

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**WP(C) No. 1259/2023
CM No. 2981/2023
Caveat No. 738/2023**

**Reserved on : 18.05.2023
Pronounced on :29.05.2023**

Ghulam Nabi Mir

.... Petitioner(s)

Through:- Mr. Basit Manzoor Keng, Advocate

V/s

UT of J&K and Ors

.....Respondent(s)

Through:- Mr. Ravinder Gupta, AAG with
Ms. Palvi Sharma, Advocate for Nos. 1 to
3
Mr. R.K Gupta, Sr. Advocate with
Mr. Udhay Bhaskar, Advocate for No. 4

CORAM:HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. The petitioner through the medium of the instant petition, is seeking quashment of the corrigendum bearing No. CEJ/Ts/23862 dated 19.02.2023 and No. CEJ/TS/23863 dated 10.02.2023 and also the impugned order dated 26.04.2023 together with the summary evaluation uploaded dated 24.03.2023 and consequent three allotment order Nos. CEJ/TS/2347-51, CEJ/TS/2352-56 and CEJ/TS/2357-61 dated 01.05.2023, allotting the works in favour of respondent no. 4 by declaring the same as illegal besides seeking a writ of Mandamus for issuance of fresh tender/ re-tender in respect of all the three items of work.

BRIEF FACTS

2. Briefly stated, the facts of the instant case are that the Office of the Chief Engineer, PW (R&B) Department, Jammu issued e-NIT No. 28 of 2022-23 dated 18.01.2023 inviting applications/bids from eligible contractors for allotment of the contract works i.e. (1) Construction of road from Batangian to Ghai Katha via Jamia Maid Dhanidhar Tehsil Surankote Distt. Poonch from 1ST RD 0 to Km 5th RD 1000 (2) Construction of road from Kanl Narooni to Nagalgali, km 1st RD 0 to km 5th RD 500 and (3) Construction of road from Hafeez Morh Pamrote to Lower Sangla Via HSS Gunthal Tehsil Surankote, Distt. Poonch, km 1st RD 0 to km 5th RD 1000 by way of earth work in cutting, cross drainage, walling, providing and laying of 150 mm thick WBM Grade-II, 75 mm thick WBM Grade III, 50 mm thick BM and 25 mm thick OGPC in km Ist RD 0 to KM 5th. RD 500. The petitioner as well as respondent no. 4 participated in the said tendering process.
3. Mr. Basit Manzoor Keng, appearing counsel for the petitioner submits that the last date for submission of online tender documents was stipulated as 09-02-2023 up to 1600 Hrs and in response to tender dated 18.01.2023, only 05 tenders were received on 09.02.2023, before the stipulated date and time. It is stated that noting the poor response from the tenderers, respondent No. 2, issued two corrigenda bearing No. CEJ/TS/23862 dated 10.02.2023 and No. CEJ/TS/23863 dated 10.02.2023 to NIT dated 10-02-2023 at about 2.49 PM and 3.03 PM respectively, after the end of the last date of submission of tender documents, thereby, extending the date for online submission of the tenders up to 14th February, 2023 up to 1200 hours in the office of respondent No. 2. The further case of the petitioner is that in response to the E-NIT dated 18-01-2023, the tender documents of the petitioner including

Bank Guarantee (BG) as bid security which was valid for 45 days were uploaded by the petitioner online and same were received by the office of respondent No. 2 in time.

4. Learned counsel for the petitioner submits that respondent No. 2 uploaded the Summary evaluation published on 13.04.2023, holding the petitioner as responsive i.e. as per the requirement of e-NIT and SBD. The Tender Evaluation Committee held a meeting for technical evaluation of bids and out of 10 only 2 bids were held to be responsive in terms of Standard Bidding Documents and 8 bids were declared as non-responsive including that of the petitioner for the reason that the petitioner had submitted a Bank Guarantee which was not valid as per Standard Bidding Documents. Respondent No. 2 uploaded the evaluation summary sheet on 24-04-2023 challenged herein, whereby, objections had been invited from bidders, while noting that evaluation summary sheet to be open to all the bidders for scrutiny and objections and, if any, one finds any discrepancies in the tender bid documents of any other. Accordingly, the petitioner filed his response / objections to the said evaluation summary sheet clarifying his stand that Bank Guarantee as per the clarification of the Bank vide letter No. JKB/LCU-Poonch 23 dated 13-03-2023 is fully valid and Bank has no objections in this regard.
5. It is further stated that the respondent No. 2 did not entertain the objections of the petitioner at all, and by virtue of communication impugned dated 26/04/2023 rejected the tender of the petitioner on the ground that conditions of obligation to be stated in the BG as bid security are not incorporated in the BG format, because as per clause 15 of ITB, BG should be valid for upto 30.06.202, but the BG submitted by the petitioner has expired on 24-03-2023. The petitioner, therefore, being aggrieved of the impugned rejections,

allotment orders No. CEJ/TS/2347-51, CEJ/TS/2352-56, CEJ/TS/ 2357-61
01.05.2023, whereby work has been allotted to respondent no. 4 has filed the
present petition challenging the action of the respondents.

