
(2025) 09 SC CK 0302

In the Supreme Court Of India

Case No : Civil Appeal No. 11418 Of 2025 (Arising Out Of Special Leave Petition (Civil) No. 12510 Of 2024)

Prakash Asphaltings And Toll Highways (India) Limited

APPELLANT

Vs

Mandeepa Enterprises And Others

RESPONDENT

Date of Decision : 12-09-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2025) 09 SC CK 0302

Hon'ble Judges : Manoj Misra, J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : Kavin Gulati, Monish Panda, Anmoj Jassal, Amrita Singh, Mohisth Shivkumar, Dushyant Sharma, Krishna Kumar Singh, Anurag Soan, Akshay Saxena, Ritu Raj, Kanika, Ayush Mishra, Nandini Sen Mukherjee, Tuhin

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J

1. This civil appeal is directed against the judgment and order dated 23.02.2024 passed by a Division Bench of the High Court at Calcutta (High Court) in MAT No. 93 of 2024.

2. Be it stated that MAT No. 93 of 2024 was filed by the respondent No. 1 as an intra-court appeal against the final order dated 03.01.2024 passed by a learned Single Judge of the High Court dismissing the writ petition, WPA No. 29001 of 2023, filed by respondent No. 1.

3. Respondent No. 1 had filed the aforesaid writ petition assailing the action of respondent Nos. 2, 3 and 4 (State of West Bengal and its officials) refusing to treat respondent No. 1 as the highest bidder by permitting it to rectify its financial bid after the bidding process was over. After observing that there was no scope for interference, learned Single Judge dismissed the writ petition.

4. Aggrieved by such dismissal, respondent No. 1 preferred an intra-court appeal

which was registered as MAT No. 93 of 2024. According to the Division Bench, the error in quoting the figure by respondent No. 1 was inadvertent; instead of quoting the price for the entire contract period of 1095 days, respondent No. 1 had uploaded per day amount of the Bill of Quantity (BOQ) of Rs. 9,72,999.00. Division Bench further observed that respondent No. 1 had promptly sought for correction of the error immediately after reopening of the price bids. Therefore, the Division Bench allowed the writ appeal vide the judgment and order dated 23.02.2024 by setting aside the order of the learned Single Judge, further directing respondent Nos. 2, 3 and 4 to evaluate the BOQ rate of respondent No. 1 by treating the amount offered by respondent No. 1 as the per day amount and then on that basis to compute the total amount for the entire contract period of 1095 days. However, the Division Bench was of the view that an opportunity should be granted by the tendering authority to the other bidders as well to match the price of respondent No. 1 and thereafter to take a final decision with regard to the award of contract.

5. It is this judgment and order which is under impugment in the present proceeding.

6. At the outset, relevant facts may be noted.

7. A notice inviting electronic bid No. 7 of 2023-24 dated 17.10.2023 was issued by the Superintending Engineer and Project Director, Project Implementation Unit - I, Public Works (Roads) Directorate, Government of West Bengal for engaging complete Road User Fee (RUF) collection operator for RUF collection from commercial vehicles (non-passenger) at designated locations on few roads in the State of West Bengal. In this case, we are concerned with the following work:

RUF Collection with HNETC System Integration and Transaction Acquiring services at Fee collection plaza under NETC programme through NPCI approved acquirer bank including engagement of required man power for operation of Road User Fee collection plaza for Dankuni Chandannagar Mogra in Hooghly district SH 13.

8. The contract period is for 1095 days. While the annual potential collection was pegged at Rs. 21.60 crores, the earnest money deposit/bid security was fixed at Rs. 25,00,000.00. As per Clause 2 of the notice inviting electronic bid, there would be two bids: technical bid and financial bid, both of which would have to be submitted concurrently duly digitally signed in the website of the West Bengal Government. Clause 3 mentioned that the rates should be quoted both in words and in figures in specific format i.e. BOQ. In case of any discrepancy between words and figures, the rate quoted in words would be treated as the actual rate offered. After bidding, the selected bidder will be the H1 bidder who will offer the highest remittance for the contract period and will make necessary agreement with the condition that the accepted bid amount over the stipulated period will have to be deposited in advance as per payment schedule to the government account in lieu of RUF collection right.

9. Clause 4 lays down the eligibility criteria for participation in the Bid. Clause 4(g) is very specific. It says that any change in the template of BOQ will not be accepted under any circumstances. Clause 4(g) reads thus:

Any change in template of BOQ will not be accepted under any circumstances.

10. The date and time schedule of the tender process as provided in Clause 9 was as follows:

Particulars

Date & Time

1. Date of Publishing NIT & Tender Documents

17-10-2023

2.Document Sale/Download Start Date

18/10/2023 from 10.00 a.m.

3. Pre Bid Meeting with the intending bidders

03/11/2023 at 1.00 p.m. at the Conference Hall of PWD at Nabanna, 8th Floor, 325, Sarat Chatterjee

Road.,Howrah- 711102.

4. Bid Submission/ Upload Start Date

08/11/2023 from 3.00 p.m.

5. Bid Submission/ Upload End Date

22/11/2023 upto 3.00 p.m.

6. Date of opening of Technical Proposals

24/11/2023 at 3.00

p.m.

7. Date of opening of Financial Bid/ Proposals

To be notified at the time of publishing List of Technically Qualified Bidders in the web portal only.

