

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 18818 of 2025
Reserved on: 24.03.2026
Decided on : 16.04.2026
Uploaded on: 16.04.2026

Process Color (P) Limited

...Petitioner

Versus

State of HP and another

...Respondents.

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the petitioner:

Mr. Shrawan Dogra, Senior Advocate with Mr. Tavleen Singh, Ms. VallabiShukla, Mr. Jeevan Kumar, Mr. Mohit and Ms. Ekta Kumari, Advocates.

For the respondents :

Mr. Pranay Pratap Singh, Additional General.

Bipin Chander Negi, Judge

An expression of interest was called for by respondent No. 2 on 26.7.2025. The same had been called for finalization of hologram specifications for sealing liquor bottles with advanced high security features including track and trace capabilities within the State. The purpose being to prevent sale of spurious/duplicate/illicit liquor in the State. Thereby not only ensuring sale of genuine liquor to the consumer but even augmenting the revenue of the State. The expression of interest is appended with the writ petition as Annexure

¹ *Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

P-3. In terms of the aforesaid expression of interest, only those bidders who fulfilled the conditions detailed hereinbelow were allowed to showcase features offered by way of a detailed presentation/demonstration in the presence of the concerned committee on 7.8.2025 at 2.30 P.M:-

- a. **Registration:** The bidder should be registered under the Indian Companies Act, 1956/2013 or Partnership Firms (LLP) registered under LLP Act 2008 or subsequent amendments.
- b. **Turnover:** Should have turnover of at least 25 cr.
- c. **Experience:** At least 3 years' experience with an in-house master origination lab in India.
- d. **Orders executed:** Should have supplied EALs/Holograms to at least one State Excise Department/UT.

2. The prospective bidders were to ensure submission of documents and presentation till 5.8.2025 through email at the specified email address. The petitioner had submitted its documents and presentation on 04.08.2025 (Annexure P-5). At the presentation held in pursuance to the expression of interest other than the petitioner five companies had participated. Before the committee on 7.8.2025, no presentation/demonstration through video conferencing had been made by the present petitioner due to paucity of time. Hence the petitioner on 8.8.2025 had submitted additional information (Annexures P-7 appended with the writ petition, R-2 and R-3 appended with the reply filed by respondent No 2).

3. Subsequent thereto, a meeting was held on 8.9.2025 for finalization of the hologram specifications for tender purpose. Details of the meeting have been appended with the reply filed by respondent No. 2 as Annexure R-4. Features offered by prospective bidders were presented in the meeting. Committee was of the view that features to be included should be identified/selected in a manner that ensures maximum participation and healthy competition in the tendering process. As a result, a combination of both holographic and non-holographic features for incorporation of tender documents were shortlisted. Other than the aforesaid, State-wise comparison of hologram features was also carried out to ensure that the selected features/combination have been adopted by the other State. Besides the aforesaid, the Committee, considering the harsh weather conditions of the State, recommended use of polyester-based environmental-friendly holograms. Further committee agreed that if a prospective bidder wanted to offer additional features other than the mandatory identified features, then the prospective bidder should be permitted to do so without any additional cost.

4. Thereafter, the RFP was published on 24.10.2025. In terms of the RFP, a pre-bid meeting was to be held on 31.10.2025 at 11.30 A.M. through video conferencing at the stated link. The bid submission was to start on 7.11.2025 (11.00 A.M.), and the bid

submission was to end on 17.11.2025 (2.30 P.M.). Opening of e-tender bids was to happen on 18.11.2025 (2.30 P.M.).

5. A pre-bid meeting in the case at hand was held on 31.10.2025. At the said meeting four entities besides the petitioner had participated Proceedings of the tender committee meeting held on 04.11.2025 for approval of responses prepared to the pre-bid queries in the case at hand have been placed on record as Annexure R-6 with the response of respondent no 2. Therein the scope and ambit of the pre-bid clarifications have been specified in the following terms;

"Pre-bid clarifications/revised clauses are meant to remove ambiguities, provide equal opportunity, incorporate justified changes, and ensure transparency in the bidding process. By providing clarifications and incorporating justified changes, the procuring authority ensures a level playing field for all participants, encourages wider participation, and prevents restrictive conditions. This ensures transparency, fairness, and accountability in procurement which is in line with the necessary guidelines as laid down in the applicable Government of India and State Government procurement policies".

