2026:AHC-LKO:59440-DB

A.F.R.

Reserved on 23.07.2026

Delivered on 21.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW

WRIT - C No. - 6379 of 2026

Ranjana Pandey ..... Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. P.W.D. Lko And 6 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Pawan Kumar Pandey, Priya Singh
Counsel for Respondent(s)	: C.S.C., Harsh Vardhan Mehrotra, Madhur Jhavar, Mohd Kaif Ali

Court No. – 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

ABDHESH KUMAR CHAUDHARY,J.: Heard Ms. Priya Singh, learned counsel appearing for and on behalf of the petitioner, Shri Pankaj Khare, learned Additional Chief Standing Counsel, appearing for and on behalf of the respondent no. 1, 2 and 3-State Authorities as well as Shri Gaurav Mehrotra, learned Senior Advocate, assisted by Madhur Jhavar, learned counsel appearing for and on behalf of the respondent no. 6.

2. The present writ petition has been filed under Article 226 of the constitution of India, seeking substantially for the following relief(s):

> *"(i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order/report dated 02.05.2026 (attached as Annexure no. 2) passed by the Headquarters Tender Disposal Committee.*
>
> *(ii) Issue a writ, order or direction in the nature of Certiorari quashing the consequential action of the respondent authorities in opening the financial bid on 02.06.2026 and any consequence thereof (attached as Annexure no. 3).*
>
> *(iv) Issue a writ, order or direction in the nature of Mandamus commanding the respondent authorities to undertake a fresh consideration of the petitioner's objection and the technical eligibility of opposite party No. 6.*
>
> *(v) Issue a writ, order or direction in the nature of Mandamus restraining the respondent authorities from giving effect to the allotment, work order, agreement or any consequential action taken in favour of opposite party No. 6 pursuant to the impugned tender process."*

3. Briefly stating, the petitioner as being a registered contractor claims to be eligible to participate in civil construction works floated by the Public Works Department of Government of Uttar Pradesh. Accordingly, the petitioner participated in a tender bearing Tender ID No. 2026-CEUFZ-1133498-1 dated 31.03.2016 for the work namely "***Renovation and Expansion Work of Press club"*** situated in District Ambedkar Nagar, which was for an estimated cost of Rs. 117 Lakhs and was stipulated to be completed within a period of Six months.

4. The said Tender was to be submitted by eligible contractors on percentage rate basis via online mode between 07.04.2026 to 15.04.2026 and the said technical bids were to be opened on 15.04.2026.

5. It is the case of the petitioner that after opening of the technical bids on 15.04.2026, they came to learn that the Respondent No. 6 (M/s Jai Prakash Verma), one of the participating co-bidders had allegedly concealed material information relating to an ongoing contract being executed by them under the Rural Engineering Department, Ambedkar Nagar, to artificially manipulate and misrepresent their available Bid Capacity. Thus, the petitioner submitted a detailed representation dated 17.04.2026 to the Executive Engineer, Provincial Division, Public Works Department, Ambedkar Nagar, lodging their formal objections and requesting them to verify from the Rural Engineering Department, Ambedkar Nagar as well as the District Panchayat Authorities about the ongoing work being executed by the Respondent No.6 and also to examine the effect of the said concealed work on the technical eligibility of Respondent No.6.

6. In the interregnum, the Respondent-State issued an Office Memorandum (OM) dated 18.04.2026 laying down a SOP (Standard Operating Procedure) for technical bid evaluation.

7. In the meantime, pursuant to the objections dated 17.04.2026 raised by the petitioner, the Executive Engineer, Provincial Division, Public Works Department, Ambedkar Nagar issued letter dated 20.04.2026 seeking information from the Executive Engineer, Rural Engineering Department, relating to the ongoing works of the Respondent No.6, which was confirmed by him vide his letter dated 21.04.2026. Thus, the issue came to be placed before the Local Tender Committee constituted for disposal of complaints relating to technical eligibility.

8. The Local Tender Evaluation Committee examined the allegations raised by the petitioner and prepared a detailed evaluation report dated 22.04.2026 and having found that the Respondent No.6 has suppressed material information about other ongoing works, marked the complaint of the petitioner as "meritorious" and declared the bid of respondent No.6 as "non-responsive".

