



2025:CGHC:9238-DB

**AFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 482 of 2025**

M/s. Shraddha Construction Company Represented Through Its Partner Satish Kumar Agrawal, S/o Late Shri Sedhu Ram Agrawal, Aged About 58 Years, R/o R-7, Vinoba Nagar, Bilaspur, District Bilaspur (C.G.)

**--- Petitioner(s)****Versus**

**1** - State Of Chhattisgarh Through Its Secretary, Department Of Commerce And Industries, Ring Road No. 1, Telibandha, District Raipur (C.G.)

**2** - Managing Director Chhattisgarh State Industrial Development Corporation Ltd, Udyog Bhawan, Ring Road No.-1, Telibandha, Raipur, District Raipur, (C.G.)

**3** - Executive Director Chhattisgarh State Industrial Development Corporation Ltd, Udyog Bhawan, Ring Road No.-1, Telibandha, Raipur, District Raipur C.G.

**4** - Executive Engineer Division-01, Chhattisgarh State Industrial Development Corporation Ltd, Udyog Bhawan, Ring Road No.-1, Telibandha, Raipur, District Raipur C.G.

**5** - Ms. Anandi Builders Through Prateek Kumar Tiwari, R/o L-7, Vinoba Nagar, Bilaspur, C.G. 495001

**--- Respondent(s)**


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For Petitioner(s) : Mr. Kishore Bhaduri, Senior Advocate assisted by Mr. Aman Saxena, Advocate.

For Respondent No. 1 /State : Mr. Prafull N Bharat, Advocate General alongwith by Mr. Sangharsh Pandey, Government Advocate.

For Respondents No. 2 to 4 : Mr. Prafull N Bharat, Senior Advocate assisted by Mr. Trivikram Nayak, Advocate.

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**WPC No. 548 of 2025**

**1** - M/s. Shraddha Construction Company Represented Through Its Partner Satish Kumar Agrawal S/o Late Shri Sedhu Ram Agrawal Aged About 58 Years R/o R-7 Vinoba Nagar Bilaspur District - Bilaspur (C.G.)

---**Petitioner(s)**

**Versus**

**1** - State Of Chhattisgarh Through Its Secretary Department Of Commerce And Industries Ring Road No. 1 Telibandha District - Raipur (C.G.)

**2** - Managing Director Chhattisgarh State Industrial Development Corporation Ltd. Udyog Bhawan Ring Road No. 1 Telibandha Raipur District - Raipur (C.G.)

**3** - Executive Director Chhattisgarh State Industrial Development Corporation Ltd. Udyog Bhawan Ring Road No. 1 Telibandha Raipur District - Raipur (C.G.)

**4** - Executive Engineer Division -01 Chhattisgarh State Industrial Development Corporation Ltd. Udyog Bahwan Ring Road No. 1 Telibandha Raipur District - Raipur (C.G.)

**5** - Ms. Shashank Mishra Through Shashank Kumar Mishra 401, B Block Harsh Horizon Mowa Raipur Chhattisgarh 492001

--- **Respondent(s)**

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For Petitioner(s) : Mr. Kishore Bhaduri, Senior Advocate assisted by Mr. Aman Saxena, Advocate.

For Respondent No. 1/State : Mr. Prafull N Bharat, Advocate General alongwith by Mr. Sangharsh Pandey, Government Advocate.

For Respondents No. 2 to 4 : Mr. Prafull N Bharat, Senior Advocate assisted by Mr. Trivikram Nayak, Advocate.

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**WPC No. 550 of 2025**

M/s. Shraddha Construction Company Represented Through Its Partner Satish Kumar Agrawal, S/o Late Shri Sedhu Ram Agrawal, Aged About 58 Years, R/o R-7, Vinoba Nagar, Bilaspur, District Bilaspur, Chhattisgarh.

---**Petitioner(s)**

**Versus**

**1** - State Of Chhattisgarh Through Its Secretary, Department Of Commerce And Industries, Ring Road No. 1, Telibandha, District Raipur, Chhattisgarh.

**2** - Managing Director Chhattisgarh State Industrial Development Corporation Ltd., Udyog Bhawan, Ring Road No. 01, Telibandha, Raipur, District Raipur, Chhattisgarh.

