IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7993 of 2025

==

Adyaraj Developers Private Limited, having its registered office al 202, Vishnu Palace, East Boring Canal Road, Patna, Bihar - 800001 through its director Jitendra Kumar Roy, male, aged about 47 years, Sto Ram Sagar Prasad, resident of House No. 57, Montessary School Lane, Gandhi Nagar, Boring Road, Patna, Bihar - 800001.

... ... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Vidhansabha Secretariat, Bihar, Patna.
2. The Additional Chief Secretary, Road Construction Department, Government of Bihar, 1st Floor, Vishweshwaraiya Bhawan, Patna-800015.
3. The Bihar Rajya Pul Nirman Nigam Ltd., a Government of Bihar undertaking, 7, Sardar Patel Marg, Veerchand Patel Road Area, Patna, Bihar 800015, through its Chairman.
4. The Chairman, Bihar Rajya Pul Nirman Nigam Ltd., 7. Sardar Patel Marg, Veerchand Patel Road Area, Patna, Bihar 800015.
5. The Managing Director, Bihar Rajya Pul Nirman Nigam Limited, 7, Sardar Patel Marg, Patna, Bihar.
6. The Deputy Chief Engineer, Work Circle 1, Bihar Rajya Pul Nirman Nigam Limited, 7, Sardar Patel Marg, Patna, Bihar.
7. The Deputy Chief Engineer, Work Circle 2, Bihar Rajya Pul Nirman Nigam Limited, 7, Sardar Patel Marg, Patna, Bihar
8. The Senior Project Engineer, Bihar Rajya Pul Nirman Nigam Ltd., Work Division, Bhagalpur.
9. The Senior Project Engineer, Bihar Rajya Pul Nirman Nigam Ltd., Work Division, Muzaffarpur.
10. The Senior Project Engineer, Bihar Rajya Pul Nirman Nigam Ltd., Work Division, Darbhanga.
11. Rachana Construction Company, Registered office at Phase 1, Plot No. 1815, Shivnath Industries, GIDC Panoli, Panoli, Bharuch, Gujarat, 394116 through its representative, Vasantbhali Ishwarlal Patel.

... ... Respondents

==

Appearance :

For the Petitioner	:	Mr. Y.V. Giri, Sr. Advocate with Ms. Shrishti Singh, Advocate
For the Respondents	:	Mr. P.K. Shahi, Sr. Advocate with Mr. Vikas Kumar, Advocate Mrs. Aradhana Kumari, Advocate Mr. Akash Deep, Advocate

For the State	:	Mr. N.H. Khan, Advocate
For the Resp. No.11	:	Mr. Aditya Prakash Sahay, Advocate

==

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
C.A.V. JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 05-08-2026

Heard learned counsel for the parties.

2. The present writ application has been filed for the following reliefs:

"*(i) To issue an appropriate writ, order, direction in the nature of certiorari for quashing the tender condition contained in clause 2(viii) read with (ix), NIT No. BRPNNL/MZF/C029/317 dated 17.03.2025, for work against serial no. 1 & 3, issued under the signature of the Senior Project Engineer, Bihar Rajya Pul Nirman Nigam Ltd., Work Division Muzaffarpur, for construction of rail over bridge (ROB), wherein for experience of completion of project, the stipulated financial year is 2020-21 to 2024-25 instead of 2019-20 to 2023-24 (Annexure-P/1, Pg.31).*

(ii) To issue an appropriate writ, order, direction in the nature of certiorari for quashing the proceeding of the high level technical bid evaluation committee dated 05.05.2025, in NIT No. BRPNNL/MZF/C029/317 dated 17.03.2025 for work against serial no. 1 to the extent that the technical bid of the petitioner has been rejected for non-compliance with clause 2(ix) of the NIT (Annexure-P/7, Pg.146).

(iii) To issue an appropriate writ, order, direction in the nature of mandamus commanding the

respondents to issue a corrigendum amending the financial period against completion of work from 2020-21 to 2024-25 to 2019-20 to 2023-24 in NIT No. BRPNNL/MZF/C029/317 dated ,17.03.2025 for work against serial no. 1 & 3.

(iv) To issue an appropriate writ, order, direction in the nature of mandamus commanding the respondents to declare the petitioner as successful in the technical bid in the NIT No. BRPNNL/MZF/C029/317 dated 17.03.2025 for work against serial no. 1 & 3.

(v) To issue an appropriate writ, order, direction in the nature of certiorari for quashing any consequential action taken pursuant to the impugned tender condition /decision, including quashing of opening of financial bid and subsequent, agreements entered with third parties.

(vi) To any other relief or reliefs for which the petitioner is found to be entitled to in the facts and circumstances of the case.

