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2026:AHC:237675-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 40904 of 2026

M/s Shiv Anant Enterprises

…..Petitioner(s)

Versus

State of U.P. and 3 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Rajeev Kumar Singh
Counsel for Respondent(s)	:	C.S.C.

Court No. - 5

HON'BLE PRAKASH PADIA, J.
HON'BLE INDRAJEET SHUKLA, J.

Delivered by Indrajeet Shukla, J.

For the sake of exposition, instant judgment is divided into following segments:

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1. Heard Sri Rajeev Kumar Singh, learned counsel for the petitioner and Sri Dharmendra Prasad Singh, learned Additional Chief Standing Counsel appearing for the State-respondents.

2. Instant writ petition has been instituted with following prayers.

"a. Issue a writ, order or direction in the nature of certiorari to quash the impugned order/Letter No.1387 dated 29.09.2026 passed by the respondent no.4-Divisional Food Controller, Basti Division, Basti as well as impugned Very Short Term E-Tender Notice (Single Stage Door Step Delivery)/Letter No.1386 dated 29.09.2026.

b. Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the candidature of the petitioner and allot the contractual work in pursuance of Very Short Term E-Tender Notice (Single Stage Door Step Delivery) Letter No.1215 dated 08.09.2026 and issued the work order in his favour in pursuance of aforesaid tender notice on his lowest rate.

c. Issue a writ, order or direction in the nature of mandamus commanding the respondent no.4-Divisional Food Controller, Basti Division, Basti to consider and decide the representation of the petitioner dated 28.09.2026 by passing a reasoned and speaking order within stipulated period as may be fixed by this Hon'ble Court."

Facts in Brief

3. The factual matrix for better appreciation and adjudication of the controversy in question is delineated as under:

3.1. Under challenge is the order/letter No. 1387 dated 29.09.2026 passed by the 4th respondent/Divisional Food Controller, Basti, Division-Basti, cancelling the tender invited for Block-Bansi in pursuance of short-term E-Tender notice (Single stage door step delivery)/Letter No. 1214, dated 08.09.2026.

3.2. The petitioner has further laid challenge to the Short-Term E-tender Notice (Single Stage Door Step Delivery)/Letter No. 1386, dated 29.09.2026 issued by the 4th respondent/Divisional Food Controller,

Basti, Division-Basti, whereby a fresh tender for Block–Bansi, District–Siddharth Nagar has been invited.

3.3. Petitioner claims to be a registered firm named and styled as M/s Shiv Anant Enterprises involved in the business of transportation of food grains and is a contractor in the Department of Food and Civil Supply, Uttar Pradesh.

3.4. Admittedly, E-Tender Notice (Single Stage Door Step Delivery)/Letter No. 3543, dated 11.03.2026 was issued by 4th respondent inviting public tender for transportation of food grains from godown to public places for 35 Blocks of Districts– Basti, Sant Kabir Nagar and Siddharth Nagar; a copy of the E-Tender notice dated 11.03.2026 has been brought on record as Annexure No. 3 to this writ petition.

3.5. In response to the E-Tender notice dated 11.03.2026 as many as three contractors applied, viz M/s Hamara Pump Itwa Fuel Center (for short ‘M/s Hamara Pump’), Shiv Anant Enterprises (petitioner) and Vaibhav Laxmi Enterprises.

3.6. The opening of the technical bid led to cancellation of the tender with respect to 25 Blocks for want of competition. Subsequently, with respect to the aforesaid 25 Blocks, fresh tender notice/E-Tender (Single Stage Door Step Delivery)/Letter No. 868 dated 14.07.2026 was again published inviting fresh tender for transportation of food grains from the operative godown to public places for 25 Blocks of Districts– Basti, Sant Kabir Nagar and Siddharth Nagar. The said tender notice is appended at Annexure No. 4 to this writ petition.

3.7. The opening of the technical bid in pursuance of the tender notice dated 14.7.2026 led to cancellation of the tender notice for Block–Bansi and Block–Uska Bazaar, District–Siddharth Nagar and thereafter, a fresh short term E-Tender notice (Single Stage Door Step Delivery) vide letter no. 1215 dated 08.09.2026 was again published by the 4th respondent inviting a fresh tender for the purposes of transportation of food grains from the operative godown to public places for only two blocks, namely Block– Bansi and Block– Uska Bazaar, District, Siddhartha Nagar

respectively. The said Short Term E-Tender Notice published vide letter No. 1215 on 08.09.2026 is part of this writ petition as Annexure No. 5.

3.8. The E-Tender notice dated 08.09.2026 was responded to by submitting technical as well as financial bids by as many as three aspirants, i.e. M/s Hamara Pump Itwa Fuel Centre, Shiv Anant Enterprises and M/s Om Traders. The technical bids of all three aforesaid tenders were opened on 14.09.2026 and were found responsive.

3.9. The case of petitioner is the technical bid of one of the contractor i.e. M/s Hamara Pump did not merit acceptance and for this reason, an objection was raised by submitting the registration certificate of vehicle i.e. UP55-80 1041 (tanker) same being plied for transportation of liquid product (petrol and diesel) was unsustainable. Thus, the vehicle proposed by contractor M/s Hamara Pump did not meet the standard prescribed in the tender notice itself. It is also not disputed that since the bid evaluation committee found the technical bid of all three contractors responsive in pursuance of the tender notice dated 08.09.2026, as such, the financial bid too was opened on 22.09.2026; consequently, M/s Hamara Pump was declared as L-1, whereas petitioner's financial bid was found to be L-2 and the third contractor M/s Om Traders was declared as L-3.

3.10. It is the admitted position that before opening of technical bid, the objections could have been raised in terms of the conditions mentioned in the tender notice but no such objection was raised, and it is after financial bid of M/s Hamara Pump was declared L-1, the technical bid was sought to be disputed through complaint made by one Vijay Prakash on 22.09.2026. The work order was issued in favour M/s Hamara Pump on 23.09.2026 under the signature of the 4th respondent, and thereafter, a de novo complaint was again submitted on 24.09.2026 by the petitioner.

3.11. The complaint with respect to the technical bid was enquired into, and finding substance in the complaint, the work order dated 23.09.2026 issued in favour of M/s Hamara Pump was cancelled vide order dated 26.09.2026 bearing letter no.1369. The said cancellation

order has not been put to challenge by M/s Hamara Pump; probably, the reason best known to him , one of them might be a flawed technical bid, as the vehicle proposed was not fit for transportation of food grains, but rather was a tanker, which is in direct conflict with Appendix 1 being part of the tender notice.

3.12. On 26.09.2026, vide letter No. 1369, Respondent No. 4 floated a proposal to the petitioner, being L-2 and another Contractor M/s Om Traders, being L-3, to extend their willingness to perform the contract work of transportation of food grains at Block Bansi, District Siddharth Nagar, at the rate L-1 offered by M/s Hamara Pump. The petitioner was required to furnish a consent letter in response to the letter dated 26.09.2026 by 01:00 pm on 28.09.2026.

3.13. The further pleaded case of the petitioner is that in response to letter dated 26.09.2026 issued by 4th respondent, it was made clear that once the technical bid of M/s Hamara Pump was not found responsive, it was incumbent upon respondent to cancel the technical bid which would lead one and only one conclusion that the financial bid offered by petitioner should be treated as L-1 and there is no other possible conclusion survives. Several reminders were given to accept the offer made by the petitioner, treating him as L-1, as the technical bid of the M/s Hamara Pump was non-responsive. It has also been emphasized that the petitioner has represented his cause on 29.09.2026 before the Principal Secretary, Food and Supply Department, The Commissioner, Food and Supply Department, U.P. and Commissioner, Basti Division, Basti, but they all went in vain.