11. Instructions to Bidders is part of the notice inviting electronic bid. Clause 5 thereof deals with submission of bids. It clarified that the notice inviting bid was of two bid system: (i) technical and (ii) financial, both to be submitted concurrently in the portal. Bidders who would be technically pre-qualified in respect of technical and financial eligibility/capability criteria would only be permitted to participate in the financial bidding. Bidders were required to submit online in two folders for each work, one being technical proposal and the other being financial proposal. It was clarified that at the time of uploading bid, care

should be taken so that during evaluation, all the documents required to be submitted by the bidders are found in a neat, clear and in a readable format, otherwise the bid might be treated as cancelled. The instructions to bidders also clarifies that technical proposals will be opened by the Bid Inviting Authority (BIA) or by the Bid Evaluation Committee, and thereafter to upload the summary list of technically qualified bidders. Heading of sub-clause B is bid evaluation. As per sub-clause B(v), in the course of evaluation, the notice inviting authority may seek clarification/information or additional supporting documents or original hard copies of documents already submitted and if these are not produced by the bidders within the stipulated time frame, their proposals will be liable for rejection. Clause 5B (v) of the Instruction to Bidders is as follows:

v. While evaluation the Notice Inviting Authority may summon of the bids and seek clarification/information or additional supporting documents or original hard copies against any of the documents only, which are already submitted/uploaded to the web portal and if these are not produced by the intending Bidders within the stipulated time frame, their proposals will be liable for rejection.

12. The following seven bidders had participated in the present tender process. These seven bidders are as follows:

1. Ainul Hoque
2. SK Nasir.
3. Mandeepa Enterprises
4. RMN Infrastructures Limited.
5. M/S GVR Infra Projects Limited.
6. Prakash Asphaltings and Toll Highways India Ltd
7. Eagle Infra India Ltd.

13. Tender evaluation was carried out by a five-member screening committee for bid evaluation on 06.12.2023 which was constituted vide G.O. No. 3410-PW/O/E-1/2M-17/2017 dated 18.09.2017. After evaluation of the technical bids by aforesaid committee, it was found that out of the aforesaid total seven bidders, only four numbers of bidders were found to be technically qualified. Three bidders were found to be non eligible and declared as disqualified. The short listed four bidders are as follows:

- (i) Ainul Hoque
- (ii) Mandeepa Enterprises
- (iii) Prakash Asphaltings and Toll Highways (India) Limited
- (iv) Eagle Infra India Limited

It was mentioned that financial bids would be opened on 08.12.2023 at 06:30

pm.

14. Accordingly, forty eight hours after declaration of technical evaluation, financial bids of the four technically qualified bidders were opened electronically as per the e-tender mechanism. On such opening, it was found that the appellant Prakash Asphaltings and Toll Highways (India) Limited was the highest bidder with the quoted amount of Rs. 91,19,00,000.00 (for 1095 days). It was also found that respondent No. 1 was the lowest bidder (H4) at the offered amount of Rs. 9,72,999.00. Details of financial bid evaluation are as under:

BOQ Summary Details

Tender Title: WBPWD/PW(R)/SEPD/PIU-I/NIB-07 OF 2023-24, SI-3 TENDER ID: 2023_WBPWD_595358_3

Sheet Name

SI.

No.

Bidder Name

Amount

Bid Rank

BoQ1

1

Prakash Asphaltings and Toll Highways India Ltd.

911900000.00

H1

2

Eagle Infra India Ltd.

783899999.00

H2

3

Ainul Hoque

652176525.00

H3

4

Mandeepa Enterprises

972999.00

H4

15. Since much hinges on this, we may extract the item rate BOQ of respondent No. 1 which is as under:

Item Rate BoQ

Tender Inviting Authority: Superintending Engineer & Project Director, Project Implementation Unit-I.

Name of Work: RUF Collection with HNETC System Integration and Transaction Acquiring services at Fee collection plaza under NETC programme through NPCI approved acquirer bank including engagement of required man power for operation of Road User Fee collection plaza for Dankuni Chandannagar Mogra in Hooghly district SH 13.

Contract No: SL No. 3 of eNIB No. 07 of 2023-2024 of S.E. & PD/PIU-I

Name of the Bidder/Bidding Firm/Company: Mandeepa Enterprises

PRICE SCHEDULE

(This BOQ template must not be modified/replaced by the bidder and the same should be uploaded after filling the relevant columns, else the bidder is liable to be rejected for this tender. Bidders are allowed to enter the Bidder Name and Values only)

NUMB

ER#

TEXT#

NUMBER#

TEXT#

NUMBER#

NUMBER#

TEXT#

SL.

No.

Name of the road on which Road User Fee Plaza is situated

Quantity

Units

Amount of Road User Fee in Figures To be entered by the Bidder for

1095 Days Rs. P

TOTAL AMOUNT

(in figures) exclusive of all taxes

TOTAL AMOUNT

In Words

1.

RUF Collection with HNETC System Integration and Transaction Acquiring services at Fee collection plaza under NETC programme through NPCI approved acquirer bank including engagement of required man power for operation of Road User Fee collection plaza for Dankuni Chandannagar Mogra in

Hoogly district SH 13. (Scope of work as per terms and condition laid down in the NIB)

1

Nos

972999.00

972999.00

INR Nine Lakh Seventy Two Thousand Nine Hundred & Ninety Nine Only

Total in Figures

972999.00

INR Nine Lakh Seventy Two Thousand Nine Hundred & Ninety Nine Only

Quoted Rate in Words

INR Nine Lakh Seventy Two Thousand Nine Hundred & Ninety Nine Only

16. After the financial bids were opened and became public, respondent No. 1 made a request to the tender committee vide e-mail dated 13.12.2023. The e-mail was accompanied by an affidavit stating that the amount offered was per day rate and that the said figure should be worked out for the total contract period of 1095 days in which event, the offer of respondent No. 1 would stand at Rs. 106,54,33,905.00 for the contract period. The tendering authority was requested to treat the figure of Rs. 9,72,999.00 as a typographical error and the figure offered by respondent No. 1 should be read as 106,54,33,905.00. The authority was further requested to consider the same keeping higher revenue in mind.

17. It appears that vide communication dated 20.12.2023, respondent No. 4 rejected the prayer of respondent No. 1 stating that such request for correction of financial bid was not possible to be entertained as it would impeach the sanctity of the tender process.

