
(2025) 07 SHI CK 1056
In the High Court Of Himachal Pradesh
Case No : CWP No. 9313 Of 2025

New India Contractor and Developers Private Limited	APPELLANT
Vs	
State Of Himachal Pradesh & Ors	RESPONDENT

Date of Decision : 14-07-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 50, Order 22 Rule 3, Order 22 Rule 4, Order 22 Rule 5, Order 22 Rule 8, Order 22 Rule 12

Citation : (2025) 07 SHI CK 1056

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Division Bench

Advocate : Bhag Chand Sharma, Ravi Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. At the outset, it needs to be observed that the instant petition had earlier been dismissed by the Court in limine on 4.6.2025 by passing following order:-

"Issue notice. Mr. Ramakant Sharma, learned Additional Advocate General and Mr. Vedhant Ranta, Advocate appear and waive service of notice on behalf of respondents No.1 & 2 and respondents No. 3 to 5, respectively.

2. Since the tender has already been processed, inasmuch as, the technical bids are now being evaluated, the instant petition which has been filed only on 03 06 2025 is clearly belated and entertaining this petition, at this stage, would only delay the entire tender process, given the fact that it is a time-bound project.

3. Consequently, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of."

2 However, the order passed by this Court was set aside by the Hon'ble Supreme Court in SLP (C) No. 16475/2025 vide order dated 20.6.2025, which reads as under:-

"1. By the impugned order, the High Court dismissed the writ petition filed by the petitioner on the ground that tender has already been processed and technical bids are being evaluated.

2. According to the petitioner, because of a technical glitch deposit of money made by the petitioner was not reflected on the portal of the Department and therefore tender could not be submitted.

3. We are of the view that the matter needs to be adjudicated on merits. During the course of hearing we have been informed that only the technical bids are being evaluated and financial bids are yet to be opened.

4. Having regard to the above, the impugned order is set aside and the matter is remanded back to the High Court for fresh adjudication on merits. In the meanwhile respondents shall not open the financial bids.

5. Parties are directed to appear before the High Court on 25. 06.2025.

6. Special Leave Petition is accordingly disposed of.

7. Pending application(s), if any, shall stand disposed of."

3 The facts as necessary for adjudication of the instant petition are that respondents No. 3 to 5-Corporation had invited e-tender for the work of "Development of Bulk Drug Part at Una District Una (H.P.) SH: Formation cutting, C/o internal roads, storm water drains, bridge and boundary fencing PH-I". The estimated cost of the work was about Rs. 2,87,57,90,020/-. The time allowed for carrying out the work was 18 months and bid security (EMD of Rs. 2,98,00,000/- alongwith cost of tender (i/c GST) Rs. 47,200/- was required to be deposited while submitting the bid for above work.

4 The tender was issued on 19.04.2025 and the last date of submission of technical and financial bid was 20.05.2025 (11.00 AM).

5 On 17.05.2025 the respondents issued a Corrigendum-V whereby due to administrative and technical reasons the dates for online bids and opening of technical bid were revised as under:-

Description

Earlier (as per corrigendum-IV)

Revised key dates

Submission of online bids

19.04.2025 (11:00 A.M.)

To 19.05.2025 (5.00 P.M.)

19.04.2025 (11:00 A.M.) to 30.05.2025 (5.00 P.M.)

Opening of technical bids

20.05.2025 (11.00 A.M.)

30.05.2025 (11.00 AM)

6 As per the pre-qualification for participating in the technical bid, one was required to deposit RFP fee of Rs.47,200/- along with EMD of Rs. 2,98,00,000/- and certain certificates like GSTIN, EFN, PAN, Solvency Bank Certificates etc.

7 According to the petitioner-firm, it fulfilled all the eligibility conditions laid down by the respondent-Corporation and its bid was substantially responsive in all aspects to participate in the said tender process. It is averred that on 30.5.2025 at 1.34.02 P.M., the petitioner had deposited Rs.2,98,47,200/- vide transaction reference No.107315568 through respondent No.6-ICICI Bank.

