Serial No. 199

HIGH COURT OF JAMMU&KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2583/2025

Date of Pronouncement: 18.08.2026.

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1. Iftekhar Hussain Shah, Age 40 years, S/o Sh. Zakir Hussain Shah, R/o Village Potha, Tehsil Surankote, and District Poonch. … ..Appellant(s)/Petitioner(s)

2. M/s MNM Construction,

   Through its partner namely Irfan Ahmed, Age 35 years, S/o Niaz Ahmed, R/o Ward No. 4, Sanai, Surankote, Poonch.

3. Mushtaq Khan, Age 48 years,

   S/o Mohd. Sharief,

   R/o Village Buffliaz, Tehsil

Surankote, and District
Poonch.

4. Ayaz Khan, Age 43 years,
S/o Sh. Tariq Khan,
R/o Village Potha, Tehsil
Surankote, and District
Poonch.

5. Farheem Hussain Shah Age 51
years, S/o Waris Shah
R/o Village Ari, Mendhar,
Poonch.

6. Sajid Ali, age 40 years,
S/o Mohd. Amin,
R/o Village Bachianwali,
Tehsil Surankote and District
Poonch.

7. Zamir Ahmed, Age 49 years,
S/o Ali Akbar,
R/o Village Buffliaz, Tehsil
Surankote, and District
Poonch.

8. Shajait Ali Kazmi, Age 37 years,
S/o Fida Hussain Shah,

R/o Village Pamrote, Tehsil Surankote, and District Poonch.

9. Mohd. Iqbal, Age 46 years

S/o Abdul Aziz, R/o Village Bhunikeith, Tehsil Surankote, District Poonch.

10. Waseem Hussain, Shah, Age 35 years, S/o Junaid Hussain Shah, R/o Village Pamrote, Tehsil Surankote, and District Poonch.

11. Mohd. Rashid Mir, Age 55 years, S/o Ghulam Mohd. R/o Village Saloonian, Tehsil Mandi, District Poonch.

12. Syed Aiyaz, age 38 years

S/o Mohd. Sayeed Shah

R/o Village Seri Chowana,
Tehsil Surankote, District
Poonch.

13. Imtiaz Qumer, Age 36 years,

S/o Qumer Din,

R/o Village Sangla, Tehsil
Surankote, and District
Poonch.

14. Mohd. Yousuf, Age 60 years

S/o Ahmeda, R/o Village
Jabri Tehsil Mandi District
Poonch.

15. Mukhtar Ahmed, Age 46
years, S/o Nissar Ahmed,

R/o Village Surankote, Tehsil
Surankote, and District
Poonch.

16. Shazia Anjum, Age 46 years

W/o Musarat Hayat

R/o Village VillageFazlabad
Surankote, Poonch.

17. Mohd. Afzal Malik, Age 62
years, S/o Mohd. Abdullah

R/o Village Salian, Tehsil
Surankote, District Poonch

18. Shuja Ahjaz Bukhari, Age 45 years, S/o Khurshid Hussain Shah, R/o Village Kaller Kattal, Tehsil Surankote, and District Poonch.

19. Shazmeen Bader, Age 32 years

    W/o Zulfikar Ahmed, R/o Village Kollian, Surankote, Poonch.

20. Amara Qumar, Age 22 years

    D/o Qumar Dion

    R/o Village Sangala Tehsil Surankote, District Poonch.

21. Miss Nazia Bukhari, Age 33 years, W/o Iftakhar Hussain Shah, R/o Ward No. 1, Potha Lower Surankote, Poonch.

Through: Mr. R.K. Gupta, Sr. Advocate with

Mr. Sayeed Nadeem Hamdani, Adv.&

WP(C) No.
2583/2025

Mr. Uday Bhaskar, Advocate

vs

1. Union Territory of Jammu and Kashmir, through Commissioner/Secretary PWD (R&B), Civil Secretariat, Srinagar/Jammu. ..... Respondent(s)

2. Chief Engineer, PWD (R&B), Pir Panjal, Poonch.

3. Superintendent Engineer, PWD (R&B), Circle Poonch.

4. Executive Engineer, PWD (R&B) Div. Surankote, Poonch.

Through: Mr. Ravinder Gupta, AAG

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

18.08.2026

01. The petitioners call in question Corrigendum No. R&B/BD/2025-26/2101-2104 dated 11.09.2025, issued by respondent No. 4-Executive Engineer, PWD (R&B) Division, Surankote-whereby the tendering process initiated pursuant to e-NIT No. 26 of 2025-26 dated 07.08.2025, insofar as it pertained to 39 civil works figuring at Serial Nos. 1 to 11, 13, 16 to 31, 33, 34 and 36 to 44, came to be withdrawn after opening of the financial bids. The petitioners have also assailed the consequential e-NIT Nos. 42, 43, 44, 45 and 46 of 2025-26, all dated 13.09.2025, whereby respondent No. 4 has put the aforesaid 39 works to fresh tender.