18. Thereafter, respondent No. 1 filed a writ petition before the High Court seeking the following reliefs:

a) Leave under Rule 26 of the Rules relating to petitions under Article 226 of the Constitution of India to move the writ petition before service of copy of the petition be granted to the petitioner to move the writ petition before service of copy thereof, in view of extreme urgency as narrated hereinabove;

b) A Writ of Mandamus directing the respondents and each of them esp., the respondent No. 3, to rescind and/or cancel and/or withdraw the letter rejecting the prayer of the petitioner to amend the rate quoted by the petitioner in the bid in respect of the tender process being Annexure "P-1" to the petition forthwith;

c) A Writ of Mandamus directing the respondent No. 3 to allow the petitioner to amend and/or rectify the petitioner's bid in respect of the tender process dated 17th October, 2023 being Annexure "P-1" hereto by quoting the rate for 1095 days instead of one day treating the same as bonafide and inadvertent mistake of the petitioner and then to consider the bid of the petitioner in the financial bid upon rectification of the same in terms of the prayers of the petitioner made in the letters and documents submitted by the petitioner on 13.12.2023, 15.12.2023 and 20.12.2023 in respect of the tender process dated 17th October, 2023 being Annexure "P-5", "P-6" and "P-7" hereto;

d) A writ of Certiorari calling upon the respondents and each of them to certify and transmit all records in respect of tender having Memo No. 590-R/PIU-I dated 17th October, 2023 being notice inviting Electronic Bid No. 07-2023-24 by the Superintending Engineer/ Project Director Unit-I Public Works (Roads) Directorate being Annexure "P-1" hereto and all subsequent letters and correspondences being Annexure "P-2" to "P-8" hereto to this Hon'ble Court so that conscionable justice may be done by quashing and/or setting aside the letter of rejection by the respondent No.3 dated 20th December, 2023 being Annexure "P-8" hereto and by directing the respondent No. 3 to allow the petitioner to rectify and/ or amend the bid for 1095 days and further process the bid of the petitioner upon such rectification in the financial bid of the said tender process being Annexure "P-1" hereto;

e) A Writ of Prohibition prohibiting the respondents and each of them, esp., the respondent No. 3 from indulging any further non-action and/or inaction in allowing the petitioner from rectifying the bid of the petitioner for 1095 days and from further taking any steps for issuing the Letter of Acceptance (LOA) to the H 1 bidder in respect of the said tender process being Annexure "P-1" hereto;

f) Interim order directing the respondents and each of them, esp., the

respondent No. 3 from proceeding further in the tender process being Annexure "P-1" hereto including issuing the Letter of Acceptance (LOA) to the H-1 bidder in respect of the tender process being Annexure "P-1" hereto till the disposal of the writ petition;

g) Ad-interim order of terms of prayer (f) above; h) Rule NISI in terms of prayers (a), (b), (c), (d), (e), (f) and (g) above; i) Costs;

j) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper.

19. The writ petition was registered as W.P.A. No. 29001 of 2023. A Single Bench of the High Court dismissed the writ petition vide the order dated 03.01.2024 by holding as under:

8. Bona fides cannot be attributed to the petitioner; rather, the petitioner was grossly negligent, since the price schedule indicated in the BOQ, which found place even in the bid of the petitioner itself, clearly showed that the amount of Road User Fee in the figures was to be entered by the bidder for 1095 days. Even after knowing the same and being aware of the various amounts involved by way of annual potential collection and bid security, the petitioner committed the error which it did.

9. After the financial bid was opened, the petitioner wrote to the tender issuing authorities. If such an opportunity is to be given to a particular bidder, the same would upset the entire tender process and, as rightly argued by the respondents, would make the tender process opaque and arbitrary.

10. The petitioner, with its eyes open, participated in the bid and quoted an erroneous amount. As such, the petitioner ought to suffer for the same and take responsibility therefor. Even if the petitioner's bid, if taken to be for 1095 days, would far exceed the next highest bid, such opportunity cannot be given to the petitioner to rectify its error after the entire bidding process was over and the financial bids of all the bidders were opened. Such chance, if given to the petitioner, would be contrary to every known principle of fairness pertaining to tenders and would amount to a special favour being extended to the petitioner for no particular reason.

11. Thus, there is no scope of interference in the tender process.

20. Aggrieved thereby, respondent No. 1 preferred a letters patent appeal before the Division Bench of the High Court which was registered as MAT No. 93 of 2024. Vide the judgment and order dated 23.02.2024, the Division Bench of the High Court observed as under:

8. * * * * *

Thus, in the light of the above undisputed factual position we are of the considered view that the Tender Inviting Authority had sufficient leverage and play in the joints to seek for any clarification or information during the entire

evaluation process and sub-clause (b) of clause 5 of the Instruction to Bidders is not restricted to the stage of evaluation of the technical bid along but it encompasses the evaluation of the entire tender right from the stage of inception till the issuance of work order. This interpretation is proper interpretation that should be given to the said clause or else it would put shackles on the right of the Tender Inviting Authority. The explanation offered by the appellant is acceptable and the appellant's offer is Rs.16 crore over and above the highest offer which is now come to the light after the financial bid has been opened.

9. For the above reasons, the appeal is allowed and order passed in the writ petition is set aside and the writ petition is allowed and the respondents are directed to evaluate the appellant's BOQ by taking the amount of Rs.106,54,33,905.00 for the period of 1095 days as called for in the tender notification.

10. Since admittedly the affidavit for correction of the bid document was submitted after opening the financial bid, this Court feels that an opportunity is to be granted to other bidders to match the price quoted by the writ petitioner. The Tender Inviting Authority shall call upon all the bidders who were found to be technically qualified including the petitioner and after evaluating the bids of all such bidders and after giving opportunity to the other bidders, who are found technically qualified, to match the corrected figures quoted by the writ petitioner shall take a final decision with regard to award of the contract in question.