ARGUMENTS ON BEHALF OF THE PETITIONER

6. Mr. Basit Manzoor Keng, learned counsel appearing on behalf of the petitioner has vehemently argued that the whole exercise of tendering process has been modified/altereD/tailor-made in such a manner so as to give undue benefit to the private respondent no. 4. He submits that the bid of the petitioner has been rejected on extremely flimsy grounds only to give an undue advantage to the private respondent no. 4. As per his submission, the fact that the private respondent no. 4 has been favoured by the respondent-State in such an obvious and blatant manner speaks volumes about the illegal nexus that exists between the respondents. As such, the allotment of works in favour of private respondent No. 4, is wholly unjust, arbitrary, illegal and improper and the same is liable to be set aside and quashed.
7. Learned counsel for the petitioner has further argued that the respondents have played fraud on the entire tender process by extending the date of submission of e-tendering by issuing two corrigenda for extending the last date of submission of bids. The last date of submission of bids, as per the e-NIT was 09.02.2023 up till 1600 Hrs., whereas the two impugned Corrigenda have been issued on 10.02.2023 i.e. after the last date of submission of bids, which according to petitioner cannot be done as the same is in violation of the SBD as is clear from the concurrent reading of Clause 10.1 and Clause 20.2 of the ITB of the SBD.

8. Learned counsel for the petitioner has admitted that the petitioner in two of the three advertised works has taken advantage of the said extension of the time for submission of bids, but in one of the said works the petitioner has submitted his Bid well in time as per the e-NIT. He has objected to the said two impugned corrigenda in his representation dated 25.04.2023, but the respondent State rejected the said representation of the petitioner vide impugned order dated 26.04.2023 without even responding to the said issue, thereby, showing the *malafide* behind it. It is further submitted that the petitioner having taken advantage of the said impugned corrigenda had presumed to be treated equally, but by the rejection of the bid of the petitioner on such flimsy grounds as well as the fact that the representation of the petitioner was rejected in such an unceremonious manner, points to the *mala fide* involved in the case at hand and the illegal nexus between the respondent-State and the private Respondent no. 4.
9. Learned counsel has further argued that the entire exercise of issuing corrigenda after last date as adopted by the respondent No. 2 is illegal, *malafide* and a colourable exercise. According to him, the same violates the Standard Bidding Documents containing instructions for bidders and is against public interest while also being violative of Articles 14 and 21 of the Constitution of India. On this score alone, the corrigenda bearing No. CEJ/TS/23862 dated 10-02-2023 and No. CEJ/TS/23863 dated 10-02-2023, the impugned order 26-04-2023, with publication dated 24-04-2023 and allotment orders bearing Nos. CEJ/TS /2347-51, CEJ/TS/ 2352-56, CEJ/TS / 2357-61, dated 01-05-2023 are liable to be set aside and quashed.
10. It is further submitted by the learned counsel that it is only before the deadline for submission of bids, the Employer may modify the bidding documents by issuing online corrigendum and not thereafter. In the instant

case, the corrigenda were issued after the expiry of the last date of submission of tenders which was 09-02-2023 and corrigenda impugned were issued on 10-02-2023. With regard to the extension of last date of submission of tender by way of corrigendum, the learned counsel has place reliance on the case decided by the Gauhati High Court titled ***Sri Swadesh Ranjan Paul and Jahar Paul vs State of Assam & Ors***, WP (C) No. 3356/2020 decided on 25-03-2021. The relevant paragraph of the said judgment is reproduced as herein under: -

"26. The respondent No. 3 stipulated the terms in the notice inviting tender wherein it is specifically stipulated that if any amendment of bid is required the same should be done before the deadline for submission of bid. Admittedly there was violation of the said stipulation as the corrigendum was published after the deadline for submission of the bid was over the deadline being 02:00 PM and the 'Corrigendum was published at 02:24 PM of 25.02.2020, the end date for submit The terms of NIT cannot be ignored as superfluous. The same must be followed by the employer also. If not then there would be unequal treatment meted to the participants in the tender process. The said extension of bid submission end date is irrational and perverse due to specific violation of the terms of the NIT and also gives an indication that the same was extended with the intent to favour the respondent No. 6 who submitted her bid immediately on 26.02.2020. The decision making process adopted by the tender authority in my opinion is liable to be interfered which I accordingly do thereby holding that act of issuance of the 'corrigendum I published on 25.02. 2020 at 02:24 PM extending the end date for submission of the bid to 02:00 PM of 27.02.2020 is in clear violation of the Clause 10(1) of the ITB of the NIT under Reference No. KARIMGANJ/2019-20/SOPD-FDR/1 (Retender) for package No. 1 of the Scheme "Reconstruction of Breached embankment at Dullaupur and Mukamerbond along with improvement of Shingla R/B embankment from Phanirbond to Dullaupur including anti-erosion measures at different reaches" is irrational and illegal and the consequent evaluation process of the tender and the act of issuance of the work order to respondent No. 6 is illegal which is set aside and quashed. There is no scope for directing the respondent No. 3 for consideration of the bids of the petitioner as he also failed to fulfil the requisite criteria while submitting the hard copy of the technical bid. In view of the same the respondent No. 3 is directed to retender the subject work against the said package (scheme) and process the same at the earliest. Further the respondent No. 6 shall have the appropriate remedy in a civil court for compensation against the action of the respondent No. 3 in violation of the terms stipulated in the NIT."

