



2025:DHC:6353-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 11<sup>th</sup> July 2025*

*Pronounced on: 01<sup>st</sup> August 2025*

+ **W.P.(C) 7263/2025 & CM APPLs. 32778-32779/2025**

**PARAM ENTERPRISES PRIVATE LIMITED, & ANR**

.....Petitioners

Through: Ms. Meenakshi Arora, Sr. Adv with  
Mr. Srijib Chakraborty & Mr.  
Subhasish Chakraborty, Advs.

versus

**IRCON INTERNATIONAL LIMITED & ORS.** ....Respondents

Through: Mr. Mohit Goel, Mr. Sidhant Goel,  
Ms. Aishna Jain and Mr. Aditya  
Maheshwari, Advs for R-1 to 5.  
Mr. Udit Seth, Mr. Anil Seth, Mr.  
Roshan Roy and Mr. Vivek G. B.  
Advs for R-6.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

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**ANISH DAYAL, J**

1. This petition has been filed seeking disqualification of the bid submitted by respondent no.6/ *Rail Vikas Nigam Ltd.* (**'RVNL'**) in reference to *Tender no. IRCON/2060/CGRP/e-TENDER/24-25/CEWRL/GAD-PND/S&T/01* dated 08<sup>th</sup> January 2025 (**'impugned tender'**), and attendant relief including to declare petitioner no.1 as L-1 bidder.

**Factual Background**



2. Brief background facts are that respondent no.3/*IRCON* issued an impugned tender for supply of various signalling, telecommunications and EIMWB materials, installation, testing and commissioning of Distributed/Centralised Electronic Interlocking (E1) Installations at 10 new stations, viz., *Surakachhar, Block Cabin, Katghora Road, Bhingra, Patuwa, Matin, Sendurgarh, Putipakhana, Dhangawan and Bhadi stations*; 06 new IBCs in the *Bhingra-Putuwa, Putuwa-Matin, Sendurgarh-Putipakhana, Putipakhana-Bhadi, Bhadi-Dhangawan & Dhangawan-Pendra Road block sections*; installation, testing and commissioning of new section Control System with Headquarters and Wayside Train Control Communication Equipment/System in the *Gevra Road–Pendra Road section*; installation, testing and commissioning of new Telephone Exchange and EIMWBs at appropriate location(s) through execution of various signalling & telecommunications works (**‘S&T Works’**); alterations/modifications in the existing panel interlocking installation at *Kusmunda Block Station (KBS) yard* and the existing Electronic Interlocking Installation at East Cabin of the *SECL SILO Siding, (KMKA) yard* including other miscellaneous works having estimated cost of work of *Rs.209.41 crores*.

3. Petitioners claim to be a reputed company in S&T Works and participated in the said tender. The technical bid was opened on 7<sup>th</sup> February 2025. Petitioners were found to be eligible with other five bidders.

4. Subsequent to the opening of the technical bid, respondents uploaded the bid documents and/or credentials submitted by the respective bidders. Petitioners, upon review of the said documents, noted that there were several anomalies in the Performance Certificate relied upon by other participants, as



they were failing to meet the eligibility criteria as per *Clause 1* of *e-Procurement Notice*.

5. Accordingly, petitioners *vide* a letter dated 25<sup>th</sup> March 2025, informed respondents and requested that the '*essential qualifying criteria*' be considered in true spirit and there should not be any arbitrary dilution. No response was received. Petitioner approached the Calcutta High Court by ***W.P.A 7764/2025*** praying for consideration of letter dated 25<sup>th</sup> March 2025.

6. In the meanwhile, there was opening of the financial bid and since the petitioner was L-2 bidder while respondent no.6/RVNL was the L-1 bidder and was awarded the contract. Subsequently, considering there was a jurisdictional issue also involved, petitioner withdrew the petition from Calcutta High Court and immediately filed this petition.