3.14. It has further been pleaded that without considering the representation of the petitioner made on 26.09.2026 and 28.09.2026, finally the tender notice, i.e. letter no.1214 dated 08.09.2026, has been cancelled vide order impugned dated 29.09.2026. Thereafter, fresh tender notice vide Short Term E-Tender Notice (Single Stage Doorstep Delivery) letter no.1386 dated 29.09.2026 was published, which is on record as Annexure no.2 to this writ petition and is under challenge. The non-consideration of the representation, despite the petitioner being L-1

due to the non-responsive technical bid of M/s Hamara Pump in pursuance of the tender notice dated 18.09.2026, is an arbitrary and illegal exercise on the part of the respondents.

3.15. The petitioner has brought to the notice of this Court, through a supplementary affidavit, an exemplar that, in similar case and circumstances in Basti Division, the technical bid of 11th bidder M/s Mishra Traders at Block Nath Nagar was found non-responsive by the Tender Evaluation Committee and during negotiation, the contract was allotted to 12th bidder M/s Pratap Enterprises; thus, the same treatment may be extended on the part of the respondents to the petitioner also.

Case of State-Respondents

4. The Divisional Food Controller, Basti Division, Basti passed an order on 29.09.2026 bearing letter no. 1387, cancelling the E-Tender notice dated 08.09.2026, is well within competence and jurisdiction on the ground of interest of the public as well as the Government. The three bidders, namely M/s Hamara Pump, offered 55.010% BSR below the scheduled rate, whereas M/s Shiv Anant Enterprises, the petitioner, offered 0.010% BSR and M/s Om Traders offered at the scheduled rate. There being no complaint till opening of the technical bid, the financial bid of all three contractors was opened and, being the highest bidder, the work order dated 23.09.2026, brought as Annexure No.CA-9 to the counter affidavit, was issued in favour of the M/s Hamara Pump.

5. Pursuant to the receipt of a complaint against the L-1 bidder, M/s Hamara Pump, in respect of the tender invited through E-tendering for Block Bansi and upon verification of the said complaint, the office letter dated 26.09.2026 was issued by Divisional Food Controller, Basti Division, Basti and thereafter, it was the petitioner, who, under the negotiations, was offered to accord his consent to execute the work at the rate quoted by L-1 bidder by 28.09.2026. The petitioner failed to respond to the proposal floated by the State Respondent and in place of accepting the same, started representing to the authorities, claiming himself as L-1. Thus, it declined to furnish its consent to execute the work at the rate

quoted by the L-1 bidder. A similar failure was found on the part of M/s Om Traders. Since none of the bidders agreed to execute the work at the rate quoted by the L-1 bidder for Block Bansi, District Siddharth Nagar, a short-term E-tender was invited in the interest of the Government as well as the public at large vide E-Tender notice dated 29.09.2026 issued by the Divisional Food Controller, Basti Division, Basti, with the deadline for submission of bids being 12.00 noon on 05.10.2026. The order of cancellation of the erstwhile tender and publication of fresh tender notice are under challenge before this Court without any locus or authority of law or for any justifiable cause.

6. The further pleading raised in the counter affidavit is that smooth and timely transportation of food grains through the door-step delivery system in Block Bansi, District Siddhartha Nagar is connected with the public interest; thus, the fresh tendering was the call of the hour, keeping the public interest as well as saving public revenue. The cancellation of earlier technical bids with respect to 25 blocks was never put to challenge, as transparency and healthy competition were an attempt by the State authorities. The cancellation of tenders even in past was due to the absence of adequate competition, being a practice consistent with the prescribed rules to safeguard the public interest and protect Government revenue. The work order was issued in favour of the M/s Hamara Pump without mala fide, as the flaw in the technical bid could not be noticed by the State authorities. In the absence of any complaint or any emerging material brought to the notice of the Tender Evaluation Committee. At the first opportunity, noticing the technical bid submitted by the highest bidder being flawed, the work order allotted to him vide order dated 23.09.2026 was cancelled vide letter dated 24.09.2026, and there is absolutely no challenge to the said cancellation. At this juncture, reference is made to Appendix -1, which is part of the tender form and becomes part of the technical bid, which depicts that the appropriate vehicle with registration number and capacity was to be detailed. The Appendix-1, having been brought on record, reads thus:

"परिशिष्ट-*1*

सम्भाग का नामः-.....

*(*तकनीकी बिड*)*

सिंगल स्टेज डोर स्टेप डिलीवरी व्यवस्थान्तर्गत भा०खा०नि०, सी०डब्लू०सी०, एस०डब्लू०सी०/बफर गोदामों व अन्य नियत स्थान से खाद्यान्न/चीनी आदि का उठान करते हुये उचित दर विक्रेताओं की दुकान तक पहुंचाने हेतु हैण्डलिंग एवं परिवहन कार्य का आवेदन।

वित्तीय वर्ष *20*.....

1- जनपद का नाम- .....

2- ब्लाक/केन्द्र का नाम- .....

3-निविदादाता का नाम- .....

4- निविदादाता का आधार नम्बर- .....

5- निविदादाता का मोबाइल नं०- .....

6- निविदादाता का ई-मेल- .....

7- निविदादाता के बैंक का नाम, ...

पता, एकाउण्ट नम्बर .....

व आई.एफ.एस. कोड- .....

8- निविदा शुल्क- ..... *(*रसीद अपलोड करें*)*

9- धरोहर धनराशि- ..... रसीद अपलोड करें*)*

10- तकनीकी बिड हेतु- संगत अभिलेख/प्रमाण पत्र अपलोड करें

I. पत्र व्यवहार का पता .....

*(*प्रमाण पत्र सहित*)*

II. स्थायी पता- .....

*(*प्रमाण पत्र सहित*)*

III. **स्वयं के ट्रकों व वाणिज्यिक छोटे वाहन के पंजीकरण नम्बर तथा क्षमता-**

ट्रकों के पंजीकरण नम्बर एवं क्षमता.....

छोटे वाहन के पंजीकरण नम्बर एवं क्षमता-.....

IV. अनुभवल का विवरण .....

V. हैसियत, प्रमाण पत्र संख्या

व निर्गमन का दिनांक- .....**..."**

7. With respect to parity claimed in the case of Block Nath Nagar, District Sant Kabir Nagar, it is stated that a total of 3 tenderers were found eligible in the technical bid by the Tender Committee, and thereafter, the financial bids were opened with respect to:

A. M/s Mishra Traders @ 05.00% ASR (Above Scheduled Rate).

B M/s Pratap Enterprizes @ 09.00% ASR.

C. Sri Ramesh Chandra Rai @ 11.90% ASR.

8. It is further stated that from the above, M/s Mishra Traders, the L-1 bidder, was declared ineligible before issuance of the work order. Accordingly, the L-2 bidder, M/s Pratap Enterprises, was called for negotiations by the Divisional Food Controller, Basti Division, Basti, vide Office Letter No.1059 dated 12.08.2026. During the negotiations, M/s Pratap Enterprises, vide its letter dated 13.08.2026, consented to execute the work at the rate quoted by M/s Mishra Traders. Subsequently, pursuant to Office Letter No.1244 dated 12.08.2026, issued by the Divisional Food Controller, Basti Division, Basti, M/s Pratap Enterprises, vide its letter dated 12.09.2026, furnished its consent to execute the work at the Government-prescribed rate. Thereafter, the work order was issued in favour of M/s Pratap Enterprises in accordance with the prescribed rules, vide Office Letter No.1289 dated 18.09.2026.