11. Learned counsel for the petitioner next submits that the Evaluation summary sheet dated 24.04.2023 has shown the petitioner to be non-responsive on two

grounds i.e., the Bank guarantee is not in accordance with the format which is acceptable to the respondent-State as per clause 6 of the e- NIT and does not extend to a period as specified therein as well as the SBD. He has submitted that respondent no. 2 fixed the last date for opening of technical bid as 15-02-2023 and bank guarantee submitted by the petitioner was valid till 24-03-2023. In view of this, the BG submitted by the petitioner was valid and same was as per the E-NIT and SBD, as the respondent have allotted certain work as per the E-NIT and SBD. It is further submitted that respondent in their earlier summary evaluation declared and held the technical bid of the petitioner to be substantially responsive and no flaw was pointed out in the Technical bid earlier and now at the time of due evaluation of his technical bid, respondent No. 2 rejected the technical bid/tender of the petitioner illegally and with *malafide* intention just to favour the private respondent as no one else was considered except the private respondent. All the three works are being allotted to the private respondent and, as such, the action of respondent No. 2 is *malafide* and arbitrary and same may result in great loss to the Government exchequer inasmuch as, the tender bid of the petitioner is comparatively low. On this score alone, the corrigenda bearing No. CEJITS/23862 dated 10-02-2023 and No.CEJ/TS/23863 dated 10-02-2023 and also the impugned order 26-04-2023 together with publication dated 24-04-2023 and allotment orders bearing Nos. CEJ/TS/ 2347-51, CEJ/TS/ 2352-56, CEJ/TS/2357-61, dated 01-05-2023 are liable to be set aside and quashed.

12. Learned counsel for the petitioner has further submitted that in case any discrepancy was found in the BG submitted by the petitioner, it was the duty of the respondent No. 2 to inform the petitioner to rectify the same which was not done in the present case. Even at the first instance, the tender of the

petitioner was held responsive, i.e. in accordance with the SBD and e-NIT. Learned counsel has referred to clause 15.1 of the IBT of Standard Bidding Document (SBD) which provides that in exceptional circumstances, prior to expiry of the original time limit, the Employer may request that the bidders may extend the period of validity for a specified additional period .It is further argued that respondent No. 2 tried its level best to get the tender bid of the petitioner rejected and defeated the very purpose of issuing e-NIT for allotment of the works as it ultimately allotted the work to private respondent by hook or crook. Thus, viewed from any angle, the approach of the respondent No. 2 is not only arbitrary, but same is illegal and contrary to Article 14 of the Constitution of India.

ARGUMENTS ON BEHALF OF CAVEATOR [RESPONDENT NO. 4]

13. *Per contra*, Mr R.K Gupta, learned senior counsel appearing on behalf of the caveator submits that the bid of respondent no. 4 in the e-NIT no. 28 of 2022-23 dated 18.01.2023 issued by the Office of the Chief Engineer, PW (R&B) Department, Jammu has been found eligible/responsive in the technical bid vide Technical Evaluation summary sheet-II dated 13.04.2023 issued by Chief Engineer, PW (R&B), Jammu.
14. Mr Gupta has further submitted that two corrigenda bearing no. CEJ/TS/23862 dated 10-02-2023 and No. CEJ/TS/23863 dated 10-02-2023 to NIT dated 10-02-2023 were issued at about 2.49 PM and 3.03 PM respectively, after the end of last date of submission of tender documents, thereby, extending the date for online submission of the tenders. He submitted that the petitioner took advantage of such extension and, as such, being the beneficiary of extended period cannot challenge the aforementioned corrigenda. He has further pointed out the petitioner has not, at any point of time, objected to the same and it was only when the petitioner

was declared as non-responsive, he has chosen to file the present writ petition challenging the aforesaid corrigenda.

15. The next contention of the learned counsel for the respondents is that the petitioner has confused the EMD with the Performance Security. According to him, the petitioner was under a legal obligation to have submitted the bid security along with bid and not the performance security. The performance security is submitted at the time when the person is declared as L-1. The role of Performance Security comes into play after the issuance of the Letter of Acceptance to the successful bidder and, as such, the petitioner cannot give the performance security in place for EMD.

16. Learned senior counsel has further submitted that clause 6 of e-NIT dated 18.01.2023 specifically provides that EMD in the shape of FDR/CDR/BG is to be pledged to Chief Accounts Officer PWD(R&B), Jammu and should be 2% of the advertised cost and must be uploaded with the bid. The CDR/FDR/BG shall be valid for 45 days beyond the bid validity period. The earnest money shall be forfeited in the eventualities as specified in sub clause (a) (b) and (c) of Clause 6. He has further submitted that Clause 7 deals with the performance security which specifically provides that within 21 days after the date of receipt of letter of acceptance, the successful bidder/contractor shall deliver to the Employer/ concerned authority, a Performance Security in the shape of CDR/FRD/Bank Guarantee for an amount equivalent to 3% of the contract price.

17. He has further submitted that as per clause 15.1 of the IBT, (Instructions To Bidders) the bid validity is for a period not less than 90 days (Ninety days) after the deadline date for opening of Technical bids as specified in NIT and a bid valid for a shorter period can be rejected by the Employer as non-responsive. In case of discrepancy in bid validity period between that given

in the undertaking pursuant to Clause 12.1 (v) and the Form of Bid submitted by the Bidder, the latter shall be deemed to stand corrected in accordance with the former and the Bidder has to provide for any additional security that is required.

18. Mr Gupta further submits that the bank guarantee which has been submitted by the petitioner does not fulfil the requirement of period stipulated in NIT which ought to have remained valid for 90+45 days i.e., a total of 135 days and on this ground also, the bank guarantee in the form of performance security submitted by the petitioner being defective cannot be relied upon. He submitted that the form of bid was applicable in the COVID period and "Bid Security Declaration" as per Clause 16 has since been deleted.

19. The learned counsel has referred to Clause 25.1 & 25.2 of the SBD, which specifically provide that during the detailed evaluation of Technical Bids, the Employers will determine whether each bid : -

- (a) meets the eligibility criteria defined in Clause 3 & 4*
- (b) has been properly signed,*
- (c) is accompanied by the required securities and*
- (d) is substantially responsive to the requirements of the Bidding documents.*

Clause 25.2 deals with the Financial Bid which conforms to all the terms, conditions and specifications of the bidding documents without material deviation or reservation as specified in the aforesaid clause. Much emphasis has been laid down in Clause 25.2(iii) which provides that rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

20. He has further submitted that the petitioner intentionally did not bring to notice of the court that the judgment of single bench of Gauhati High Court

in case titled, *Sri Swadesh Ranjan Paul and Jahar Paul vs State of Assam &Ors.* in WP (C) No.3356/2020 decided on 25.03.2021 has been set aside in LPA WA/140/2021 titled, "*Joyshree Dev vs Swadesh Ranian Paul and Jahar Paul and five others* decided on 16.11.2021.

