# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.13329 of 2026**

**CNR No. BRHC010888642026**

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Rai Raj Construction Pvt. Ltd. having its Corporate Office at 601, 6th floor, Lav Kush Tower, Exhibition Road, P.S. Gandhi Maidan, District Patna through its Director Baidya Nath Rai, aged about 54-years, Male, Son of Mahendra Rai, Resident of 410, Ashiyana Plaza, Budha Marg, P.S. Kotwali, District Patna, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer In-Chief, Works Management, Road Construction Department, Government of Bihar, Patna.
3. The Chief Engineer (South), Road Construction Department, Government of Bihar, Patna Cum Chairman, Technical Bid Evaluation Committee, Road Construction Department, Government of Bihar, Patna.
4. The Executive Engineer, Road Division-Sonepur, District Saran, Bihar.

... ... Respondent/s

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**Appearance :**

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|---|---|---|
| For the Petitioner/s | : | Mr. Prabhat Ranjan, Advocate |
| | | Mr. Shubham Kumar, Advocate |
| | | Mr. Ansh Prasad, Advocate |
| For the Respondent/s | : | Mr. S.D. Sanjay, Advocate General |
| | | Mr. Vijay Chandra Maurya, AAG-2 |
| | | Mr. Lokesh Kumar, AC to AG |
| | | Mr. Rahul Kumar, AC to AG |
| | | Mr. G.R. Shahi, AC to AG |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**CAV JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 15.10.2026**

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This writ petition has been filed by the petitioner with the following prayers:

> *"(i) Quashing of the decision of the Technical Bid Evaluation Committee as contained in Memo No. 2433 dated 13.08.2026 (Annexure P/2) to the extent:-*
>
> *a) Technical bid of the petitioner has been held to be non-responsive and thus, disqualified in terms of Clause 1.2.1 (b) of Section 3 of the Model Bidding Document for the allegation of failure to execute the Agreement in connection with the 2-works awarded to the petitioner under Road Division, Bihar Sharif and the Bank Guarantee furnished is not in accordance with ITB Clause 17 and Serial 18 of the NIT inasmuch as the uploaded Bank Guarantee incorporate guarantee will be a Clause "this operative when accompanied with advise (SFMS) issued from the advising Bank" which makes it conditional Bank Guarantee;*
> *b) It has been decided to open the financial bid of the technically responsive bidders in case no objection is received against the decision of the Technical Bid Evaluation Committee in terms of Departmental Order No. 141 read with Memo No. 5355 dated 28.10.2021; and*
> *c) It has been decided to proceed further for re-tender only after disposal of the objection from the competent level in case any such objection is received against the decision of the*

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*Technical Bid Evaluation Committee.*

*(ii) Direction upon the Respondents to open the financial bid of the petitioner in connection with NIT No. 02/2026-2027 RCD/Road Division Sonepur dated 11.05.2026 Package No. 26 B and proceed further in accordance with the tender conditions; and*

*(iii) Restraining the Respondents from giving effect to the decision of the Technical Bid Evaluation Committee as contained in Memo No. 2433 dated 13.08.2026 (Annexure P/2) during the pendency of the present writ application and/or the without the leave of this Hon'ble Court."*

2. The facts as noted from the record and highlighted by Mr. Prabhat Ranjan, learned counsel appearing for the petitioner are that, the petitioner is a firm registered as Class-1 contractor under the Bihar Contractors Registration Rules, 2007 ('Rules of 2007' in short) and is engaged in construction work on behalf of various Government Departments in the State of Bihar. According to him, a Notice Inviting Tender (NIT) No.02/2026-2027 RCD/Road Division, Sonepur dated 11.05.2026 was issued by the Respondent No. 4 i.e. the Executive Engineer Road Division, Sonepur - District, Saran, Bihar in connection with ordinary maintenance works, initial rectification works, periodic maintenance work including re-application of road markings etc. under the Rosera Division of