(vii) To issue an appropriate writ/order/direction in the nature of mandamus commanding the respondents to produce the work order issued in favour of Rachana Construction Company, and to quash the said work order."

3. The brief facts of the present case are that the petitioner participated in three tenders floated by the Bihar Rajya Pul Nirman Nigam Limited vide NIT Nos. BRPNNL/MZF/C029/317, BRPNNL/DBG/C009/351 and BRPNNL/BHG/C016/310, all dated 17.03.2025. The grievance of the petitioner arises out of a common eligibility condition

incorporated in the aforesaid tenders whereby, for the purpose of experience relating to completion of similar works, the relevant financial period was prescribed as 2020-21 to 2024-25, whereas for the purpose of annual financial turnover, the corresponding financial period prescribed was 2019-20 to 2023-24. According to the petitioner, prescribing two different financial periods for determining eligibility under the same tender is arbitrary, discriminatory and contrary to the Standard Bidding Document, which contemplates consideration of the 'last five years' uniformly for all eligibility criteria.

4. It is the case of the petitioner that though corrigenda were issued in respect of two of the aforesaid tenders, only the financial period relating to turnover was corrected to 2019-20 to 2023-24, while the experience criteria continued to stipulate the period 2020-21 to 2024-25. Aggrieved thereby, the petitioner submitted a representation dated 25.04.2025 seeking reconsideration of the impugned condition and thereafter participated in the said tender process. Subsequently, the technical bids of the petitioner in all the three tenders were rejected on the ground of non-compliance with the prescribed experience criteria. Though objections were submitted against the rejection within the stipulated time, no decision thereon was communicated, leading to the filing of the present writ application.

5. Mr. Y.V. Giri, learned Senior Counsel for the petitioner, submits that the impugned tender condition prescribing different financial periods for assessing annual financial turnover and completion of similar works is wholly arbitrary, discriminatory and violative of Article 14 of the Constitution of India. It is submitted that while the turnover criterion has been assessed with reference to the financial years 2019-20 to 2023-24, the experience criterion has been confined to the period 2020-21 to 2024-25, though both form part of the same eligibility requirements. Such inconsistency, according to the petitioner, has no rational nexus with the object sought to be achieved and has resulted in the arbitrary exclusion of otherwise eligible bidders.

6. It is further submitted that relevant Clause of the Standard Bidding Document read with Appendix to the Instructions to Bidders contemplates consideration of the 'last five years' uniformly for determining the eligibility of bidders. According to the petitioner, once the Standard Bidding Document envisages a common five-year period for assessing eligibility, the respondents could not have prescribed one financial period, namely 2019-20 to 2023-24, for annual financial turnover and a different financial period, namely 2020-21 to 2024-25, for assessing completion of similar works under the impugned tender. It is, therefore, contended that the stipulation contained in the said

Clauses of the Notice Inviting Tender is contrary to the Standard Bidding Document and is liable to be set aside.

7. Learned counsel further submits that although corrigenda were issued in two of the tenders correcting the financial period relating to turnover to 2019-20 to 2023-24, no corresponding correction was made in respect of the experience criterion, thereby perpetuating the inconsistency.

8. Learned counsel for the petitioner further submits that the petitioner otherwise satisfies all the eligibility requirements and possesses the requisite experience if the relevant financial period is uniformly taken as 2019-20 to 2023-24. The rejection of its technical bids solely on account of the impugned condition is, therefore, illegal, arbitrary and liable to be set aside.

9. Per contra, Mr. P.K. Shahi, learned senior counsel for the respondents submits that the impugned tender conditions are neither arbitrary nor discriminatory but have been uniformly made applicable to all intending bidders. It is submitted that the petitioner, having participated in the tender process with full knowledge of the eligibility conditions, cannot be permitted to challenge the same after having been declared technically non-responsive for failing to satisfy the prescribed qualification criteria. According to the respondents, the petitioner does not possess the requisite eligibility as stipulated in the tender

documents and, therefore, cannot seek to assail the very conditions under which it participated.

10. Placing reliance upon the judgment of the Hon'ble Supreme Court in ***Michigan Rubber (India) Limited v. State of Karnataka,*** *reported in* ***(2012) 8 SCC 216***, learned counsel submits that the authority issuing the tender is the best person to appreciate and prescribe the terms and conditions of the tender, and the constitutional courts should exercise restraint in interfering with such conditions. Learned counsel further submits that since the impugned eligibility criteria are neither arbitrary nor actuated by *mala fides* and have been applied equally to all participants, no interference by this court is called for.

11. Learned counsel appearing for respondent no. 11 adopts the submissions advanced on behalf of the respondent authorities and further submits that upon opening of the financial bids, respondent no. 11 emerged as the L-1 bidder and was consequently awarded the work. Pursuant to the issuance of the work order, respondent no. 11 has mobilised the requisite men and machinery at the project site in accordance with the specifications and requirements of the contract, and the execution of the work is presently in progress.