6. Other than the aforesaid, The Manual for Procurement of Goods 2024, Chapter 5, specifically Para 5.2.4 thereof under the head "Clarification of Tender Documents", details the scope and ambit of the pre-bid clarifications (Annexure R-8 filed with the reply of R-2).

Relevant extract whereof reads as follow:-

"Only material queries and their responses shall be uploaded on the website without revealing the identity of the bidder making the query.

When the response to clarification changes the requirement significantly and/or when there is not much time left for the bidders to respond to such responses, the time and date of submission of tenders may also be suitably extended".

7. In view of the aforestated, queries which were found suitable by the committee were responded to by issuing a corrigendum dated 20.11.2025 (Annexure R-7 filed with the reply of R-2). Resultantly the last date of the bid submission was suitably extended from 17.11.2025 to 29.11.2025 till 2.30 P.M, and the same was to be opened on 1.12.2025 at 2.30 P.M. The principal grievance of the petitioner is that the queries raised by the petitioner at the pre-bid meeting, though received, were not taken into consideration when the corrigendum was released on 20.11.2025 (Annexure P-12).

8. In the aforesaid backdrop, the present petition has been filed seeking the following reliefs:-

1. To kindly issue writs, orders or directions particularly writ in the nature of mandamus directing the respondent/State to consider, decide and incorporate the suggestions made by the petitioner in its pre-bid queries (Annexure P-9) and till then the Tender process may kindly be stayed in the interest of justice; and
2. To kindly issue writs, orders or directions particularly for clarification or reconsideration of the specific conditions within the Tender documentation that appear discriminatory or prevent a "level playing field" for the bidders; and

3. To kindly issue writs, orders or directions particularly for appropriate intervention to ensure that all tender conditions are in full compliance with established procurement guidelines and constitutional principles of equity and non-discrimination; and
4. To kindly issue writs, orders or directions for a judicial review regarding certain tender stipulations to ascertain their consistency with the principle of a 'level playing field' for all potential bidders; and
5. To kindly pause the current tender process and to re-evaluate the process with the goal of re-issuing a revised tender notice that promotes maximum fairness and transparency; and

9. In the case at hand "tender jurisdiction" of the High Court under Article 226 of the Constitution of India is sought to be invoked by a party prior to participating in the tender. The judicial review of such contractual matters has its own limitations. At the very outset a reference to the judgement of the apex court in ***Uflex Ltd. v. State of T.N., (2022) 1 SCC 165*** wherein a word of caution qua interference in such matters has been pronounced. The relevant extract whereof reads as under:-

"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 (hereinafter referred to as "the Constitution"), 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.

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.

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”.

10. The first and foremost contention raised by the petitioner is with respect to the turnover clause mentioned on Page 9 of the tender documents. As per the same, a bidder is required to have an average annual turnover of not less than 24 crores during the preceding three years (financial years 2022-23, 2023-24, 2024-25) from all activities, including holograms. In this respect, it is contended that for a business of less than five crores, the respondent’s

requirement to have a 24 crores annual turnover is excessive. The same restricts participation of bidders. A comparison is sought to be drawn with a similar tender floated in the year 2019 by respondent No. 1, wherein the requirement of turnover was only Rs. 5 crores. The steep increase is therefore argued to be an unreasonable condition imposed by the respondents. The petitioner submits that queries in this respect had been raised at the pre-bid meeting held on 31.10.2025, however, the same have not been clarified by the respondents till date.