9. In contrast, in the case of Block Bansi, M/s Hamara Pump, the L-1 bidder, was found ineligible after issuance of the work order dated 23.09.2026 in its favour. Accordingly, the L-2 bidder for Block Bansi, namely, the petitioner, M/s Shiv Anant Enterprises, was requested to furnish its consent to execute the work at the L-1 rate vide Office Letter No. 1369 dated 26.09.2026, issued by the Divisional Food Controller, Basti Division, Basti. However, in its letters dated 26.09.2026 and 28.09.2026, the petitioner declined to furnish its consent to execute the work at the rate quoted by M/s Hamara Pump Itwa Fuel Centre. Consequently, in the interest of the Government and the public at large, the tender was cancelled by the Divisional Food Controller, Basti Division, Basti, vide Office Letter No. 1387 dated 29.09.2026, and a fresh tender was issued vide Office Letter No. 1386 dated 29.09.2026, in accordance with the prescribed rules. The factual distinction disentitles the petitioner to claim any parity.

10. In order to defend the order impugned as well as re-tendering, the provisions contained in the Rules, titled as Uttar Pradesh Procurement Manual (Procurement of Goods), have been relied upon by the State

respondents with further submission that the administrative decision to cancel the erstwhile tendering process and re-tendering is based on fairness, good conscience and to subserve the public cause. The said procurement manual is statutory in character, having been issued under Article 166 (2) and (3) of the Constitution of India coming in force on 01 April 2016, and governs the field and realm of contract where the State is one of the parties. The relevant excerpts as contained in Chapters 13 and 14 of the Procurement Manual read thus:

> *"Two Bid System*
>
> *13.28. For purchasing capital equipment, high value plant, machinery, etc., of complex and technical nature, tender enquiry document, complete in all respects, may be issued as usual. However,* ***the tenderers should be asked to bifurcate their quotation in two parts. The first part is to contain the relevant technical specifications and allied commercial details and earnest money (wherever asked for) as required in terms of the tender enquiry documents and the second part should contain only the price quotation. The first part is commonly known as 'Technical Bid' and the second part 'Financial Bid'.***
>
> *13.29. The Technical Bid and the Financial Bid shall be sealed by the tenderer in separate covers duly super scribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly super scribed following similar procedure as prescribed under para 13.13 of this chapter. The Technical Bids are to be opened in the first instance, at the prescribed time and date and the same will be scrutinised and evaluated by the competent committee/authority with reference to parameters prescribed in the tender documents and the offers received from the tenderers. Thereafter, in the second stage, the Financial Bids of only the technically acceptable offers (as decided in the first stage above) are to be opened for further scrutiny, evaluation, ranking and placement of contract.*
>
> *14.4. The officer nominated for handling the tenders for initial scrutiny etc. will receive the tenders along with other documents from the tender opening officials in a manner as described under para 13.26 of chapter 13. In this context, it should be ensured that no tender is rejected by the tender opening officials at the tender opening stage; they are to open all the tenders as received and send them to the officer concerned as prescribed above.*
>
> *14.5. All the* ***14.22. The Procuring entity reserves the right to accept or reject any bid, to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to the bidders. Reasons for doing so shall be recorded in writing in the purchase file.*** *tenders so received will first be scrutinised to see whether*

the tenders meet the basic requirements as incorporated in the bidding documents. The tenders, which do not meet the basic requirements, are to be treated as unresponsive and ignored.

unresponsive and may be ignored, during the initial scrutiny: The following are the important points, for which a tender may be declared as

(1) The tender is not in the prescribed form (where forms are prescribed)

(2) The tender is unsigned.

(3) The tenderer is not eligible, e.g. The tender enquiry condition says that the hidder has to be a registered SSI unit; but the tenderer is say, a Large Scale Unit.

(4) The tender validity period is shorter than the required period.

(5) Required EMD has not been provided.

(6) The tenderer has quoted for goods manufactured by a different firm/company without the required authority letter from the proposed manufacturer.

(7) Tenderer has not agreed to give the required performance security.

(8) The goods quoted are sub-standard, not meeting the required specification etc.

14.10. After completing the stage as per para 14.9 above, it is to be examined whether the remaining tenderers (i.e. other than the unresponsive tenderers) meet the required qualification criteria incorporated in the tender document. ***The tenderers, which do not meet the required qualification criteria are to be declared unresponsive and not to be considered further. Details of such tenderers, which do not meet the required qualification criteria are also to be recorded in the purchase file along with the grounds for their becoming unresponsive.***

In case of Two Bid System, the technical acceptability of the offers are first determined and, thereafter, the Financial Bids of only the technically acceptable offers are opened for further scrutiny and processing for placement of contract. (also refer paras 13.28- 13.29 of chapter 13)

14.11. (1) The bid evaluation committee's determination of the responsiveness of a bid should be based on the contents of the bid itself. A responsive bid is one that meets the requirements of the bidding documents without material deviation, reservation, or omission where: deviation' is a departure from the requirements specified in the bidding documents;

(b) 'reservation' is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding documents; and

(c) 'Omission' is the failure to submit part or all of the information or documentation required in the bidding documents.

A material deviation, reservation, or omission is one that,

(a) if accepted, would: -

(1) affect in any substantial way the scope, quality, or performance of the subject matter of procurement specified in the bidding documents; or

(2) limit in any substantial way, inconsistent with the bidding documents, the procuring entity's rights or the bidder's obligations under the proposed contract, or

(b) if rectified, would unfairly affect the competitive position of other bidders presenting responsive bids.

The bid evaluation committee shall examine the technical aspects of the bid in particular, to confirm that all requirements of bidding document have been met without any material deviation or reservation.

(2) Subject to sub para above, the procuring entity shall regard a bid as responsive if it conforms to all requirements set out in the bidding documents.

(3) The procuring entity may regard a bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents or if it contains errors or oversights that can be corrected without touching on the substance of the bid. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of bids.

14.15 (1) The criteria fixed for evaluation of Technical bids shall be clearly mentioned in the bidding documents so as to keep transparency in selection process. The criteria once fixed for evaluation of technical bids shall not be changed or relaxed.

(2) Techno-commercial qualifications of the bidders shall be evaluated on the basis of the weightages of marks assigned or minimum achievements fixed in the bidding documents for various criteria of qualifications in the area of professional, technical, financial, managerial competence, etc. like number of years of experience of the bidder in the subject matter of procurement, satisfactorily completion of similar contracts in past certain years, each valuing not less than prescribed percentage of the value of subject matter of procurement, financial

turnover of the bidder in past certain years in relation to the value of subject matter of procurement, the value of works in hand of the bidder at the time of submitting the bid relative to the value of subject matter of procurement, etc.

(3) Bidders securing prescribed minimum percent of marks or have fulfilled minimum achievement norms may be considered to have technically qualified.

(4) The number of tenderers qualified in technical evaluation should not generally be less than 3 (three). If the number is less than 3 (three) and it is considered necessary by the procuring entity to continue with the bid process, reasons shall be recorded in writing and included in the record of the procurement proceedings.

(5) The bidders which qualified in the technical evaluation shall be informed in writing about the date, time and place of opening of their financial bids. This date should generally be not later than 15 (fifteen) days from the date of issue of letter.

Evaluation and Ranking of Financial Bids

14.17. (1) Depending on the terms of delivery and the projected requirement, all the applicable components of the costs, as quoted in the responsive tenders, are to be added to work out the ultimate evaluated costs of the tenders. The evaluation is also to include applicable taxes, duties etc. in the tender prices. Further, if the tender document provides for any price preference and/or purchase preference for SSI/PSU etc. the same is also to be kept in view while evaluating such tenders.