02. Mr. R. K. Gupta, ld. Sr Counsel, appearing with Mr. Udhay Bhasker, Advocate, for the petitioners, has vehemently contended that the impugned corrigendum, followed by issuance of fresh e-NITs, is arbitrary, irrational and legally unsustainable. The principal grievance projected is that the earlier tendering process had travelled substantially beyond the stage of technical evaluation; the financial

bids had already been opened and the petitioners had emerged as L-1 bidders in respect of the works for which they had participated.

03. Counsel submits that once the tender process had reached such an advanced stage, its wholesale cancellation could not have been resorted to casually or mechanically. According to him, the impugned corrigendum does not disclose any reason whatsoever for abandoning the completed tender process, and the subsequent decision to invite fresh bids is, therefore, wanting in transparency and fairness. It is further urged that the petitioners, having emerged as the lowest bidders, had acquired a legitimate expectation that their bids would be considered fairly and taken to their logical conclusion. Some of the petitioners are stated to have even deposited performance security in the shape of CDRs equivalent to 3% of the advertised cost and submitted their original documents to the Department in accordance with the Standard Bidding Document. Cancellation of the process at such a stage, it is contended, could not have been undertaken except for cogent, bona fide and demonstrable reasons.

04. Learned Senior Counsel has also referred to the earlier proceedings in WP(C) No. 2416/2025 and submits that the petitioners had

apprehended interference in the tender process at the instance of certain competing bidders. According to the petitioners, such apprehension subsequently acquired substance when the private respondents arrayed in the earlier writ petition were declared technically disqualified. The contention is that notwithstanding their technical disqualification, the unsuccessful bidders continued to make representations and exert pressure upon the official respondents for cancellation and re-tendering of the works. The sequence of events culminating in the corrigendum dated 11.09.2025 and issuance of fresh tenders barely two days thereafter, according to learned Sr. Counsel, lends credence to the petitioners' allegation that the decision was not founded upon legitimate procurement considerations.

05. It is additionally urged that there was no alteration in the nature or scope of the works, their estimated cost or the material terms and conditions governing their execution. In the absence of any such change, he submits, the respondents were under an obligation to demonstrate a compelling public-interest reason for abandoning the earlier process after disclosure of the financial bids.

06. This Court, vide order dated 19.09.2025, put on hold the action of the respondents in proceeding with the fresh tendering process and directed the respondents to file their reply and produce the relevant record.

07. The respondents have resisted the writ petition. Their first line of defence rests upon Clause 27 of the Standard Bidding Document, which reserves to the competent authority the right to accept or reject any bid and to cancel the bidding process and reject all bids at any stage prior to award of the contract. It is, accordingly, pleaded that mere emergence of a bidder as L-1 does not confer an indefeasible or vested right to award of the contract. Since no contract had been formally awarded in favour of the petitioners, the respondents maintain that the competent authority remained entitled to cancel the process in exercise of the power reserved under the tender conditions.

08. The respondents have further explained that a substantial number of bidders stood rejected on account of non-compliance with a newly introduced requirement contained at Point No. 2 of the Standard Bidding Document, requiring every participating supplier/contractor

to disclose the bank account linked with his GSTIN. Several such bidders are stated to have submitted representations, both online and offline, pleading that they had either not noticed or were unaware of the newly introduced requirement. According to the respondents, cancellation and re-tendering were therefore considered necessary to secure wider participation, maximise competition and preserve the integrity of the procurement process.

09. A further justification projected by the respondents is financial. It is pleaded that the rates received in the impugned tender process were, on average, only about 3% below the advertised rates, whereas the average rate obtained by the Surankote Division during the Financial Year 2025-26 was approximately 23.77% below. The decision to re-tender, according to the respondents, was consequently intended to secure more competitive rates and safeguard public revenue.