**3** - Executive Director Chhattisgarh State Industrial Development Corporation Ltd., Udyog Bhawan, Ring Road No. 1, Telibandha, Raipur, District Raipur, Chhattisgarh.

**4** - Executive Engineer Division- 01, Chhattisgarh State Industrial Development Corporation Ltd., Udyog Bhawan, Ring Road No. 1, Telibandha, Raipur, District Raipur, Chhattisgarh.

**5** - Ms. Anandi Builders Through Prateek Kumar Tiwari, R/o L-7, Vinoba Nagar, Bilaspur, Chhattisgarh. 495001

--- **Respondent(s)**

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For Petitioner(s)	: Mr. Kishore Bhaduri, Senior Advocate assisted by Mr. Aman Saxena, Advocate.
For Respondent No. 1/State	: Mr. Prafull N Bharat, Advocate General alongwith by Mr. Sangharsh Pandey, Government Advocate.
For Respondents No. 2 to 4	: Mr. Prafull N Bharat, Senior Advocate assisted by Mr. Trivikram Nayak, Advocate.

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**WPC No. 551 of 2025**

M/s. Shraddha Construction Company Represented Through Its Partner Satish Kumar Agrawal, S/o Late Shri Sedhu Ram Agrawal, Aged About 58 Years, R/o R-7, Vinoba Nagar, Bilaspur, District Bilaspur Chhattisgarh.

---**Petitioner(s)**

**Versus**

**1** - State Of Chhattisgarh Through Its Secretary, Department Of Commerce And Industries, Ring Road No. 1, Telibandha, District Raipur Chhattisgarh.

**2** - Managing Director Chhattisgarh State Industrial Development Corporation Ltd., Udyog Bhawan, Ring Road, No. 1, Telibandha, Raipur, District Raipur Chhattisgarh.

**3** - Executive Director Chhattisgarh State Industrial Development Corporation Ltd., Udyog Bhawan, Ring Road, No. 1, Telibandha, Raipur, District Raipur Chhattisgarh.

**4** - Executive Engineer Division - 01, Chhattisgarh State Industrial Development Corporation Ltd. Udyog Bhawan, Ring Road, No. 1, Telibandha, Raipur, District Raipur Chhattisgarh.

**5** - Ms. Anandi Builders Through Prateek Kumar Tiwari, R/o L - 7, Vinoba Nagar, Bilaspur, Chhattisgarh, 495001.

--- **Respondent(s)**

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For Petitioner(s)	: Mr. Kishore Bhaduri, Senior Advocate assisted by Mr. Aman Saxena, Advocate.
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For Respondent No.1 /State : Mr. Prafull N Bharat, Advocate General  
alongwith by Mr. Sangharsh Pandey,  
Government Advocate.

For Respondents No. 2 to 4 Mr. Prafull N Bharat, Senior Advocate assisted  
by Mr. Trivikram Nayak, Advocate.

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**WPC No. 843 of 2025**

M/s Avinash Buildcon Infrastructure Private Limited Through Ashok Kumar  
Tiwari S/o Jagannath Tiwari Aged About 46 Years Address Phase - li Vaishali  
Nagar Shrikant Verma Marg Bilaspur (C.G.)

---Petitioner(s)

**Versus**

**1** - Chhattisgarh State Industrial Development Corporation (Csidc) (A  
Government Of Chhattisgarh Undertaking Through Its Managing Director Head  
Office Udyog Bhawan Ring Road No. 01 Telibandha Raipur (C.G.) 492001

**2** - Executive Engineer (E.E) Division - 1 Csidc Raipur District - Raipur (C.G.)

**3** - Shri Sushil Kumar Soni In- Charge Executive Engineer (E.E.) Division -1  
Csidc Raipur District - Raipur (C.G.)

**4** - M/s Anandi Builders Through Its Authorized Partner Prateek Kumar Tiwari  
Address At L- 7 Vinoba Nagar Bilaspur (C.G.)

**5** - Macadam Makers Infrastructure Pvt. Ltd. Through Its Director Tushar  
Jaswani Address At A 4 And 5 First Floor Indira Gandhi Vyavsayik Parisar  
Behind Apex Bank Pandri District - Raipur (C.G.)

**6** - M/s Shraddha Construction Co. Through Its Partner Satish Kumar Agrawal  
Address At R- 7 Vinoba Nagar Bilaspur (C.G.)