12. The following issues arise for consideration before this Court:

i. Whether the petitioner, who alleges that it participated in the tender process under protest, can seek invalidation of the tender process upon being declared technically non-responsive?

ii. Whether the prescription of eligibility criteria, including the determination of the relevant financial period for assessing experience, falls within the exclusive domain of the tendering authority, being the best judge of its requirements, and what is the permissible scope of judicial review over such conditions?

Re. Issue No.(i)

13. The petitioner has contended that prior to participating in the tender process, it had submitted a representation dated 25.04.2025 questioning the validity of the impugned eligibility condition prescribing the financial period for assessment of experience. It is further the case of the petitioner that since no decision was taken on the said representation, it participated in the tender process under protest. The petitioner has also asserted that it otherwise possesses the requisite experience and would satisfy the eligibility criteria if the relevant financial period is reckoned as 2019-20 to 2023-24 instead of 2020-21 to 2024-25. On such premise, it has been urged that the challenge cannot be treated as an afterthought merely because the petitioner has participated in the tender process.

14. The submission, though attractive at first blush, does not commend acceptance.

15. It is an admitted position that the petitioner was fully aware of the eligibility conditions contained in the Notice Inviting Tender before submitting its bid, and the petitioner consciously elected to participate in the tender process. Thus, the petitioner voluntarily subjected itself to the evaluation process prescribed under the tender documents.

16. The conduct of the petitioner here assumes significance. Having voluntarily entered the field of competition and sought consideration of its bid under the notified terms and conditions, the petitioner cannot simultaneously seek to invalidate the very conditions governing such participation merely because it failed to qualify in the technical evaluation. A litigant cannot be permitted to both approbate and reprobate or, in other words, to blow hot and cold in the same breath.

17. Merely because the petitioner had submitted a representation or allegedly participated under protest does not alter the legal position. Such representation, or participation under protest cannot, by itself, invalidate the tender process nor can it confer upon the petitioner a right to seek annulment of the process after the result has gone against it. The petitioner’s assertion that it would have been eligible had a different financial period been prescribed is essentially a challenge to the wisdom and legality of

the eligibility condition itself. Such a plea cannot justify unsettling a tender process in which the petitioner knowingly participated.

18. In ***R.N. Gosain v. Yashpal Dhir,*** *reported in* ***(1992) 4 SCC 683***, the Hon'ble Supreme Court observed that the law does not permit a person to approbate and reprobate and that no party can accept and reject the same instrument or transaction according to its convenience. The relevant portion of the said order reads as follows:

> ***"10.*** *Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage".*

19. The aforesaid principle applies with equal force to tender matters. A bidder who consciously participates in a tender process and seeks consideration of its bid under the notified eligibility conditions cannot ordinarily be permitted to question the same conditions after being declared unsuccessful. Having taken a calculated chance of success, the petitioner cannot seek to invalidate the process solely because the outcome has not been favourable.

20. Accordingly, this Court holds that the petitioner's participation in the tender process, notwithstanding its representation and alleged protest, disentitles it from seeking invalidation of the tender process merely because its technical bid came to be rejected. The petitioner, having consciously subjected itself to the tender process, cannot simultaneously seek consideration of its bid under the notified conditions and, upon being declared technically non-responsive, seek to invalidate the same process.

21. In view of the aforesaid, Issue No. 1 is answered against the petitioner.

Re. Issue No. (ii)

22. The principal contention of the petitioner is that the respondents ought to have prescribed the financial period for assessment of completion of similar works as 2019-20 to 2023-24 instead of 2020-21 to 2024-25, as according to the petitioner, such a period would be consistent with the Standard Bidding Document and would render the petitioner eligible. The respondents, on the other hand, contend that the eligibility conditions have been consciously framed keeping in view the requirements of the employer and that such conditions uniformly apply to all intending bidders.

23. Before examining the rival submissions, it is necessary to lay down the settled principles governing judicial review in matters relating to award of public contracts.

24. It is now trite that the author of the tender document (employer) is the best judge of its requirements. The employer, having regard to the nature of the work, the technical specifications, financial implications and the object sought to be achieved, is entitled to prescribe such eligibility criteria as it considers appropriate. The Court, while exercising jurisdiction under Article 226 of the Constitution, does not sit as an appellate authority over the decision of the employer nor does it substitute its own opinion for that of the tendering authority merely because another view is possible.

