2026:AHC-LKO:66151-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. – 9641 of 2026

M/S Yuvaan Infotech Thru. Partner Ritvik Pandey

…..Petitioner(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Medical And Health Lko And 2 Others

…..Respondent(s)

Counsel for Petitioner(s)	:	Pankaj Gupta, Harish Chandra Yadav
Counsel for Respondent(s)	:	C.S.C.,

<u>Court No. - 3</u>

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

1. Instruction produced today by the learned Standing Counsel is taken on record.

2. Heard learned Counsel appearing on behalf of the parties.

3. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has sought for the following substantial reliefs:-

> *"**(i)** Issue a writ, order or direction in the nature of certiorari, quashing the order dated 22.8.2026 (annexure no.1).*
>
> ***(ii)** Issue a writ, order or direction in the nature of mandamus, commanding the opposite parties, specially, opposite party no. 2 to execute the contract in pursuance of the finalization of the tender and after its approval,"*

4. It has been submitted by the learned Counsel for the petitioner that the petitioner has been declared the successful bidder in the tender floated by the respondent relating to 'Hiring Consultancy Services- percentage based- selection of service provider for establishing "Aadhar Enrollment Centre, Project Management, E-Governance, Selection of Service Provider and Field Level O", published on GeM Portal. According to the learned Counsel, almost seven entities participated in the Tender, amongst which only three including the petitioner were found successful in the technical evaluation. Thereafter, the petitioner and the other two participated in the technical presentation and the committee constituted for that purpose, after considering the pre-qualification and the technical qualification declared the petitioner successful by awarding H-1 grade and an order to that effect was also uploaded to that effect on the GeM portal on 05.08.2026.

5. It has been further submitted that subsequently the Respondent No.2/ Director General (Medical Health), Lucknow in terms of the tender process also uploaded the contract on the GeM portal on August 11, 2026 after its due approval and mere formality of signing the contract was contemplated under the tendering process by the Respondent-Authority. It is the case of the petitioner that dehors the finalization of the contract as aforesaid, the respondent in the most illegal and unprecedented manner cancelled the Tender vide the impugned order subsequently uploaded on 22nd August, 2026 and the only reason assigned for such cancellation is stated to be unavoidable circumstances.

6. Earlier, we had directed learned Standing Counsel to seek instructions from the respondent authority and to apprise this Court the reasons relating to cancellation of the Tender as we prima-facie, found the reasons mentioned for cancellation to be rather sketchy, casual and devoid of any particulars.

7. Pursuant thereto, learned Standing Counsel for the State has filed instructions dated 17th September, 2026 and has *inter alia* disclosed, for the first time that the real reason for cancellation is the inadvertent mentioning of the Performance Bank Guarantee (ePBG) as 0.75% in the Bid Document, instead of the prescribed range from 3% to 5% as per the rules applicable for tender published on GeM portal.

8. On a specific enquiry by this Court as to whether the tender would be revived, in case the petitioner made good the shortfall of the Performance Bank Guarantee (ePBG) so as to meet the required range of 3% to 5%, the learned Standing Counsel fairly submitted that such a course would be impermissible, broadly for two reasons; *(i)* it would constitute a "material change" in the financial terms of the tender, contrary to the amendment procedure under Clause 2.3 of the RFP; and *(ii)* it would prejudice the other participants who had contested and lost in the tendering process. However, on the other hand, the petitioner, through his Counsel, has given an unconditional undertaking to deposit the deficit ePBG, so as to raise it to 5% of the contract value and to abide by such terms, as this Court may impose.

9. After hearing learned Counsel for the parties and giving our anxious consideration to the dispute raised in the present writ petition, as well as upon perusing the material available on record, we find that the said Tender had been published on GeM portal on 08.07.2026 and after following a rigorous process as contemplated under the tendering process, selected the petitioner successful as having grade H-1. We do not find any issue relating to the technical or financial incompetency raised by the Respondent-Authority, nor there any ground that the work anticipated under the Tender has become impossible to act or the very process of Tender is frustrated due to lack of fund or any cogent reasons. Amusingly, we find that the only issue, raised by the respondent to cancel the tender and seemingly to re-tender and go through the entire process again, relates to inadvertence mentioning of inadequate Performance Bank Guarantee (ePBG) in the tender.