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Road Construction Department, Bihar. He stated that the present writ application relates to work advertised under Package No. 26B in the aforesaid NIT. It is his submission that as per the knowledge of the petitioner, seven bidders participated in the tender process by submitting their respective bids. For the purpose of evaluation of the responsiveness of the technical bids of the respective bidders, the three-member Technical Bid Evaluation Committee ('TBEC' in short) under the Chairmanship of Respondent No. 3 convened its meeting on 13-08-2026. The TBEC vide Proceedings Memo No.2433 dated 13-08-2026 evaluated the technical bids of the respective bidders and decided to disqualify four bidders including the petitioner herein and declared three bidders as qualified the technical bid evaluation. He submitted that as per TBEC Proceedings dated 13-08-2026, the technical bid of the petitioner was found to be non-responsive in terms of Clause 1.2.1 (b) of Section 3 of the Model Bidding Document (MBD) for failure on the part the petitioner to execute the agreement in connection with two works earlier allotted to the firm under the Road Division, Bihar Sharif and the Bank Guarantee furnishing was not in terms of Clause 17 of the ITB read with Clause 18 of the NIT and also that the petitioner has furnished a conditional Bank Guarantee.

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3. He submitted that a further decision was taken to open the financial bids of the technically responsive bidders in case no objection is received against the decision of TBEC and in the eventuality any objection is received, further action shall be taken only after the disposal of such objection by the competent authority.

4. He stated that in so far as the first ground of rejection is concerned, the same pertains to Letter of Acceptance (LoA) bearing Nos.1425 and 1426 dated 03.07.2025 issued by the Executive Engineer Road Division, Bihar Sharif, which were challenged in this Court, vide CWJC No. 15252 of 2025 (LoA 1425), Rai-Raj Construction Pvt. Ltd. Vrs. State of Bihar and Others on various grounds and the Coordinate Bench of this Court vide order dated 09.10.2025 granted *status quo* in connection with the said LoA. He submitted that aforesaid CWJC No. 15252 of 2025 came to be disposed of by a Co-ordinate Bench of this Court vide order dated 27.07.2026 by setting aside the LOA, as contained in letter No. 1425 dated 03.07.2025, with a further direction to the respondents to return the Bank Guarantee which was furnished as Earnest Money Deposit within two weeks.

5. Mr. Ranjan, further submitted that CWJC

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No.15269 of 2025 filed by the petitioner was in respect of LoA No. 1426 of 2025 dated 03.07.2025, which also came to be disposed of by the Coordinate Bench of this Court vide order dated 27-07-2026 by setting aside the LOA dated 03-07-2025 with similar directions to the respondents to return the Bank Guarantee which was furnished by the petitioner as EMD.

6. It was the submission of Mr. Ranjan that the decision of the respondents to reject the technical bid of the petitioner and consequential decision vide Memo dated 13.08.2026 is absolutely arbitrary and illegal, dehors the tender conditions and in express violation of the judicial orders passed by this Court.

7. It was his submission that Clause 1.2.1 (b) of Section 3 of the MBD has no application as the respondents had not brought on record even a single instance of record of poor performance such as abandoning the work; improper completion of the contract; inordinate delays in completion; litigation history or financial failures etc. in connection with any work contracted with the petitioner.

8. He stated that the disqualification under Clause 1.2.1 (b) of Section 3 of the MBD could be invoked only after agreement has been executed and one or more of the several

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exigencies like abandonment of work, failure to complete the work properly, inordinate delay, litigation history or financial failure occurs. He also submitted that Clause 1.2.1 (b) of Section 3 of the MBD could be invoked only when the agreement has been executed earlier and there is failure on behalf of the bidder and not at stage before the execution of the agreement. He submitted that the reference to the failure of the petitioner to execute the agreement in connection with the two works awarded under Bihar Sharif Road Division is also misconceived, in as much, as both the LOAs being 1425 and 1426 dated 03.07.2026 were initially stayed by the Co-ordinate Bench of this court and finally both the LOAs were quashed by this Court and as such, there was no occasion for the respondents to disqualify the petitioner on the ground of failure to execute the agreement pursuant to two LOAs as referred to above.