9. Thereafter, the aforesaid issue was accelerated to the Headquarters Disposal Committee. Apparently, vide a report dated 02.05.2026, the Headquarters committee neither set aside the evaluation report of the Local Tender Evaluation Committee nor declared the respondent No.6 eligible and merely remanded the issue to the Local Tender Evaluation Committee for fresh consideration in view of the SOP dated 18.04.2026.

10. It is the contention of the petitioner that the results of the Local Tender Evaluation Committee was never communicated to them and instead they came to learn on 02.06.2026 that the financial bid was opened of the subject tender and the contract was already awarded to the Respondent No.6. Thus, a challenge has been laid in the present writ petition seeking quashing of the report/order dated 02.05.2026 passed by the Headquarters Disposal Committee and the consequential action of the respondents in opening the financial bid dated 02.06.2026; and direction to the respondent authorities to undertake a fresh consideration of the petitioner's objections relating to the technical eligibility of the respondent No.6 and consequential effect of restraining any allotment and/or grant of any work order to the respondent No. 6 in the subject tender.

11. It has been also submitted that different yard-sticks have been adopted by the respondents for determining the technical eligibility as apparently the Local Tender Evaluation Committee had declared the bid of the petitioner as 'non-responsive', therefore, in a separate tender dated 27.02.2026 relating to widening and strengthening work of Bhiti Umrawan Link road, wherein the SOP dated 18.04.2026 was allegedly ignored to the disadvantage of the petitioner. Thus, issue of arbitrariness, fairness, discrimination and infringement of rights guaranteed under Article 14 and 19(1)(g) of the Constitution has also been raised by the petitioner in the present writ petition.

12. *Per contra*, the respondent No. 1 to 5, being the State of Uttar Pradesh and its other functionaries, although did not file any Counter-Affidavit but vehemently defended the action taken by them. It has also been submitted by the learned Additional Chief Standing Counsel that the respondent No.6 was declared as ‘L-1’ on 02.06.2026 and accordingly, a Letter of Acceptance was issued to them on 08.06.2026. It has also been stated that pursuant to the said letter of acceptance, a contract has already been awarded to respondent No.6/ private respondent on 10.06.2026. Thus, it is their submission that in a six-month contract, almost two months have already lapsed and as such this Court may not interfere in this matter at this stage, keeping in view the peculiar facts and circumstances of the present case.

13. As far as the private contesting respondent/ respondent No.6 is concerned, they filed a short-counter affidavit on 09.07.2026, followed by a supplementary counter-affidavit dated 21.07.2026.

14. Besides, the denial of the contents of the writ petition and supporting the stand taken by the respondent-State, the private respondent contended that filing of a complaint by a disgruntled competitor/bidder in tenders issued by the Government had been a perennial problem, sometimes stalling the Tender process itself. It was in this background that as an administrative clarification/ remedial measure, in all the tender issued by the Utter Pradesh Public Works Department, an office order dated 18.04.2026 was issued providing clarification regarding the criteria which are to be considered by the local tender committee and tender committee at the head office of the Department, more particularly with the bid capacity of the bidder.

15. According to the learned counsel, one of the criteria as stipulated under Clause 12 as contained in the impugned office order dated 18.04.2026, provided that the verification of concealed work against any contractor/firm will be done only if the cost of the concealed works exceeds 10 percent of the invited tender cost. Further, if the cost of the work is less than 10 percent of the invited tender cost, the bid capacity displayed on the Prahari portal will be revaluated by the Local Prahari Committee. According to the private respondent, as per the allegation of the petitioner, the respondent No.6 at best may be guilty of not disclosing its ongoing work of Rs.3.72 Lakh, however, the same made no impact on the bidding capacity of the answering respondent for participating in the aforesaid tender as the cost of the subject tender was Rs.117 Lakhs and the cost of the work purportedly concealed by answering respondent was Rs. 3.72 Lakhs, which is less than 10% of the cost of the tender, i.e. Rs.117 Lakhs, as such, in accordance with Clause 12 of the office order dated 18.04.2026, the bid submitted by the answering respondent was rightly re-evaluated. It was also submitted that the Headquarters Disposal Committee has merely directed the technical evaluation committee to correct and/or review its mistake in the light of the office order dated 18.04.2026.