21. It may be mentioned that both before the learned Single Judge as well as before the Division Bench, appellant was not arrayed as a party respondent, though on evaluation of the financial bids, it was found to be the highest bidder (H1).

22. Aggrieved by the aforesaid judgment and order dated 23.02.2024, appellant preferred the related special leave petition. By order dated 27.05.2024, this Court granted permission to the appellant to file the special leave petition. While issuing notice, this Court also stayed the impugned judgment and order dated 23.02.2024. Thereafter, the matter was heard on 08.08.2025 when leave was granted.

23. Mr. Kavin Gulati, learned senior counsel for the appellant submits that after the financial bids were opened, appellant was found to be and was declared as the highest (H1) bidder by the tendering authority on 13.12.2023. Admittedly, respondent No. 1 sought rectification/correction of its financial bid only after the financial bids were opened and only after the appellant was declared as H1. The tendering authority was fully justified in rejecting the request of respondent No. 1 for rectification/correction of its financial bid.

23.1. Learned Single Judge was justified in observing that if the opportunity as sought for by respondent No. 1 is allowed, the same would upset the entire tender process. Learned Single Judge had rightly observed that respondent No. 1 had participated in the tender process with its eyes wide open and had quoted an

erroneous amount. Even if its bid taken for the entire contract period exceeds the highest bid, such opportunity for rectification cannot be given to respondent No. 1 to rectify its error after the entire bidding process was over and the financial bids of all the tenderers were opened. If this is accepted and respondent No. 1 is given such an opportunity, it would be contrary to every known principle of fairness pertaining to tenders and would amount to a special favour being extended to respondent No. 1 for no particular reason. Learned senior counsel submits that the view taken by the learned Single Judge is the correct view and should not have been interfered with by the Division Bench in a letters patent appeal.

23.2. Mr. Gulati submits that in the proceedings before the learned Single Judge, appellant was not made a party respondent though it was the highest (H1) bidder. Though the relief claimed by respondent No. 1, if granted, would have adversely affected the appellant, this issue did not arise because the learned Single Judge did not accept the contentions of respondent No. 1 and had declined to interfere with the tender process.

23.3. However, in the intra-court appeal before the Division Bench, respondent No. 1 again did not array the appellant as a party respondent. Division Bench took the view that the tendering authority had sufficient leverage and play in the joints to seek any clarification or information during the tender evaluation process. Learned senior counsel submits that the Division Bench had interpreted Clause 5B(v) of the Instructions to Bidders erroneously to hold that the tendering authority had the discretion to seek any clarification or information at any stage of the tender process right from the stage of inception till issuance of the work order and thereafter to hold that any other interpretation would put shackles on the functioning of the tendering authority. Learned senior counsel submits that the aforesaid view taken by the Division Bench is palpably erroneous having the effect of unsettling the entire tender process. Clause 5B(v) of the Instructions to Bidders cannot be given such a broad interpretation. Referring to Clause 4(g) of the tender conditions, he submits that it is clear therefrom that change of Bill of Quantity (BOQ) would not be accepted under any circumstances. If the view of the Division Bench is accepted, there would be no finality attached to a tender process which in turn would impeach the sanctity of the tender process itself.

23.4. Learned senior counsel further submits that the final direction of the Division Bench directing the tendering authority to evaluate the BOQ of respondent No. 1 not at Rs. 9,72,999.00 which it held to be per day figure but to accept respondent No. 1's BOQ at Rs. 106,54,33,905.00 for the entire contract period has changed, the entire complexion of the tendering process thereby rendering the position of the appellant wholly untenable despite being declared as the highest (H1) bidder by the tendering authority. This direction of the Division Bench entails adverse civil consequences upon the appellant. Despite being so, the Division Bench did not deem it appropriate to get the appellant impleaded in the appellate proceedings. Consequently, no notice was issued or

opportunity of hearing granted to the appellant by the Division Bench before disposing of the intra-court appeal. This is in clear violation of the principles of natural justice.

23.5. According to him, the reasoning adopted by the Division Bench is highly questionable. Division Bench has taken the view that if the BOQ amount of respondent No. 1 is read as Rs. 106,54,33,905.00, the difference between the amount quoted by respondent No. 1 and what is being offered by the H1 bidder i.e. the appellant would be about 15 crores and this additional amount would enure to the benefit of the state exchequer. He submits that collecting higher revenue is only one facet of public interest. The other aspect, which is more important, is that because of the avoidable litigation instituted by respondent No. 1, the State could not timely start the contract work. As a result, it lost considerable amount of revenue. However, this aspect of the matter was overlooked by the Division Bench. He reiterates that if the view taken by the Division Bench is accepted then there would be no finality to a tender process.

23.6. Learned senior counsel to buttress his arguments has submitted a compilation of judgments. Additionally, he has also placed reliance on few other judgments. The decisions relied upon by learned counsel for the appellant are as under:

(i) West Bengal State Electricity Board Vs. Patel Engineering Company Limited (2001) 2 SCC 451

(ii) Jagdish Mandal Vs. State of Orissa (2007) 14 SCC 517

(iii) Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited (2016) 16 SCC 818

(iv) Johra Vs. State of Haryana (2019) 2 SCC 324

(v) M/s. ABCI Infrastructures Private Limited Vs. Union of India (2025) INSC 215

23.7. Finally, learned senior counsel submits that whether on account of violation of the principles of natural justice or on the point of unduly interfering with a tender process, the impugned judgment and order of the Division Bench cannot be sustained. Therefore, the same is liable to be set aside and quashed.