9. In effect, it was his submission that the decision dated 13.08.2026 is not only in violation of the above Clause but is in express derogation and contempt of the judgment of this Court. He stated, the grounds mentioned in the impugned decision travers beyond the stipulation in the LoAs with regard to consequence of failure to execute the agreement in

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connection with any work awarded to the bidder. It was also his submission that the impugned decision has overlooked the consequences of the failure of any bidder to execute the agreement after the issuance of the agreement, in as much as according to the bidding document failure can lead only to cancellation of LoA and forfeiture of the EMD and cannot result in disqualification of the bidder in subsequent tender process.

10. One of the plea of Mr. Ranjan was that TBEC cannot take a final decision but can only recommend to the Departmental Tender Committee (DTC) the technical responsiveness of the prospective bidders. He also stated that the ground that the Bank Guarantee furnished by the petitioner as EMD is conditional is concerned, the stipulation is that the Bank Guarantee will be operative when accompanied with the advice (SFMS) issued from the advising Bank, will not make the Bank Guarantee conditional. He submitted that nowhere in the tender document, it has been mentioned that the Bank Guarantee to be furnished by the bidder as EMD should be conditional or unconditional nor any format has been prescribed. That apart, it was also his submission that the stipulation in the Bank Guarantee, does not in any way violate the requirements under Clause 17 of the ITB or Serial No.18 of

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the NIT.

11. In any case, it was his submission that the stipulation that the guarantee will be operative when accompanied with advice (SFMS) issued from the advising Bank will not make the Bank Guarantee conditional and the same has no bearing or connection with the revocation, forfeiture or any other action relating to the Bank Guarantee by the department. He also laid stress on the fact that the issuing Bank vide communication dated 14.08.2026 has also clarified to Respondent No. 4 that the aforesaid is a standard clause prescribed as per the banking procedure under the RBI guidelines and not as a condition for revocation of the Bank Guarantee.

12. One of the submission of Mr. Ranjan is that the TBEC headed by the Chief Engineer cannot take any final decision with regard to the opening of the financial bids or financial bids evaluation and the decision on all such matters is to be taken by DTC.

13. He relied upon the decision of the respondents contained in Memo No. 4676 (E) dated 17.07.2025 to contend that the decision with regard to the cancellation of the tender or re-tender of the work is to be taken by the four-DTC headed by

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the Departmental Secretary.

14. He also submitted that in terms of the Memo No. 874 (E) dated 05.02.2026 and Memo No. 1547 dated 26.02.2026 it is actually the DTC headed by the Departmental Secretary which has to take a final decision on the technical responsiveness of the bidders.

15. Similar are his submissions with regard to the decision of the respondents in terms of Memo No. 1535 dated 25.02.2026. He submitted that the decision taken by the TBEC in the proceedings dated 13.08.2026 is in entirety beyond jurisdiction and as per Departmental Letter No.3870 as contained in Annexure P/7 and the prevalent procedure, the TBEC has got no jurisdiction to take such decision, rather it is the DTC headed by the Secretary of Department who has to take the decision.

16. That apart, his submission was also by drawing our attention to I.A. No. 01 of 2026 to contend that the decision of the Complaint/Grievance Committee rejecting objections dated 14.08.2026 of the petitioner vide Memo No.5858(E) dated 24.08.2026 is absolutely arbitrary, non-speaking and beyond jurisdiction. This according to him is because the said committee is required to consider the objections and complaint

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filed by the bidders against the decision of the TBEC only and make recommendations to DTC. Even otherwise, the Complaint/Grievance Committee consisting of four officers whereas the impugned decision by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary Headquarter/ Engineer-in-Chief (Headquarter) being Special Invited Officer is absent and instead a Joint Secretary, Road Construction Department had participated as member in the proceedings of the Complaint Committee.