(2) Sometimes, while purchasing sophisticated and costly equipment, machinery, etc. the purchase organisation also gives special importance to factors like high quality performance, environmental friendly features, low running cost, low maintenance cost, etc. To take care of the same, relevant details are to be incorporated in the tender document and the criteria adopted to assess the benefit of such features while evaluating the offers are also to be clearly stipulated in the tender document so that the tenderers are aware of the same and quote accordingly. While evaluating such offers, these aspects are also to be taken into account. Such details, whenever considered necessary, should be evolved by competent technical authority for incorporation in the tender document, so that there is no ambiguity and/or vagueness in the same.

(3) After completing the entire evaluation process for the responsive tenders on equitable basis as above, these are to be entered into a ranking statement in ascending order of the evaluated prices (like L1, L2, L3 etc.) along with other relevant details, so that a clear picture of their standing as well as comparative financial impact is available at a glance.

14.22. The Procuring entity reserves the right to accept or reject any bid, to annul the bidding process and reject all bids at any time prior to

contract award, without thereby incurring any liability to the bidders. Reasons for doing so shall be recorded in writing in the purchase file.

Dividing the Quantity

14.23. As per standard procedure, each schedule of requirement incorporated in the tender enquiry document is to be covered on the lowest responsive tenderer for that schedule without dividing the same. The tenderer who does not quote for the complete schedule as required is normally to be treated as unresponsive and ignored. However, there may be special occasions of purchase of very large quantities of goods which are beyond the capacity of a single tenderer and the lowest responsive tenderer is unable to take the load of the entire quantity. In such cases, the remaining quantity may be ordered on the second lowest.

responsive tenderer (L2) at the rates offered by the lowest responsive tenders (L1), as far as feasible and for this purpose negotiation may be held with the above tenderer (viz. L2). In such cases, it may also become necessary to divide the requirement under a schedule by placing multiple contracts for part quantities on more than 2 (two) responsive tenderers. Such eventuality should normally be foreseen and provided for in the notice inviting tenders. The formula proposed to be adopted for allocation of orders to multiple (responsive) tenderers should be clearly brought out in the notice inviting tenders. The splitting of order by purchasing organisation should be an exception rather than a rule. (also refer paras 14.30(3) (d) and(e)

Restriction on negotiations

14.30. (1) In case of single source procurement, the negotiations will be conducted in accordance with para 8.8 of chapter 8.

(2) To the extent possible, no negotiations shall be conducted after the pre-bid stage. All clarifications needed to be sought shall be sought in the pre-bid itself. The bidding documents shall have a copy of the contract enclosed and the same shall not be altered.

(3) Negotiations may, however, be undertaken only with the lowest tenderer (L1) under the following circumstances :-

(a) There should be no post-tender negotiations with L-1, except in certain exceptional situations. Such exceptional situations would include, procurement of proprietary items, items with limited sources of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time.

(b) In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re- tender for the entire requirement would delay the availability of the item, thus jeopardising the essential operations, maintenance and

safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through a re-tender, following the normal tendering process.

(c) Convincing reasons must be recorded by the authority recommending negotiations. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approvals for the entire process of award of tenders does not exceed one month from the date of submission of recommendations. In no case should the overall timeframe exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.

(d) If after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable. In cases where the department decides in advance to have more than one source of supply (due to critical or vital nature of the item) pre-disclosing the ratio of splitting the supply in the tender itself must be followed scrupulously.

(e) Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter-offer thereafter to L-2, L-3, etc., (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.

(4) In case L-1 backs out, there should be a re-tender.

Note (1) Subject to aforesaid provisions, the bid evaluation committee (BEC) shall have full powers to undertake negotiations. Detailed reasons and results of negotiations shall be recorded in the proceedings.

Note -(2) Negotiations will not make the original offer made by the bidder inoperative. The bid evaluation committee will have option to consider the original offer in case the bidder decides to increase rates originally tendered or imposes new terms and conditions."

Contention raised on behalf of petitioner

11. Learned counsel for the petitioner submitted with vehemence that while rejecting the tender notice dated 08.09.2026 by the impugned order dated 29.09.2026, the 4th respondent did not consider the claim of the petitioner in the correct perspective, as the technical bid of M/s Hamara Pump was ineligible since its inception; as such, there was no occasion for opening its financial bid and declaring M/s Hamara Pump

as L-1. In law, the financial bid offered by the petitioner was the highest and, being the highest bidder, he had the right to get the work order, but in a very arbitrary manner, the claim of the petitioner has been brushed aside. The respondent fell in error, firstly in not scrutinising the technical bid of Hamara Pump at the occasion it arose and thereafter, compelling the petitioner to execute the work at the rate offered by M/s Hamara Pump. In a contract matter, fairness is the essence and no party can be compelled to accept the work order at the price offered by another contractor being a participant in the same bidding process.

12. Learned counsel for the petitioner further submitted that while rejecting the tender notice dated 08.09.2026, the respondent no. 4 did not consider the application of the petitioner dated 28.09.2026 wherein he has categorically stated that in similar fact and circumstances in the Basti Division, the technical bid of L-1 bidder M/s Mishra Traders at Block-Nathnagar District- Sant Kabir Nagar was disqualified by the tender committee, during negotiation resultantly, the contract was allotted to L-2 bidder M/s Pratap Enterprise after negotiation considering his offered rate, which is clear from the order dated 12.08.2026 passed by none other than respondent no. 4.

13. The learned counsel for the petitioner invited attention of this Court to the short term E-Tender notice (Single Stage Door Step Delivery) letter no.1386 dated 29.09.2026 which has been issued prior to cancellation of earlier short term E-tender notice (Single Stage Door Step Delivery) dated 08.09.2026 vide impugned letter no.1387 dated 29.09.2026 thus, the fresh tender notice appears to have been directed to be published prior to cancellation of erstwhile tender notice. This indicates a prejudged and premeditated mind of the respondents, reflecting bias.

14. The alternative submission of learned counsel for the petitioner is that the petitioner has never refused to accept the rate floated by State respondents in pursuance of the letter dated 26.09.2026 in unequivocal terms and only expressed his desire that, being L-2, where the technical

bid of L-1 has been found to be disqualified/non-responsive, the financial bid of petitioner ought to have been honoured.

15. The further contention is that, if the writ petition fails, he is ready to accept the terms offered by the State Government, i.e. the rate offered by L-1 M/s Hamara Pump at this stage.

16. Lastly, learned counsel for the petitioner submitted that cancellation of the erstwhile tender notice and publication of fresh tender notice for the work in which the petitioner was in fact, L-1 as the technical bid of the contractor, who was found L-1 was disqualified/non responsive, would attract the protection of Article 14 of the Constitution of India.

17. To bolster submissions advanced by learned counsel for the petitioner, the petitioner has relied upon the judgment of the Delhi High Court in of **Inderjit Mehta Vs. Union of India, 2015 SCC OnLine Del 11661.** Relevant paragraph of the judgment reads thus:

> *"15. It is an admitted position by Respondent 2 that Respondent 3 was ineligible to participate in the tender process. The affidavit submitted by Respondent 3 was found to be false and Respondent 3 has been banned for a period of 5 years by Respondent 2. As Respondent 3 is stated to have filed a petition impugning ban, we are not examining the merits of the claim or otherwise of Respondent 3 and Respondent 2 qua the documents submitted by Respondent 3. For the present, we are assuming the stand of Respondent 2 to be correct that Respondent 3 was not qualified to participate in the tender process as before us Respondent 3 has not placed any material to show that Respondent 3 was eligible to participate.*
>
> *16. Since Respondent 3 was ineligible to participate in the tender process itself, Respondent 2 could not have issued the bid documents to Respondent 3 entitling them to submit the financial bids. The situation that emerges is that the bid of Respondent 3 cannot be considered at all and the tender process has to be considered as if Respondent 3 had not participated. If that is the position, then the rates quoted by the petitioner would become L-1.*
>
> *20. The mere plea of Respondent 2 that that the Accepting Authority is of the view that lower rates may be possible on re-tender, does not stand to reason. The lower rates, if any, would not enure to the benefit of Respondent 2 but would enure, if at all, to the benefit of the earlier contractor as the subject tender is at the risk and costs of the earlier contractor. There is no cogent material placed on record to show as to how the accepting authority has formed such an opinion. The only*

reason that appears from the record is that the petitioner had, in the first call, quoted higher rates of approximately Rs 172 crores and in the second call has quoted rates of approximately Rs 162 crores. This cannot be a ground to form an opinion that in the third call the rates are further likely to go down. It is not the case of Respondent 2 that there are only two bidders. The rates quoted by the other bidders apparently were higher than the petitioner and that is why the petitioner is now L-1.