16. It has also been further highlighted that the respondent-State, upon re-valuation of the tender of the respondent No.6, including the ongoing work has found them eligible. Subsequently, on due consideration of the financial bid, they being the lowest bidder have been declared 'L-1' in the aforesaid tender and accordingly, a contract bond was executed by the respondent-State. It has been further submitted that as a matter of fact, they had been executing the work for the last more than two months without any complaint.

17. As far as the contention of the petitioner relating to arbitrary and discriminatory act of the respondent-State, in not providing equal treatment as that of respondent No. 6 is concerned, the learned counsel has submitted that first and foremost, the alleged discrimination is relating to a different tender and as such is out of context. Secondly, it is submitted that it is available on records of the writ petition that the petitioner had while participating in the tender for the work widening and strengthening of Bhiti Umrawan Link road, Ambedkar Nagar, had actually concealed 08 ongoing works costing to Rs.94.09 Lakhs. According to the learned counsel, since the entire tender value for the aforesaid work was Rs.223 Lakhs, 10% whereof was Rs.22.3 Lakhs, as such, the cost of the concealed work of Rs. 94.09 lakhs by the petitioner, were far more than the 10% of the entire cost of the invited tender and therefore, the bid of the petitioner was not required to be re-evaluated and was declared as “non-responsive” as per Clause 12 of the office order dated 18.04.2026. Thus, according to the learned Counsel, the purported ground of differential treatment of the bid of the petitioner in a separate tender qua the bid of the answering respondent in the subject matter tender, is totally unwarranted and untenable.

18. This Court has heard learned counsel for the parties at length on several occasions and perused the record. Before entering the merits, it is useful to recapitulate the settled parameters of judicial review in tender matters, which supply the yardstick against which the rival contentions are to be tested.

19. Although, there is a rich precedent on the said subject, sufice to mention that the parameters and scope of judicial review in tender matters stands firmly established through the prominent judgments of the Hon'ble Supreme Court of India, passed in ***Tata Cellular v. Union of India,*** reported in ***(1994) 6 SCC 651; Michigan Rubber V/s State of Karnataka,*** reported in ***2012 (8) SCC 216; Jagdish Mandal v. State of Orissa,*** reported in ***(2007) 14 SCC 517; Uflex Ltd. v. State of Tamil Nadu,*** reported in ***(2022) 1 SCC 165;*** and ***N.G. Projects Ltd. v. Vinod Kumar Jain*** reported in ***(2022) 6 SCC 127;*** wherein on each occasion the Apex Court structured the basic broad principles for interference based on the foundation of judicial review being in the nature of a review of the decision-making process and not the decision itself.

20. Two further decisions of the Hon'ble Supreme Court, which require special mention as they reinforce and sharpen this position, are ***Silppi Constructions Contractors v. Union of India,*** reported in ***(2019) SCC OnLine SC 1133;*** and ***Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium),*** reported in ***(2016) 8 SCC 622.*** The Court in ***Silppi Constructions Case*** *(supra)* held that evaluating tenders and awarding contracts are essentially commercial functions in which Courts should be *"normally loathe to interfere in contractual matters, unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out",* and cautioned that the power of judicial review exists to test whether a decision-making process is lawful, and not whether the decision itself is sound. Similarly, in ***Central Coalfields Case*** *(supra),* the Court held that it is primarily for the author of the tender document to decide the essentiality of a particular condition, and that a term will ordinarily be treated as essential where the tendering authority has treated it as such, subject only to review for arbitrariness, unreasonableness, discrimination or mala fides. According to this Court, when these judgments are read together with two more judgments passed by the Hon'ble Supreme Court in ***Raunaq International Ltd. v. I.V.R. Construction Ltd.,*** reported in ***(1999) 1 SCC 492;*** and ***Air India***

Ltd. v. Cochin International Airport Ltd., reported in ***(2000) 2 SCC 617;*** the consistent thread is that interference is warranted only where overwhelming public interest, mala fides, or manifest arbitrariness is demonstrated and not merely because an alternative view of the tender conditions was possible.