8 The petitioner despite depositing security amount was unable to upload/complete the other documents/formalities as required on account of technical glitch without any fault on its part. The reason for not permitting the petitioner to complete the technical bid was that due to technical error the fee status of the petitioner with regard to the tender was shown as "payment failure"

9 The petitioner thereafter through its Director immediately sent an e-mail dated 30.4.2025 at 4.50 P.M. to respondent No.5-Executive Engineer of Corporation, informing him the technical glitch in respect of payment deposited on H.P. government portal.

10 According to the petitioner, respondents No. 3 to 5 were duly apprised of the fact that despite making successful payment of Rs.2,98,97,200 at 1.34 P.M., the petitioner was unable to upload its technical bid because of technical glitch. The petitioner tried to contact the representatives of the respondent-Corporation seeking time to upload its documents, however, no heed was paid to the request of the petitioner.

11 The petitioner thereafter on 31.5.2025 at 5.31 P.M. again requested the respondent-Corporation to investigate the payment issue and resolve the discrepancies by extending time to submit technical bid, but the same was also not acceded to, constraining the petitioner to file the instant petition for grant of the following substantive reliefs:-

"(i) That this Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate writ or order directing the respondent No. 3 & 5 to permit the petitioner to upload his technical bid with regard to "Development of Bulk Drug Plant at Una District Una (H.P.) S : Formation cutting, C/o internal roads, storm water drains, bridge and boundary fencing PH-I" as the entire amount required to be paid stood paid by the petitioner from his bank account at 1.34 PM on 30-5-2025 vide account statement Annexure P 5 and still the petitioner was prevented from uploading the requisite technical bid by the closing date i.e 30-5-2025 and time despite no fault of the petitioner and entirely on account of technical glitch and the petitioner apprised the respondents about it well before the closing date and time vide email (Annexures P7).

(ii) That this Hon'ble Court may further be pleased to issue writ of mandamus declaring that the inaction on the part of the respondent No. 5 in not permitting the petitioner to upload the technical bid has resulted in the loss of due opportunity to the petitioner in tender for "Development of Bulk Drug Part at Una District Una (H.P.) SH: Formation cutting, C/o internal roads, storm water drains, bridge and boundary fencing PH-I".

(iii) That this Hon'ble Court may be pleased to issue writ of mandamus, order or direction preventing the respondents not to proceed further till the technical bid of the petitioner is uploaded for "Development of Bulk Drug Part at Una District Una (H.P.) SH: Formation cutting, C/o internal roads, storm water drains, bridge and boundary fencing PH-I".

12 Respondents No. 3 to 5-Corporation have filed their reply, wherein they had taken preliminary objection(s) regarding maintainability of this petition by taking exception to the fact that the petitioner has not brought on record the pertinent factual aspects as are necessary for the adjudication of the present case. It is averred that an amount of Rs.2,98,00,000/- (earnest money) and Rs.47,200/- (RFP fee), which the petitioner claims to have been debited from its account to the payment gateway of HP Tender Protel has never been credited to the payment gateway.

13 It has been averred that the respondent-Corporation received e- mail of the petitioner on 31.5.2025 with regard to its failure to upload the bid on the HP Tenders Portal and accordingly this issue was taken up with National Informatics Center, Shimla (NIC) by sending e-mail to it on 2.6.2025 at 2.21 P.M. and in response to the e-mail, NIC on 3.6.2025 reverted back to the respondent-Corporation stating that as the bid was not submitted by the bidder, therefore, the payment details were not captured in the procurement system and they also referred the matter to the Bank.

14 It is further averred that there is no provision for extension of bid submission as bid submission date of tender had already closed on 30.5.2025 (5:00 P.M.) and the tender had already been opened/decrypted.

15 It is averred that it was on 18.6.2025, the respondent-Corporation had received an e-mail from the ICICI Bank, in which it was stated that the payment was not received on the ICICI gateway being used by the HP Tenders Portal and the amount had been refunded back to the client.