21. We are thus of the view that the decision taken by Respondent 2 in cancelling the subject tender and resorting to re-tender cannot be sustained. Accordingly, the tender notice dated 17-3-2015 is quashed. The respondent is directed to declare the petitioner as L-1. In view of the substantial delay already having been caused, we direct Respondents 1 and 2 to award the contract to the petitioner subject to the petitioner satisfying the other conditions of the tender. The petition is accordingly allowed in the above terms leaving the parties to bear their own costs."

18. Another judgment of the Delhi High Court has been relied upon by learned counsel for the petitioner, rendered in the case of **M/S S.B. Transport Company v. Container Corporation of India and Anr. (2015) 09 DEL CK 0152,** paragraph no. 18, read thus:

"18. Having considered the facts of the case and the arguments submitted by the learned counsel for the parties, in our view, the requirement of submitting the EMD was an essential condition of the tender. This is clearly discernible from the mandatory language used in the Instruction to Tenderers as also in the tender conditions. We have already pointed out clause 5 of Chapter 1 of the tender conditions which clearly stipulated that if at any stage during the evaluation of the technical bid, the EMD was found to be invalid, the respective bidder's bid would be summarily rejected. Furthermore, in clause 2.3 of Chapter 2 of the tender conditions it was categorically provided that documents submitted without EMD 'will be summarily rejected'. Clause 7 of Chapter 1 of the tender conditions also stipulates that if the EMD is found invalid at any stage during the evaluation of the e-bid, the respective bidder's bid would be summarily rejected. All these stipulations have been provided without any relaxation or any other condition which would enable us to take a view that the requirement of furnishing the EMD was not an essential condition of the tender. Therefore, this much is clear that the requirement of furnishing the EMD was an essential condition of the tender. It is also an admitted position that T.N. Singh had not furnished the EMD on the ground that it had an MSME registration. We have also noted the submission made by the learned counsel for CONCOR that this was an online bidding process in which the bidder was specifically required to indicate as to whether it was exempt as a micro or small enterprise or whether it was

applying under the general category. T.N. Singh had exercised the option indicating that it was bidding as a micro / small enterprise. Admittedly, T.N. Singh was neither. Therefore, T.N. Singh was required to submit the earnest money deposit which it failed to do. In our view since the requirement of earnest money deposit was an essential condition and T.N. Singh had not complied with the same, he was not eligible to proceed to the next page, that is, of consideration of pre-qualification bid and / or to the further stage of consideration of the financial bids. We agree with the submission made by Ms Acharya that the decisions in G. J. Fernandez (supra), Poddar Steel Corporation (supra) and Pes Installations Pvt. Ltd. (supra) were on entirely different sets of facts and circumstances. There is no dispute with the principles of law laid down in those decisions but the factual matrix of the present case is entirely distinct and different from those obtaining in the said cases. It is clear that there can be two types of conditions - essential and ancillary. If an ancillary condition is deviated from, then there may be scope for consideration of a particular bid. But if an essential condition which does not permitting any deviation, is not complied with, then the bid is to be rejected summarily and cannot be considered at all. The consequence of this discussion is that T.N. Singh was not entitled to proceed to the next stage beyond the consideration of the EMD and, therefore, there is no question of T.N. Singh being regarded as the L-1 bidder or the successful bidder and in that respect the decision of CONCOR in cancelling the Letter of Intent cannot be faulted.

19. This takes us to the consideration of writ petition filed on behalf of S.B. Transport Company. In view of our decision that T.N. Singh was ineligible and that the cancellation of the Letter of Intent by virtue of the letter dated 21.08.2015 was valid, the next point for consideration is what is to be done with regard to the subject tender. In this regard, we feel that the approach adopted by this court in Inderjit Mehta (supra) could very well be adopted in the present case also. Since T.N. Singh's bid was not to be considered at all, the tender process would have to be considered as if T.N. Singh had not participated in the same. That being the case, the bid of the S.B. Transport Company would become L-1. CONCOR would have to be treat S.B. Transport Company as L-1 and proceed with the tender process there from. We may also note that Ms Maninder Acharya on instructions from Shamal Singh, Proprietor, S.B. Transport Company and who is present in court also stated that, so that there is no loss to the public exchequer, they are willing to match the quote made by T.N. Singh. That being the case CONCOR shall consider the bid of S.B. Transport Company as L-1 at the reduced rate equivalent to that which had been offered by T.N. Singh and to award the contract to S.B. Transport Company provided that they comply with all other conditions and formalities."

19. Learned counsel for the petitioner further relied upon the judgment rendered in the case of **West Bengal Electricity Board Vs.**

Patel Engineering Corporation Limited, 2001 (2) SCC 451. Relevant paragraphs of the judgment read thus:

> "*32. We find no force in the submission that as under clause 14.2 items against which no rate or price is entered by the bidder will not be paid by the employer when executed and shall be deemed covered by the other rates and prices in the bill of quantities, the unit price in items containing errors be ignored and the bid be considered on the basis of the total price bid which is the lowest. In our view, there is a basic distinction between a case where against some items no rates or prices are quoted and a case where some rate is quoted. Whereas in the former case the bidder will not be entitled to claim any specific amount for the work done by him in the absence of any rate for that work, because in the aforementioned clause it is clarified that the bidders will not be paid by the employer and that the execution of the work shall be deemed covered by other rates and prices in the bill of quantities, but in the latter case the bidder will be entitled to claim for the work executed on the basis of quoted price/rate.*
>
> *33.* ***We may, however, clarify that the appellant is not obliged to award contract to any of the bidders at their quoted price bid. It is always open to the appellant to negotiate with the next lowest bidder for awarding the contract on economically-viable price bid.***
>
> *34. For the reasons abovementioned, though the impugned order of the High Court insofar as it relates to quashing of letter of the appellant dated 18-12-1999 falls within the purview of judicial review, yet the direction to the appellant to permit correction of errors by Respondents 1 to 4 in their bid documents and consider their bid along with the other bid, goes far beyond the scope of judicial review, as elucidated by this Court in Tata Cellular [(1994) 6 SCC 651] . In the result, we uphold the impugned order of the Division Bench insofar as it relates to quashing of communication and letter dated 18-12-1999 and set aside that part of the impugned order giving direction to the appellant to permit Respondents 1 to 4 to correct bid documents and to consider their bid after correction along with other bids. The appeal is thus allowed in part. On the facts and in the circumstances of this case we leave the parties to bear their own costs."*

Contention raised on behalf of State-respondent

20. Learned Counsel for State-Respondent, Sri Dharmendra Prasad Singh submitted that the order impugned cancelling the tender process dated 08.09.2026 and the decision for re-tendering dated 29.09.2026 are based on the statutory rules named and styled as the procurement manual.

21. The further submission is that the negotiation was offered to the petitioner, treating him as the highest bidder once the technical bid of M/s. Humara Pump was found non-responsive after the work order in his favour was cancelled, but the negotiation failed as the petitioner, in a recalcitrant manner, tried to force the State authorities to accept the price offered for the contract, which is alien to the constitutional mandate requiring fair treatment and equality.