10. Having heard the counsel for the parties and having considered the pleadings and the record produced, the controversy essentially narrows down to the following question:

> ***Whether, notwithstanding the power reserved under Clause 27 to cancel the tender process before award of contract, the decision to cancel the process after***

opening of the financial bids and identification of the L-1 bidders satisfies the constitutional requirement of fairness, non-arbitrariness and bona fide exercise of administrative discretion?

11. The legal principles governing judicial review of tender matters are by now well settled. The writ Court does not sit as an appellate authority over the commercial wisdom of the tendering authority. The decision as to whether a particular bid should be accepted, rejected or the process itself abandoned lies primarily within the domain of the employer. Judicial review is directed principally at the decision-making process, rather than the commercial merits of the decision itself. Equally settled, however, is the proposition that the State and its instrumentalities do not shed their constitutional obligations merely because they operate in the contractual field. The freedom available to the Government in commercial matters is accompanied by the requirement that its decision must remain free from arbitrariness, favouritism, mala fides or considerations extraneous to the object sought to be achieved.

12. In **Tata Cellular v. Union of India, (1994) 6 SCC 651**, the Supreme Court emphasised judicial restraint in contractual matters while

simultaneously recognising that the decision-making process remains amenable to review where arbitrariness, bias or mala fides are demonstrated. The Government undoubtedly possesses freedom of contract, but such freedom cannot be exercised for a collateral purpose.

13. The principle was further explained in **Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517** and **Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216**. The Court, while exercising jurisdiction under Article 226, is required to examine whether the process adopted or decision made is mala fide or intended to favour someone; whether it is so arbitrary or irrational that no responsible authority acting reasonably could have arrived at it; and whether public interest is adversely affected. Where the answers are in the negative, interference in tender matters is ordinarily unwarranted.

14. The same principle has been reiterated in ***"Silppi Constructions Contractors v. Union of India"*, (2020) 16 SCC 489** and subsequent decisions. Greater latitude must undoubtedly be afforded to the tendering authority, particularly where its decision is demonstrably bona fide and founded upon considerations of public

interest. The Court cannot substitute its own assessment of what would constitute a commercially preferable decision merely because another course was also available.

15. Tested against these principles, the submission of the petitioners that emergence as L-1 by itself created an indefeasible right to award of the works cannot be accepted. An L-1 bidder does not acquire a vested right to the contract merely because its financial bid is the lowest. Until acceptance culminates in an award in accordance with the governing tender conditions, the competent authority retains the power to reject the bid or, where circumstances legitimately warrant, abandon the tender process itself. Clause 27 reinforces that position by expressly reserving to the respondents the power to cancel the bidding process before award of the contract. The existence of such a clause, however, does not place the exercise of that power beyond judicial scrutiny. A contractual reservation of power cannot be equated with a licence to act arbitrarily. The power may be wide, but its exercise by an instrumentality of the State must nevertheless satisfy Article 14 of the Constitution. There is, therefore, a material distinction between the existence of power to cancel a tender and the

legality of the exercise of that power in a given case. Clause 27 answers the former; the latter must be tested on the touchstone of fairness, reasonableness, bona fides and public interest.

16. In the present case, the tendering process had crossed the stage of technical evaluation. Financial bids had been opened and the relative financial position of the bidders had entered the public domain. This circumstance does not denude the respondents of their power to cancel the process, but it necessarily requires the decision to be supported by reasons commensurate with the stage which the procurement process had reached. Re-tendering after disclosure of financial bids has consequences for the integrity of competitive bidding because the rates quoted by the participants cease to remain confidential.

17. There is no serious dispute that, pursuant to e-NIT No. 26 of 2025-26 dated 07.08.2025, as many as 330 bids were received for 44 works and, upon technical evaluation, 86 bidders were found technically qualified in accordance with the eligibility and responsiveness criteria prescribed in the SBD. It is also not disputed that five works, namely those at Serial Nos. 12, 14, 15, 32 and 35, were cancelled on account

of inadequate competition/single responsive bids. In respect of the remaining 39 works, however, the respondents proceeded to the next stage and opened the financial bids.