### **Submissions on behalf of Petitioner**

7. The gravamen of petitioner's challenge to respondent no.6/RVNL's successful bid is the '*qualification criteria*' in the tender, i.e. contractor should possess the experience of having successfully completed or substantially completed similar works during the last seven years with defined parameters of the estimated value of such works. While, respondent no.6/RVNL's bid and Experience Certificate showed that they have done such works, the same were fully sub-contracted to sub-contractors. Therefore, it was essentially contended that they could not take the benefit of credentials which had already been transferred to sub-contractors.

8. The matter was listed before this Court on 27<sup>th</sup> May 2025 and no stay was granted. However, a direction was given in *paragraph 6* of the said order that:



*“..... any decision taken pursuant to the subject tender shall be subject to the outcome of the present writ petition.”*

9. Ms. Meenakshi Arora, Senior Advocate for petitioner, argued that this tender itself has a provision which restricted sub-contracting and, therefore, if respondent no.6/RVNL has no experience in executing the previous contract, they should not be considered. ‘*Essential qualifying criteria*’ of contract, to which reference was made, is extracted as under:

**“Tender for S&T works of Dhangawan to Surakachhar of  
CEWRLP Project**

**ANNEXURE-V**

***(Ref. Clause 3.0 of e-Procurement Notice, sub-clause 19.1 of ITT)***

***Essential Qualifying Criteria:***

- 1. The contractor should possess the experience of having successfully completed or substantially completed similar works during the last 7-years (ending last day of the month previous to the one in which tenders are invited) which should be any one of the following: -*
  - i. Three similar completed works each costing not less than the amount equal to 30% of the estimated cost.*
  - ii. Two similar completed works each costing not less than the amount equal to 40% of the estimated cost.*
  - iii. One similar completed work costing not less than the amount equal to 60% of the estimated cost.*

**Meaning of Similar work:** *Works are considered similar if executed work involves “Supply, Installation, Testing and Commissioning of Indoor and Outdoor (SSI/EI/RRI/PI) S& T works”.*

10. Since there was no disqualification of petitioner on account of technical grounds, the details of experience submitted are not being discussed herein.

11. The challenge is, in fact, to the experience claimed by respondent no.6/RVNL. The Performance Certificate submitted by respondent no.6/RVNL



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was dated 21<sup>st</sup> October 2022 issued by the South-Central Railway bearing no. *W.Con.496/A/Misc/RVNL*.

12. The said certificate was related to an award of work dated 25<sup>th</sup> July 2011, for construction of Roadbed, Major Bridges, Track Linking (excluding supply of Rails and PSC line sleepers), General Electrical, Traction and S&T Works (Outdoor) and Construction of Staff quarters in connection with doubling with railway electrification of *Vijaywada-Gudivada-Bhimavaram-Narasapur, Gudivada-Machilipatnam* and *Bhimavaram-Nidadavole* doubling with Electrification (221 kms). Same is extracted as under:



#### **SOUTH CENTRAL RAILWAY**

Office of the  
Chief Admn. Officer/Cons.  
Rail Nirman Nilayam  
Secunderabad-500025

**No.W Con.496/A/Misc/RVNL**

**Date:21/10/2022**

#### **PERFORMANCE CERTIFICATE**

The following subject work has been entrusted to RVNL for execution vide Railway Board Lr. No.2004/W-I/RVNL/13/Pt.III, Dt. 25.07.2011. The details of work done are furnished below:

1. Name of work: Construction of Roadbed, Major Bridges, Track Linking (excluding supply of Rails and PSC line sleepers), General Electrical, Traction and signal & Telecommunication works (Outdoor) and Construction of Staff quarters in connection with Doubling with Railway Electrification of *Vijaywada-Gudivada-Bhimavaram-Narasapur, Gudivada-Machilipatnam* and *Bhimavaram-Nidadavole* doubling with Electrification (221 kms) as detailed below:
  - (a) Package-1: Vijayawada- (Excl)- Gudivada-Moturu (Incl) (51.50 kms)
  - (b) Package-2: Moturu (Excl) Bhimavaram Town (Excl) (Km 53.50 kms)
  - (c) Package-3: Bhimavaram Town – Nidadavole (Excl) (km 49.75)
  - (d) Package-4: Gudivada (Excl) – Machilipatnam (36.74 kms)
  - (e) Package-5: Bhimavaram Jn (Excl)- Narsapur (29.48 kms)
2. Name of the Executing Agency : Rail Vikas Nigam Ltd.