25. In ***Michigan Rubber (India) Ltd. (supra)*** , the Hon'ble Supreme Court, after surveying the earlier precedents, held that fixation of tender conditions is essentially a matter of executive policy and the employer is the best judge of its requirements. It was further held that judicial review is confined to examining whether the decision-making process is actuated by *mala fides*, intended to favour someone, or is so arbitrary and irrational that no reasonable authority could have arrived at such a decision. The relevant portion of the said order reads as follows:

> *"23. From the above decisions, the following principles emerge:(a) The basic requirement of*

Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by

court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. 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"? And
(ii) Whether the public interest is affected?
If the answers to the above questions are in the negative, then there should be no interference under Article 226."

26. The same principle was reiterated in ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.***, *reported in* ***(2016) 16 SCC 818***, wherein the Hon'ble Supreme Court held that the constitutional courts should defer to the interpretation placed by the tendering authority upon its own tender conditions unless such interpretation is found to be arbitrary, mala fide or perverse. It was further observed that the owner or employer of a project, having authored the tender documents, is the best person to understand and appreciate their

requirements. The relevant portion of the said order reads as follows:

> *"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."*

27. Again, in ***Silppi Constructions Contractors v. Union of India***, *reported in* ***(2020) 16 SCC 489***, the Hon'ble Supreme Court cautioned that constitutional courts should exercise considerable restraint in interfering with contractual matters. It was observed that the courts should not interfere merely because another interpretation of the tender conditions appears to be more plausible. The relevant portion of the said order reads as follows:

> ***"19.*** *This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual*

or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. *The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a*

> *court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."*

28. Similarly, in ***N.G. Projects Ltd. v. Vinod Kumar Jain***, *reported in* ***(2022) 6 SCC 127***, the Hon'ble Supreme Court reiterated that interference in tender matters should be minimal and only in exceptional cases involving arbitrariness, mala fides or manifest perversity. The relevant portion of the said order reads as follows:

> *"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."*

29. Keeping the aforesaid principles in view, this Court finds that the petitioner primarily seeks a direction that the eligibility condition ought to have prescribed a different financial period than the one notified by the respondents. Such a submission, in substance, invites this Court to rewrite the tender conditions by substituting the petitioner's understanding of the appropriate eligibility criteria for that adopted by the employer.

30. This, in the considered opinion of this Court, is impermissible. The Court cannot direct the employer to prescribe a particular eligibility condition merely because another criterion may also appear to be reasonable or because such alteration would render a particular bidder eligible. The scope of judicial review is

concerned with the decision-making process and not with the merits of the decision itself. Unless the condition is demonstrated to be manifestly arbitrary, discriminatory or actuated by mala fides, the Court cannot sit in judgment over the wisdom of the employer.

31. In the present case, nothing has been brought on record to demonstrate that the impugned eligibility condition was tailor-made to favour any particular bidder or to exclude the petitioner alone. The condition formed part of the tender documents and applied uniformly to every intending participant. Merely because the petitioner claims that adoption of another financial period would have made it eligible does not render the impugned condition liable to be interfered with.

32. The petitioner's reliance upon relevant Clauses of the Standard Bidding Document and the contention that the expression 'last five years' necessarily mandates adoption of the financial period 2019-20 to 2023-24, as also the alleged inconsistency between the turnover criteria and experience criteria, are matters which go to the legality and interpretation of the impugned condition itself. Merely because such a contention has been raised does not enlarge the scope of judicial review or justify substitution of the employer's decision by that of the Court.

33. Further, in the present case, the petitioner has failed to demonstrate that prescribing the financial period 2020-21 to 2024-25 for assessing completion of similar works is either irrational or devoid of any nexus with the object sought to be achieved. At best, the petitioner has suggested that another financial period would have been more appropriate or beneficial. However, the Court is not concerned with the comparative wisdom of two possible eligibility criteria. Judicial review does not extend to substituting the Court's view for that of the employer merely because another criterion also appears to be reasonable.

34. The mere fact that the turnover criterion and the experience criterion refer to different financial periods is, by itself, insufficient to invalidate the impugned clause. In the absence of any statutory prohibition, express stipulation in the Standard Bidding Document, mala fides, hostile discrimination or manifest arbitrariness, the commercial wisdom of the employer in prescribing such eligibility criteria cannot be substituted by judicial opinion.

35. Accordingly, Issue No. (ii) is answered against the petitioner.

36. In view of the facts and circumstances of the case, findings recorded on the aforesaid issues and the discussions made above, this Court is of the considered opinion that the petitioner

has failed to make out any case warranting interference of this court.

37. Accordingly, the present writ petition stands dismissed.

38. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, ACJ)

I agree.

(Rajesh Kumar Verma, J.)

(Rajesh Kumar Verma, J.)

Gaurav Kumar/-

AFR/NAFR	A.F.R.
CAV DATE	27.07.2026
Uploading Date	05.08.2026
Transmission Date	N.A.