18. The principal justification emerging from the respondents' record for cancellation of the remaining works is the receipt of complaints/representations from certain bidders whose bids had been found non-responsive. The complaints are attributed, inter alia, to Saleem Iftikhar Khan, Shazia Parveen, Sohail Khurshid Khan, Kabir Hussain, Arif Mohd. and Waseem Akram, who are stated to have alleged violation of Clauses 25.3 and 25.4 of the SBD.What is significant, however, is that the SBD produced before the Court does not contain Clauses 25.3 or 25.4 of the nature referred to in those complaints. Clause 25, as appearing in the document, pertains to jurisdiction of Courts in the event of disputes/differences between the contractor and the Department. The very foundation of this set of objections, therefore, does not correspond with the tender document placed on record. The record further indicates that a Committee convened a meeting on 10.09.2025 and recommended cancellation broadly on the grounds of securing maximum competition through

wider participation; protecting public funds by ensuring fair value and avoiding allegedly high rates; upholding the fundamental principles of public procurement; and acting upon the objections/representations suggesting re-tendering.

19. These reasons have to be examined in the backdrop of the process already undertaken by the respondents themselves. Out of 330 bids, 86 bidders had successfully crossed the technical evaluation. Where competition was actually found inadequate, namely in respect of five works, the respondents consciously cancelled those works. In respect of the remaining 39 works, the respondents considered the level of participation sufficient to proceed further and, accordingly, opened the financial bids. Once the respondents themselves differentiated between works suffering from inadequate competition and those having sufficient responsive bidders, their subsequent reliance upon "wider participation" as a general ground for cancelling even the latter category required a cogent and objective foundation. The record, as produced, does not disclose such foundation. On the contrary, the presence of 86 technically qualified bids in relation to the

39 works demonstrates that the tender process had generated substantial competitive participation.

20. The financial justification advanced by the respondents also does not satisfactorily resolve the matter. The respondents rely upon an average rate of 23.77% below the advertised rates allegedly obtained by the Division during Financial Year 2025-26, as against approximately 3% below in the present tender process. The petitioners have specifically pleaded that the figure of 23.77% relates to road/earth works, whereas the present tenders concern building works, for which the pricing structure and scope for quoting substantially below the estimated rates are materially different. The material placed before the Court does not satisfactorily rebut this distinction. There can be no quarrel with the proposition that the State, being custodian of public funds, is entitledand indeed duty-bound, to secure the best possible value in public procurement. Equally, however, a generalised reference to "public interest" or "value for money" cannot substitute an objective comparison of comparable works and prevailing rates. The material relied upon must bear a rational nexus with the procurement in question.

21. The scope of judicial review in contractual matters has evolved around this distinction. In ***"Radha Krishna Agarwal v. State of Bihar"* , (1977) 3 SCC 457,** the Supreme Court recognised the distinction between purely contractual disputes and State action amenable to public law review. The subsequent jurisprudence has made it clear that the contractual character of a transaction does not, by itself, immunise arbitrary State action from scrutiny under Article 226.In *ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.*, (2004) 3 SCC 553, the Supreme Court held that an appropriate writ petition against the State or its instrumentality arising out of contractual obligations is maintainable where the impugned action possesses a public law element and is shown to be arbitrary or unreasonable.

22. More recently, in ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India Pvt. Ltd., (*****2023) 2 SCC 703**, the Supreme Court reiterated that State action in the contractual field does not cease to be subject to Article 14 merely because contractual rights are involved. Of particular relevance is "**Subodh Kumar Singh Rathor v. Chief Executive Officer" , (2024) 15 SCC 461**. While

distinguishing "***Pimpri Chinchwad New Township Development Authority v. Vishnudev Cooperative Housing Society***", **(2018) 8 SCC 215,** the Supreme Court clarified that although internal file noting's do not by themselves create enforceable rights unless translated into an official decision, such noting's and deliberations can certainly be examined by a constitutional Court to ascertain whether the ultimate decision withstands judicial review. The Court also emphasised that public interest cannot invariably be reduced to a mere question of financial advantage; fairness of public authorities and the integrity of contractual dealings are themselves relevant facets of public interest.

23. It is in the light of these principles that the record produced by the respondents assumes significance. The impugned Corrigendum dated 11.09.2025 merely states:

> **"Subject: Tender Withdrawn after opening of Financial Bids. Reference: e-NIT No. 26 of 2025-26 Dated 07.08.2025. S.No. 01 to 11, 13, 16 to 31, 33 to 34&36 to 44."**

24. It does not disclose any reason for withdrawing the tenders after opening of the financial bids. Absence of reasons in the corrigendum may not, by itself, be conclusive if the contemporaneous record

unmistakably demonstrates a lawful and bona fide decision-making process. The Court has, therefore, examined the departmental record to ascertain whether the decision was founded upon relevant considerations. The record, however, does not inspire such confidence. The representations relied upon by the respondents emanated substantially from bidders whose bids had already been declared non-responsive. More importantly, the principal clauses allegedly violatedClauses 25.3 and 25.4do not correspond to the SBD produced before the Court. There is also no material demonstrating that the technical rejection of those bidders had been set aside, found erroneous by any competent authority, or otherwise rendered legally suspect.