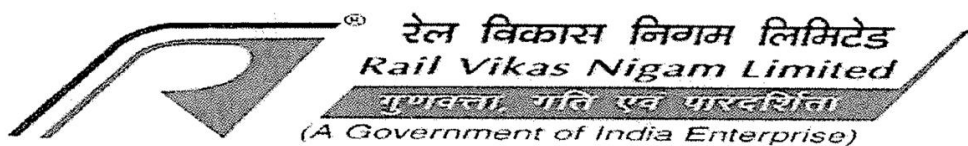
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3. Total Value of work done : Rs.4307.35 Cr.  
 4. Detailed Estimate/sanctioned Cost : Rs.1503.71 crores.

13. It was contended that the tender qualification required work to be completed within seven years though the same had been started way back in 2016 and the completion was in 2022 and, therefore, arguably the ‘seven years criteria’ would not have been met. However, the main focus, of the Senior Counsel for petitioner, was on the nature of the Completion Certificate and the lack of ‘execution’ by respondent no.6/RVNL. Each of the *five packages* was executed through sub-contractors and not by respondent no.6/RVNL, while completion was awarded to each of the sub-contractors by respondent no.6/RVNL. Some of these Experience Certificates issued by respondent no.6/RVNL to the sub-contractors have been placed on record by the petitioner.

14. As an illustration, the Experience Certificate issued to a joint venture of *M/s Sri SCL Infratech Limited, Hyderabad* and *M/s China Railway 21<sup>st</sup> Bureau Group Company Ltd.*, was issued relating to balance work of *Package-1*. For ease of reference, the same is extracted as under:



Block No: 227&228, Railway Colony, Satyanarayanapuram,  
 Vijayawada – 520 011- Phone: 0866-2532154

TO WHOM SO EVER IT MAY CONCERN		
No: RVNUSC/BZA-GDV-OTRIPackage-1/172/Agmt/ Package-1, Dt: 20.07.2023		
This is to certify that, Mis. SCL-CRC21 B (JV), H.No.8-2-502/1/A, 1st Floor, JIVI Towers, Road No.7, Banjara Hills, Hyderabad - 500 034, Telangana State has been carried out the following:		
1.	Name of the work	Balance works of Package-1 for Construction of Roadbed, Major and Minor Bridges, Track Linking (Excluding supply of Rails and PSC Line sleepers), General Electrical, Traction and Signal & Telecommunication works (Outdoor); in connection with Doubling with Railway Electrification of Vijayawada - Bhimavaram Section



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		from Km.0.00 to Km. 51.50 Between Vijayawada and Moturu Stations (Including Gudivada & Moturu Yards) on Vijayawada division of South-Central Railway				
2.	Name of Client	Rail Vikas Nigam Limited, Block Nos. 227 & 228, Satyanarayanapuram Railway: Colony, Vijayawada 520 001. Office Phone: 0866-2532154.				
3.	Name of the Contractor	M/s. SCL-CRC21B (JV), H.No.8-2-502/1/A, 1st Flo or, JIVI Towers, Road No.7, Banjara Hills, Hyderabad - 500 034				
4.	Share of JV	M/s. Sri SCL Infratech Limited, Hyderabad: 70% M/s China Railway 21st Bureau (Group) Co. Ltd: 30% (M/s.Sri SCL Infratech Limited, Hyderabad has taken sub-contractor from CRC21B)				
5.	JV Partners Responsibilities	M/s. Sri SCL Infratech Limited, Hyderabad Entire Earthworks, Bridges, Buildings, Ballast Supply, Platform, Passenger amenities & miscellaneous works, procurement, General Services Electrical works, other miscellaneous works  M/s. China Railway 21st Bureau (Group) Co. Ltd.: P.Way Supply, Linking of Pay-way items, Signalling Supply group items, Signalling Execution and OHE works. (M/s. Sri SCL Infratech Limited, Hyderabad has taken sub-contractor from CRC21B)				
6.	Letter of Acceptance No./ Agreement No.	LOA No. RVNL/SC/BZA-GDV-OTR/Package-1/172, dated 24.08.2016 Agreement No. RVNL/SC/BZA-GDV-OTR/Package-1, dated 21.10.2016				
7.	Contract Value as per: LOA/Agreement	Rs.329. 92 Crores				
8.	Total value of work done so far (including PVC)	Rs. 511.23 Crores (Rs.436.96 + Rs.74.27 PV)				
9.	Value of work done	Year	Amount in Crores of Rs.			
			Civil	Electrical	S&T	Total
		2016-17	0	0	0	0
		2017-18	18.15	0.42	8.86	27.43
		2018-19	27.76	16.01	6.04	49.81
		2019-20	192.25	43.86	12.72	248.83
		2020-21	53.81	30.06	8.76	92.63
		2021-22	4.47	0.65	2.12	7.24
		2022-23	1.81	6.01	3.2	11.02
		Total in Cr.	298.25	97.01	41.7	436.96
		Price Variation Amount in Crores of Rs.				
Value of PVC		Civil	Electrical	S&T	Total	
	Total in Cr.	46.89	21.69	5.69	74.27	

