2025:AHC-LKO:61186-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 9597 of 2025

Avani Paridhi Energy And Communications Pvt.Ltd.Thru. Authorized Signatory Shri Aditya Yadav .....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt. Of Environment Forest/Climate Change Lko. And 3 Others .....Respondent(s)

Counsel for Petitioner(s)	:	Pranav Agarwal, Anumita Chandra, Km. Vasundhara Mathur
Counsel for Respondent(s)	:	C.S.C., Ashok Kumar Verma, Sharad Kumar Shukla

Court No. - 16

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE PRASHANT KUMAR, J.

(Judgment dictated in open Court)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the technical evaluation dated September 15, 2025 and the entire tender process on the ground that the said tender process is not in terms of the mandate of the Government Order dated 19.05.2023.

3. Learned counsel appearing on behalf of the respondents has raised a preliminary ground of maintainability of the writ petition. He submits that the petitioner has participated in the entire tender process and is accordingly barred from challenging the same by way of a writ petition. To buttress his argument, he relies upon a judgment of the Supreme Court in **Tata Motors Limited v. The Brihan Mumbai Electric Supply & Transport Undertaking (Best) and others** (Civil Appeal No.3897 of 2023 arising out of SLP(C) No.15708 of 2022, decided on May 19, 2023).

4. Learned counsel appearing on behalf of the petitioner relies on paragraph

23 of a judgment of the High Court of Uttarakhand in **Nandaur Haldwani Ujjwal Dharam Kanta Owners Society v. Uttarakhand Forest Development Corporation and others** reported in **MANU/UC/0501/2023** to submit that if the petitioner has protested and thereafter participated, he is not estopped from filing a writ petition. The said paragraph of the judgment is delineated below :-

> "23. This Court is not convinced with the arguments of the learned senior counsel for the respondents-Corporation, since, the tender which was submitted by the petitioner was effectively "under protest". The petitioner specifically pleaded in para 9 of the petition, that even before participating in the tender, the petitioner had raised the objections by representation dated 19.07.2023. Pertinently, in response to the said averment, the respondent has not disputed the fact of submission of this representation, and has merely stated that the same is a matter of record. Whether any decision was taken on the said representation, or not, the respondents are silent. It appears to us, that the respondent-Corporation deliberately avoided to deal with the petitioner's objections, which were submitted by the petitioner before participating in the tender process. Once the objection had been raised by any of the bidder before participating in the tender, the respondents who floated tender cannot be heard to say that the bidder is estopped from challenging the tender conditions, when there was no response/decision taken on the objection."

5. We have examined the letter dated 25.08.2025 supposedly written by the petitioner in protest. Upon a perusal of the letter, it appears that the petitioner had raised some protest, however, receipt of such letter has been categorically denied by the counsel appearing on behalf of the respondents. The petitioner has not been able to indicate or provide any proof of evidence of service of the said letter under these circumstances, the contention of the petitioner that they had participated in the tender process after protesting remains unsubstantiated and cannot be countenanced by us.

6. In light of the same, the judgment of the Uttarakhand High Court in **Nandaur Haldwani Ujjwal Dharam Kanta Owners Society** (supra) does not come to the petitioner's aide.

7. Furthermore, we are of the view that the Writ Court should be slow to interfere in commercial matters especially in relation to tenders issued by the government. The Supreme Court in **Tata Motors Limited** (supra) has categorically held as follows :-

"52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in Association of Registration Plates v. Union of India and Others, reported in (2005) 1 SCC 679.

53. The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd., reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

54. As observed by this Court in Jagdish Mandal v. State of Orissa and Others, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes."

8. Furthermore, the Supreme Court in **Travancore Devaswom Board v. Ayyappa Spices** reported in **AIR 2024 SC (Supp) 1354** discussed in detail the principles that would apply in relation to judicial review in tender matters. The relevant paragraph is delineated below :-

> "19. The principle that in matters of public tenders for procurement, judicial review is restrained is well established 4. In cases where a party invoking writ jurisdiction has been a participant in the tender process, courts should be slow and cautious in exercising the power of judicial review. In a recent decision, UFLEX Ltd. v. Government of Tamil Nadu, Civil Appeal Nos. 4862-63 of 2021 : (AIR 2021 SC (Supp) 1510), this Court has held that constitutional courts should exercise caution while interfering in contractual and tender matters, disguised as public interest litigations. The following observations are important for the purpose of this case :
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> "1. The enlarged role of the Government in economic activity and its corresponding ability to give economic "largesse" was the bedrock of creating what is commonly called the "tender jurisdiction". The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The public interest litigation (PIL) jurisdiction is also invoked towards the same objective, an aspect normally deterred by the Court because this causes proxy litigation in purely contractual matters.
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> 2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.
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> 3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, "attempts by unsuccessful tenderers with imaginary grievances, wounded pride and

> business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted.""

9. The Division Bench of this High Court after relying on several Supreme Court's judgments in **Moksh Innovations Inc. v. State of U.P. and others** reported in **2021 SCC OnLine All 206** also held as follows :-

> "**10.** The first and foremost question which falls for our consideration is as to what is the scope of judicial scrutiny in relation to a challenge made by an unsuccessful bidder, to a tender condition. There is no doubt that in regard to allotment of contract the action of the Government or its instrumentality are subject to judicial review, however, it is also equally well settled that a tender submitted in response to a NIT is only an offer which the Government or its instrumentality are under no obligation to accept. It is only that the participating tenderer should be dealt with in a fair and non-discriminatory manner in the matter of evaluation of tenders. Ordinarily scope of judicial scrutiny of a tender matter implies that terms of tender are not open to judicial scrutiny unless it is found that the same have been tailor-made to benefit a particular party or class of tenderers. It is also equally settled by a long line decisions by Hon'ble Supreme Court that a party having participated in the tender knowing that it was unsuccessful ordinarily, cannot be permitted to challenge the conditions of tender, as such after thought action on the part of the unsuccessful bidder is impermissible to be entertained by the Courts. It is trite law that a tenderer having accepted the tender conditions and submitted the tender does not have locus to challenge the conditions of tender for the reason that in such a situation any party aggrieved by the conditions of tender ought to have challenged the NIT before submitting its tender pursuant to such notice."

10. The principles that emerge from a reading of the above judgments is crystal clear that the Writ Court should ordinarily refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. Furthermore, a person who has participated in the tender process is barred from challenging the said tender conditions at the closing stages when it is clear that the person is unsuccessful. Any such challenge to the tender conditions is required to be made by the person at the very first instance and an unsuccessful tenderer cannot raise a ground that the tender conditions were in any manner unlawful so as to reverse the decision at the

eleventh hour.

11. In view of the above discussions, we are of the view that since the petitioner had participated in the tender process and was an unsuccessful bidder, he cannot be allowed to challenge the same, subsequently.

12. In light of the same, the writ petition is dismissed.

October 6, 2025
cks/-

(Prashant Kumar,J.) (Shekhar B. Saraf,J.)

Digitally signed by :-
CHANDRA KANT SINGH
High Court of Judicature at Allahabad,
Lucknow Bench