--- Respondent(s)

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For Petitioner(s) : Mr. Anshuman Shrivastava, Advocate.

For Respondents No. 1 to 3 Mr. Prafull N Bharat, Senior Advocate assisted  
by Mr. Trivikram Nayak, Advocate.

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**WPC No. 848 of 2025**

M/s Avinash Buildcon Infrastructure Private Limited Through Ashok Kumar  
Tiwari, S/o Jagannath Tiwari, Aged About 46 Years, Address- Phase- II,  
Vaishali Nagar, Shrikant Verma Marg, Bilaspur, C.G.

---Petitioner(s)

**Versus**

**1** - Chhattisgarh State Industrial Development Corporation (Csidc) (A  
Government Of Chhattisgarh Undertaking), Through Its Managing Director,

Head Office, Udyog Bhawan, Ring Road No. 01, Telibandha, Raipur, C.G. 492001

**2** - Executive Engineer (E.E.) Division-1, C S I D C Raipur, District Raipur, Chhattisgarh.

**3** - Shri Sushil Kumar Soni In-Charge Executive Engineer (E.E.), Division-1, C S I D C Raipur, District Raipur, Chhattisgarh

**4** - M/s Anandi Builders Through Its Authorized Partner Prateek Kumar Tiwari, Address At L-7, Vinoba Nagar, Bilaspur, C.G.

**5** - Macadam Makers Infrastructure Pvt. Ltd. Through Its Director Tushar Jaswani, Address At- A 4 And 5, First Floor, Indira Gandhi Vyavsayik Parisar, Behind Apex Bank, Pandri, District Raipur, C.G.

**6** - M/s Shraddha Construction Co. Through Its Partner Satish Kumar Agrawal, Address At- R-7, Vinoba Nagar, Bilaspur, C.G.

--- **Respondent(s)**

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For Petitioner(s) : Mr. Anshuman Shrivastava, Advocate.

For Respondents No. 1 to 3 Mr. Prafull N Bharat, Senior Advocate assisted by Mr. Trivikram Nayak, Advocate.

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**WPC No. 853 of 2025**

M/s Avinash Buildcon Infrastructure Private Limited Through- Ashok Kumar Tiwari S/o Jagannath Tiwari, Aged About 46 Years, Address- Phase-Ii, Vaishali Nagar. Shrikant Verma Marg, Bilaspur ( C.G. ).

---**Petitioner(s)**

**Versus**

**1** - Chhattisgarh State Industrial Development Corporation (Csidc) Development Corporation ( Csidc ) (A Government Of Chhattisgarh ) Undertaking, Through- Its Managing Director, Head Office, Udyog Bhawan, Ring Road No. 01, Telibandha, Raipur ( C.G. )492001

**2** - Executive Engineer (E/e. ) Division 1, Csidc Raipur, District- Raipur, Chhattisgarh.

**3** - Shri Sushil Kumar Soni In- Charge Executive Engineer ( E.E. ) Division -1, Csidc Raipur, District- Raipur, Chhattisgarh.

**4** - M/s Anandi Builders Through- Its Authorized Partner Prateek Kumar Tiwari, Address At- L-7, Vinod Nagar, Bilaspur ( C.G. ).

**5** - Macadam Makers Infrastructure Pvt. Ltd. Through- Its Director Tushar Jaswani. Address At- A4 And 5, First Floor, Indira Gandhi Vyavsayik Parisar, Behind Apex Bank, Pandri, District- Raipur ( C.G. ).

**6** - M/s Shraddha Construction Co. Through- Its Partner Satish Kumar Agrawal Address At- R-7, Vinoba Nagar, Bilaspur ( C.G. ).

--- Respondent(s)

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For Petitioner(s) : Mr. Anshuman Shrivastava, Advocate.  
For Respondents No. 1 to 3 Mr. Prafull N Bharat, Senior Advocate assisted  
by Mr. Trivikram Nayak, Advocate.