17. The Complaint Committee after considering the complaint/objection should have referred the matter to the DTC headed by the Departmental Secretary and it is this DTC which is the final authority to take a decision with regard to responsiveness of the technical bid of the respective bidders and opening of financial bids. In other words, it is his submission that the Complaint/Grievance Committee in the present case has itself erroneously assumed the jurisdiction to take a final decision with regard to the responsiveness of the technical bid of the respective bidders and to issue directions to open the financial bids.

18. He submitted that even the TBEC decision dated 13.08.2026 rejecting the technical bid of the petitioner on the

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ground that the Bank Guarantee submitted/uploaded by the petitioner as a Bid Security/EMD is a conditional Bank Guarantee as against the requirement of the same being unconditional, whereas the ground on which the Complaint/Grievance Committee has taken the impugned decision is a fresh ground, that the petitioner has not submitted along with the Bank Guarantee the relevant advise (SFMS), is at variance with the decision of the TBEC.

19. Further, according to him, a decision has been taken by the Complaint/Grievance Committee oblivious of the Letter dated 14.08.2026 issued by the Bank clarifying that the bid security is not a conditional guarantee but an unconditional one. He seeks the reliefs as prayed for in the petition. He relied on the judgment of the Hon'ble Supreme Court in ***Maha Mineral Mining and Benefication Pvt. Ltd. vs. Madhya Pradesh Power Generating Co. Ltd. & Anr. CA*** arising out of ***SLP(C) 1940/2025*** and ***Shanti Construction Pvt. Ltd. vs. The State of Odisha and Ors. CA*** arising out of ***SLP(C) 5829/2023*** in support of his submissions.

20. On the other hand, Mr. S. D. Sanjay, learned Advocate General appearing for the respondents would contend that the petition filed by the petitioner is infructuous, in as much

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as the financial bids have been opened, the successful bidder has been identified. He submitted that pursuant to NIT dated 11-05-2026, the petitioner along with 6 bidders had participated in the tender. The financial bids of the qualified bidders were opened and the lowest bidder has been identified for the award of the tender. He submitted that the bid evaluation process involves the process from the opening of the technical bid and evaluation by the TBEC. The technical bid is opened from the Online Portal after downloading the documents uploaded by the bidder. The TBEC takes into account only documents which are uploaded on the EPROC Portal of the Government of Bihar. Upon examination of the technical bid, the TBEC records a decision declaring each of the bid to be either technically responsive or non-responsive along with reasons for its decision.

21. If any person participating in the bid is aggrieved by the decision of the TBEC, they are entitled to raise objection within two days of the opening of the bids. All objections received by the TBEC along with its decision are forwarded to the Complaint/Grievance Committee constituted vide a Departmental Notification issued from time to time and in the instant case, it was issued by Letter No.2217 (E) dated 01.04.2026, Letter No. 2360 (E) dated 09.04.2026 and Letter

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No.5625 (E) dated 17.08.2026. Thereafter, the Complaint/Grievance Committee had agreed with the recommendation of the TBEC and thereby rejected the objections of the petitioner against the decision of the TBEC to declare the bid of the petitioner non-responsive.

22. He stated that the reasons stated for declaring the bid as non-responsive are (1) Bid Security Bank Guarantee mentions that the Bank Guarantee will be operative when accompanied with advice (SFMS) issued from the advising Bank but the same advice SFMS was not uploaded on the EPROC portal. In absence of the advice, SFMS, the Bank Guarantee was conditional which was contrary to the expressive bid terms contained in the Clause. The form of the security bid was provided in the Section 4B of the NBD. The other bidders have submitted, the Bank Guarantees in the same manner and without any condition. On the basis of the recommendation in the meeting, a final decision is recorded by the Complaint/Grievance Committee which in the instant case has rejected the objections dated 14.08.2026 of the petitioner. Thereafter, the financial bids were opened.

23. He contended that it is a strange coincidence that in the last three bids submitted by the petitioner, technical

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lacuna have been found to be left on the basis of which the petitioner has filed objections and litigated the matter before this Court. It is also rather a strange coincidence that every time the financial bid of the petitioner is substantially lower than the Department's estimate. The Final Order dated 27.07.2026 in CWJC No. 15252 of 2025 is in the process of being challenged and objections relating to abandoning the work by the petitioner is also justified in light of the fact that although on technical ground the petitioner wanted to resile out of its obligation under the bid, but the intent, purpose and conduct of the petitioner cannot be missed.