21. Moreover, this Court finds from a facial reading of these judgments that while the Supreme Court provided a free hand and to a certain extent some latitude to the State in prescribing and/or deciding the terms and conditions of a tender, so as to ensure viability, technical competence and financial capability, but at the same time the State authorities have been put on a caveat that, in case the said latitude has been demonstrably discriminatory or arbitrary, this Court exercising its jurisdiction under Article 226 of the Constitution, would not be powerless in conducting a judicial scrutiny of the same. In any case, the latitude provided to the State is not unbridled as the whole idea is to provide an equal-level playing ground to each of the tenderers and not to take any decision, which would have the vice of irrationality, unreasonableness, unfair and being not transparent, malafide, bias or perversity or any such actions, which is contrary to the statutory provisions.

22. Coming back to the context of the present case before this Court, it is to be noted that the Hon'ble Supreme Court in the ***Uflex case*** (supra) has very categorically observed that although the objective of the "tender jurisdiction" of the High Courts under Article 226 of the Constitution was to ensure greater transparency in the administrative actions and decisions relating to Tender by the authority concerned, however, the hard fact remains that, of late almost no tender document issued by a public authority remains unchallenged by unsuccessful competitors/bidders/tenderers on various reason. The Apex Court in the said ***Uflex case (Supra)***, relying on the well celebrated judgment of ***Jagdish Mandal V/s State of Orisa,*** reported in ***(2007) 14 SCC 517;*** observed that a tenderer or a contractor aggrieved by an alleged breach of tender conditions by a public authority always has the statutory remedy of seeking damages before a Civil Court. Consequently, the Apex Court went on to hold that:

> *“**3.** … 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.”*

23. Building on this, the Supreme Court in ***N.G. Projects case (Supra)*** again went on to hold that the High Courts, whilst exercising “tender jurisdiction” must bear in mind the provisions of clause (ha) of Section 41 of the Specific Relief Act, 1963, inserted in pursuance of the report dated 20-6-2016 submitted by the Expert Committee set up for the examination of the said legislation, which demonstrates the intention of the legislature to ensure that infrastructure projects should not be stayed. The Court went on to hold that a High Court, under Article 226 of the Constitution, ought to refrain from granting stay upon construction of infrastructure projects especially. Apparently, the Court went to the extent of stating that even if the High Court comes to a conclusion that there is total arbitrariness in the manner in which the government contract has come to be awarded by the public authority, it must refrain from interfering and must relegate the parties to the Civil Court, where an unsuccessful bidder/tenderer may claim damages for wrongful exclusion from such authority. This ought to be done because injunctions on or interferences in public projects increases the burden of additional costs on the State and deprives the citizens from the infrastructure on which the public authorities are expected to work.

24. Having recorded the aforesaid binding principles, this Court ventures to examine the contention of the parties on the touchstone of these principles and finds that the fulcrum of the argument of the learned Counsel for the petitioner is three-fold. The First being that the respondent No.6 concealed material information regarding an ongoing contract with the Rural Engineering Department so as to misrepresent its Bid Capacity; that the Local Tender Evaluation Committee, upon verification, found the complaint meritorious and declared bid of respondent No.6 ‘non-responsive’ by report dated 22.04.2026; but that the Headquarters Disposal Committee, rather than deciding the issue, remanded it for fresh consideration in light of the SOP dated 18.04.2026 which was issued only one day after the petitioner's complaint of 17.04.2026. Thus, according to the petitioner, the first contention would be that the said SOP was incapable of governing a complaint already pending. Second, and closely related is the contention that the outcome of the fresh consideration directed on remand to the Technical Evaluation Committee, was never communicated to the petitioner, which technically means that the petitioner was denied any opportunity to test or challenge the reversal of a finding that had, until then, gone in its favour. Thirdly, the plea of discriminatory treatment vis-à-vis the petitioner's own bid in another tender, being the Bhiti Umrawan Link Road tender. Each of these arguments are being examined in seriatim, keeping in view that the first two, in particular, warrant closer scrutiny than a purely formal reading of the SOP dated 18.04.2026.