16 Further, objection has been taken to the effect that on the last date of bid submission, when the petitioner was trying to upload its bid, 9 other bidders had successfully uploaded their bids, which clearly indicates that there was no technical glitch on the part of the respondent-Corporation or else 9 other bidders would also not have been able to upload the bids on 30.5.2025, which had been received between 2:43 P.M. and 4:39 P.M., precisely the time when, as per the petitioner, it was trying to upload its bid.

17 In the rejoinder filed by the petitioner to the reply of respondents No. 3 to 5, contents of the reply have been denied and averments made in the petition have been reiterated and reaffirmed.

18 The ICICI Bank, which has been arrayed as respondent No.6, has filed its separate reply, wherein it too has questioned very maintainability of the petition on the ground that the dispute is limited to the extent that the payment for the bid was initiated/carried out on 30.5.2025 through the account maintained by the petitioner with the ICICI Bank and it

has been submitted that the petitioner had initiated the payment through internet banking on 30.5.2025, which was supposed to be the last date for closing of the financial bid. The payment was initiated between 1:30 P.M. to 2:00 P.M. through internet banking by the petitioner, the details of the beneficiary and their details were filled in by the petitioner itself. In response to the above said transaction, the response was generated by the ICICI Bank. The account of the petitioner was debited at the end of the ICICI Bank and there was no further intimation from the aggregators, namely, Worldline ePayments India Private Limited.

19 It is further averred that from 30.5.2025 to 2.6.2025, the payment /amount was lying with the aggregators and due to technical failure, the payment could not be credited into the account of respondent No.5. On 2.6.2025, the payment in question was refunded back to the ICICI Bank by the aggregators and ICICI Bank credited the same to the account of the petitioner. The aggregators through e-mail dated 26.6.2025 provided the details of the payment and admitted that they were able to identify the disputed payment while carrying out the reconciliation activity on their end on 31.5.2025 and that the amount was refunded to the remitter as refund was initiated on 31.5.2025. Lastly, it has been averred that ICICI Bank cannot be blamed for the technical failure.

20 Mr. Sunil Mohan Goel, learned Senior Advocate duly assisted by Mr. Raman Jamalta, Advocate would argue that since the financial bid is yet to be opened and technical bid was not accepted only on account of technical glitch, no prejudice would be caused to the respondents-Corporation in case they consider its bid. He further submits that after all justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way and would heavily rely upon the judgment passed by the Hon'ble Supreme Court in S. Nagraj vs. State of Karnataka, 1993 Supp (4) SCC 594, more particularly, para 18 thereof, which reads as under:

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order

was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake, Such inequitable consequences as have surfaced now due to State cannot be permitted to continue."

The learned Senior counsel for the petitioner would further argue that once the petitioner has done everything within its reach, then he could not be expected to perform the impossible and therefore, also the respondents should still consider its technical bid.

21 On the other hand, Mr. Anup Rattan, learned Advocate General and Mr. Sankalp Thakur, Advocate, would argue that once there is no technical glitch at the end of respondents-Corporation and the same if at all was at the petitioner's end, the respondents-Corporation cannot be compelled to consider its technical bid as this would be not only illegal but arbitrary and would amount to re-writing the contract by extending the timelines.

22 We have heard the learned counsel for the parties and have also gone through material available on record.

23 There is no dispute that NIC is the technology facilitator and responsible for the software development, support, hosting and maintenance of e-procurement portal and related services for providing a safe, secure and transparent e-procurement system. A security audit is conducted by the Standardisation Testing and Quality Certification for compliance with all security and functional aspects of the e-procurement system. We have also been informed that the system is also certified by the World Bank as well as the Asian Development Bank for electronic procurement requirements of multilateral development banks financed operations.