11. The aforesaid submission of the petitioner is without any merit. A perusal of the expression of interest dated 26.7.2025 (Annexure P-3) reveals that the approximate volume of holograms required for one year is approximately ten crores in number. In this respect, a perusal of the reply filed by respondent No. 2, specifically para 7 of the preliminary submissions, categorically reflects that the turnover condition has been fixed keeping in view the GeM specifications, wherein the minimum turnover to be asked from an OEM is four times the value of the tender. The said specification is discernible from Annexure R-10 (Page 312) appended with the reply filed by respondent No. 2. Other than the aforesaid, the turnover requirement specified in the tender has been fixed to ensure the capability of the bidder. The parameter is therefore neither found to be unreasonable or ex facie irrelevant. In every tender there is a

qualifying parameter with respect to turnover. The Court cannot sit over in judgment on what should be the turnover required for an entity to participate. Besides insofar as the petitioner is concerned, it cannot contend that all and sundry should be permitted to participate in matters of this nature. In tender matters it is a well settled position of law that rules of natural justice have no role hence the argument that query raised at the pre-bid meeting has not been responded to is of no consequence more so keeping in view the scope and ambit of the pre-bid clarifications detailed supra in paragraph five. Pre-bid queries serve only to clarify, not to create enforceable obligation. A prospective bidder cannot claim a vested right, i.e., a suggestion be implemented. Prospective bidders cannot dictate tender specifications.

12. The next contention raised by the petitioner is with respect to HSSMS certification. It is submitted by the petitioner that introducing the condition in clause No. 12 of Section 2.1 of the tender document is very demanding, as only companies with big infrastructure will have the certificate, and therefore competition would be restricted. Other than the aforesaid, it is submitted that a query in this respect had been raised, however, the same has not been responded to.

13. From a perusal of the reply filed by respondent No. 2, specifically para 8 of the preliminary submissions, it is evident that the

HSSMS certification in the bid was included on the direction of user department to ensure the following:-

- The hologram creation process is secure.
- The master/original hologram design is protected against theft or duplication.
- The supply chain is controlled (so unauthorized copies don't leak).
- Manufacturing quality is consistent, reducing risk of defects.

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 matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the authorities. Incorporation of the HSSMS certification in the case at hand has been made for valid reasons hence cannot be termed to be irrational, unreasonable or *ex facie* irrelevant. Even otherwise the Court cannot sit over in judgment on a qualifying parameter with respect to technology. As has already been stated in tender matters it is a well settled position of law that rules of natural justice and equity have no role to play.

14. It is next contended by the petitioner that the tender in the case at hand requires the bidder to develop a very simple hologram having no strong security features. As per the petitioner, the "MASTER" of the tender does not have any updated or adequate security features. Further, as per the petitioner, previous tender specifications in this respect should have been incorporated, as no counterfeit incidents were recorded in the State since 2019. Other than the aforesaid, according to the petitioner, specifications supplied to the respondents in pursuance of the expression of interest dated

8.8.2025 and in the pre-bid query dated 31.10.2025 in this respect have also not been considered.

15. In this respect, it would be appropriate to refer to the proceedings of the meeting held on 8.9.2025 pertaining to finalization of the hologram specifications for tender purposes, i.e., Annexure R-4 (Page 278), appended with the reply filed by respondent No. 2, which reads as follows:-

“It was informed that the department is presently using polyester based holograms incorporating a combination of both holographic and non-holographic features. The holographic features are visible to the naked eye, whereas the non-holographic features require a special device for verification.

The features offered by the bidders (Annexure-B) were presented in the meeting. After detailed deliberations, the Committee was of the view that the features to be included should be identified/selected in a manner that ensures maximum participation and healthy competition in the tendering process. Based on the detailed analysis of the features offered, the Committee considering the requirement of Department and to ensure healthy competition, shortlisted a combination of both holographic and non-holographic features for incorporation in the tender document. The details of the shortlisted features are at Annexure-C State-wise comparison of hologram features was also carried out to ensure that the selected features, or combinations thereof, have been adopted by other states as well. The details are provided at Annexure-D.

The Committee considering the harsh weather conditions of the state, recommended the use of polyester-based and environmentally friendly holograms. The Committee also finalized the general

Hologram material specifications for tender purpose. Detail at Annexure-E.