25. In order to examine the said contention of the petitioner in its right perspective, it would be apt that this Court would first and foremost note the different stages involved in the tender process, keeping in mind that these tenders are basically e-tenders and are to be found on Prahari Portal of the State Government. These steps can be tabulated as herein below:

Stage 1	The respondent No.2 shall upload the Tender Document on the e-tender portal and thereafter, on the Prahari Portal.
Stage 2	The Contractors will log in to the Prahari Portal and uphold their bid along with all the documents.
Stage 3	The contractors will complete the uploading of documents on the Prahari Portal and thereafter, download the Technical Sheet E-1 which will then be uploaded on the E-Tender Portal.
Stage 4	The submitted bids will be subjected to technical evaluation by the Prahari Portal itself without any manual checking. The results will be displayed as 'responsive/ non-responsive'. The same will be uploaded on E-tender portal as well.
Stage 5	A period of 72 hours is thereafter granted to all bidders to object to the automatic outcome of the technical evaluation carried out by the Prahari Portal.
Stage 6	<u>Tender/Local Evaluation Committee comprising of one Superintending Engineer and two Executive Engineers will evaluate the objectives, if any, submitted by the Bidder and if any objection is found to be valid and the result of technical evaluation by the Tender committee is different</u>

	from the 'automatic outcome' of the technical evaluation carried out by the Prahari Portal, the revised outcome will be forwarded to Disposal/ Nistaran Committee (generally referred to as Prahari committee) for its decision.
Stage 7	The Prahari/ Nistaran Committee (comprising of three Chief Engineers and one Superintending Engineer), which is stationed at Lucknow will decide on the revised outcome and thereafter, the final result of the technical evaluation will be uploaded on the Prahari Portal.
Stage 8	The Financial Bids will be opened after the publication of the final result of the technical evaluation, and the lowest bidder (L-1) will be declared on the Prahari Portal itself.
Stage 9	The lowest bidder will be issued an LOA, and thereafter, contract for the works will be executed.

26. As far as the chronological unfolding of events of the present case is concerned, the tabular chart would show the following events corresponding to their respective dates:

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Date	***Particulars***
31.03.2026	Tender was issued
15.04.2026	Technical bids were opened
17.04.2026	Complaint was filed by the Petitioner against the Answering Respondent
18.04.2026	Office order dated 18.04.2026 was issued and was in force
22.04.2026	Local tender committee declared bid of the Answering Respondent as non-responsive on the complaint of the Petitioner
02.05.2026	The decision of the Local Tender Committee was forwarded to the Prahari/Nistaran Committee for further consideration, whereby, Prahari/Nistaran Committee directed the Local Committee to reconsider the matter in light of the office order dated 18.04.2026
	After re-consideration of the bid of the Answering Respondent by the Local Committee the bid of Answering Respondent was found technically qualified
30.05.2026	Results of technical qualifications were uploaded on the Prahari Portal
02.06.2026	Answering Respondent was declared as L-1 bidder
08.06.2026	Letter of Acceptance issued in favour of the Answering Respondent
10.06.2026	Contract has been awarded to the Answering Respondent for carrying out the work of renovation and expansion of the Press Club, Ambedkar Nagar within a period of 6 months.

27. Having chronicled the steps and the events corresponding to their respective dates, we find that the complaint of the petitioner dated 17.04.2026 was lodged at ‘Stage-6’ of the step i.e at the stage wherein the Tender/Local Evaluation Committee was examining the complaint. Further, we find that between 17.04.2026 to 22.04.2026 the complaint was being examined, and no final decision was taken by the Committee. We also find that during this window, when the said complaint was being processed, an office order dated 18.04.2026 was issued, which is the bone of contention. It has been contended by the petitioner that the said office order would not be applicable to the case of the respondent No.6 as the same came into existence after lodging of the complaint by the petitioner, whereas it has been contended by the respondent No.6 that the said office order is merely clarificatory in nature and for that very reason was rightly applied.