25. The Court is conscious that a representation does not become irrelevant merely because it is made by an unsuccessful bidder. If such representation exposes a genuine illegality or defect affecting the integrity of the tender process, the authority would not only be entitled but obliged to examine it. The difficulty in the present case is that the record does not disclose any such defect. Instead, complaints founded upon provisions not shown to exist in the SBD appear to

have materially influenced the decision to abandon a process in which the complainants themselves had failed to qualify.

26. Equally significant is the fact that the respondents had already applied their mind to the adequacy of competition. Wherever only a single responsive bidder was available, the corresponding works were cancelled. For the remaining 39 works, the respondents consciously proceeded to open the financial bids. In these circumstances, a subsequent conclusion that the entire process required cancellation merely to obtain "wider participation", without any material showing that the existing competition was inadequate, is difficult to reconcile with the respondents' own preceding assessment.

27. This Court is not concerned with determining what ought to be the appropriate contract price, nor can it substitute its commercial judgment for that of the tendering authority. The issue is narrower: whether the reasons which actually informed the cancellation bear a rational nexus with the material available before the authority**.** On examination of the record, the answer has to be in the negative. The tendering process is not an empty ritual. It proceeds through structured stages intended to secure transparency, equality and fair

competition. Though a bidder acquires no vested right merely by being declared L-1, once the authority permits a bidder to cross the technical stage, opens the financial bid and identifies the lowest bidder, abandonment of the process must nevertheless rest upon bona fide, relevant and rational considerations. The reserved power of cancellation cannot be employed arbitrarily or for the purpose of providing a fresh opportunity to bidders who failed to satisfy the prescribed eligibility requirements. The Court would also refrain from recording a definitive finding of personal mala fides merely on the basis of the circumstances noticed above, particularly in the absence of clear and specific material fixing such conduct upon an identified decision-maker. The impugned action nevertheless suffers from manifest arbitrariness, for the reasons recorded hereinabove. That finding is sufficient for exercise of jurisdiction under Article 226 of the Constitution.

28. The respondents were certainly empowered under Clause 27 of the SBD, as also the applicable provisions of the J&K PWD Engineering Manual, 2020, to cancel the bidding process before award of the contracts. Such power, however, had to be exercised for legitimate

procurement considerations and upon an objective assessment of the material before the competent authority. The record in the present case fails to establish such an exercise.

29. The decision to cancel the tender process in respect of the 39 works, after opening of the financial bids, thus cannot be sustained merely by invoking the power reserved under the tender conditions. The reasons relied upon are either unsupported by the tender document, inconsistent with the respondents' own assessment of adequate participation, or founded upon a financial comparison which has not been shown to relate to comparable works. For the foregoing reasons, the writ petition merits acceptance.

30. Accordingly, Corrigendum No. R&B/BD/2025-26/2101-2104 dated 11.09.2025, insofar as it withdraws the tender process pertaining to the 39 works under e-NIT No. 26 of 2025-26 dated 07.08.2025, is quashed. Consequently, e-NIT Nos. 42, 43, 44, 45 and 46 of 2025-26, all dated 13.09.2025, insofar as they seek to re-tender those very 39 works, shall also stand quashed. The respondents are directed to resume the tender process under e-NIT No. 26 of 2025-26 from the stage at which it stood immediately prior to issuance of the

impugned corrigendum and to take the same to its logical conclusion strictly in accordance with the terms of the SBD and the applicable law.

31. It is, however, clarified that this judgment shall not be construed as a direction to award any particular work to any petitioner merely on account of his being L-1. The competent authority shall remain free to take the final decision regarding acceptance of the respective bids in accordance with the tender conditions and law, but any such decision shall be founded upon relevant considerations, applied uniformly and taken without being influenced by the cancellation and re-tendering process which has been set aside by this Court. The interim direction dated 19.09.2025 shall merge in this judgment.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

(Sanjay Parihar)
Judge

Jammu
18.08.2026
Rahul Sharma

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No