22. The further submission is that the highest bidder does not acquire any right to have a contract concluded unless the formal agreement is entered into. The State is not bound to accept the highest tender or bid and the Government validly retains its power to accept or reject the highest bid in the interest of public revenue. Petitioner's case of treating him as the highest bidder is of no consequence for conclusion of contract.

Authoritative pronouncements qua enforcement of contractual rights against State or its instrumentalities

23. It is no more res integra that the State and its instrumentalities are not exempt from the duty to act fairly, merely because in their business dealings they have entered into the realm of contract. The Supreme Court, in **Shrilekha Vidyarthi (Kumari) v. State of U.P., (1991) 1 SCC 212**, reiterated that the State is bound by the mandate of Article 14 even in contractual matters and cannot act arbitrarily merely because the relationship arises out of a contract. This principle was reaffirmed in **Madras Aluminium Company Limited v. Tamil Nadu Electricity Board, (2023) 8 SCC 240**, holding that State action in the contractual sphere must conform to the constitutional requirements of fairness, reasonableness and non-arbitrariness. Further, in **Association of Registration Plates v. Union of India, (2005) 1 SCC 679,** the Supreme Court held that although the State has discretion to prescribe tender conditions and determine the eligibility of prospective contractors, such discretion must be exercised fairly, reasonably and in the public interest, without arbitrary discrimination. Similarly, in **Air India Ltd. v. Cochin**

International Airport Ltd., (2000) 2 SCC 617, the Supreme Court held that while the State enjoys commercial discretion in awarding contracts, it must adhere to its own prescribed norms and procedures, and any departure therefrom is amenable to judicial review where the decision-making process is vitiated by mala fides, unreasonableness or arbitrariness; however, judicial interference must be exercised cautiously and only where warranted by overwhelming public interest.

24. The Supreme Court, in **State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706,** reiterated that State action in contractual matters is not immune from constitutional scrutiny under Article 14 and that cancellation of a tender must satisfy the requirements of fairness, reasonableness and principles of natural justice. Similarly, in **Udai Pal Singh v. State of U.P., Writ-C No. 36416 of 2018,** decided on 22.01.2019, the Allahabad High Court held that cancellation of a contract or auction without affording an opportunity of hearing to the successful bidder, particularly after compliance with the requisite payment conditions, is arbitrary, perverse and violative of natural justice. The Court further held that executive orders cannot override statutory bye-laws and that cancellation decisions founded upon inapplicable Government Orders, or exercised inconsistently and arbitrarily, are liable to be set aside as suffering from unreasonableness.

25. The Supreme Court, in **ICOMM Tele Ltd. v. Punjab State Water Supply & Sewerage Board, (2019) 4 SCC 401,** reiterated that State authorities, even while acting in the contractual sphere, are bound by Article 14 and must ensure fairness, reasonableness and non-arbitrariness in their actions, which remain amenable to judicial review. In **Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818**, the Supreme Court held that constitutional courts should ordinarily defer to the interpretation and understanding of tender conditions by the employer or project owner and should interfere only where the decision-making process or decision is vitiated by mala fides, arbitrariness, irrationality or perversity. Further, in **SEBI v. Bhavesh Pabari, (2019) 5 SCC 90,** the Supreme Court held that where no

limitation period is prescribed for the exercise of statutory power, such power must nevertheless be exercised within a reasonable time, determined with reference to the facts and circumstances of the case, the nature of the default, prejudice caused and creation of third-party rights.

26. The Supreme Court in **Save Mon Region Federation & Anr. v. State of Arunachal Pradesh & Ors., 2026 SCC OnLine SC 526**, held that public procurement must be transparent, fair, non-arbitrary and capable of objective scrutiny, and that repeated departures from competitive tendering, absence of recorded reasons for dispensing with tender, non-production of vouchers and other core procurement records, and allegations of conflict of interest/related-party benefit are not matters which can be brushed aside as mere administrative irregularities. The relevant remarks in **Save Mon Region Federation** (*supra*) are reproduced hereinbelow:

> *"10. The award of public contracts is an exercise of public power. It involves the expenditure of public funds and the conferment of economic benefit by the State. Such decisions are not insulated as matters of private contract. They are subject to the discipline of Article 14 of the Constitution of India, because the State must act fairly, transparently, and in a non-arbitrary manner when it distributes public resources.*
>
> *11. This Court has repeatedly recognised that State owned or public owned resources cannot be dealt with at the absolute discretion of the executive. Public interest is the paramount consideration. One of the ordinary and safest methods of securing that public interest is by inviting competition through tenders. A departure from competitive tendering may be permissible in a limited set of situations, but only when the departure is justified by rational and recorded reasons that do not suggest discrimination. In Sachidanand Pandey v. State of W.B.2, this Court emphasised that appearance of public justice is as important as doing justice, and nothing should be done which gives an appearance of bias, jobbery or nepotism. That principle has particular force in matters of public contracting, because secrecy, discretion and personal proximity are precisely the conditions in which abuse of power becomes difficult to detect.*
>
> *13. The discipline that governs State largesse reinforces this position. The State and its instrumentalities cannot confer benefits according to the whims of any political or administrative functionary. In Akhil hartiya Upbhokta Congress v. State of M.P.3, this Court held that every decision to confer benefit must be founded on a sound, transparent and*

discernible policy and must be implemented by a non- discriminatory method, free from favouritism and nepotism. The same understanding informs the statement in Centre for Public Interest Litigation v. Union of India4, that whenever a contract or licence is granted the public authority must adopt a transparent and fair method so that eligible persons have a fair opportunity of competition. These decisions do not lay down tendering as a mechanical ritual. They treat transparency and fair opportunity as constitutional essentials in the disposition of public resources.

14. These principles are especially stringent where the allegation is of conflict of interest or related party benefit. In such situations, the constitutional concern (2011) 5 SCC 29 (2012) 3 SCC 1 is not limited to whether the State obtained value for money. The concern is whether public power was used, directly or indirectly, to confer private advantage, or whether the process was structured in a manner that excluded competition and enabled a preferred beneficiary. Once such a concern arises on the record, it is not answered by showing that the overall percentage of work awarded to related parties is numerically small. A constitutional violation in public contracting is not diluted by statistics. Even a single instance, if established, undermines equality, the rule of law and public confidence in fair administration.

15. At the same time, it must be emphasized that judicial review in this field does not convert the Court into a tender approving authority. The Court does not sit to choose the contractor or to re-evaluate technical bids. The Court examines whether the process conforms to constitutional standards of fairness, transparency and non-arbitrariness, and whether the record supports the decision. Where the complaint is not about comparative merits of bidders but about systemic opacity, repeated departures from competitive methods, missing records and alleged conflict of interest, the matter travels beyond an ordinary contractual grievance and raises questions of constitutional accountability."

Analysis and Reasoning

27. At this juncture, it is pertinent to point out that in pursuance to E-Tender notice no.1386 dated 29.09.2026, as many as five contractors, including the petitioner, have applied/participated. The law does not entitle any bidder/contractor to compel the other party to accept the rate offered by him unless a formal contract is entered into, thus, the petitioner has no legal or enforceable statutory right. The bleak attempt of the petitioner to equate the tendering process for Block Nath Nagar, District Sant Kabir Nagar with the E-tendering process for Block Bansi, District Siddharth Nagar is wholly misplaced and circumstances

surroundings the two tendering process are entirely different. Prior to issuance of work order for Block Nath Nagar, it was only upon finding M/s Mishra Traders, the L-1 bidder, ineligible the L-2 bidder, M/s Pratap Enterprises, was called for negotiation by the Divisional Food Controller, Basti Division, Basti, vide office letter no.1059 dated 12.08.2026. During the negotiations, M/s Pratap Enterprises, vide its letter dated 13.08.2026, consented to execute the work at the rate quoted by M/s Mishra Traders. Subsequently, pursuant to Office Letter No.1244 dated 12.08.2026, issued by the Divisional Food Controller, Basti Division, Basti, M/s Pratap Enterprises, vide its letter dated 12.09.2026, furnished its consent to execute the work at the Government-prescribed rate. Thereafter, the work order was issued in favour of M/s Pratap Enterprises in accordance with the prescribed rules, vide office letter no.1289 dated 18.09.2026.