24. Mr. Anurag Soan, learned counsel appearing for respondent No. 1 has opposed the challenge made by the appellant. He submits that the Division Bench has rightly observed that the tendering authority have the leverage to consider the clarifications as sought for by respondent No. 1. According to him, the mistake committed by respondent No. 1 was a bona fide one and completely unintentional. Since ordinarily, the rates sought for and offered in the tenders floated in the State of West Bengal are on the basis of per day figures, respondent No. 1 offered per day BOQ figure whereas the figure ought to have been a consolidated one for the entire contractual period of 1095 days. This inadvertent mistake was detected only when the financial bids were opened and

without loss of time, respondent No. 1 promptly e-mailed the tendering authority pointing out the mistake and sought for rectification. This was supported by an affidavit. If the BOQ amount of respondent No. 1 for the entire contractual period is calculated based on the per day rate, the bid offer of respondent No. 1 would be by far the highest; by an amount of Rs. 15 crores over the bid value of the appellant. Therefore, there was no reason why the tendering authority should have ignored the rectification effort of respondent No. 1.

24.1. Learned counsel submits that to the extent the Division Bench held that the tendering authority had the leverage to consider such clarification, the decision is in favour of respondent No. 1. However, the Division Bench ought to have declared respondent No. 1 as the highest bidder because that would be the natural consequence of acceptance of respondent No. 1's rectification effort. But the direction of the Division Bench to the state authorities to provide an opportunity to the other bidders to match the BOQ figure of respondent No. 1 is completely unwarranted. Viewed in that context, though the intra-court appeal has been decided in favour of respondent No. 1, it has actually been denied the consequential relief.

24.2. Mr. Soan submits that the BOQ figure offered by respondent No. 1 was highest (H1) from day one; it was an inadvertent mistake to declare the said amount as per day figure instead of computing the total amount for the entire contractual period. He submits that there is a material difference between a total revision of price by quoting a new amount and clarifying the existing price. The case of respondent No. 1 falls in the latter category.

24.3. Regarding non-joinder of appellant as a party respondent, learned counsel for respondent No. 1 submits that respondent no. 1 had approached the High Court seeking a writ of mandamus against respondent No. 4 to allow rectification/clarification of its financial bid owing to inadvertent mistake and also sought for quashing of the rejection letter dated 20.12.2023 issued by respondent No. 4 whereby the request for rectification/clarification of financial bid by respondent No. 1 was rejected. No relief was sought for against the appellant. Evidently, bid of respondent No. 1 is substantially higher than that of the appellant. Public at large would have benefitted by such rectification/clarification. Therefore, non-joinder of appellant as respondent to the proceedings before the High Court is not fatal. Consequently, it cannot be said that there is any violation of the principles of natural justice.

24.4. Learned counsel has referred to Clause 5B(v) of the Instructions to Bidders which empowers the tendering authority to seek clarification of the documents submitted by the bidders. In terms of Clause D(ii) of the notice inviting bid, both the technical bid and the financial bid were required to be submitted simultaneously. Division Bench has correctly interpreted Clause 5B(v) of the Instructions to Bidders and such interpretation warrants no interference. Learned counsel for respondent No. 1 submits that the clarified financial bid of respondent No. 1 should be accepted in the light of the larger public interest otherwise the

State would lose revenue by about 15 crores. Public exchequer should not be made to suffer because of an inadvertent mistake in quoting the BOQ figure by respondent No. 1. In this connection, learned counsel has placed reliance on a decision of the Delhi High Court in the case of Supreme Infrastructure India Limited Vs. Rail Vikas Nigam Limited 2012 SCC Online Delhi 616 in which case, rectification/clarification was allowed by the Delhi High Court.

24.5. Learned counsel further submits that matters relating to tender and awarding of contract are essentially commercial functions. In such matters, principles of equity and natural justice should be kept at a distance.

24.6. Learned counsel for respondent No. 1 submits that the mistake committed by respondent No. 1 was so apparent when compared with the annual potential collection of the contract which is estimated in crores and the bid security is fixed at Rs. 25 lakhs. Therefore, there was no reason for respondent No. 1 to quote a figure of Rs. 9,72,000.00 as the bid price for the entire contractual period of 1095 days. In the absence of any allegation of malafides or collusion or fraud, respondent No. 1's right to request for clarification was correctly allowed by the Division Bench.

24.7. Clarifying the position, learned counsel submits that in an earlier bid process in which respondent No. 1 participated, per day figure was sought for. It was because of this that there was confusion and respondent No. 1 followed the same protocol in the present case. It was only when the financial bid was opened that respondent No. 1 realised the inadvertent mistake. Rectification of such apparent mistakes can in no manner be said to vitiate the sanctity of the tender process as respondent No. 1 is also a technically qualified bidder.

24.8. In the facts and circumstances of the case, learned counsel submits that no case for interference in the impugned judgment is made out by the appellant and, therefore, the appeal is liable to be dismissed.

25. Ms. Nandini Sen Mukherjee, learned counsel appearing for respondent Nos. 2 to 4, at the outset submits that though the State has not challenged, the impugned judgment and order of the Division Bench, nonetheless it is ad idem with the appellant who has questioned the impugned directions of the Division Bench.

25.1. Learned counsel submits that both on the issue of violation of the principles of natural justice and interference with an ongoing tender process by a court in a proceeding under Article 226 of the Constitution of India, the impugned judgment and order cannot be sustained.

25.2. She submits that both appellant and respondent No. 1 alongwith two other bidders were found to be technically qualified. Thereafter, when the financial bids were opened, it was found that the bid offered by the appellant was the highest and therefore it was declared as H1. On the other hand, bid of respondent No. 1 was found to be the lowest. Accordingly, the tendering authority had finalized the

bidders. Therefore, when respondent No. 1 moved the High Court and the Division Bench had substantially granted relief to respondent No. 1 having the potential to upset the financial bids of the bidders as finalized by the tendering committee, it was necessary that appellant should have been made a party respondent in the proceedings before the High Court. As the appellant was not put to notice and was not heard, the impugned directions which are prejudicial to the appellant cannot be sustained.