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**Hon'ble Mr. Ramesh Sinha, Chief Justice**

**Hon'ble Mr. Ravindra Kumar Agrawal, Judge**

**Order on Board**

**Per Ramesh Sinha, Chief Justice**

**21/02/2025**

1. Heard Mr. Kishore Bhaduri, learned Senior Advocate assisted by Mr. Aman Saxena, learned counsel for the petitioner {in WPC No. 482/2025, 548/2025, 550/2025 and WPC No. 551/2025}, Mr. Anshuman Shrivastava, learned counsel for the petitioner {in WPC No. 843/2025, 848/2025 and 853/2025}. Also heard Mr. Prafull N Bharat, learned Advocate General assisted by Mr. Sangharsh Pandey, learned Government Advocate for the State/respondent No. 1 as well as Mr. Prafull N Bharat, learned Senior Advocate assisted by Mr. Trivikram Nayak, learned counsel for the respondent-CSIDC.
2. Pleadings have been exchanged between the parties so far as WPC No. 482/2025, 548/2025, 550/2025 and 551/2025 are concerned. So far as WPC No. 843/2025, 848/2025 and 853/2025 are concerned, the petitioner was earlier granted time to file rejoinder to the return filed by the respondent-CSIDC, however, the petitioner has failed to do so and today again, he prays for grant of some more time for filing of the rejoinder. However, since the issue involved in all these petitions are identical, we proceed to hear the matter finally.
3. The petitioner {in WPC No. 482/2025} has prayed for the following

relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to issue a writ/writ, direction/directions, order/orders quashing the disqualification of the petitioner and impugned email dated 14/01/2025 (Annexure P/1) passed by the Respondent department in the tender (NIT No. 20, Tender ref no. 20/CSIDC/EE/DIV.-1/2024-25 and Tender no. 163565 issued on 27/12/2024), (3rd call) for the Upgradation, Renewal of BT Roads, Construction of RCC Drain, Providing and laying of 100mm dia D.I. pipe line and Street Light at I/A Kapan Distt.- Janjgir-Champa (C.G.) (Annexure P/2), in the interest of justice.*

*10.2 That, this Hon'ble Court may kindly be pleased to direct the Respondent authorities to reevaluate the tender process transparently and fairly in accordance with law and to provide the reason for the cancellation of the Petitioners bid and reconsideration of the same in a transparent and fair manner.*

*10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case.”*

4. The petitioner {in WPC No. 548/2025} has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to issue a writ/writ, direction/directions, order/orders quashing the disqualification of the petitioner and impugned email dated 14/01/2024 (Annexure P/1) passed by the Respondent department in the tender (NIT No. 23, Tender ref no. CSIDC/EE/DIV.-II/2024-25/23 and Tender no. 163570 issued on 27/12/2024), (3rd call) for the Upgradation of Infrastructure like Roads drain, water supply & Street light etc. at I/A Birkoni Distt. Mahasamund (C.G.) (Annexure P/2), in the interest of justice.*

*10.2 That, this Hon'ble Court may kindly be pleased to direct the Respondent authorities to reevaluate the tender process transparently and fairly in accordance with law and*

*to provide the reason for the cancellation of the Petitioners bid and reconsideration of the same in a transparent and fair manner.*

*10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case."*

5. The petitioner {in WPC No. 550/2025} has prayed for the following relief(s):

*"10.1 That, this Hon'ble Court may kindly be pleased to issue a writ/writ, direction/directions, order/orders quashing the disqualification of the petitioner and impugned email dated 14/01/2024 (Annexure P/1) passed by the Respondent department in the tender (NIT No. 19, Tender ref no. 19/CSIDC/EE/DIV.-1/2024-25 and Tender no. 163564 issued on 27/12/2024), (3rd call) for the Up-gradation, Strengthening of BT Roads, Construction of RCC Drain. Providing and laying of 100mm dia D.I. pipe line and Street Light at I/A Tifra Distt.- Bilaspur (C.G.) (Annexure P/2), in the interest of justice.*

*10.2 That, this Hon'ble Court may kindly be pleased to direct the Respondent authorities to reevaluate the tender process transparently and fairly in accordance with law and to provide the reason for the cancellation of the Petitioners bid and reconsideration of the same in a transparent and fair manner.*

*10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case."*

6. The petitioner {in WPC No. 551/2025} has prayed for the following relief(s):

*10.1 That, this Hon'ble Court may kindly be pleased to issue a writ/writ, direction/directions, order/orders quashing the disqualification of the petitioner and impugned email dated 14/01/2024 (Annexure P/1) passed by the Respondent department in the tender (NIT No. 18, Tender*