24 The e-mail, dated 3.6.2025, sent by NIC to the respondents does not support any system error on the e-procurement portal as is evident from the e-mail, which reads as under:-

"This is in reference to trailing mail regarding tender with tender id 2025_SIDC_103997 1 published on <https://hptenders.goiv.in>, kindly find the

reply as:--

1.1) As bid was not submitted by bidder therefore, payment details are not captured in procurement system (in available report), but we have also explicitly requested bank to analyze it. Although it has been observed other participated bidders have also submitted their bids on 30-May-2025 successfully.

1.2) Bid submission date of tender id 2025 SIDC 103997 1 is already closed on 30-May-2025 05: 00 PM and tender is already opened/decrypted on 31-May-2025. Therefore now there is no provision for extension of bid submission.

2) As per analysis it seems that some of the conventions/practises were not followed like modification in existing structure of BOQ or renaming of BOQ etc, therefore system has not allowed to upload the altered BOQ."

25 In view of the above, we are unable to accept that there was any technical glitch in the e-procurement portal of respondents No.3 to 5 that had prevented the petitioner from uploading its bid in time.

26 In Maharashtra Housing Development Authority v. Shapoorji Pallonji and Company Private Limited and Others: (2018) 3 SCC 13, the Hon'ble Supreme Court had considered a case where the respondent/writ petitioner had complained that although it had uploaded its technical and financial bid and had pressed "freeze button", it did not get the acknowledgement of the bid submitted. In the given circumstances, the Bombay High Court had issued directions to NIC to access the files containing the bid documents of the petitioners and make the same available to the appellant (Maharashtra Housing Development Authority). The said directions were subject matter of appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court noted that the controversy was twofold. First, whether the bid documents uploaded by the respondent/writ petitioners could be retrieved or irretrievably lost; and second, whether the respondent would be entitled to a consideration of its bid on merits assuming that the documents could be retrieved. The Hon'ble Supreme Court had answered both the questions in the negative. The relevant extract of the said decision is set out below:-

"7. Pursuant to the aforesaid order dated 18-1-2018 NIC has filed an affidavit dated 23-1-2018 wherein it has been stated that the data uploaded by the first respondent cannot be retrieved by NIC and Maharashtra Housing Development Authority jointly or severally under any circumstances in the present e-Tendering system with prevailing Government of India Guidelines. In para 7 of the aforesaid affidavit dated 23- 1-2018 the NIC has also stated as under:

"7. As far as NIC is concerned it cannot access the invalid bid documents since it has neither the keys nor the approved process to download the same pertaining to any packet/envelope/cover. Even though keys are available with Maharashtra Housing Development Authority (petitioner), but even with that keys the bid documents cannot be retrieved at this time as the bid opening event has already been concluded. Thus bid documents cannot be retrieved under any

circumstances from the e-Tendering system."

8. The above apart, in the counter-affidavit filed by NIC it as been stated that the bid uploaded by the first respondent was invalid as the representative(s) of the said respondent did not press the "freeze button" which alone would have completed the bid process. In this regard, NIC has further stated that on 27-7-2017 there was no problem in the server during the relevant time period and as many as 427 bid documents (pertaining to other tenders) were uploaded between 1200 hours to 1300 hours on the said date i.e. 27-7- 2017. NIC in its affidavit has further stated that if the first respondent had uploaded the documents at 1216 hours on 27- 7-2017 and it had not received the bid submission acknowledgment it still had 44 minutes to contact NIC for help which help was not sought. In this regard, NIC has further stated that the first respondent bidder had participated in e-Tendering in Maharashtra Government portal earlier and thus it was familiar with the entire process.

