



2026:AHC-LKO:68884-DB

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 7461 of 2026

M/s Divya Enterprises Thru. Authorized Signatory Sudhakar Awasthi
.....Petitioner(s)

Versus

State of U.P. Thru.Prin.Chief Conservator of Forest and Wildlife Deptt.of
Forest,Lko. and 3 others
.....Respondent(s)

Counsel for Petitioner(s)	: Sunil Kumar Singh, Kartikeya Yadav, Prateek Agrawal, Yuvraj Verma
Counsel for Respondent(s)	: C.S.C., Amal Rastogi, Chinmay Mishra

Court No. - 3

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

- 1.** Supplementary counter affidavit filed on behalf of the respondents no.2 and 3 is taken on record.
- 2.** Supplementary affidavit filed on behalf of respondent no.4 is also taken on record.
- 3.** Heard learned counsel appearing on behalf of the petitioner, Shri Pankaj Khare, learned Additional Chief Standing Counsel appearing on behalf of State-respondent no.1, Shri Prithish Kumar, learned Senior Advocate assisted by Shri Amal Rastogi, learned counsel appearing for respondents no.2 and 3 as well as Shri S.C. Mishra, learned Senior Advocate assisted by Shri

Chinmay Mishra, learned counsel appearing for respondent no.4 and perused the materials available on record.

4. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner is aggrieved by the rejection of his e-tender on 04.07.2026 on the ground that he was the L-2 bidder, whereas respondent no. 4 has been declared to be the L-1 bidder. Thus, the present writ petition has been filed for the following substantial relief(s):-

"(i). Issue a writ of certiorari quashing the recommendation dated:04.07.2026 made by the Respondent no.3 for e-tender no.2026_UPDFW_1163110_1 dated:24.06.2026 and affirmed by Respondent no.2 declaring the Respondent no.4 as lowest bidder as available on the website.

(ii). Issue a writ of mandamus directing the Respondent no.2 and 3 to reevaluate the financial bid for e-tender no.2026_UPDFW_1163110_1 dated:24.06.2026 taking into consideration the complete quantity of 21 articles."

5. It emerges from the record that the present tender is relating to "supply of food material" for wild animals in Nawab Wazid Ali Shah Zoological Garden, Lucknow (herein-after referred to as 'Lucknow Zoo'). The said tender was floated on 24.04.2026 and the period of supply was for one year i.e. 2026-27.

6. It would be apt at this juncture to reproduce some clauses of the tender, which are relevant for our consideration.

"9. निविदा से सम्बन्धित शासन द्वारा लागू समस्त कर (जैसे आयकर/स्टैम्पड्यूटी/जी०एस०टी० निविदादाता द्वारा बिल ऑफ क्वान्टिटी (बी०ओ०क्यो०) में दी गयी दरों में सम्मिलित मानी जायेगी, निविदा में दी गयी दरों के अनुसार भुगतान के अतिरिक्त अन्य किसी भी प्रकार की धनराशि प्राणि उद्यान द्वारा भुगतान नहीं की जायेगी।

10. बी०ओ०क्यो० सूची में सम्पूर्ण कुल न्यूनतम सामग्रियों की दरों की निविदा स्वीकार की जायेगी। निविदा को स्वीकार या अस्वीकार करने का पूर्ण अधिकार निदेशक, प्राणि उद्यान, लखनऊ के पास सुरक्षित है। सशर्त निविदा स्वीकार नहीं होगी।

14. प्रत्येक खाद्य सामग्री की दरें बी०ओ०क्यो० में अंकित करना होगा। प्रदत्त दरों में प्राणि उद्यान के भण्डार तक दुलान का व्यय सम्मिलित होंगे।

15. खाद्य सामग्री की मासिक अनुमानित मात्रा निम्न प्रकार है:-

क्र० सं०	खाद्य सामग्री (राशन) का नाम	मासिक अनुमानित मात्रा कि० ग्रा० में
1.	गेहूँ	310 कि०ग्रा०
2.	चना	7200 कि०ग्रा०
3.	बर्रे	50 कि०ग्रा०
4.	भुना चना	105 कि०ग्रा०
5.	काकून	320 कि०ग्रा०
6.	जौ	60 कि०ग्रा०
7.	गुड़	140 कि०ग्रा०
8.	सफेद नमक	01 कि०ग्रा०
9.	चोकर	15550 कि०ग्रा०
10.	चावल	50 कि०ग्रा०
11.	कुटा मक्का	360 कि०ग्रा०
12.	मूँगफली की खली	07 कि०ग्रा० (ग्रीष्म) 850 कि०ग्रा० (सर्दी)
13.	सफेद ज्वार	240 कि०ग्रा०
14.	मूँग दाना	120 कि०ग्रा०
15.	बाजरा	390 कि०ग्रा०
16.	धान	500 कि०ग्रा०
17.	काला नमक	20 कि०ग्रा०
18.	मलका मसूर की दाल	16 कि०ग्रा०
19.	कुटा जौ	40 कि०ग्रा०
20.	सरसों की खली	07 कि०ग्रा०
21.	जई	200 कि०ग्रा०

16. खाद्य सामग्री की माँग में व्यापक परिवर्तन हो सकता है और सामग्री आवश्यकता न होने पर नहीं भी माँगायी जा सकती है। जिसके लिये प्राणी उद्यान कोई मुआवजा का देनदार न होगा। इस सम्बन्ध में नौग के

अनुसार ही खाद्य सामग्री की आपूर्ति पूर्ण रूप से करनी होगी। खाद्य सामग्री का माँग पत्र उप निदेशक से निविदादाता प्राप्त करेंगे। इसकी प्राप्त करने की जिम्मेदारी स्वयं निविदादाता की होगी।"

7. It is an admitted case that the writ petitioner neither raised any pre-bid query nor expressed any doubt about the evaluation methodology of the lowest bidder. In fact, as a matter of record, we see that paragraph nos.5 and 6 of the writ petition *inter-alia* states as herein-under:-

"5. That as many as 21 articles were to be supplied every month with each article having different quantity to be supplied. The rate per kilogram were to be quoted for each article while participating in the tender.