*ref no. 18/CSIDC/EE/DIV.-1/2024-25 and Tender no. 163563 issued on 27/12/2024), (3rd call) for the Up-gradation, Strengthening of BT Roads, Construction of RCC Drain & Water Supply work at I/A Sirgitti Distt. Bilaspur (C.G.) (Annexure P/2), in the interest of justice.*

*10.2 That, this Hon'ble Court may kindly be pleased to direct the Respondent authorities to reevaluate the tender process transparently and fairly in accordance with law and to provide the reason for the cancellation of the Petitioners bid and reconsideration of the same in a transparent and fair manner.*

*10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case.”*

7. The petitioner {in WPC No. 843/2025} has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to allow the present Writ Petition and direct the Respondent No. 1 & 2 to produce entire records of the present case;*

*10.2 That, this Hon'ble Court may kindly be pleased issue appropriate direction(s) / writ(s) / order(s) to set-aside decision of disqualification dated 14.01.2025 in the pre-qualification stage by the respondents no. 1 and 2 communicated to the petitioner vide email dated 14.01.2025 (ANNEXURE P/1);*

*10.3 That, this Hon'ble Court may kindly be pleased issue appropriate direction(s)/writ(s)/order(s) to the respondents no. 1 and 2 to quash the entire tender process in the Tender No. 163565 (third call) and to direct respondents no. 1 and 2 to issue fresh Notice Inviting Tender (NIT) for the work mentioned in Tender No. 163565;*

*10.4 That, this Hon'ble Court may kindly be pleased to grant any other relief as it may deems fit and appropriate, in the interest of justice.”*

8. The petitioner {in WPC No. 848/2025} has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to allow the present Writ Petition and direct the Respondent No. 1 & 2 to produce entire records of the present case;*

*10.2 That, this Hon'ble Court may kindly be pleased issue appropriate direction(s)/writ(s)/order(s) to set-aside decision of disqualification dated 14.01.2025 in the pre-qualification stage by the respondents no. 1 and 2 communicated to the petitioner vide email dated 14.01.2025 (ANNEXURE P/1);*

*10.3 That, this Hon'ble Court may kindly be pleased issue appropriate direction(s)/writ(s)/order(s) to the respondents no. 1 and 2 to quash the entire tender process in the Tender No. 163564 (third call) and to direct respondents no. 1 and 2 to issue fresh Notice Inviting Tender (NIT) for the work mentioned in Tender No. 163564;*

*10.4 That, this Hon'ble Court may kindly be pleased to grant any other relief as it may deems fit and appropriate, in the interest of justice.”*

9. The petitioner {in WPC No. 853/2025} has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to allow the present Writ Petition and direct the Respondent No. 1 & 2 to produce entire records of the present case;*

*10.2 That, this Hon'ble Court may kindly be pleased issue appropriate direction(s)/writ(s)/order(s) to set-aside decision of disqualification dated 14.01.2025 in the pre-qualification stage by the respondents no. 1 and 2 communicated to the petitioner vide email dated 14.01.2025 (ANNEXURE P/1);*

*10.3 That, this Hon'ble Court may kindly be pleased issue appropriate direction(s)/writ(s)/order(s) to the respondents no. 1 and 2 to quash the entire tender process in the Tender No. 163563 (third call) and to direct respondents no. 1 and 2 to issue fresh Notice Inviting Tender (NIT) for the work mentioned in Tender No. 163563;*

*10.4 That, this Hon'ble Court may kindly be pleased to grant any other relief as it may deems fit and appropriate, in the interest of justice."*