25.3. Ms. Mukherjee further submits that the sanctity of the entire tender process would be affected in case the corrections suggested by the Division Bench are sustained. This would not only be unfair to the bidders higher in rank than respondent No. 1 but has unduly delayed finalisation of the contract.

25.4. After adverting to the facts of the case, learned counsel representing respondent Nos. 2 to 4 submits that in the BOQ template contained in the tender papers, it was clearly mentioned that the rate was to be quoted for the entire duration of the contractual period i.e. for 1095 days. Therefore, the assertion of respondent No. 1 that it had inadvertently quoted rate on per day basis instead of 1095 days cannot be accepted. In this connection, learned counsel has also referred to Clause 4(g) of the notice inviting bid which clearly prohibits change in the template of BOQ. This type of post tender modification of quoted rate as sought for by respondent No. 1 is not at all permissible. In fact, because of this attempt on the part of respondent No. 1, finalisation of the contract has been unduly delayed which in turn has affected collection of government revenue.

25.5. Elaborating further, learned counsel for respondent Nos. 2 to 4 submits that respondent No. 1 did not mention anywhere in its bid that the rate quoted by it was on 'per day' basis. It was only after opening of the financial bid that respondent No. 1 claimed that the quoted rate was on per day basis. Respondent No. 4 had rightly rejected such request construing it to be an attempt to influence the bidding process.

25.6. In these circumstances, learned counsel submits that the Division Bench was not justified in setting aside the order of the learned Single Judge and by directing respondent Nos. 2 to 4 to accept the computed bid of respondent No. 1 by converting the figure from per day basis to the entire contract period of 1095 days and thereafter to make an analysis with the bids offered by the other bidders. In view of a catena of judgments of this Court, such interference by a writ court is simply not permissible.

25.7. Learned counsel therefore submits that as a matter of fact, following the impugned judgment and order, all the four technically qualified bidders were called upon to submit their sealed bids afresh for 1095 days keeping the rates of 106,54,33,905.00 as the minimum. However, after this Court granted stay, the aforesaid process has been cancelled.

25.8. Learned counsel finally submits that permitting an unsuccessful bidder to raise grievance after opening of the financial bid would set a bad precedent. If it

is permitted, grievance of all kinds and of all sorts would be forthcoming and the contracts would never get executed.

26. Submissions made by learned counsel for the parties have received the due consideration of the Court.

27. Though we have adverted to the facts in the preceding paragraphs, nonetheless for a proper appreciation it would be apposite to briefly sum up the factual contours of the present controversy.

28. The contract in question relates to RUF collection at fee collection plaza for Dankuni Chandannagar Mogra section of SH 13 in the District of Hooghly, West Bengal. In terms of the notice inviting electronic bid dated 17.10.2023, the contract period is for 1095 days. While the annual potential collection was pegged at Rs. 21.60 crores, the earnest money deposit/bid security was fixed at Rs. 25,00,000.00. The tender comprised of two bid system: technical bid and financial bid to be submitted concurrently digitally in the website of the West Bengal Government. The rates should be quoted in both words and figures in BOQ format. In case of any discrepancy between words and figures, the rate quoted in words would be accepted as the actual rate offered. After the bidding process, the selected bidder will be treated as H1 bidder who will offer the highest remittance for the contract period. The eligibility criteria made it clear that under no circumstances, change in template of BOQ will be accepted.

28.1. In all, total of seven bidders had participated in the tender process out of which four were shortlisted by the screening committee on 06.12.2023 as being technically qualified. These four included appellant and respondent No. 1. 28.2. Thereafter, financial bids of the four technically qualified bidders were opened. On such opening, it was found that the bid offered by the appellant at Rs. 91,19,00,000.00 for 1095 days was found to be the highest (H1) whereas the bid offered by respondent No. 1 at Rs. 9,72,999.00 was found to be the lowest (H4).

28.3. After the financial bids were opened and finalized, respondent No. 1 made a request to respondent No. 4 vide email dated 13.12.2023 to change the rate offered by it by treating the same as per day offer and on that basis, to compute the amount for the entire contractual period of 1095 days which figure would stand at Rs. 106,54,33,905.00. It was contended that respondent No. 1 was therefore the highest bidder and its rate was more than Rs. 15 crores above that of the appellant. The mistake committed by it was an inadvertent one. Since it would be beneficial to the public exchequer, respondent No. 4 was requested to correct the inadvertent mistake.

28.4. This prayer of respondent No. 1 was rejected by respondent No. 4 vide the communication dated 20.12.2023.

28.5. Thereafter, respondent No. 1 filed a writ petition before the High Court being WPA No. 29001/2023. A learned Single Judge of the High Court dismissed the writ petition vide the order dated 03.01.2024.

28.6. Aggrieved thereby, respondent No. 1 preferred a letters patent appeal before the Division Bench of the High Court being MAT No. 93 of 2024. Vide the judgment and order dated 23.02.2024, the Division Bench allowed the appeal by directing respondent Nos. 2 to 4 to evaluate the BOQ rate of respondent No. 1 by treating Rs. 106,54,33,905.00 as the amount for the entire contractual period of 1095 days instead of Rs. 9,72,999.00 which was treated to be a per day figure. However, since the other bidders were not before the court, it was directed that opportunity be granted to such bidders to match the price quoted by respondent No. 1. After evaluating the bids of all such bidder, the said respondents were directed to take a final decision with regard to award of the contract in question.