15. Similarly, there are other Completion Certificates relating to *Packages-2, 3, 4 & 5*. One of the sub-contractors was also a bidder in the subject tender.





16. Senior Counsel for petitioner then stated that the relevant experience for the purpose of tender, being *execution* of contracts and not sub-contracting, was clearly borne out from *Clause 13.0* of the General Conditions of Contract (*‘GCC’*) of the instant tender. *Clause 13.1* of GCC provided for conditions for sub-contracting by contracting party in the existing tender as part of conditions. Those conditions are specified as under:

**“13.0 SUBCONTRACTING**

**13.1 Subcontracting**

*i. The Contractor shall not subcontract the whole of the works. Except where otherwise provided in the Contract, the Contractor shall not subcontract any part of the works without the prior consent of the Engineer in writing and in any case not beyond 30% of the contract value. Any such consent shall not relieve the Contractor from any of his liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any subcontractor, his representative, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor.*

*ii. Provided that the Contractor shall not be required to obtain such consent for:*

- a) The provision of labour, or*
- b) The purchase of materials which are in accordance with the specifications/standards specified in the Contract, or*
- c) The subcontracting of any part of the works for which the subcontractor is named in the contract.*
- d) The purchase of Plants and Equipment for execution of the works.*
- e) The hiring of Plants and Equipment for execution of the works.*

*Any breach of the above conditions shall entitle the Employer/Engineer to rescind the contract.”*

*(emphasis added)*





17. Senior Counsel for petitioner, therefore, contended that if the tendering authority itself was so restrictive about sub-contracting by the contracting party, and had prohibited it, unless there was consent, and in any case not beyond 30% of the contract value, the intention clearly was that the experience required was of ‘*execution*’ and not merely of ‘*project management*’ or as a ‘*management contractor*’. Respondent no.6/RVNL, per the petitioner, had performed the role of *project management* by virtue of sub-contracting in the South-Central Railway’s tender.

18. Importantly, it was emphasized that respondent no.6/RVNL had transferred its credentials to its sub-contractors, thereby creating an anomaly where not only respondent no.6/RVNL but all the five sub-contractors would be claiming the same credentials, whereas respondent no.6/RVNL had not really done and executed the work.

19. Focus was also on the ‘*qualifying criteria*’ as extracted above which specified the meaning of “*similar work*” towards the end of the Clause. It stated that works are considered similar if “*executed work*” involves the supply, installation, testing and commissioning of indoor and outdoor S&T work.

**Submissions on behalf of Respondent n o.1/IRCON**

20. Respondent no.1/IRCON’s counsel, however, contended that, *firstly*, *mala fides* cannot be ascribed to respondent no.1/IRCON merely by granting work to respondent no.6/RVNL; respondent no.6/RVNL was a reputed ‘*Navratna Company*’ of the Government, and not a fly-by-night operator; and *secondly*, that Public Sector Undertaking’s (*PSUs*), as a matter of fact, do sub-contract, particularly in large infrastructure projects, and it is a standard industry practice. Further, it was contended that the requirement, as per tender, was of the contractor possessing experience of “*having successfully completed or*



*substantially completed similar works*”. The requirement was of ‘*completion*’ of contracts of the specified amount and the specified period, which respondent no.6/RVNL did satisfy.