10. Since the facts and issues involved in these petitions are identical, they are being considered and decided together. WPC No. 482/2025 and WPC No. 843/2025 are in respect of Industrial Area Kapan, District Janjgir-Chamapa, WPC No. 548/2025 is in respect of Industrial Area Birconi, District Mahasamund, WPC No. 550/2025 and WPC No. 848/2025 are in respect of Industrial Area Tifra, District Bilaspur, WPC No. 551/2025 and WPC No. 853/2025 are in respect of Industrial Area Sirgitti, District Bilaspur, However, for disposal of these petitions, WPC No. 482/2025 is being taken as the lead case.
11. According to Mr. Kishore Bhaduri, learned Senior Advocate appearing for the petitioner-M/s. Shraddha Construction Company submits that the petitioner is an established construction firm registered in Class 'A' with the State of Chhattisgarh and has successfully executed several contractual works throughout the State of Chhattisgarh for over 20 years. The petitioner is aggrieved by the arbitrary and illegal action of the respondent authorities in disqualifying the Petitioner from participating in the tender (NIT No. 20, Tender ref No. 20/CSIDC/EE/DIV.-I/2024-25 and Tender No. 163565 issued on 27/12/2024), (3rd call) for the Up-gradation, Renewal of BT Roads, Construction of RCC Drain. Providing and laying of 100mm dia D.I. pipe line and Street Light at I/A Kapan Distt. Janjgir-Champa (C.G.) despite fulfilling all the eligibility criteria. The respondent-Chhattisgarh State Industrial Development Corporation Ltd. (*for short, the CSIDC*) issued a Notice Inviting Tender (*for short, the NIT*) on 27.12.2024 bearing tender (NIT No. 20, Tender ref No. 20/CSIDC/EE/DIV.-I/2024-25 and Tender No. 163565 issued on 27/12/2024), (3rd call) for the Up-gradation, Renewal of BT Roads,

Construction of RCC Drain, providing and laying of 100mm dia D.I. pipe line and Street Light at I/A Kapan Distt. Janjgir-Champa. Since, the petitioner qualified all the eligibility criteria as mentioned under the NIT, it participated in the tender process and duly complied with all the requirements including the submission of a competitive bid and all the stated documents. The starting date of bid submission for the present tender, being the 3rd round was 28.12.2024, the bid submission due date online was 06.01.2025 and the last date for physical submission was 08.01.2025. The petitioner as above mentioned submitted all the mentioned documents on time and complied with all the criteria. Despite fulfilling all the technical criteria, financial criteria and eligibility, the petitioner firm was shocked to receive an e-mail communication on 14.01.2024, that it will not be allowed to participate in the price bid opening for the tender and it has been rejected during the techno-commercial evaluation by the respondent Department. This was complete arbitrary action and illegality committed by the respondent Department as to without mentioning any reason and without evaluation of anything, the petitioner firm was disqualified without passing any order in this regard. There is no mention of what techno-commercial evaluation has been conducted by the respondent Department and in complete disregard to the rule of law, the rights of the petitioner are being jeopardized by the disqualification. The respondent Department opened the financial bid on 14.01.2025 and the private respondent No. 5 i.e. M/s. Anandi Builders was declared as L-1, being the lowest. The financial bid was illegally opened only for one person being the respondent-M/s. Anandi Builders, so as to deprive the petitioner in the financial bid round. The entire purpose and objective of tender is to select a suitable supplier or contractor to supply goods or services at a suitable/most cost effective price. The tender has been awarded to the private respondent-

M/s. Anandi Builders, without any reason or speaking order. No opportunity was provided to the petitioner to represent himself and further the action of respondent authorities violates the standard tendering procedure. Therefore, it is in violation of Article 14 of the Constitution of India because from the action of the respondent-CSIDC, it is clearly reflected that pick and choose policy was adopted for declaring L-1 in favour of respondent-M/s. Anandi Builders.

12. Mr. Bhaduri submits that when the previous calls were made, the petitioner sought for clarifications from the respondent Department as to the reasons for rejection, in order to cure for any shortcomings before the upcoming 3rd call, however the respondent Department never responded to it or gave a fair chance to the petitioner to participate in the tender process. The respondents have acted in clear derogation of conducting a fair and transparent participation and a fair tender process, as the contractor like the present petitioner has been eliminated quoting "rejection during techno-commercial evaluation" without there being any reason/ground to explain the same and only in order to arbitrarily qualify only one bidder being respondent-M/s. Anandi Builders upto the financial bid round. The non-speaking e-mail rejection is devoid of any justification and the rejection of the petitioner's participation in the tender process without assigning any valid reason or prior intimation amounts to arbitrary action on the part of the Respondents and appears to be motivated solely to favour the private respondent-M/s. Anandi Builders and hence deserves to be set aside. The action of the respondent Department suffers from arbitrariness, irrationality, malafides and bias and hence, the relief(s) as sought for in these petitions may be granted to the petitioner. In support of his contentions, he relies on a decision of the Apex Court in ***Tata Motors Limited v. The Brihan Mumbai***