10. On an inspection by this Court of the Bid Document, we find that a percentage of 0.75% of the (eBPG) was mentioned in the tender and the petitioner was required to duly comply with the said provision, and therefore calling upon the petitioner to deposit ePBG for 5% of the contract would result in putting him into a disadvantageous position. However, as aforesaid, we have enquired from the learned Counsel for the petitioner, as to whether the petitioner was ready to match the requisite deposit of 5% of ePBG, so as to negate the ground of cancellation of the Tender. The learned Counsel for the petitioner has fairly submitted that the petitioner is ready to deposit the additional amount of ePBG and undertakes to abide by such terms and conditions as directed by this Court.

11. However, according to this Court, the pivotal question is whether the ePBG percentage is an "essential" condition going to the root of the tender, non-compliance whereof (or correction of which) would vitiate the entire process, or whether it is a collateral/ancillary term amenable to correction without disturbing the substratum of the tender. This distinction was authoritatively drawn in ***Poddar Steel Corporation v. Ganesh Engineering Works;*** reported in ***(1991) 3 SCC 273;*** where the Court held that tender conditions may be classified into those that are essential and those that are merely ancillary or subsidiary; deviation from the latter, particularly where it does not prejudice any other party, may be waived or corrected by the authority issuing the tender. A similar approach was adopted in ***G.J. Fernandez v. State of Karnataka,*** reported in ***(1990) 2 SCC 488;*** and in ***B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.,*** reported in ***(2006) 11 SCC 548;*** where it was held that an employer is entitled to condone deviations in tender conditions, provided the relaxation is applied without discrimination and does not result in arbitrariness.

12. The ePBG is a performance security, fundamentally a financial safeguard for due performance of the contract and does not bear upon the eligibility, technical competence or comparative merit of a bidder *inter se*. It does not affect the substantive evaluation on the basis of which the petitioner was declared H-1. Correcting the percentage upward, at the tendering authority's own admitted error, and at the volunteered instance of the petitioner, does not touch the essential fabric of the selection process. It is, in essence, curing an error of the author of the tender document, not amending a term that shaped the competitive field. In this context, the settled maxim — *nullus commodum capere potest de injuria sua propria* (no one can take advantage of one's own wrong), recognized by the Supreme Court in, *inter alia*, ***Kusheshwar Prasad Singh v. State of Bihar,*** reported in ***(2007) 13 SCC 433;*** applies with full force. The Respondent-Authority cannot visit upon the petitioner the consequences of its own inadvertence in fixing an ePBG contrary to the applicable GeM norms, more so when the petitioner has offered, without demur, to bear the resultant additional financial burden.

13. In view of the aforesaid unconditional undertaking of the petitioner to deposit ePBG for 5% of the contract value, we are unable to countenance any justifiable reason as to why the tender, at this fag-end, ought to be cancelled. As far as the other ancillary grounds relating to non-permissibility of such increase in ePBG amount as per clause 2.3 of the RFP (Request for proposal) is concerned, we have taken the arduous task of glancing through the said clause and are unable to subscribe to the views of the learned Standing Counsel or the Respondent-Authority. A facial reading of the clause, merely prescribes the procedure for amendment of the RFP; it neither prohibits amendment as such nor renders financial terms immutable once published. The presence of an amendment clause in a tender document is itself recognition by its author that circumstances may warrant modification. The authority issuing a tender is ordinarily regarded as the best interpreter of its own document, a principle recognized in ***Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium),*** reported in ***(2016) 8 SCC 622;*** and ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.,*** reported in ***(2016) 16 SCC 818;*** but that deference is not absolute, and cannot extend to an interpretation that does violence to the plain language of the clause itself, or that is invoked selectively to defeat a curable, authority-created error. We are, therefore, unable to accept the construction placed upon Clause 2.3 by the respondent.