28. This Court on a facial reading of the office order dated 18.04.2026, finds that the same was essentially issued in furtherance to a government order dated December 5, 2023, which was relating to a mechanism devised for dealing a complaint filed by a participating contractor against another co-tenderer. The said Government Order records that in tenders invited for various projects, it was often seen that competing bidders routinely raise complaints of varying character against co-bidders, the disposal of which consumes sufficient time, resulting in delaying the project against the public interest. Therefore, in order to cut short, the said issue, keeping in view that often these complaints are for minor discrepancy, resulting in disqualification of qualified bidders from the tender and the expected healthy competition takes a back-seat, a list of categories for entertaining these complaints should be provided. Thus, a list of categories came to be provided in the said Government Order and it was clarified that only complaints made on these point/categories would be taken cognizance by the Local Tender Evaluation Committee. These categories being:

(1) Earnest Money

(2) Annual Turnover

(3) Work Experience

(4) Details of ongoing works of the tenderer

(5) Registration for tenders invited through T-1/T-2 Bidding document necessity.

29. Pursuant to the aforesaid Government Order, we find that the office order dated 18.04.2026 has been issued elaborating the extent in which these aforesaid categories are to operated in the form of a SOP (Standard Operating Procedure) both at the level of Local Tender Evaluation Committee as well as the Head Office Committee. Thus, we find as to the issue relating to 'details of ongoing works of the tender' which is category no. 4 in the Government Order dated 05.12.2023, the said SOP provided in Clause 12 of the said document, that the tenderer has to upload the details of all ongoing works being executed. The said SOP also inter-alia contained that if sufficient bid capacity is still available after deducting the cost of the concealed work to the extent of 10%, the complaint will be considered dismissed. For ease of perusal and ready reference relevant part of Clause 12 of the office order dated 18.04.2026 is reproduced hereunder-

> *"किसी भी ठेकेदार/फर्म के विरुद्ध छिपाए गए कार्य का सत्यापन तभी कराया जाएगा, जब छिपाए गए कार्य की लागत, आमंत्रित निविदा लागत के 10 प्रतिशत से अधिक हो। यदि छिपाए गए कार्य की लागत, आमंत्रित निविदा लागत के 10 प्रतिशत से कम हो, तो प्रहरी पोर्टल पर प्रदर्शित बिड कैपेसिटी का पुनः मूल्यांकन स्थानीय प्रहरी कमेटी द्वारा किया जाएगा। यदि छिपाए गए कार्य की लागत घटाने के बाद भी*

पर्याप्त बिड कैपेसिटी उपलब्ध है, तो शिकायत को निरस्त मानते हुए अग्रिम कार्यवाही की जायेगी।"

30. Further, we find that as far as the issue relating to consideration of 'details of ongoing work' being a category for which complaints can be entertained existed in the rule book since the year 2023. However, keeping in view the fact that this category had a very wide range of implications, a SOP came to be issued giving a restrictive meaning to the said wide range, in the sense that it provided that any complaint under this category would be sent for verification and considered only if the ongoing work complained of (which has been hidden) is more than 10% of the work for which the tender was floated and participated by the bidder against whom the complaint was made. According to this Court, the said restriction to 10% merely supplies a numerical threshold that gives that pre-existing category workable and provides an objective content, so that trivial or immaterial concealment does not derail an otherwise qualified bid, effecting the larger interest of "healthy competition".

31. As far as the proximity between the complaint dated 17.04.2026 and the SOP dated 18.04.2026 i.e. a gap of a single day, the same does not, without more, establish any indicative design to defeat the petitioner's complaint. But, again this Court is also not to construe the said timing as immaterial merely because the SOP is contended to be clarificatory for three simple reasons. The first, being that the SOP does not abolish or dilute the category of complaint based on 'details of ongoing works as it merely quantifies it and to an extent limits its implication. Secondly, the SOP operates state-wide, across all PWD tenders, and was not framed with reference to, or confined to, the subject tender, and it was issued in furtherance of a pre-existing 2023 Government Order rather than being conjured for this dispute. Thirdly, and most importantly, the SOP is clarificatory of an existing norm and does not create a new substantive disqualification or eligibility criterion with retrospective effect; it only structures the manner of applying a criterion that was already in force. On this basis, applying ***Central Coalfields*** *(supra)*, it was for the tendering authority, who are the author of the tender conditions to determine how the pre-existing 'ongoing works' criterion was to be operationalised, and that determination, being uniform, prospective in its object and non-discriminatory on its face, does not disclose arbitrariness.