24. He stated that the averments made in I.A No. 01 of 2026 are concerned, the same are beyond the averments made in the writ petition and as such these averments need not be looked into as no opportunity to revert was given by the respondents. Even otherwise, no rejoinder to the counter affidavit has been filed. Hence, he seeks the dismissal of the bid petition.

**ANALYSIS**

25. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is whether the respondents are justified to treat the technical bid

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of the petitioner as non-responsive.

26. The grounds on which bid of the petitioner was treated as non-responsive are (1) failure to execute the agreement in connection with two works awarded to the petitioner under Road Division, Bihar Sharif and (2) the Bank Guarantee executed is not in accordance with 17B Clause 17 and Serial 18 of the NIT, in as much as the uploaded Bank Guarantee will be operative when accompanied with advice (SFMS) issued from the advising Bank which makes it conditional Bank Guarantee.

27. In so far as (1) above is concerned, Mr. Ranjan has stated that LOA Nos. 1425 and 1426 have been set aside by the Court, as such, there was no occasion to execute the agreements which can be a ground to declare the technical bid as non-responsive. His Submission was also the Clause 1.2.1 (b) of Section 3 of MBD is not applicable as the respondents have not brought on record even a single instance of poor performance and also the Clause can be invoked only when an agreement has been executed earlier and there is a failure on the part of the bidder to execute the work; failure to execute any agreement can lead to forfeiture of the earnest money and cancellation of the agreement.

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28. Whereas, the case of the respondents is that in the last three bids submitted by the petitioner, technical lacunas have been found, in as much as every time the financial bids of the petitioner were substantially lower than the departmental estimate i.e. submitting lower bids and then finding ways to stall the tender process.

29. It is a conceded position that the Courts have set aside the LoAs No. 1425 and 1426. The same was on the ground that the respondents have not followed Clauses 27.2 and 27.4 of the bid opening and evaluation provisions. So in that sense, the agreements could not have been executed as the LoAs were set aside. Mr. Ranjan is right in stating that the ground that there is a failure on the part of the petitioner to execute the agreement in connection with the two works shall not be available to the respondents to treat the technical bid as non-responsive. Having said that in so far as the ground (2) is concerned that the Bank Guarantee was conditional has to be seen from the context of the format of the Bank Guarantee provided in the NIT. The same reads as under:-

**"BANK GUARANTEE FOR ADVANCE PAYMENT**

To:

_____ [name of Employer]
_____ [address of Employer]
_____ [name of Contract]

Gentlemen:

In accordance with the provisions of the General Conditions/ Particular Conditions, Clause 45 ("Advance Payment") of the above-mentioned Contract,
_____ *[name and address of Contractor]* (hereinafter called "the Contractor") shall deposit with

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_____ *[name of Employer]* an unconditional Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of ₹_____ [amount of guarantee][1] _____ [in words].

We, the _____ [bank], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to _____ [name of Employer] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding ₹_____ [amount of guarantee][1] _____ [in words].

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed there under or of any of the Contract documents which may be made between _____ [name of Employer] and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification. This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until _____ [name of Employer] receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and Seal: _____
Name of Bank: _____
Address: _____
Date: _____

[1] An amount shall be inserted by the bank representing the amount of the Advance Payment, & denominated in Indian Rupees

Section 8: Contract Forms"

30. The above clearly depicts that the Bank Guarantee has to be unconditional. In fact, the stand of the petitioner in Paragraph No. XIV of the writ petition is that the tender document does not stipulate that Band Guarantee should be conditional or unconditional nor any format is prescribed. The stand is factually incorrect, in view of the format reproduced above. We must state that Mr. Ranjan during his submissions conceded that the Bank Guarantee has to be unconditional. We are clear that the same is conditional because at Page No. 401 of the Paper Book the Bank Guarantee reads as under:-

> ***"This Guarantee will be operative when accompanied with advice (SFMS) issued from the Advising Bank."***

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31. According to Mr. Ranjan, the above condition does not make the Bank Guarantee conditional and also the same shall not have bearing or connection with the revocation, forfeiture, or any other action in relation to the Bank Guarantee by the Department. He also stated that the Bank Guarantee is not conditional has been clarified to the Respondent No.4 by the Bank that the aforesaid is a standard clause prescribed as per banking procedure under RBI Guidelines and not as a revocation, forfeiture or any other action.