***Electric Supply and Transport Undertaking***<sup>1</sup>. Despite fulfilling all the technical criteria, financial criteria and eligibility, the petitioner firm received an e-mail directly on 14.01.2024 that they will not be allowed to participate in the price bid opening for the tender and they have been rejected during the techno-commercial evaluation by the Respondent Department due to others. The other competitive bids have not even been taken into consideration by the respondent Department which clearly depicts malice in respondent Department's action and will also result in loss to the State as any competitive bid has neither been considered nor any contractor been malafidely qualified upto the financial-bid round in order to present a competitive bid. The contractors have been eliminated in the very first round by simply quoting "rejection during techno-commercial evaluation" and thereby without assigning any reason, motivated solely to favour respondent-M/s. Anandi Builders. The entire purpose and objective of tender is to select a suitable supplier or contractor to supply goods or services at a suitable/most cost effective price. The tender has been awarded to the private respondent without any reason or speaking order. No opportunity was provided to the petitioner to represent himself and further the action of respondent authorities violates the standard tendering procedure.

13. Mr. Prafull N Bharat, learned Advocate General alongwith Mr. Sangharsh Pandey, learned Government Advocate appearing for the respondent No. 1/State submits that the main contesting party in these petitions is the respondent-CSIDC which has floated the tender. It is submitted by Mr. Bharat that he is appearing on behalf of respondent-CSIDC also in the capacity of a Senior Advocate.
14. Mr. Bharat, learned Senior Advocate assisted by Mr. Trivikram Nayak, learned counsel for the respondent-CSIDC, relying on the return filed,

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submits that the tendering authority i.e. authority calling for bids has the discretion to set the criteria, minimum qualification, terms and conditions of the bid, etc. and generally its decision as to qualification should not be interfered with. It is a settled principle of law that unless something very arbitrary or mala fide is made out, which is not the case in the matter at hand, no interference can be called-in merely at the behest of non-qualifying/ineligible firm. In the matter at hand the technical bid of Petitioner has been rightly rejected as he has not fulfilled the requisite tender terms and conditions. Moreover, the decision of the respondent authority is proper, just and reasonable and is in conformity with the settled jurisprudence in tender matters. Mr. Bharat submits that CSIDC is a Government of Chhattisgarh undertaking which is registered as a company under the Companies Act, 1956. CSIDC is under the administrative control of Department of Commerce & Industry, Government of Chhattisgarh and it is the nodal agency to facilitate and promote industrial development in the State. It is also primarily involved in establishment, maintenance and upgradation of industrial areas and projects, land allotment and acquisition, financial aid assistance, infrastructure development for conducive growth of businesses etc. It also conceptualizes, conceives, plans, implements and maintains various mega infrastructural facilities in the region. It has played a vital role in establishment of the Industrial areas/growth centers in the State. CSIDC had received approval from the Government of India and received budget to the tune of Rs. 76.786 Crores for upgradation of infrastructure at its 12 Industrial Areas/Parks across the State of Chhattisgarh under the Incentives for Achieving Target Fixed for Capital Expenditure for 2024-25 as can be seen from the letter dated 22/10/2024 and the approved projects. CSIDC have to mandatorily submit a utilization certificate to the extent that the funds allotted and

approved have been utilised and exhausted by March 2025 to Finance department as per GFR 12-B. CSIDC, accordingly had issued Tenders for the aforementioned projects and at present the tender in question is the 3rd call of the NIT No. 20, Tender ref No. 20/CSIDC/EE/DIV.-1/2024-25 and Tender No. 163565 issued on 27/12/2024), (3rd call) for the Up-gradation, Renewal of BT Roads, Construction of RCC Drain, Providing and laying of 100mm dia D.I. pipe line and Street Light at Industrial Area- Kapan Distt. Janjgir-Champa (C.G.) at an estimated cost of Rs. 521.23 Lakhs (Rs. 5.21 Crores approx.) which is the Probable Amount of Contract and the work is to be tentatively completed before 31/03/2025 (i.e. period if less than 6 months).