21. The fact that respondent no.6/RVNL had been given the contract by the South-Central Railway and had completed the contract successfully and been given a Completion Certificate, there was no reason as to why it should not take the benefit of it. Ascribing a condition in the tender qualification that the experience should involve *executed* works only and not include *completed* works *simpliciter*, would be unnecessarily imposing a tender condition without regard to the expertise of the tender giving authority.

22. Respondent no.1/IRCON’s counsel further contended that the verification process had been carried out and both the petitioner and respondent no.6/RVNL qualified, but respondent no.6/RVNL being the L-1 bidder, they were bound to execute the contract with them. Reliance was placed on *Minutes of the Meeting of the Tender Committee*, which noted the process of verification, in that respondent no.6/RVNL had submitted its credentials in the earlier tender in which verification had already been carried out.

23. Counsel for respondent also placed reliance upon ***Sahakar Global Limited JV and Another v. Municipal Corporation of Delhi*** 2025 SCC OnLine Del 2273 and ***N.G. Projects Limited v. Vinod Kumar Jain & Ors.*** (2022) 6 SCC 127.

24. Counsel for respondent no.6/RVNL contended that allusion to ‘*management contractor*’ phraseology was not existing in the tender and the Court cannot manufacture a disqualification if it did not exist. The Completion Certificates showed that they had actually done the work and got the benefit of



it. The sub-contracting was a regular part of infrastructure contracts and there is no condition, in the tender, that such could not be considered.

25. In this relation, counsel for respondent handed over some industry-specific articles to the Court, which note that, based on statistics, it was found that *80% value of building contracts are undertaken by smaller contractors and involve high scale contracting.*

26. Further, it was argued that there was delay by petitioner in approaching the Court. The letter was issued on 25<sup>th</sup> March 2025 after the technical bid had opened up on 7<sup>th</sup> February 2025, while the Writ Petition was filed on 26<sup>th</sup> May 2025, after the financial bids had opened up on 16<sup>th</sup> May 2025. Petitioner was a disgruntled bidder and, therefore, there was no merit in their petition.

### **Submissions in rejoinder**

27. Senior Counsel for petitioner relied on ***Afcons Infrastructure Limited. V. Nagpur Metro Rail Corporation Ltd. & Anr.*** (2016) 16 SCC 818, to contend that a constitutional courts' interference with interpretation of authority's decision is permitted if it is perverse. As regards ***Sahakar Global Ltd.*** (*supra*), it specifically recorded that judicial review was permissible. Regarding ***N.G. Projects*** (*supra*), it was distinguished on the grounds that the facts were different and that the party had not completed the work. This was later clarified by the Supreme Court *vide* an order dated 18<sup>th</sup> May 2022 in ***Jai Bholenath Construction v. The Chief Executive Officer, Zilla Parishad, Nanded & Ors.*** The petitioner's counsel submitted that they were willing to meet the offer and, therefore, there would be no escalation of price or financial prejudice for respondent no.1/IRCON.

28. Reliance was also placed on ***Tata Cellular v. Union of India*** (1994) 6 SCC 651, on the aspect that though the tendering authority has expertise to



assess the bids, what can be examined is, if it has not acted in a fair and reasonable manner.

29. Reliance was also placed on *PKF Sridhar & Santhanam vs. Airports Economic Regulatory Authority of India* 2022 SCC OnLine Del 122, by the petitioner, canvassing that the tender document is to be read as whole and no clause can be read in isolation. Therefore, the condition in *Clause 13.1* of GCC restricting sub-contracting in the awarded work would naturally mean that pre-condition for experience would also not accommodate mere sub-contracting, but would insist on *execution* of work.