28. In contrast, in respect of Block Bansi, after the work order had been issued in favour of the L-1 bidder, M/s Hamara Pump, the said firm was found ineligible. Accordingly, the L-2 bidder for Block Bansi, namely, the petitioner, M/s Shiv Anant Enterprises, was requested under negotiations to furnish its consent to execute the work at the L-1 rate, vide Office Letter No. 1369 dated 26.09.2026, issued by the Divisional Food Controller, Basti Division, Basti strictly considering tenets of the provisions contained in the Procurement Manual coupled with the principles of natural justice However, in view of the petitioner's letters dated 26.09.2026 and 28.09.2026, whereby it declined to furnish consent to execute the work at the rate quoted by M/s Hamara Pump Itwa Fuel Centre, the tender was cancelled in the interest of the Government and the public at large, vide Office Letter No. 1387 dated 29.09.2026, and a fresh tender was issued vide Office Letter No. 1386 dated 29.09.2026. The said action is in accordance with the prescribed rules.

29. With respect to parity sought for contract qua Block Nathnagar, the case of the State respondent is that the tendering process relating to another block, or the case, cannot be compared with the present tender due to factual dissimilarity. The Divisional Food Controller, Basti

Division, Basti, has taken a just and appropriate decision in the present matter after duly considering the facts, applicable rules and requirements of financial transparency.

30. At first blush, the argument advanced by learned counsel for the petitioner appears to be very attractive, as, unless the erstwhile tender notice is cancelled, for the same work, a fresh tender notice cannot be directed to be published. Both the orders of cancellation of the erstwhile E-tender notice dated 08.09.2026 vide order dated 29.09.2026, and the direction for publication of fresh E-tender notice appear to be of the same date, and at this stage, learned counsel for the State-respondent tried to defend, saying that it is only a typographical error and the decision has been taken simultaneously on the same day. Firstly, the erstwhile tender notice dated 08.09.2026 was cancelled and then thereafter, the fresh tender notice was directed to be published vide order dated 29.09.2026 with two different letter numbers. The letter numbers appear to have been interchanged. The error noticed appears to be inadvertent, as the decision to cancel the erstwhile tender notice and the publication of the fresh tender notice have been taken on one and the same date and once the authorities decided to cancel the erstwhile tender notice and published a fresh tender notice, mere mention of interchanged letter numbers would not render any assistance favoring the petitioner. Though, the tender process requires fairness particularly when State is one of the parties, thus, the State Authorities are cautioned to be careful in future.

31. Thus, the cancellation of the earlier tender and the issuance of the fresh tender were inter-related processes and were carried out on the same date. Therefore, the petitioner's allegation, founded merely upon the serial numbers of the respective letters, is devoid of merit.

32. It is found that M/s Mishra Traders, the L-1 bidder for Block Nathnagar, being declared ineligible, the L-2 bidder, M/s Pratap Enterprises, consented to execute the work at the L-1 rate, i.e., 5% above the scheduled rate, and subsequently also agreed to execute the work at a rate lower than the rate quoted by the L-1 bidder, namely, at the

scheduled rate. Thereafter, in the interest of the Government, the work order was issued in favour of the L-2 bidder, M/s Pratap Enterprises, by the Divisional Food Controller, Basti Division, Basti, vide Office Letter No.1289 dated 18.09.2026.

33. On the other hand, in respect of the tender invited for Block Bansi, the petitioner, M/s Shiv Anant Enterprises, which was the L-2 bidder, declined to furnish its consent to execute the work at the rate quoted by the L-1 bidder, M/s Hamara Pump Itwa Fuel Centre, i.e., 55.010% above the BSR (Basic Schedule of Rates). Consequently, in the interest of the Government, the Divisional Food Controller, Basti Division, Basti, cancelled the previously invited tender for Block Bansi vide Office Letter No. 1387 dated 29.09.2026 and re-invited tenders through the very short-term E-Tender Notice No. 1386 dated 29.09.2026.

34. Admittedly, the technical bid in pursuance of the fresh tender notice published on 29.09.2026 has yet to be opened, and finalization of the technical bid was made subject to the final outcome of the present writ petition, vide order dated 14.10.2026, and it has been informed at the Bar that, as on today, the same has not been opened.

35. Though not cited by the parties, this Court is cognizant of the Supreme Court decision rendered in the case of **U.P.Avas Evam Vikas Parishad & Ors. v. Om Prakash Sharma, 2013 (5) SCC 182.** The paragraph nos. 28, 29, 30 and 31 shed light on the issue in question, which reads as under:

> *28. It is also an undisputed fact that the offer of the plaintiff is highest as per the terms and conditions of the sale of plot in question by public auction are concerned, 20% of the bid amount deposited by him that by itself does not amount to accepting his bid by the competent authority for grant of leasehold rights of plot in his favour.*
>
> *29. This Court in Meerut Development Authority case [(2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803] has laid down the legal principle that the bidder who has participated in tender process has no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to the notice inviting tenders in a transparent manner and free from hidden agenda. The relevant paragraphs are extracted hereunder: (SCC p. 182, paras 27 & 29)*

> *"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.*
>
> *29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism."*

30. In support of the said proposition, the learned Senior Counsel for the defendant, Mr Rakesh Dwivedi has also placed reliance upon another decision of this Court in State of U.P. v. Vijay Bahadur Singh [(1982) 2 SCC 365] . The learned Senior Counsel has rightly placed reliance upon the judgment of this Court in Rajasthan Housing Board case [(2007) 1 SCC 477] which reads as under: (SCC p. 483, para 9)

> *"9. This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court."*
>
> *The law laid down by this Court in the aforesaid paragraph in support of the proposition of law that so long as an order regarding final acceptance of the bid had not been passed by the Chairman of the Housing Board, the highest bidder acquire no vested right to have the auction concluded in his favour and the auction proceedings could always be cancelled. Further, he has placed reliance on another decision of this Court in Laxmikant [(1996) 4 SCC 208] referred to supra. In support of the proposition of law this Court has rightly pointed out that the "State" or the authority, which can be held to be "State" within the meaning of Article 12 of the Constitution, is not bound to accept the highest tender/offer or bid and the Government could validly retain its power to accept or reject the highest bid in the interest of public revenue. In support of this contention, he has placed reliance on State of Orissa v. Harinarayan Jaiswal*

[(1972) 2 SCC 36] case, relevant paragraph of which reads as under: (SCC pp. 44-45, para 13)

"13. Even apart from the power conferred on the Government under Sections 22 and 29, we fail to see how the power retained by the Government under clause (6) of its order, dated 6-1-1971, can be considered as unconstitutional. As held by this Court in Cooverjee B. Bharucha case [Cooverjee B. Bharucha v. Excise Commr., AIR 1954 SC 220] , one of the important purpose of selling the exclusive right to sell liquor in wholesale or retail is to raise revenue. Excise revenue forms an important part of every State's revenue. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction-sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19(1)(g) or Article 14 can arise in these cases. The Government's power to sell the exclusive privileges set out in Section 22 was not denied. It was also not disputed that those privileges could be sold by public auction. Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate. There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids (see Union of India v. Bhim Sen Walaiti Ram [(1969) 3 SCC 146]). By merely giving bids, the bidders had not acquired any vested rights. The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government—nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights. The High Court was wholly wrong in thinking that purpose of Sections 22 and 29 of the Act was not to raise revenue. Raising revenue as held by this Court in Cooverjee B. Bharucha v. Excise Commr. [Cooverjee B. Bharucha v. Excise Commr., AIR 1954 SC 220] case was one of the important purposes of such provisions. The fact that the price fetched by the sale of country liquor is an excise revenue does not change the nature of the right. The sale in question is but a mode of raising revenue. Assuming that the question of arbitrary or unguided

power can arise in a case of this nature, it should not be forgotten that the power to accept or reject the highest bid is given to the highest authority in the State i.e. the Government which is expected to safeguard the finances of the State. Such a power cannot be considered as an arbitrary power. If that power is exercised for any collateral purposes, the exercise of the power will be struck down. It may also be remembered that herein we are not dealing with a delegated power but with a power conferred by the legislature.