32. Nor can it be said that the application of the SOP to a complaint already pending, but not yet finally decided, is impermissible. A procedural or clarificatory circular ordinarily governs pending proceedings unless it purports to reopen or unsettle a right that has already crystallised. Apparently, the complaint stood at Stage 6 of the process as on 18.04.2026; no final, binding order had yet been passed on it and the Local Tender Evaluation Committee's first report came only on 22.04.2026. Therefore, a change in the governing standard that takes effect before a decision-maker has finally pronounced upon a pending matter ordinarily ought to be applied to that matter, unless it purports to reopen or unsettle a right that has already crystallised, or unless it is shown to have been framed with the specific object of defeating an identified complaint. Neither infirmity is established here on the material available on record. According to this Court, the SOP is of general, State-wide application, and there is nothing to show it was drafted with the purpose to defeat the purpose of the petitioner's complaint. The petitioner's expectation of an outcome based on an unquantified reading of 'ongoing works' therefore does not rise to be a legitimate expectation whose frustration would, by itself, be actionable in judicial review. Further, we are unable to find any contemporaneous material on record suggesting that the SOP had been issued due to any malafide reason or that the same has been issued for this specific tender.

33. Further, we also find that the said clarification embodied in clause 12 of the office order dated 18.04.2026 does not in any manner run counter to public interest as it does not in any manner adversely affect the capability or capacity of the bidder to perform the work for the proposed Tender. According to this Court, a concealment below 10% of the tender value bears no material relationship to the bidder's capacity to perform. Rather, we find that the said restriction is in the nature of expediting the whole tendering process as 10% of the value of the ongoing work, which might have not been disclosed, does not have in any manner impact on the capability of the tender, but it would definitely have an impact on tender process itself, which as rightly argued would result in delaying the project against the public interest. According to this Court, the said restriction in the complaint is merely in the nature of cutting short the controversy, which may also result in disqualification of qualified bidders from the tender and the healthy competition taking a back-seat and is also consistent with the very purpose recorded in the Government Order dated 05.12.2023 and with the caution sounded in ***Uflex (Supra)*** against permitting 'imaginary grievances' to derail public procurement.

34. We now come to the second ground agitated by the petitioner, wherein it has been submitted that the Headquarters Disposal Committee's report dated 02.05.2026 did not itself decide the petitioner's complaint inasmuch as it remanded the matter to the Local Tender Evaluation Committee for fresh consideration in light of the SOP. It is the petitioner's specific and un-rebutted case that the outcome of that fresh consideration was never communicated to them and they learnt of the reversal only indirectly, upon the financial bid being opened on 02.06.2026. If that is so, the fresh consideration on remand, whatever its content, was arrived at without affording the petitioner, the very party whose complaint had until then been held meritorious, a hearing or even notice of the reasons for its reversal. A complainant who has succeeded before a committee is ordinarily entitled to know, by a reasoned and communicated order, why that finding was undone on remand by the same committee. The principle of *audi alteram partem* applies with particular force where an administrative reversal operates directly and adversely on a party who was not privy to the second round of consideration. Neither there is any submission of the respondents 1 to 5 nor that of respondent No.6 as to any proof that such an order, was ever communicated to the petitioner. This is not a mere technical omission capable of being cured by inference; it goes to the fairness of the process by which respondent No.6 came to be treated as eligible.