9. If NIC, which had developed the e -portal in which bids were to be submitted and maintenance and upkeep of which was its responsibility, had stated in its affidavit what has been indicated ab ve, we do not see how the repeated statemen s made on behalf of the first respondent that the bid documents can still be retrieved, if required by travelling beyond the Government of India Guidelines, sho ld commend to us for acceptance. The opini n rendered in this regard by the consultant of the first resp ndent Mr Arun Omkarlal Gupta on which much stress and reliance has been placed by the first respondent could hardly be determinative of the question in a situation where NIC which had developed the portal ad stated before the Court on affidavit that retrieval of the documents even jointly with Maharashtra Housing Development Authority is not feasible or possible. That apart, lack of any timely response of the first respondent when the system had failed to generate an acknowledgment of the bid documents in a situation where the first respondent claims to have pressed the "freeze button"; the generation of acknowledgments in respect of other bidders and the absence of any glitch in the technology would strongly indicate that the bid submitted by the first respondent was not a valid bid and the directions issued by the High Court in favour of the first respondent virtually confer on the said respondent a second opportunity, which cannot be countenanced.

10. In the above view of the matter, we are inclined to take the view that the High Court was not correct in issuing the directions extracted above as contained in para 29 of the impugned judgment/order dated 28-9-2017. The same are, therefore, interfered with. The appeal is allowed accordingly."

27 In our considered view the af resaid decision is squarely applicable to the fac s as obtaining in the instant case.

28 At this stage, we may also note Division Bench judgment of the Delhi High Court in Deep Blue Xpress Limited v. Municipal Corporation of Delhi, 2023 SCC OnLine Del 5493, wherein the Delhi High Court had considered a similar case

where the petitioner had contended that it had initiated the process of submission of bid well in time, however, due to a technical glitch was unable to process the payments under the RFP on the e-portal, despite multiple attempts through different banks. In the aforesaid context, the Delhi High Court observed as under:-

"12. Upon perusal of the record, undisputedly, the deadline for submission of bids for the Subject Tender was 19.07.2023 at 03:00 PM. The Hourly Server Health Report filed by the MCD as per the direction of this Court shows that on 19.07.2023, there were 49 bids received on the bidding portal between 02:00 PM and 03:00 M. The status report also highlights that there were a total of 5 successful bids received with respect to the Subject Tender on 19.07.2023 of which 3 bids were received between 02:00 PM and 03:00 PM. The aforesaid facts dispel all allegations vis-à-vis the occurrence of technical glitches or snags on the e-portal. If any issues were faced by the Petitioner herein while submitting its bid for the Subject Tender, they were certainly not caused by any technical glitch on the part of the NIC or the Respondents. Therefore, the failure of the bidder to submit its bid within due time on the e-portal is certainly the fault of the Petitioner itself, and this Court finds no merit in the allegations leveled by the Petitioner that it was unable to submit its bid due to technical glitches."

29 The decision of Delhi High Court in Deep Blue Express Limited's case (supra) was assailed before the Hon'ble Supreme Court at the instance of the writ petitioner therein, however the SLP was ordered to be dismissed vide order dated 27.9.2023.

30 A similar view was also expressed by another Division Bench of Delhi High Court in Jindal Steel and Power Limited and Another v. Union of India and Others, 2023 SCC OnLine Del 4401.

31 At this stage, we also need to notice another judgment of the Hon'ble Supreme Court in Mythri Infrastructure and Mining India Pvt. Ltd vs. State of Odisha, 2023 SCC Online SC 1028, wherein while dealing with somewhat an identical issue, the Hon'ble Supreme Court observed as under:

"1. It is pointed out to us that about 122 bids were received and loaded in the server in question on 24.07.2021 upto 300 p.m. On the basis of preponderance of probability, the High Court has rightly arrived at the conclusion that the technical glitch was at the end of the petitioners.

2. During the course of hearing, the learned Senior Advocate appearing on behalf of the petitioners has stated that the tender qua the 11th block has been cancelled/annulled. This is disputed by the learned Senior Advocate appearing on behalf of the State of Odisha. We make no comments in this regard.

3. Recording the aforesaid, we do not find any good ground and reason to interfere with the Impugned judgment and hence the special leave petition is dismissed.

