid, as aforesaid can be taken expeditiously in accordance with law.

17. With the above directions, the writ petition is **disposed of**.

**May 29, 2026**  
cks/-

**(Abdhesh Kumar Chaudhary,J.) (Shekhar B. Saraf,J.)**