29. Having noted the factual backdrop of the case, let us now examine the relevant provisions of the tender conditions. We have already noted that Clause 4 of the notice inviting electronic bid lays down the eligibility criteria for participation in bid. Clause 4(g) specifically says that any change in the template of BOQ will not be accepted under any circumstances. Clause 5 of the Instructions to Bidders which form part of the notice inviting electronic bid cautions the bidders that care should be taken so that during evaluation of the documents submitted by the bidders those are found to be neat and clear and in a readable format, otherwise the bid would be treated as cancelled. Clause 5B of the Instruction to Bidders deals with bid evaluation. Clause 5B(v) says that during the process of evaluation of bids, the notice inviting authority may summon and seek clarification/information on additional supporting documents or original hardcopies against any of the documents which are already submitted/uploaded in the web portal. In the event, these are not produced by the intending bidders within the stipulated time frame, their proposals will be liable for rejection.

30. Division Bench of the High Court has interpreted this clause in a broad way to include rectification of bona fide mistakes in quoting BOQ rates by the bidders. In our view, this will be stretching things a bit too far. This provision is meant to empower the notice inviting authority to seek clarification or further information regarding any document filed by a bidder. This cannot be interpreted so broadly as to include rectification of the BOQ rates which is governed by Clause 4(g) of the notice inviting electronic bid putting a complete embargo to any change in the template of BOQ; the prohibition is specific: change in the template of BOQ will not be accepted under any circumstances.

31. Our view is fortified by the item rate BOQ of respondent No. 1 which we have extracted in paragraph 15 of this judgment. In column 5, the heading is : amount of road user fee in figures to be entered by the bidder for 1095 days. As against this, respondent No. 1 quoted the figure of Rs. 9,72,999.00. In words, i.e. in column 6, the quoted rate was mentioned as nine lakhs seventy two thousand nine hundred and ninety nine only.

32. Therefore, though the contention of respondent No. 1 is that it had made an inadvertent mistake in quoting the BOQ rate of per day figure instead of the total

contract period of 1095 days, a closer scrutiny would however belie such contention. In columns 5, 6 and 7, respondent No. 1 filled up the amount in figures and words as Rs. 9,72,999.00 and Rupees nine lakhs seventy two thousand nine hundred and ninety nine respectively for 1095 days. In such circumstances, it cannot be said to be an inadvertent or unintentional mistake, as is being contended on behalf of respondent No. 1. Therefore, allowing respondent No. 1 to rectify such mistakes after finalization of the financial bid would be highly improper as it would have the effect of unsettling the entire tender process.

33. In Patel Engineering Company Limited (supra), this Court had rejected a similar contention that the mistakes were unintentional and had occurred due to fault of the computer in the following manner:

23. The mistakes/errors in question, it is stated, are unintentional and occurred due to the fault of computer termed as "a repetitive systematic computer typographical transmission failure". It is difficult to accept this contention. A mistake may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake. Here the mistakes may be unintentional but it was not beyond the control of Respondents 1 to 4 to correct the same before submission of the bid. Had they been vigilant in checking the bid documents before their submission, the mistakes would have been avoided. Further, correction of such mistakes after one-and-a-half months of opening of the bids will also be violative of clauses 24.1, 24.3 and 29.1 of the ITB.

33.1. This Court also held that tenders are invited on the basis of competitive bidding. On the one hand, it offers a fair opportunity to all those who are interested in competing for the contract and on the other hand it affords the authority a choice to select the best of competitors on a competitive price without prejudice to the quality of the work. Above all, it eliminates favoritism and discrimination in allotting public works to contractors. While benefit to the public exchequer is certainly an important criteria in award of contract, it is equally in public interest to adhere to the rules and conditions subject to which bids are invited.

34. This Court in Jagdish Mandal (supra) after referring to earlier decisions of this Court succinctly summed up the scope of judicial review of award of contracts and held thus:

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona

fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. 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. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say:

"the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.

35. Afcons Infrastructure Limited (supra) is a case where this Court reiterated the proposition that the words used in the tender documents cannot be ignored or treated as redundant or superfluous: they must be given the due meaning and their necessary significance. The owner or a employer of a project having authored the tender documents is the best person to understand and appreciate its requirements and interpret its documents. Constitutional courts must defer to this understanding and appreciation of the tender documents unless there is mala fides or perversity in the understanding or appreciation or in the application of the terms of the tender documents. It is possible that the view taken by the owner or the employer may not be acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given. This Court held as follows:

13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court

to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.

36. In the recent case of M/s. ABCI Infrastructures Private Limited (supra), this Court has dealt with a similar issue as in the present case. In that case, appellant was ranked as L-1 bidder with the bid price of Rs. 1,569.00 (rupees one thousand five hundred and sixty nine only). According to the appellant, they had quoted a bid price of Rs. 1,569 crores but due to system error, the quoted amount appeared just as 1,569.00. After the financial bids were opened and announced, appellant stated that it had discovered the mistake and accordingly the mistake was informed to the respondent authority stating that its actual bid was Rs. 1,569 crores and not Rs. 1,569.00. Though the mistake was bald-faced, Border Roads Organization, the respondent authority, insisted on accepting the bid inspite of the letters from the appellant seeking to withdraw from the tender. Ultimately Border Roads Organization declared the appellant as a defaulter and decided to forfeit its bid security. Consequently, the bank guarantee was sought to be encashed. It was in that context, this Court though observed that the mistake was self evident, nonetheless it agreed with the Border Roads Organization that the appellant was at fault and had made the mistake of having failed to add the required zeroes in the financial bid. The plea of system glitch put forth by the appellant was not acceptable as the others had successfully uploaded their bids without any problem. In the facts of that case, this Court noted that there were subsequent developments leading to fresh tender and award of contract though at a lower price. In the circumstances, this Court directed the appellant to pay Rs. 1 crore to the Border Roads Organization as a consequence of its error and upon receipt of the same, Border Roads Organization was directed to return appellant's original bank guarantee.