21. Lastly, learned senior counsel submitted that the respondent has already been allotted the work and has started the execution of the work, and thus, it will be against the public interest if at this belated stage any adverse order is passed.

LEGAL ANALYSIS

22. Heard learned counsel for the parties and the caveator at length and perused the record. Caveat stands discharged. Mr Ravinder Gupta, appearing on behalf of the official Respondents has adopted the arguments advanced by the caveator.

23. With the consent of the learned counsel for the parties, the instant petition is taken for final disposal.

24. ***Admit.***

25. Having considered the whole spectrum of arguments and counter arguments addressed by the learned counsel appearing for the parties, I am of the view that the decision in this petition hinges on determination of the following issues:

(i) ***Whether the corrigenda issued by the respondents is in conformity with the terms and conditions of the tender notice and can the petitioner being the beneficiary of the same by availing the extended time for the submission of the bids turn around and subsequently challenge the said corrigenda?***

(ii) ***Is there any difference between Performance Security and Bid Security? Can Performance Security be a substitute to the Bid Security and can the submission of the former in place of the latter be subsequently rectified?***

(iii) What is the scope of power of Judicial Review in tender or contractual matters? Can this Court interfere at this stage when the work has already been allotted and the Contractor has started executing the work?

Issue No. (i)

26. The challenge thrown by the petitioner with respect to the issuance of corrigenda bearing No. CEJ/TS/23862 dated 10-02-2023 and No. CEJ/TS/23863 dated 10-02-2023 cannot sustain the test of law in the light of the fact that the petitioner being the beneficiary of the same has applied during the extended period as envisaged in the aforementioned Corrigenda. It is apparent from Tender Summary Reports published on 24.04.2023, annexed with the writ petition, that the petitioner has availed the benefit of the corrigenda with respect to two works. The corrigenda were issued in order to provide level playing field to all the bidders so that nobody should be prejudiced due to the ambiguity and mismatch that occurred in the information provided in the hard copy and the one uploaded on the website. In the present case, no bidder raised any objection to the issuance of the corrigenda extending the date of submission of bids, the necessity for issuance of which arose because of peculiar facts and circumstances i.e., mismatch in the information provided in the hard copy. In fact, majority of the bidders including the writ petitioner as well as the private respondent submitted their bids during the extended period in terms of the corrigenda dated 10.02.2023 and took benefit of the extended time for submission of bids without raising any objection to the issuance of the corrigenda.

27. It is pertinent to observe that it was only when the bids of the writ petitioner came to be declared as non-responsive on 24.04.2023; the petitioner started questioning the issuance of corrigenda. Had the writ petitioner been declared responsive in the Technical Evaluation Bid, he would have no grievance

against the corrigenda. The validity and issuance of the corrigenda, more particularly, when the petitioner is beneficiary of the same cannot be called in question at this belated stage.

28. Thus, after having availed the benefit of the extended time period prescribed in the aforesaid corrigenda with respect to two works, it does not lie in the mouth of the petitioner to agitate that the corrigenda is vitiated by some *malafide* consideration with a view to enlarge the zone of consideration and giving contract to blue eyed persons i.e., the private respondent. The petitioner, therefore, cannot challenge the terms of the Tender (NIT) after having availed the benefit of the corrigenda. Thus, the challenge thrown by the petitioner to the aforesaid corrigenda does not sustain the test of law and is liable to be rejected.

29. In so far as the question whether the respondent-State was entitled to extend the date for submission of the bid by virtue of corrigenda after the last date of submission is concerned, the Court does not deem necessary to delve into the same in light of the fact that petitioner being the beneficiary of the extension cannot call in question the aforesaid corrigenda.

30. In the case titled *Renaissance Distilleries and Breweries Ltd. v/s. The Govt. of NCT of Delhi &Ors.* 2007 SCC Online Del 113, the High Court of Delhi has also reiterated the aforementioned position of law. The relevant paragraphs are reproduced as hereinunder:

“10. Before we examine the petitioner's submission that the condition requiring submission of a VAT Certificate was not essential, we may note that the petitioner has not, and could not have challenged the prescription of the aforesaid Clause 2(x) read with Clause 6 of the NIT, whereunder the bidders were required to submit the said VAT Certificate, and it was stated that offers without, inter-alia, the documents will not be entertained and be summarily rejected. This is so in view of the decision of the Hon'ble Supreme Court in

Tata Cellular v. UOI, AIR1996SC11. While laying down the principles relating to the scope of judicial review of administrative decisions and exercise of contractual powers by government bodies, one of the principles deduced by the court was that "The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract." In the present case, the petitioner participated in the tender process, fully conscious of the conditions of the NIT, which expressly in unequivocal terms required the submission of the VAT certificate by the bidders and stated that bids not accompanied with the requisite documents would not be entertained and would be summarily rejected and is now seeking to challenge the rejection of its bid by advancing its own interpretation of the tender conditions.