### **Analysis**

30. The issue concerns a tender floated by respondent no.1/IRCON on 11<sup>th</sup> June 2024 (*Tender no. IRCON/2060/CGRP/e-TENDER/24-25/CEWRL/GAD-PND/SnT/PKG-B*), for S&T works at multiple stations in the, *Chhattisgarh East West Railway Limited (CEWRL section)*, as part of the *Pendra Road- Gevra Road Double Line* project (*‘earlier tender’*).

31. The *‘essential qualifying criteria’* under the earlier tender were identical to the criteria stipulated under the impugned tender. Both the petitioner and respondent no.6/RVNL, along with other entities, submitted their bids under the earlier tender. In support of its bid in the earlier tender, respondent no.6/RVNL submitted a Performance Certificate dated 21<sup>st</sup> October 2022 issued by the South-Central Railway.

32. As part of its evaluation, respondent no.1/IRCON carried out due diligence of the documents submitted by all bidders by issuing verification letters to the authorities who issued the certificates. On 12<sup>th</sup> July 2024, respondent no.1/IRCON issued a letter to the South-Central Railway seeking a



response to specific queries and enclosing the Performance Certificate submitted by respondent no.6/RVNL in support of the eligibility criteria.

33. On 26<sup>th</sup> July 2024, the South-Central Railway responded to the letter of respondent no.1/IRCON and confirmed the contents of Performance Certificate submitted by respondent no.6/RVNL. The earlier tender was scrapped due to efflux of time, and the impugned tender was floated on 8<sup>th</sup> January 2025, which was for the same project. Bids were again submitted, and besides petitioner and respondent no.6/RVNL, four other entities submitted the bids.

34. Respondent no.6/RVNL again gave the same Performance Certificate. After opening of technical bids on 7<sup>th</sup> February 2025, respondent no.1/IRCON conducted due diligence for verification of documents, including that of the petitioner. Four bidders were declared technically qualified; this has been recorded in the *Minutes of the Meeting of the Tender Committee*.

35. As regards the Performance Certificate of respondent no.6/RVNL, it was noted in the said certificate (particularly in *paragraph 9*) that “*the entire project has been commissioned for traffic*” and, therefore, have been qualified for ‘*successfully completed works*’ rather than ‘*substantially completed works.*’ The date of commencement of the work was 14<sup>th</sup> July 2016 and was completed in October 2022, which fell within the period of the past *seven year’s* eligibility period. The nature of the work was of similar nature i.e. S&T work. The value of the work amounted to *Rs.364.52 crores*, which was significantly above the 60% threshold of the impugned tender.

36. *Paragraph 6(b)* of the Performance Certificate provided year-wise expenditure from *F.Y. 2019* till *F.Y. 2023* (of last *seven years*), cumulatively amounting to *Rs.294.41 crores*, which was significantly higher than the 60% threshold.



37. Respondent no.1/IRCON's argument, therefore, was that the decision-making process was properly followed and they had legitimately concluded that respondent no.6/RVNL fulfilled the technical criteria. Respondent no.1/IRCON also submitted that the project executed by respondent no.6/RVNL for the South-Central Railway involved a substantial scope of work of significant financial value, and that the engagement of sub-contractors was not out of the ordinary. Moreover, the responsibility and accountability, along with risk, has always been on respondent no.6/RVNL and, therefore, it could not be said that they were merely a '*management contractor*'. The Performance Certificate issued by the South-Central Railway explicitly acknowledged that respondent no.6/RVNL had completed the work and their performance was satisfactory.

38. The Court, in its assessment, has taken judicial notice of two facts: *firstly*, that respondent no.6/RVNL is a *Navratna PSU* and, therefore, not a fly-by-night operator but a large public sector cooperation which is necessarily regulated by its own internal mechanisms; and *secondly*, the aspect of sub-contracting is a normal occurrence in large infrastructure projects, and it is quite impossible for one entity to execute the large manifold of works which, in modern times, are involved in an infrastructure project.

39. However, aside from this, principally the Court has to assess whether the challenge to the tender process should be entertained, as foisted by the petitioner. In these circumstances, whether the tendering authority had envisaged a situation where they would only accept bids from agencies submitting experience of *100% execution* of works rather than '*completion of works*' needs to be considered. This assessment and right itself resides in the tendering authority, as being the author of the tender and an expert in the matter.