14. As regards the other objection relating to increasing the ePBG from 0.75% to 5% having an adverse effect or would be to the prejudice of the other contesting participants in the tender, who had participated and lost in the tendering process, we fail to understand how the same would cause any prejudice to any such person. According to us, given the facts of the present case, two forms of prejudice must be separately considered. First, prejudice to bidders who participated on the terms as published i.e., whether raising the petitioner's ePBG obligation retrospectively disturbs the basis on which they bid. This apprehension does not survive scrutiny, for the simple reasons that an increase in the performance security demanded of the successful bidder alone imposes a heavier burden on him and confers no comparative advantage on him *vis-à-vis* the other two technically qualified bidders, whose own ranking, scores and disqualification (if any) remain wholly unaffected. Second, and more substantially, it was faintly suggested that entities may have been deterred from bidding at all by an artificially low ePBG of 0.75%, and that correcting it *post-facto* for the petitioner alone does not undo that deterrent effect on the wider field. Again, this prejudice also seems to be without any logic and reasoning. If the ePBG amount would have been decreased, we could very well eschew that the said process may prejudice to potential participate, who could not participate because of the increased ePBG, but to say that increase in amount of ePBG would be prejudicial to the participants appears to be absolutely preposterous and without any basis.

15. This Court is conscious of the fact that it is well established that the State, even while acting in its contractual capacity, remains bound by Article 14 of the Constitution of India and cannot act arbitrarily. Having permitted the petitioner to proceed through technical evaluation, financial evaluation, declaration as H-1, and upload of the contract for signature, the respondent generated a legitimate expectation of consummation of the contract, absent a substantive and lawful impediment (Please see ***Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71;*** and ***National Buildings Construction Corporation v. S. Raghunathan, (1998) 7 SCC 66)***. Therefore, in the view of this Court, cancellation of the entire process, at this belated stage, on a ground that is both self-created and curable, defeats that legitimate expectation without any countervailing public interest, financial infeasibility, or impossibility of performance being pleaded or shown.

16. For all the aforesaid reasons, we find that the reason "unavoidable circumstances," as originally recorded in the GeM portal to be insufficient in law to sustain cancellation of an advanced tender process. The subsequently, disclosed reason of having inadvertently fixing the ePBG below the mandated 3%–5% of the contract value, relates to a term that was never published or known to any bidder and is severable from the substantive evaluation process, and accordingly is amenable to correction without re-tender, on the peculiar facts of this case. Further, Clause 2.3 of the RFP does not bar correction of the ePBG, but merely prescribes the procedure for amendment and no prejudice, actual or apprehended, is shown to accrue to the other participants by reason of an increase in the ePBG applicable to the petitioner alone. Thus, we hold that the cancellation, in these circumstances, was disproportionate, arbitrary, and unsustainable in law.

17. Accordingly, this writ petition is ***allowed.*** The impugned order dated 22.08.2026, cancelling the tender, is hereby *quashed.* The petitioner is directed to deposit the deficit amount towards the Performance Bank Guarantee so as to raise it to 5% of the contract value, within a period of one week from today. Upon such deposit being made, the tender shall stand revived, and the parties shall be relegated to the *status quo ante* obtaining immediately prior to cancellation, subject to there being no other legal impediment.

18. Having regard to the time already lost in this litigation, the respondents shall, without further delay or demur, make available to the petitioner the contract document for signature and completion of allied formalities, so as to enable performance of the contract in terms of the RFP and in accordance with law, within two weeks of deposit of the enhanced ePBG.

19. It is clarified that this judgment is confined to the limited issue of the legality of cancellation of the Tender on the sole ground raised by the Respondent-Authority, namely, the inadequacy of the ePBG, and no opinion is expressed on any other aspect of the Tender process or the merits of the parties' respective claims *inter se.*

20. The writ petition is ***disposed of*** accordingly. No order as to costs.

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

September 18, 2026
Anuj Singh