Further, the Committee unanimously agreed that if any bidder, in addition to the identified mandatory features, wishes to offer additional features inclusive of the quoted cost in the tender then the bidder shall be permitted to do so. It was further emphasized that although not mandatory, bidders are encouraged to offer a mobile app-based solution for hologram authentication, if available, at no additional cost.”

16. From the aforesaid it is evident that at the time of finalization of the hologram the committee had been informed of the specifications of the hologram presently being used by the department. From amongst the features offered the Committee selected in a manner that ensures maximum participation and healthy competition in the tendering process. Besides the aforesaid while selecting the specifications the requirement of Department was also kept in sight. The Committee permitted offering of additional features over and above the identified mandatory features within the quoted cost in the tender by a bidder. In formulating the specifications relevant factors were taken into consideration.

17. As already stated supra, the Court cannot sit over in judgment on a qualifying parameter with respect to technology. Besides we cannot say whether these conditions are better than what were prescribed earlier for in such matters the authority calling for tender is the best judge. The author of the tender is best placed to determine its commercial and technical requirements. In the case at

hand we are concerned with sale of liquor. The objective has been set out by the State Government i.e. use of such technology as would prevent spurious liquor from being sold. It is a well-known fact that a large revenue collection comes to the state through sale of liquor. It thus must be left to the State Government to see how best to maximise its revenue and what is the technology to be utilised to prevent situations like spurious liquor, which in turn would impede revenue collection, apart from causing damage to the consumers.

18. Besides the aforesaid, it is submitted by the petitioner that, as per the requirements of the tender, a polyester-base hologram is to be provided. It is further submitted by the petitioner that in its letter dated 8.8.2025 addressed in pursuance of the expression of interest and pre-bid query dated 31.1.2025, the petitioner had indicated the availability of environment-friendly biodegradable holograms, however, the same were never considered by the respondents.

19. In the meeting held on 8.9.2025 pertaining to finalization of the hologram specifications for tender purposes, Annexure R-4 (Page 278) the Committee after considering the presently in use polyester based holograms, features offered by the bidders and keeping in view the harsh weather conditions of the state recommended the use of polyester based environmentally friendly holograms. This Court cannot sit over in judgment on a parameter with

respect to technology. Besides the respondents are best placed to determine technical requirements to subserve the twin requirements of augmenting state revenue and impeding the sale of spurious liquor. Hence the plea sought to be raised is without any merit.

20. It is further contended that the previous tender floated in 2019 contained an experience clause, which now stands completely deleted, and in the present tender, a five-year experience clause has been incorporated in Section 2 of the tender document. Last but not the least, it is contended that three major clauses contained in the previous tender of 2019 have now been omitted, namely: (a) the bidder or its associate or any constituent thereof should not have been involved in any criminal activity. Further should not have been convicted of any criminal offence. In this regard an affidavit was earlier required to be filed. It is submitted that this clause was addressed in the corrigendum dated 20.11.2025, but it was restricted only to matters relating to holograms, (b) the bidder should not have any conflict of interest in the manufacture/sale/distribution of liquor at any point of time, for which an affidavit was also required to be submitted, and (c) a bidder who is currently supplying security holograms for affixation for liquor purposes in any adjacent State touching the border of Himachal Pradesh was previously disentitled to participate.

21. Terms and conditions have been prescribed apparently bearing in mind the nature of contract. In the matter of formulating

conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities. Unless the action of tendering authority is found to be malicious and a misuse of its statutory powers interference by Courts is not warranted. No case of mala fides has been made out to the effect that the terms and conditions of the tender are tailor-made to suit a particular bidder. Besides whether these conditions are better than what were prescribed earlier cannot be said by this court for in such matters the authority calling for tenders is the best judge.

22. For the foregoing reasons, the petitioner has failed to persuade this Court to interfere in the tender process by exercising powers of judicial review, therefore, the present writ petition being devoid of merit is dismissed, so also the pending miscellaneous applications, if any.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

16th April, 2026
(Tarun)