40. It is for the tendering authority to understand, appreciate, and assess what it requires for its works. This aspect in tender jurisprudence is fairly well settled. Reliance is often placed on the decision in ***Tata Cellular v. Union of India*** (*supra*), wherein the Supreme Court held that judicial review of administrative actions is limited to examining the decision-making process rather than the merits or fairness of the decision itself. Relevant paragraph is extracted as under:

“77. ....Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.....”

(emphasis added)

41. Moreover, in ***Tata Motors Ltd. v. Brihan Mumbai Electric Supply & Transport Undertaking*** (2023) 19 SCC 1, the same aspect has been embellished in the following paragraphs:

“56. The law relating to award of contract by the State and public sector corporations was reviewed in *Air India Ltd. v. Cochin International Airport Ltd.* [*Air India Ltd. v. Cochin International Airport Ltd.*, (2000) 2 SCC 617] and it was held that the award of a contract,





whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

57. As observed by this Court in *Jagdish Mandal v. State of Orissa* [*Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517], that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”

(emphasis added)

42. Even, in *Agmatel India (P) Ltd. v. Resoursys Telecom* (2022) 5 SCC 362, it has been stated by the Supreme Court as under:



*“26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given.”*

(emphasis added)

43. The issue, therefore, is whether the Court can replace its opinion on what is in the best interest of the tendering authority with its own. Further embellishment is provided by the Supreme Court in *Afcons Infrastructure* (*supra*). Relevant paragraphs are extracted as under:

*“12. In Dwarkadas Marfatia and Sons v. Port of Bombay [Dwarkadas Marfatia and Sons v. Port of Bombay, (1989) 3 SCC 293] it was held that the constitutional courts are concerned with the decision-making process. Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] went a step further and held that a decision if challenged (the decision having been arrived at through a valid process), the constitutional courts can interfere if the decision is perverse. However, the constitutional courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was confirmed in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] as mentioned in Central Coalfields [Central Coalfields Ltd. v. SLL-SML (Joint Venture*



Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99].

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.

14. We must reiterate the words of caution that this Court has stated right from the time when Ramana Dayaram Shetty v. International Airport Authority of India [RamanaDayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] was decided almost 40 years ago, namely, that the words used in the tender documents cannot be ignored or treated as redundant or superfluous — they must be given meaning and their necessary significance. In this context, the use of the word “metro” in Clause 4.2(a) of Section III of the bid documents and its connotation in ordinary parlance cannot be overlooked.

15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.

16. In the present appeals, although there does not appear to be any ambiguity or doubt about the interpretation given by NMRCL to the tender conditions, we are of the view that even if there was such



*an ambiguity or doubt, the High Court ought to have refrained from giving its own interpretation unless it had come to a clear conclusion that the interpretation given by NMRCL was perverse or mala fide or intended to favour one of the bidders. This was certainly not the case either before the High Court or before this Court.”*  
(emphasis added)

44. It may be instructive to note a decision of the Division Bench of this Court in ***Sahakar Global Limited JV*** (*supra*), where after traversing through legal principles on tenders, the Court states the scope and extent of judicial review of the action of the State, in exercise of its jurisdiction under Article 226 of the Constitution. Relevant paragraph is extracted as under:

“49. In view of the aforesaid discussion, the scope and extent of judicial review of the action of the State by this Court in the exercise of its jurisdiction under Article 226 of the Constitution in matters relating to tender/contract is well established which can be summarised, so far as the same is relevant for the purpose of consideration of the issue arising in this case, as below:

(A) Judicial review of State action, even in matters of contract, is permissible in disputes which arise after the contract is entered into by an authority.

(B) Judicial review is also permissible in relation to disputes which arise in a tender/contract matter that are to be awarded by the public authorities at the stage prior to the award of the contract.

(C) Even at the stage after termination or breach of contract, actions of the State/instrumentality can be subjected to judicial review.