The High Court erroneously thought that the Government was bound to satisfy the Court that there was collusion between the bidders. The High Court was not sitting on appeal against the order made by the Government. The inference of the Government that there was a collusion among the bidders may be right or wrong. But that was not open to judicial review so long as it is not proved that it was a make-believe one. The real opinion formed by the Government was that the price fetched was not adequate. That conclusion is taken on the basis of Government expectations. The conclusion reached by the Government does not affect any one's rights. Hence, in our opinion, the High Court misapplied the ratio of the decision of this Court in Barium Chemicals Ltd. v. Company Law Board [AIR 1967 SC 295] and Rohtas Industries Ltd. v. S.D. Agarwal [(1969) 1 SCC 325].”

(emphasis supplied)

31. In view of the law laid down by this Court in the aforesaid decisions, the learned Senior Counsel Mr Rakesh Dwivedi has rightly placed reliance upon the same in support of the case of the first defendant, which would clearly go to show that the plaintiff had not acquired any right and no vested right has been accrued in his favour in respect of the plot in question merely because his bid amount is highest and he had deposited 20% of the highest bid amount along with the earnest money with the Board. In the absence of acceptance of bid offered by the plaintiff to the competent authority of the first defendant, there is no concluded contract in respect of the plot in question, which is evident from letters dated 26-5-1977 and 8-7-1977 wherein the third defendant had rejected the bid amount deposited by the plaintiff and the same was refunded to him by way of demand draft, which is an undisputed fact and it is also not his case that the then Assistant Housing Commissioner who has conducted the public auction had accepted the bid of the plaintiff.”

36. It is a settled position of law that the exercise of contractual powers by the State and its instrumentalities is not immune from constitutional scrutiny under Article 14 of the Constitution of India. Even in matters arising out of tender proceedings, the State is under a constitutional obligation to act fairly, reasonably, transparently and bereft of arbitrariness, favouritism or mala fides. The contractual character of a

transaction does not confer upon the State an unfettered discretion to act at its whims or to depart from the standards of fairness and non-discrimination. Although the constitutional courts ordinarily exercise restraint in interfering with commercial and administrative decisions relating to tenders, such restraint does not extend to actions which are arbitrary, irrational, discriminatory, perverse or actuated by mala fides. The scope of judicial review, therefore, extends to examining the decision-making process to ensure that public power is exercised in conformity with constitutional principles and public interest.

37. It is equally well settled that the principles of natural justice constitute an integral facet of fairness in administrative action, particularly where a decision adversely affects the rights and legitimate interests of a person participating in a tender process. Any decision to cancel a tender or deprive a successful bidder of the benefit accruing from the tender process must be founded upon cogent reasons, taken within a reasonable time and, wherever the circumstances so warrant, after affording the affected party an effective opportunity of hearing. The State cannot justify an otherwise arbitrary action merely by placing it within the contractual domain or by relying upon internal communications which were never duly communicated to the affected party. Further, the decision-making process must be transparent, objectively ascertainable and supported by the relevant records. Where the action of the State suffers from procedural unfairness, unexplained delay, absence of cogent reasons or non-observance of the principles of natural justice, the same becomes amenable to judicial review under Article 226 of the Constitution of India.

Conclusion and the Final Order

38. It is not in dispute to either of the parties that the technical bid offered by M/s Hamara Pump was non-responsive, leaving no right to open a financial bid. The vehicle offered by M/s Hamara Pump bearing Registration No.UP 55-80 1041 was registered as a tanker, and the permit is for transportation of petroleum products; thus, it is beyond any doubt that the technical bid offered by Hamara Pump was flawed from

its inception. Even if it is assumed that the technical bid of Hamara Pump was non-responsive and its financial bid was not worthy to be opened, and the L-2, i.e., the petitioner, was in de facto L-1 but notwithstanding highest bidder it does not get any indefeasible right to get the work order it has only the right of negotiation being a species of principles of natural justice, which was offered to the petitioner vide letter dated 26.09.2026, but the said opportunity to revise the rate was blatantly refused by the petitioner as he failed to furnish his consent to execute the work at the revised rate in terms of the proposal floated by the department. Since no bidder agreed to execute the bid at the rate the department wanted, the department, in its wisdom and in the interest of the Government and the public at large, cancelled the erstwhile tender notice dated 08.09.2026. Neither any mala fide is alleged against the department nor is it borne out of record.

39. Thus, on the appreciation of the factual matrix, the relevant case laws and the procurement manual lead to the inevitable conclusion that even if the petitioner, in place of L-2 being considered L-1 for all practical purposes in pursuance to tender notice dated 08.09.2026 and is treated as the highest bidder who participated in the tender process, no other right exists, except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to the notice inviting tenders in a transparent manner and free from hidden agenda.

40. So long as an order regarding final acceptance of the bid has not been passed by the competent authority, even if the petitioner is considered to be the highest bidder, does not acquire a vested right to the conclusion of the contract, particularly in view of Section 4 of the Indian Contract Act, which speaks of when communication is complete. Thus, as has been held in **Om Prakash Sharma** (*supra*). The highest bidder has limited rights of equality, fair treatment and negotiation; the bid offered by him cannot be enforced unless the same is translated into a formal contact, /agreement.

41. In view of the aforesaid, in the peculiar circumstances, notwithstanding that the petitioner is treated as the highest bidder, he does not have an indefeasible right to contract; thus, the writ petition, as framed by the petitioner, fails, but in the alternative, admittedly the technical bid has not been opened in pursuance of tender notice dated 29.09.2026, as such no right to the bidders therein has yet been crystallised.

42. At this Stage, Learned counsel for the petitioner, on instructions from his client, submitted that the petitioner is willing to execute the contract at the rate quoted by M/s Hamara Pump in pursuance of the tender notice dated 08.09.2026. In turn, the query was made in this regard to the State Counsel, who on the basis of instructions, expressed no reservation and clarified that the order impugned cancelled the erstwhile tender process and the decision of re-tendering was taken in view of the interest of the public as well as the Government qua revenue issues, and even at this stage, the free and voluntary consent expressed as above would be honoured by the State respondents.

43. Thus, we permit the petitioner to file a fresh representation according his consent and willingness for execution of work at rate L-1 as offered by M/s Hamara Pump, and if such offer is made within a period of one week from today, the same shall be honoured by the State authorities and the work order shall be executed accordingly with all promptitude, if there is no other legal impediment.

44. In the wake of the aforesaid, the writ petition is **disposed of.**

45. Costs made easy.

(Indrajeet Shukla,J.) (Prakash Padia,J.)

November 18, 2026
Mohit

Whether the order is speaking: Yes
Whether the order is reportable: Yes