11. In our view, the petitioner ought to have agitated its point of view in this petition even before participating in the tender process, since it should have been obvious to the petitioner that its bid would be rejected due to non-submission of the VAT certificate. The petitioner cannot challenge the clear and unambiguous terms of the NIT after having participated in the tender process and failing to be considered therein on account of the petitioner not fulfilling the said express condition. Reference may be made to India Thermal Power Ltd. v. State of MP and Ors. [2000]1SCR925 , paragraph 17 and New Bihar Bidi Leaves Co. and Ors. v. State of Bihar and Ors, [1981]2SCR417 , Para 48. In our view, the challenge raised in this petition must fail on this short ground.

31. The Hon'ble Supreme Court in the case titled *New Bihari Biri Leaves Co. & Ors. v/s. State of Bihar & Ors*, (1981)1 SCC537, has laid down the conditions governing approbate and reprobate in the realm of contract. The Court in paras 48 and 49 has held:

"It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is qui approbat non reprobatur (one who approbates cannot reprobate). This principle, though originally borrowed from Scots Law, is now firmly embodied in English Common Law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument

or transaction (Per Scrutton L.J. Verschures Creameries, Ltd. v. Hull & Netherlands Steamship Co. [1921] 2 K.B. 608; See Douglas Menzies v. Umphelby [1908] A.C.

224 at P. 232; See also Stroud's Judicial Dictionary, Vol. I, page 169, 3rd Edn.).”

“49.... It is true that a person cannot be debarred from enforcing his fundamental rights on the ground of estoppel or waiver. But the aforesaid principle which prohibits a party to a transaction from approbating, a part of its conditions and reprobating the rest, is different from the doctrine of estoppel or waiver.”

32. Again, in *Indotech Groups vs Union of India & Ora* 2009 SCC OnLine Del 312, the High Court of Delhi in a similar facts and circumstances has held as under:

“15Further, in the present case, the Petitioner did not challenge the impugned condition in Court at the time of the tendering process which commenced in February 2008 and instead participated in the same. It was only when the Petitioner was not selected in the bid process that the Petitioner belatedly challenged the tender conditions as well as the awarding of the same in the month of September 2008. Belated petitions cannot be entertained. The Petitioner cannot now be allowed to challenge the tender conditions as its writ petition is barred by laches that are totally unexplained. Valuable rights have accrued in favour of the successful bidders by the award of the tender and the resultant supplies of the FR overalls to the extent of over 8000 pieces out of the total 11,500 tendered for. Furthermore, the Petitioner did not join M/s. Tan Enterprises, a successful bidder, as a party to the present writ petition, even though it seeks setting aside of the impugned tender, thereby prejudicially and directly affecting the rights of the said successful bidder: Even otherwise, when a writ petition is filed challenging the award of a contract by a public authority, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. In our view there is no public interest involved in stopping the supply under the tender. Furthermore, in our view there is no arbitrariness, discrimination or mala fide in the subject tender and all the aspects and objections to the terms thereof have already been considered and rejected by the CVC. We find no infirmity in the impugned conditions to warrant interference.”

33. Reliance is also placed on *State Bank of India vs Airports Authority of India & Ors.* 2002 SCC OnLine Del 69, wherein, the High Court of Delhi in paras

26, 27, 28 and 29 has made the following observations, thereby buttressing the
aforementioned proposition of law:

26. I find considerable merit in the submission of the Senior Counsel, Mr. T.R. Andhiyarjuna that petitioner, who declined to abide by the tender terms and quoted zero percentage of the gross turnover, was clearly an unsuccessful bidder. Further questions need not arise as SBI could not claim any right for its quotation to be accepted. Petitioner had simply failed to comply with condition of the tender and was thus ineligible. Petitioner could not be permitted to plead any special hardship or equities. Reference is invited to India Thermal Power Ltd. v. State of M.P. (supra), para 17. There is also considerable merit in the submission of the respondent that petitioner, who failed to bid in a responsive manner but took its chance, cannot be subsequently permitted to challenge belatedly, nearly after a period of one year and four months, the conditions of tender. I am of the view that although the writ petition is liable to be dismissed on the short ground of delay and laches on the part of the petitioner as well as petitioner having given a non-responsive bid since the parties were heard on the challenge to condition No. 4 of the notice inviting tender, I am adverting to the same briefly.

27. The challenge by the petitioner, as noted earlier, is on the ground that the said condition was arbitrary and vague. The plea was that without estimated, or actual turnover being indicated, the percentage being quoted was illusory. This argument does not appear to be tenable in the present facts and circumstances. The location and size of each of the counter had been identified. The bidders were expected to and specially the petitioner, who had been operating at the airport would certainly have an idea of inflow and outflow of the passengers and the volume of transactions that may be expected from a counter at a particular location. It is also pertinent to notice that other bidders also have quoted a percentage after estimating what they expected to be the turnover of yield from a particular counter. It is also significant that the petitioner itself has quoted a percentage of turnover for its tender at Chennai. But in the present tender he quoted a zero percentage. In these circumstances, petitioner's case that the condition was arbitrary and irrational has to fail. This is especially so when the real reason for the petitioner for not quoting was the financial losses and its request for special treatment and status in its dealing with respondent No. 1. Petitioner has knowingly participated in the process of bidding and after becoming unsuccessful, in my view, is precluded even on equitable consideration from making a challenge to the notice inviting tender. A party cannot be permitted to approbate or reprobate. Reference in this

connection may be invited to Nagubai Ammal v. B. Shama Rao, 1956 SCR 451 and New Bihar Biri Leaves Co. v. State of Bihar, (1981) 1 SCC 537, where the Court approved the following principle:

“A person cannot say at one time that a transaction is valid and thereby obtain some advantage to which only he be entitled on the footing i.e. valid and then turn around say it is void for the purpose of securing some other advantage i.e. to approbate or reprobate the transaction.”