(D) However, judicial review of the actions of the public authorities are permissible on the grounds of the action complained against being arbitrary, unfair or



unreasonable, being contrary to the principle enunciated under Article 14 of the Constitution of India.  
(E) The writ court, while exercising judicial review in relation to disputes arising at a stage prior to the award of contract, can undertake scrutiny, however, such judicial review/scrutiny would be undertaken within the nature of judicial review as declared by the Supreme Court in the decision in Tata Cellular(supra).

(F) The writ Court can judicially review a contractual dispute where one of the parties to the contract is a public authority and also in such a situation where there is a violation of principles of natural justice, where the action complained against does not serve any public interest and the public authority has not acted in good faith.

(ii) *The highest bidder has no vested right to have the contract concluded in his favour.”*

(emphasis added)

45. The Court does not find anything in the tender conditions that prohibits a previous experience involving sub-contracting. If it was so, the same would have been provided. The attempt by the Senior Counsel for petitioner to conflate *Clause 13.0* of the GCC of the instant tender, which restricted sub-contracting for the purposes of this contract, is in the opinion of this Court an unnecessary and tedious extrapolation.

46. Regards contract of the South-Central Railway, considered for the purpose of previous experience, it would be the prerogative of the South-Central Railway as to how it wishes to conduct works *inter alia* through sub-contracting. The fact that the South-Central Railway issued a Performance Certificate and also issued a verification in this regard on a query by respondent no.1/IRCON endorses and precipitates the issue *qua* respondent no.6/RVNL. As to how respondent no.1/IRCON deals with its own contract/works in the



subject tender has no connect, links or tether with the works under the South-Central Railways contract.

47. It is for the author of the documents i.e. the tendering authority, to assess what it wants, both in terms of previous experience and how it requires a successful party to work, and any condition it wishes to impose on the execution of its own works. These two aspects cannot be conflated, as it would be illogical and irrational; if permitted, would cause havoc in many tendering processes.

48. As rightly argued by respondent no.1/IRCON & respondent no.6/RVNL, there was no terminology of '*management contractor*' used in the tender document, and, therefore, that imposition/interpolation sought by petitioner, through implication, is unmerited. Accepting petitioner's contention would amount to introducing an artificial disqualification, which the tendering authority has considered and rejected. Furthermore, it would lead to a situation where a successful bidder would be disenfranchised from the tender and the works without any legitimate reason.

49. The Court does not find any infirmity with the decision-making process, considering that, for the purpose of tender evaluation, verification of the experience certificate was sought. It cannot be ignored that technical experts, who evaluate tenders of such large values, would understand the difference between *completion* of works through sub-contracting and *execution* of works. These are matters that would be par for the course, for technical experts, and the Court does not wish to enter into that thicket.

50. Whether the transfer of credentials by respondent no.6/RVNL to its sub-contractors would disentitle them from claiming the experience is not an issue which the Court needs to delve into, for the reason that the South-Central Railway's verification endorsed the experience in the hands of respondent





no.6/RVNL. The imputation of ‘*transfer of credentials*’ cannot invite an opinion from the Court to supersede the opinion of the South-Central Railway in relation to its own works. Once the verification was given, which provided for *completion*, in fact *successful* and *satisfactory* completion, the ‘*qualifying criteria*’ would have been met.

51. Petitioner adverting to a stray line in the proviso to *Clause 1(iii)* for qualifying criteria referring to “*meaning of similar works*” containing the word and phrase “*executed*” in support of their contention, is neither merited nor accepted. A bare perusal of the clause would bear out that “*executed*” is used in a particular context, and it does not impose a specific qualification or disqualification in any manner relating to ‘*execution*’ of works, as opposed to “*subcontracting*.”

52. The proviso to *Clause 1(iii)* is merely to embellish the phrase “*similar works*” and is not a provision which can override the principal part of the *Clause 1* itself. Accepting petitioner’s contention would be effectively using the ‘*tail to wag the dog*’ and would be against all tenets of contractual interpretation.

53. Accordingly, the petition is dismissed. Pending applications are rendered as infructuous.

54. Judgement be uploaded to the website of this Court.

**ANISH DAYAL, J**

**DEVENDRA KUMAR UPADHYAYA, CJ**

**AUGUST 1, 2025/ak/tk**