32. The submissions of Mr. Ranjan are not appealing. This we say so, as the above condition makes the Bank Guarantee operative only when accompanied with an advice (SFMS) and in that sense the Bank Guarantee was conditional. Such a stipulation is at variance with the format given in the bid document which we have reproduced above.

33. In fact, Mr. Sanjay has by drawing our attention to the counter affidavit contended that in the absence of advice SFMS the Bank Guarantee becomes conditional is appealing because without the advice the Guarantee will not be honoured/operative. So it follows looking from any angle the Bank Guarantee was conditional.

34. The reliance placed by Mr. Ranjan on the letter

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of the Bank dated 14-08-2026 that it is a standard clause and has no bearing or connection with revocation, forfeiture or any action relating to Bank Guarantee by the Department, does not answer the ground on which the respondents treated the technical bid non-responsive. Suffice it to state the said Bank Guarantee is conditional in the absence of any advice (SFMS).

35. The further submission of Mr. Sanjay that the other bidders have submitted the Bank Guarantee in the prescribed format without precondition would also justify the decision of TBEC and Complaint/Grievance Committee in treating the technical bid as non-responsive, is justified.

36. One of the submission of Mr. Ranjan is also that TBEC headed by the Chief Engineer cannot take a final decision with regard to opening of the financial bids or financial bid evaluation. Suffice it to state that TBEC has only observed about the opening of the financial bids. It does not say TBEC shall open it. There is no dispute that the financial bids were opened by the Departmental Tender Committee (DTC). Hence, this plea is not appealing and is rejected. The plea that in terms of Memo dated 05.02.2026 and the Memo dated 26.02.2026, it is the DTC headed by the Secretary which has to take final decision on the technical bids is concerned the same is

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unmerited. The very nomenclature of TBEC, depict it is the technical bid evaluation Committee; surely it evalute the technical bids whether it is responsive or non-responsive. So to that extent, the decision is binding. In any case, the petitioner is estopped for contending so, for the reason it did submit its objections to the Complaint/Grievance Committee. In that sense it accepted the jurisdiction of the TBEC against whose decision filed objections to the Complaint/Grievance Committee which was constituted vide a Departmental Notifications issued time to time as stated in the counter affidavit.

37. So the petitioner having accepted the decision of the TBEC and having invoked the jurisdiction of Complaint/Grievance Committee by submitting objections, it cannot now challenge the very jurisdiction of the TBEC, declaring its bid as non-responsive, that too on the ground it is DTC which is competent.

38. In so far as the judgments relied upon by Mr. Ranjan as noted above are concerned, surely those judgments are not applicable in the fact situation and in view of our conclusion above and as such are distinguishable.

39. Even otherwise, in the facts and circumstances of the present case, the impugned action does not require any

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interference under Article 226 of the Constitution of India in the absence of any prejudice, nor it is the case of the petitioner that the impugned action is actuated by *mala fide*. In view of our discussion above, we hold the petitioner is not entitled to the reliefs sought. The writ petition is liable to be dismissed. We order accordingly. No costs.

40. Pending application(s), if any, shall also stand disposed of.

**(V. Kameswar Rao, CJ)**

**(Partha Sarthy, J) :** I agree.

**(Partha Sarthy, J)**

shailendra/-

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| **AFR/NAFR** | A.F.R |
| **CAV DATE** | 25.09.2026 |
| **Uploading Date** | 15.10.2026 |
| **Transmission Date** | N/A |

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