6. That clause 10 of the tender document categorical state that total minimum value quoted will be allocated the tender."

8. As per the tender condition, the bids of the participants including the petitioner as well as the private respondent no.4 was evaluated on 02.07.2026 by a three member committee and the cumulative rate of the various food articles was found in the case of the petitioner to be Rs.1324.44/-, whereas of the respondent no.4 to be Rs.539/- and as such the bid of the respondent no.4 was declared to be L-1 for the financial year 2026-27.

9. After the aforesaid declaration, the work order was issued on 08.07.2026 and ever since then respondent no.4 had been supplying the food articles to the Lucknow Zoo.

10. It is the submission of the learned counsel for the petitioner that the authority, in its order, has only considered the rates quoted by each party and, on that

basis, determined respondent no. 4 to be the L-1 bidder. He submits that the authority ought to have taken into account the quantity to be supplied per month along with the rates quoted and, thereafter, determined the lowest bidder.

11. The argument advanced by learned counsel for the petitioner appears to be an attractive proposition in the first blush, however, on a deeper scrutiny of the issue, it is apparent from the records that the methodology adopted by the respondent-authority appears to be consistent with the terms and conditions stipulated in the tender document.

12. A facial reading of Clause 10 makes it clear that the tender was to be accepted on the basis of the lowest overall rates quoted for the complete list of required materials specified in the Bill of Quantities. Admittedly, Clause 9 says that the rate so quoted by the tenderer shall be inclusive of all taxes and no additional amount shall be payable, not even of transportation upto the store of the Zoo as mentioned in Clause-14. Thus, according to us, the rates have been fixed for all intents and purposes of 21 articles for a period of one year i.e. 2026-27 and the same cannot be varied/changed in any circumstances.

13. No doubt Clause 15 provides for a monthly estimated quantity, however, we find that Clause 16 in clear terms makes the aforesaid monthly estimate conditional as it says that the estimate may be substantially varied as per the demand of the food

material. The said clause also gives a disclaimer in the sense that certain materials may not be ordered at all and that no compensation would be payable to the supplier on that account.

14. Shri S.C. Mishra, learned Senior Advocate appearing on behalf of respondent no.4, relying on Clause 10 of the tender condition, has submitted that the said methodology of assessment of the lowest bidder is a known practice in supply of food articles and has been consistently followed by the Lucknow Zoo in its previous years. He has submitted that the said methodology was very much in agreement with the petitioner and as such the same was never challenged as is apparent from the record. According to him, merely because the petitioner was unsuccessful in the tender, that ground cannot become a right to the petitioner to challenge the tender, the terms of which he agreed and consented while participating in the bid. According to Shri Mishra, the interpretation of Clause-10 of the tender has to be left to the author of the tender document. In this regard, he has relied upon the judgments in **Central Coalfields Limited vs. SLL-SML (Joint Venture Consortium) and others;** (2016) 8 SCC 622, **Ranjana Pandey vs. State of U.P. and others;** decided on 21.08.2026 in Writ-C No. 6379 of 2026, **N.G. Projects Limited vs. Vinod Kumar Jain;** (2022) 6 SCC 127 and **Silppi Constructions Contractors vs. Union of India and Another;** (2020) 16 SCC 489.

15. Recently, this Court in **Ranjana Pandey (supra)**, had an occasion to define the contours of scope of

interference by this Court in tender matters and has held *inter-alia* as follows:-

"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."

16. Testing on the touchstone of the aforesaid precedent, this Court cannot be oblivious to the fact that in the whole process of judicial scrutiny, this Court cannot loose sight of the needs and requirement of the Lucknow Zoo.

17. It is not uncommon that when a tender matter is challenged by one of the parties the entire focus of the Court shifts in choosing the most eligible party. However, this inquiry of choosing the most eligible party cannot ignore the needs of the owner. The final choice has to be left to the owner, as it is for the owner to take the final decision with necessary flexibility and pragmatism. In our considered view, while exercising judicial review of contractual matters, this Court do not exercise, ex-ante jurisdiction to preempt executive actions, as has been held by the Hon'ble Surpreme Court in ***M/s Steag Energy Services (India) Pvt. Ltd. vs. GSPC Pipavav Power Company Ltd. (GPPC) and others***; reported in *AIROnline 2026 SC 214*.

18. The case set up by the petitioner at this stage, i.e. after the L-1 bidder has been selected, is highly belated. If the petitioner was of the view that the terms and conditions were unfair and that the tender could not have been decided solely on the basis of the addition of the rates, he ought to have approached this Court before participating in the tender process.

19. Furthermore, the Courts have also held that the Writ Court cannot substitute its own opinion for that of the employer/author of the tender document. The interpretation of the terms and conditions of the tender would primarily fall within the domain of its author, and unless such interpretation is found to be perverse, the Writ Court would not interfere.

20. In view of the aforesaid observations, the present petition as being devoid of any merits, does not require any interference in the declaration of respondent no.4 as lowest bidder. Accordingly, the writ petition is **dismissed**.

21. No order as to cost(s).

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

September 28, 2026

Praveen