28. There is also no merit in the contention of the petitioner that since there cannot be waiver or estoppel against enforcement of fundamental rights. Petitioner is entitled to challenge the said condition. In New Bihari Bidli Company (supra), the Supreme Court held that/while it was true that a person cannot be debarred from enforcing his fundamental rights on the ground of estoppel or waiver but the aforesaid principles which prohibit a party to a transaction from approbating a part of its condition and reprobating the rest is different from the doctrine of estoppel or waiver. In the present facts and circumstances, as noted above, in my view, firstly, Condition No. 4 prima facie, does not suffer from any arbitrariness or irrationality, though it could have been happily worded and made more precise.

29. The petitioner having failed to challenge it before bidding and thereafter for a considerable period of time having itself accepted the same condition in another tender, cannot be now permitted to assail the same. The submission of the petitioner that AAI cannot recover any amount other than by way of licence fee and hence Condition No. 4 requiring a bidder to pay a percentage of gross turnover contravenes the provisions of the Airport Authority of India Act is again without merit. As noticed earlier, Section 11 enjoins upon the authority to act on business principles. Section 22 of the Airports Authority of India Act, is an enabling section, which allows the authority and confers the power to charge rent and fee for the facility in the Airport i.e. landing, housing, parking, traffic services etc. Section 22 cannot curtail or interfere with the right of the authority to invite competent bids to allot, space. Moreover, the charging of a licence fee having a fixed element computed on the basis of per sq. feet as well as a variable element computed on the basis of turnover, will not make change the character of the licence fee or the consideration payable for the counters to be allotted.

34. Therefore, in light of the facts and circumstances of the present case and the settled position of law, it can be concluded that once the petitioner has been the beneficiary of the aforesaid corrigenda, then he cannot turn around

subsequently and challenge the same after availing the extended time for submission of two bids out of three.

Issue No. (ii)

35. Another question which requires consideration in the present case is that whether the respondents can accept the Performance Security submitted by the Contractor in place of Bid Security for any tender.
36. The answer to the same is in the negative because providing of the performance security comes at a stage when the bidder is declared as L1 and that stage has not yet come in the instant case. A bidder as per the e-NIT was required to submit Earnest Money Deposit (EMD)/ Bid Security in the shape of FDR/DR/BG to the tune of 2% of the advertised cost of the work along with his bid and pledged to Chief Accounts Officer, PWD (R&B), Jammu. This was a mandatory requirement in terms of clause 6 of the e-NIT as well as clause 2.2.1 of Section 2 of the SBD.
37. The writ petitioner, instead of submitting the EMD in the shape of BG along with his bid, submitted a Bank Guarantee in the shape of a Performance Security. As mentioned above, EDM and Performance Security are two different kinds of securities and have different purposes and obligations and are submitted at different stages of the tendering process. Therefore, the non-submission of the EMD in the shape of BG entailed outright rejection of the bid.
38. A perusal of the BG submitted by the writ petitioner along with his bid would reveal that it was not EMD entailing any of the obligations mentioned in Clause 6 of the e-NIT. The BG submitted in the shape of Performance Security is of no use at the time of the submission of bid and this directly affects the rights of the Employer and therefore, was liable to be rejected. The difference

between the EMD and Performance Security is evident in clause 6 & 7 of the e-NIT as well as clause 30 of Section 1 of the SBD.

For facility of reference, clause 6 and 7 of e-NIT dated 18.01.2023 are being quoted hereunder:

- 6. EMD in shape of FDR/CDR/BG pledged to Chief Accounts Officer PWD(R&B) Jammu should be 2% of the advertised cost & must be uploaded with the bid. The CDR/FDR /BG shall be valid for 45 days beyond the bid validity period. The earnest money shall be forfeited if:**
 - a. Any bidder/tenderer withdraws his bid/tender during the period of bid validity or makes any modifications in the terms and conditions of the bid.**
 - b. Failure of successful bidder to furnish the required performance security within specified time period after issuance of letter of acceptance.**
 - c. Failure of successful bidder to execute the agreement on same day of issuance of allotment of work**
- 7. Performance Security 3%: Within 21 (Twenty One) days after the date of receipt of the letter of Acceptance, the successful bidder/ contractor shall deliver to the Employer/ concerned authority, a Performance Security in shape of CDR/FDR/Bank Guarantee for an amount equivalent to 3% of the contract price.**

39. The record further reveals that the petitioner has submitted the Performance Security and not the Bid Security which was required under NIT and the same was valid up to 24.03.2023, when it ought to have been valid till 30.06.2023, which is for a total of period 135 days (i.e 90+45 days). Therefore, the performance security being short of the stipulated period of time cannot be a substitute to bid security for any tender.

40. It is specifically provided in clause 6 of e-NIT dated 18.01.2023 that CD/FDR/BG shall be valid for 45 days beyond the bid validity period and the earnest money shall be forfeited in three eventualities laid therein. The Bank Guarantee (and other instruments having fixed validity) issued, as surety for the bid is to be valid for 45 days beyond the validity of the bid and the bid remains valid for 90 days. Therefore, as such, the Bank Guarantee ought to have remained valid for 90 + 45 days = 135 days. Clause 7 deals with the

performance security which specifically provides that within 21 days after the date of receipt of letter of acceptance, the successful bidder/contractor shall deliver to the Employer/concerned authority, a Performance Security in the shape of CDR/FRD/Bank Guarantee for an amount equivalent to 3% of the contract price.