37. Reverting back to the case of Afcons Infrastructure Limited (supra), we find that this Court had also examined the issue regarding impleadment of other bidders when a challenge is made to an award of contract. This Court was of the view that it would be appropriate for the constitutional courts to insist on all eligible bidders being made parties to the proceedings filed by an unsuccessful or ineligible bidder. It has been held as under:

18. Before we conclude, it is necessary to point out that the High Court was of the opinion that the eligible bidders were not entitled to be either impleaded in the petition filed in the High Court by the ineligible bidder GYT-TPL JV or were not entitled to be heard. With respect, this is not the appropriate view to take in matters such as the present. There are several reasons for this, one of them being that there could be occasions (as in the present appeals) where an eligible bidder could bring to the notice of the owner or employer of the project that the ineligible bidder was ineligible for additional reasons or reasons that were not within the contemplation of the owner or employer of the project. It was brought to our notice by Afcons Infrastructure in these appeals that GYT-TPL JV did not

have any experience in the construction of a viaduct by the segmental construction method and that the translations of documents in Mandarin language filed in the High Court were not true English translations. Submissions made by the learned counsel for Afcons Infrastructure in this regard are important and would have had a bearing on the decision in the writ petition filed in the High Court but since Afcons Infrastructure was not a party in the High Court, it could not agitate these issues in the writ petition but did so in the review petition which was not entertained. It is to avoid such a situation that it would be more appropriate for the constitutional courts to insist on all eligible bidders being made parties to the proceedings filed by an unsuccessful or ineligible bidder.

38. In *Johra* (supra), this Court reiterated the fundamental principle that no order can be passed by any court in any judicial proceeding against any party without hearing and without giving such party an opportunity of hearing. In the facts of that case, the impugned order was set aside on the ground that the same was passed without hearing the appellant.

39. A three-Judge Bench of this Court in *CIDCO Vs. Shishir Realty Private Limited* (2012) 16 SCC 527, observed that when a contract is being evaluated, the mere possibility of more money in the public coffers does not in itself serve public interest. This Court held as follows:

61. When a contract is being evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State claiming loss of public money cannot be used to forego contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and the fairness of public authorities is also in play. The courts need to have a broader understanding of public interest, while reviewing such contracts.

40. The above proposition has been followed by another three-Judge Bench of this Court in the recent case of *Subodh Kumar Singh Rathore Vs. Chief Executive Officer* 2024 SCC Online SC 1682, when it examined the concept of public interest in administrative decisions relating to award of contracts. This Court held that even assuming for a moment that there was technical fault in the tender, which if rectified had the possibility of generating more revenue, the same by no stretch could be said to be a cogent reason for concealing an already existing tender. This Court highlighted the importance of maintaining the sanctity of tenders in governmental procurement processes. Public tenders are the cornerstone of governmental procurement processes, being competitive and ensuring fairness and transparency in the allocation of public resources. Public tenders are designed to provide a level playing field for all potential bidders, fostering an environment where competition thrives. The integrity of this process ensures that public projects and resources are delivered efficiently and effectively, benefiting the society at large. Therefore, sanctity of public tenders and contract is a fundamental principle that underpins the stability and

predictability of legal and commercial relationships. Infact this Court put in a word of caution that considerations of public interest should not be narrowly confined to financial aspect only.

41. Applying the above legal principles to the facts of the present case, we are of the view that the Division Bench of the High Court clearly fell in error in directing respondent No. 2 to 4 to allow rectification of the financial bid of respondent No. 1 by treating the amount offered by it as the per day figure and on that basis to compute the total amount for the entire contractual period of 1095 days. Such an exercise is clearly impermissible having regard to the terms and conditions of the contract which are required to be understood on the anvil of this Court's judgments. The authority granted to the tendering authority by clause 5B (v) of the Instruction to Bidders cannot be stretched to construe the price bid of respondent No. 1 as the per day offer, contrary to the bid declaration of respondent No. 1 itself, and thereafter, on that basis to work out a new bid amount for the entire contractual period making it the highest. In the present case, respondent No. 1 was not at all vigilant; rather, it displayed a very casual approach. In such circumstances, clause 5B(v) cannot be invoked to resurrect the bid of respondent No. 1 to make it H1. Clause 5B(v) of the Instruction to Bidders has to read conjointly with clause 4(g) of the notice inviting electronic bid.

42. While judicial review is not excluded to assail administrative decisions even in matters of tenders and contract, the long line of consistent judicial pronouncements tells us that the constitutional courts should exercise utmost restraint in interfering with a tender process unless the threshold of judicial review are met, as explained in Jagdish Mandal (supra) and in Afcons Infrastructure Limited (supra).

43. As is clearly discernible, appellant was a necessary party to the proceedings before the High Court instituted by respondent No. 1 being the H1 bidder. Impugned directions of the High Court has adversely affected the case of the appellant, downgrading its H1 status. The proposition that equity and natural justice should be kept at bay during the course of tender evaluation, while fully applicable to the case of respondent No. 1, cannot be applied to judicial proceedings where tender evaluation is under judicial scrutiny, fairness and natural justice being integral to the judicial process. Therefore, non-impleadment and consequential non-hearing of the appellant by the High Court, has vitiated the impugned judgment and order.

44. The expression 'public interest' in the arena of commercial transactions cannot and should not be confined to any straight jacket definition. While benefit or accrual of more revenue to the public exchequer is certainly an important aspect, equally important, if not more, is adherence to the rules and conditions of tender; sanctity of the tender process being paramount and should be maintained at all cost.

45. Thus, having regard to the above, impugned judgment and order dated 23.02.2024 passed by the Division Bench of the High Court in MAT No. 93 of 2024 cannot be sustained and is hereby set aside and quashed. Respondent Nos. 2 to 4 would be free to proceed with and finalise the award of contract in terms of the notice inviting electronic bid dated 17.10.2023.

46. Civil appeal is accordingly allowed. However, there shall be no order as to cost.