35. As far as the ground relating to discriminatory and unequal treatment of the petitioner and the respondent No.6 is concerned, we find that the quantum of undisclosed ongoing work against both the parties is not identical and are poles apart. As already mentioned herein above, the cost of the present tender is Rs.117 Lakhs and the cost of the work purportedly concealed by respondent No.6 was Rs. 3.72 Lakhs, which is less than 10% of the cost of the tender, i.e. Rs.11.7 Lakhs, as such, in accordance with Clause 12 of the office order dated 18.04.2026, the bid submitted by the said Respondent was re-evaluated. However, in contrast, we find that the petitioner while participating in the tender for the work widening and strengthening of Bhiti Umrawan link road, Ambedkar Nagar, the Petitioner had allegedly concealed 08 ongoing works costing Rs.94.09 Lakhs and the entire tender value for the said work was Rs.223, therefore, 10% of Rs.223 Lakhs work, which comes to Rs.22.3 Lakhs, as such, the cost of the concealed work of Rs. 94.09

lakhs (approximately 40% of the tender work) by the petitioner were more than the 10% of the entire cost of the invited tender. Therefore, the bid of the petitioner was not required to be re-evaluated and was declared as non-responsive as per Clause 12 of the office order dated 18.04.2026. According to this Court, a distinction between concealment of the order of 10% and concealment of the order of 40% is not one and the same and for sure cannot be treated equally. According to this Court, the said treatment is not arbitrary as the higher figure concealment is directly proportional to the efficiency of work and goes to the root of the workability of new tender. Identical treatment of dissimilarly placed cases is not equality; Article 14 forbids the equal treatment of unequals as much as it forbids the unequal treatment of equals. No case of discrimination is therefore made out in the facts of the present case.

36. This Court has also examined whether the petitioner itself acted with reasonable diligence, since a party invoking Article 226 against a substantially performed public contract must show it did not sit on its rights. On the record, the petitioner appears to have acted promptly at each stage where information was available to it, whether it is filing its objection within two days of the technical bids being opened (17.04.2026); or approaching this Court after discovering it is only upon the opening of the financial bid on 02.06.2026 and discovering that the earlier finding in its favour had been reversed without notice to it that the petitioner had appraoched this Court. The delay in institution of these proceedings is therefore substantially attributable to the very non-communication complained of and cannot be held against the petitioner in the same manner as delay flowing from simple inaction would be. That said, the position on the other side of the ledger has also hardened in the sense that much water has flown down the bridge after the lodging of the complaint, inasmuch as the financial bid was opened, Respondent No.6 was declared L-1, a Letter of Acceptance was issued, a contract was executed, and more than two months of the stipulated six-month execution period have elapsed with Respondent No.6 executing the work without any complaint. Applying ***N.G. Projects (supra)*** and ***Raunaq International (supra),*** this Court must weigh the public cost, delay and disruption of unsettling a substantially performed infrastructure contract against the nature of the infirmity established.

37. Balancing these considerations, this Court is unable to find that the substantive standard applied i.e. the 10% threshold in Clause 12 of the SOP dated 18.04.2026 was in any manner irrational, discriminatory, or incapable of governing the petitioner's complaint; on that limb, and on the plea of discriminatory treatment, no case for interference is made out, for the reasons recorded above. However, the process by which Respondent No.6 came to be found eligible on remand and without any reasoned order communicated to the petitioner, it discloses a real infirmity of the kind this Court cannot simply pass over. Consistent with ***N.G. Projects (supra),*** which in a way warns against staying or unwinding an infrastructure contract already substantially under execution even where arbitrariness is shown, this Court declines to quash the order dated 02.05.2026, the opening of the financial bid dated 02.06.2026, or the consequential award of contract to respondent No.6, and declines to restrain further execution of the work. It would not serve the public interest, at this stage, to disturb a contract more than two months into a six-month execution timeline on account of a procedural infirmity in the remand process, particularly where the substantive standard applied is itself found to be rational. The respondent-State is, however, directed to communicate to the petitioner, within four weeks, a reasoned order reflecting the basis on which Respondent No.6's bid was found eligible on remand pursuant to the report dated 02.05.2026. The petitioner shall remain at liberty to pursue such remedy, including a civil suit for damages arising from any established procedural infraction, as may be available in accordance with law.

38. For all the aforesaid reasons, we do not find any good and emergent ground for interfering in the decision already taken by the Authority in awarding the contract. Accordingly, the present writ is ***disposed of***, with the aforesaid directions.

39. There shall be no order as to cost(s).

(Abdhesh Kumar Chaudhary, J.)

I agree

(Shekhar B. Saraf, J.)

August 21, 2026

MVS/-