41. It is therefore, clear that the bank guarantee by way of performance security which has been submitted by the petitioner does not fulfil the requirement of the period stipulated in NIT, which ought to have remained valid for 90+45 days = 135 days and on this ground also, the bank guarantee being defective cannot be relied upon.
42. The writ petitioner has submitted that in any event, he was entitled to rectify the performance security submitted as bank guarantee and also provide any additional security in terms of clause 15.1 of the Standard Bidding document (SBD). Furthermore, he also submitted that it was the duty of the respondent No. 2 to inform the petitioner to rectify the aforesaid discrepancy as clause 15.2 provides that in exceptional circumstances prior of expiry of the original time limit, the employer may request that the bidders may extend the period of validity for a specified additional period.

For facility clause 15.1 and 15.2 of the ITB is reproduced as hereinunder: -

“15.1 Bids shall remain valid for a period not less than 90 days (Ninety days) after the deadline date for opening of Technical bids as specified in NIT. A bid valid for a shorter period shall be rejected by the Employer as non-responsive. In case of discrepancy in bid validity period between that given in the undertaking pursuant to Clause 12.1 (V) and the Form of Bid submitted by the Bidder, the latter shall be deemed to stand corrected in accordance with the former and the Bidder has to provide for any additional security that is required.

15.2 In exceptional circumstances, prior to expiry of the original time limit, the Employer may request that the bidders may extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by cable. A bidder may refuse the request without forfeiting his Bid security. A bidder agreeing to the request will not be required or permitted to

modify his bid except as provided in 15.3 hereinafter, but will be required to extend the validity of his Bid security for a period of the extension, and in compliance with Clause 16 in all respects”.

43. In my view, the reliance placed by the petitioner on clause 15 is misplaced. Clause 15 of the SBD instructions to Bidders pertains to Bid Validity in certain circumstances. Clause 15.1 provides that the bid validity period should not be less than 90 days in any event. It specifically provides that a bid valid for a shorter period shall be rejected by the employer as non-responsive. The only opportunity for rectification is given in case of discrepancy in bid validity period between the undertaking submitted pursuant to clause 12.1(v) and the form of bid submitted by the bidder. In that event, the shorter period in terms of bid validity as provided in the bid form shall be deemed to be corrected in accordance with the undertaking. Similarly, clause 15.2 only pertains to a situation where the employer is unable to finalize the award of contract during the bid validity period and for that purpose, the employer after the expiry of the original time period of 90 days may request the bidders in writing for extension of the bid validity period.
44. In the present case, as noted earlier, the petitioner instead of submitting the EMD in shape of BG along with his Bid submitted a bank guarantee in the shape of a performance security. The difference between the EMD and performance security is evident from clause 6 and 7 of the e-NIT as well as clause 30 of Section 1 of the SBD. The submission of bank guarantee in the shape of performance security is of no use at the time of the submission of bid and this directly affects the right of the employer and, therefore, was liable to be rejected. It is pertinent to observe that the submission of EMD in the shape of BG for a period of 45 days beyond the bid validity period was a **mandatory requirement** and could not have been rectified as per clause 15 of the SBD.

45. The law on the aforesaid subject is well settled. *In Bakshi Security and Personnel Services Pvt. Ltd. v. Devkishan Computed Pvt. Ltd. and Ors.*,

(2016) 8 SCC 446, the Hon'ble Apex Court has held as under:

“14. The law is settled that an essential condition of a tender has to be strictly complied with. In Poddar Steel Corpn. V. Ganesh Engg. Works [Poddar Steel Corpn. v. Ganesh Engg. Works, (1991) 3 SCC 273] this Court held as under: (SCC p. 276, para 6)

“6. ... The requirements in a tender notice can be classified into two categories—those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.”

15. Similarly in B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. [B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd., (2006) 11 SCC 548] the Hon'ble Supreme Court held as under: (SCC pp. 571-72, para 66) “

(i) if there are essential conditions, the same must be adhered to;

(ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

(iii) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;

(iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;

(v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;...”

16. We also agree with the contention of Shri Raval that the writ jurisdiction cannot be utilized to make a fresh bargain between parties.”

46. Even in the case of *Vidarbha Irrigation Development Corporation vs. M/S Anoj Kumar Garwala*, Civil Appal No.1049 of 2019 (arising out of SLP (C) 27818 of 2018, decided on 23.01.2019, the Supreme Court in similar facts and circumstances held *that in case an essential tender condition which had to be strictly complied with was not so complied with, the employer would have no power to condone lack of such strict compliance.*
47. Therefore, in light of the above, it is crystal clear that the submission of performance security in placed of bid security cannot be rectified as the same is a mandatory requirement as per clause 6 of the e-NIT. It is also pertinent to observe that neither the clarification issued by the bank dated 13.03.2023 with respect to the bid and performance security can alter/modify/relax the terms and conditions of the NIT nor the clarification issued by the bank has a direct bearing on the terminology used in the NIT which are binding on the parties.
48. Accordingly, *I hold that bid security cannot be a substitute for performance security as both are distinguishable and are submitted on different stages.* Thus, the petitioner was under legal obligation to have submitted the bid security along with bid and not the performance security. Since the same was a mandatory requirement, it cannot be condoned or rectified.
49. The writ petitioner has also claimed a violation of a right to equality under Article 14 of the Constitution of India as he was deprived from the allotment of work despite having submitted the lowest rates for the tender as per his assertion. In my view, the petitioner by no stretch of imagination claim

equality with respondent No. 4 as equality applies only when the requirements for the compliance of conditions are fulfilled by both the competing parties. In the instant case, since the writ petitioner had not fulfilled the mandatory condition of submitting EMD in form of BG, he cannot claim an unfettered right to execute the work as the principle of awarding the contract to lowest tenderer applies only when all things are equal amongst the competing bidders. Therefore, neither there is a violation of right to equality of the writ petitioner nor can he claim an unfettered right to execute the work by virtue of being the lowest tenderer.