4. Application for impleadment stand disposed of.

5. Pending application(s), If any, shall stand disposed of.”

32 From the aforesaid conspectus of the judgments, it is absolutely clear that once there is technical glitch at the end of the petitioner and not at the end of the respondents-Corporation, like in the instant case, then the petitioner has no occasion to complaint much less approach the writ Court

33 As a last ditch effort, learned counsel for the petitioner would refer to Division Bench judgment of the Delhi High Court in Adani Welspun Exploration Limited vs. Union of India, 2022 SCC Online Del2486 and another judgment of Division Bench of Bombay High Court in Cineom Broadcast India Ltd. vs. Municipal Corporation of Greater Mumbai, 2022 SCC Online Bom 11778 to contend that once the petitioner is prevented from submitting/uploading its document/bid due to technical glitch, which cannot be attributed to the petitioner, it cannot be shut out from the bid process.

However, having gone through both the judgments, we find the same to be not applicable to the instant case.

34 As regards Adani Welspun Exploration Limited case (supra), therein documents that were not uploaded on the e-portal were held to be not mandatory and even otherwise, those documents were required to be uploaded only if there was a shortfall in the net worth of the bidder as is evident from para 19 of the judgment, which reads as under:-

19. When the question was posed by this Court to the learned ASG with regard to the presence of a categorical instruction in the manual pertaining to uploading of a self-declaration if BG was not applicable to a bidder, the learned ASG was unable to point out any clause or instruction inferring the same. It was, in fact, submitted by the learned ASG that the said instruction was implied and that an experienced bidder would have been prudent enough to upload the same. This Court is of the opinion that this contention on behalf of the Respondent does not hold any water. In the ordinary course of bidding, it cannot be said that a bidder, who had previously not undergone this procedure of bidding or had not experienced the allegedly implied condition, could have deduced that a blank document or a self-declaration in lieu of a BG had to be uploaded on the page for Serial No. 3. Furthermore, the learned ASG has also failed to satisfy this Court on as to why a BG would be required if uploading a Networth certificate was mandatory. Furthermore, even a reading of the requirement of Serial No.3 demonstrates that a BG only had to be uploaded if there was a shortfall in the networth of the bidder; this Court is of the opinion that there resides no ambiguity in the reading of this phrase. It is also pertinent to note that the email dated 27.05.2022, sent by the Respondent to the Petitioner, categorically states that the networth of the Petitioner had been uploaded on the DGH e-bidding portal. Therefore, it is clear that not only did the Respondent have access to the networth of the Petitioner, but that the uploading of the BG was only mandated in

the event that the bidder did not fulfil the requisite network requirement.

Therefore, this judgment has no relevance to the issue in question and is thus not applicable.

35 As regards Cineom Broadcast India Ltd. case (supra) therein the petitioner had approached the Bombay High Court complaining that it could not upload its documents as there was clearly technical malfunction at the end of the respondent, which could not have been rectified by the petitioner. The Bombay High Court came to the categorical conclusion that since the respondent had found that attempts had been made by the petitioner to upload its documents then as per clause 8, it ought to have intimated the bidder to comply, which it has admittedly failed to do so. It was further held that since admittedly there was an unresolved technical glitch, which could not be attributed to the petitioner, therefore, keeping in view this background that the petition came to be allowed.

36 What the petitioner herein has failed to take note of while relying upon the aforesaid judgment and has conveniently overlooked is the following observation which alone has important bearing on this case:-

"13. This is not a case where the Respondent-Corporation has established that the glitch was from the Petitioner's end or that it was due to the Petitioner's system problem, internet problems, user I.D., locking etc. In fact, as can be seen from the submissions that Petitioner has well within the scheduled time communicated its grievances to the Respondent-Corporation, but without any response or resolution. The Respondent-Corporation has informed us that the financial bids which were to be opened at 4.00 p.m., today have not yet been opened. We are therefore, of the view that it would be in the interest of justice to allow the Petitioner to participate in Tender Process as no prejudice would be caused to any of the other bidders and would only increase competition for better achievement of the Project objective of universal education."

37 In view of aforesaid discussions and for the reasons stated above, we find no merit in the instant petition and the same is accordingly dismissed, so also the pending application(s), if any, leaving the parties to bear their own costs.