50. I am fortified with the law laid down by the Supreme Court in case titled *West Bengal State Electricity Board vs. Patel Engineering Company Limited*, reported in 2001 (2) SCC 451, wherein in para 32, the following has been laid down:-

“32. The submission that remains to be considered is that as the price bid of respondent Nos.1 to 4 is lesser by 40 crores and 80 crores than that of respondent Nos.11 and 10 respectively, public interest demands that the bid of respondent Nos.1 to 4 should be considered. The project undertaken by the appellant is undoubtedly for the benefit of public. The mode of execution of the work of the project should also ensure that the public interest is best served. Tenders are invited on the basis of competitive bidding for execution of the work of the project as it serves dual purposes. On the one hand it offers a fair opportunity to all those who are interested in competing for the contract relating to execution of the work and on the other hand it affords the appellant a choice to select the best of the competitors on competitive price without prejudice to the quality of the work. Above all it eliminates favouritism and discrimination in awarding public works to contractors. The contract is, therefore, awarded normally to the lowest tenderer which is in public interest. The principle of awarding contract to the lowest tenderer applies when all things are equal. It is equally in public interest to adhere to the rules and conditions subject to which bids are invited. Merely because a bid is the lowest the requirements of compliance of rules and conditions cannot be ignored. It is obvious that the bid of respondent Nos.1 to 4 is the lowest of bids offered. As the bid documents of respondent Nos.1 to 4 stands without correction there will be inherent inconsistency between the particulars given in the annexure and the total bid amount, it cannot be directed to be considered along with other bid on the sole ground of being the lowest.”

Issue (iii)

51. The scope of judicial review in contractual matters points towards judicial restraint. It is well settled that the scope of judicial review is very limited in the domain of contract and therefore, it must be used sparingly. Court must be wary of attempts made by unsuccessful tenderers who may try to persuade Courts into exercising its power of judicial review based on mere procedural aberrations. This is particularly important because such interferences may adversely affect public works and cause undue delays.

52. In *Tata Cellular vs Union of India*(1994)6SCC 651, the Supreme Court reviewed the entire case law on the subject and laid down the following principles for application to cases involving judicial review in contractual matters. The relevant paragraph is reproduced as hereinunder:-

94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.***
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.***
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.***
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.***
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.***

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

53. Similarly, the decision of the Supreme Court in *Directorate of Education and Ors. v. Educomdatamatics Limited & Ors.*, 2004 (4) SCC 19 reiterates the said position. The Court in that case was examining a tender notice which stipulated a turnover of Rs. 20 Crores as a condition of eligibility and held that the Government must have a freehand in stipulating the terms of the tender and that it must have reasonable play in the joints as a concomitant necessary for an administrative body in administrative sphere.

The court observed: -

"12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny the same being in the realm of contract. That the government must have a free hand in setting the terms of the tender. it must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias, it is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."

54. On the question of the rights of a bidder, in case titled *Meerut Development Authority v. Assn. of Management Studies*, (2009) 6 SCC 171, the Hon'ble Supreme Court in paras 26, 27, and 29 has held:

"26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

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 above stated 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.”

55. Recently, in 2023, the Supreme Court in the case of *Tata Motors Limited v The Brihan Mumbai Electric Supply & Transport Undertaking (Best) And Ors.* [Civil Appeal No.3897 of 2023 (arising out of SLP(C) NO. 15708 OF 2022)] has made some relevant observations resonating the principles of judicial restraint in contractual matters. The relevant paragraphs are: -

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

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.”

56. It is therefore evident from the aforementioned authoritative pronouncements by the Supreme Court that the writ courts must refrain from interfering in contractual matters involving technical issues that lie outside the domain of Courts. That being so, Courts being a guardian of fundamental rights are duty bound to interfere when there is a clear-cut case of arbitrariness or *mala fides* or bias or irrationality being perpetuated. However, especially in case involving tenders, Courts must recognise their limited technical expertise and must not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. **Therefore, in matters concerning contracts, the courts must give fair play in the joints to the government.**
57. Another aspect which must be borne in mind before judicial interference is done in matters concerning tenders is the financial implication on the public exchequer that the State may have to meet with if the Court directs afresh tender notice. To say the least, it would not be in public interest to set at naught the entire tender process at the stage when the contract is well underway.
58. In the facts of the present case, even if the objections raised by the petitioner are taken at face value, it does not amount to a clear-cut case of arbitrariness or *mala fides* that would warrant judicial interference especially in a situation where the tender has already been allotted and the contract is well underway.

In any event, nothing specific has been brought to the attention of this Court that would reveal *mala fide* or favouritism in awarding the tender to Respondent no. 4. In such a situation, this Court is duty bound not to delve into the technicalities or to scrutinize the issuance of corrigenda with a magnifying glass. It must accord “*fair play in the joints*” to the Government in such a matter.

59. Even pragmatically, in light of the fact that the tender has been allotted to respondent no. 4 and the work of the contract is well underway, it would not be in public interest to set at naught the entire tender process at this stage due to the financial implications on the public exchequer. Therefore, viewed from any angle, a case for judicial interference in the present case is not made out and thus, the challenge thrown by the petitioner is liable to be rejected.

CONCLUSION

60. In the light of the aforesaid settled legal position coupled with the facts and circumstances of the instant case, the challenge of the petitioner to the impugned corrigenda fails and the writ petition which is devoid of any merit is dismissed along with all connected CM(s).

(Wasim Sadiq Nargal)
Judge

JAMMU
29.05.2023

Whether the judgment is reportable ?	Yes
Whether the judgment is speaking ?	Yes