15. It is submitted by Mr. Bharat that as per Clause 11 of the Tender Terms and Conditions, it was the duty of bidder to go through the NIT and the tender/P.Q. document thoroughly and the Certificates, Annexures, Enclosures as mentioned in the Tender will have to be submitted strictly in the prescribed format, at the time of submission of Technical/Financial Bid, failing which the contractor shall disqualify for the work and his financial offer shall not be opened. Further, Clause 6(a) of the Tender Terms and Conditions provided that the authorized Committee will prepare minutes of the pre-qualification opening and shortlist/approve the qualified tenderers and subsequently as per Clause 6(b) only the financial bids of only qualified bidders will be opened. CSIDC had also issued the Pre-Qualification Document (Annexure P/2) along with the NIT/Tender documents which provides for necessary criteria which must be fulfilled by any bidder in order to be declared as eligible, also this Pre-Qualification Document contained the requisite format and other important documents which any bidder is required to comply with. Accordingly, the Pre-Qualification Document clearly mentioned that the Probable Amount of Contract (*for short, the PAC*) is Rs. 521.23 Lakhs



and the time for completion of project is 2.5 months. The Pre-Qualification Document which is a part of Tender has to be mandatorily complied with and Clause 2 specifically mentions that 'Tenderer who meets the minimum qualification criteria will be qualified only if their available bid capacity (*for short, the ABC*) for construction work is equal to or more than the probable amount of contract/ PAC'. The bid capacity is calculated as follows-

"Assessed Available Bid Capacity = (A x Nx M – B)"

[i.e. in present matter ABC= A x 1½ x 2.5 – B]

Where:

A = Maximum value of all civil engineering work executed in " any one financial year" during the last five year (updated to the price level at the current financial year at the compounded rate of 10% (Ten percent)a year taking into account the completed as well as work in progress. [i.e. A is the Total Value of All Civil Works Completed/executed in any one financial year].

N= Number of years prescribed for completion of the works for which tender is invited (period up to 6 months to be taken as half-year and more than 6 months as one year). Any period beyond 12 months, the period actually mentioned in the N.I.T. shall be considered. [In the matter at hand as work is for 2.5 months therefore value of N is less than 6 months implies that value of N would be taken as 2].

M = 2.5 (constant)

B = Value, of existing commitments and on-going works be completed during the period of completion of the work for which tender is invited (period up to 6 months to be taken as half-year and more than 6 months

as one year). Any period beyond 12 months, the period actually mentioned in the N.I.T. shall be considered [i.e. B is the total value of all existing/ongoing works].

16. Mr. Bharat further submits that any tenderer/bidder must satisfy the requisite criteria i.e. its ABC must be greater than or equal to PAC which would indicate that the bidder/tenderer is capable of taking up the project financially and the project is viable. Hence, any bidder/tenderer participating in the tender has to provide the said requisite details and *prima facie* from their own records the participating bidders can determine whether they have requisite qualification as per bid terms and conditions or not. For the purpose of calculation, the value of A (which is total value of civil works executed/completed in one financial year) could be derived from Annexure-1 annexed with the NIT that is filled-in by the tenderer, however, the prescribed format must be adhered to, failing which as per Clause 11 of NIT, the bid automatically gets rejected. Accordingly, any participating bidder must provide Annexure-1 in prescribed format which is that the total annual volume of civil engineering construction work executed and payments received each year in the immediate five years preceding the year in which tenders are invited must be mandatorily be certified by the Engineer-in-Chief (*for short, the EIC*) i.e. the Annexure-1 must be certified by the EIC. This is done so that a uniformity is maintained while calculating the value provided and it also helps maintain the requisite standard criteria and it also authenticates the data provided. However, the petitioner had not provided the Annexure-1 as per the requisite format and on the basis of total civil works executed by the petitioner, provided in Annexure-3 of the tender documents were used for assessing the bid capacity. Now, as far as Value of B (which is total value of all ongoing/executing works in one financial year) is concerned, as per tender documents it is to be

calculated and derived from the Annexure-4 which is the existing commitments and ongoing all classes of civil engineering construction works, by the prime contractor. The technical bids of all participating tenderers were opened and the respondent-CSIDC had calculated the ABC as per the requisite formula on the basis of the documents submitted by the participating bidders. In the Tender of Kapan Industrial Area, it was found that the petitioner had not submitted his Annexure-1 in prescribed format i.e. it was a self-attested Annexure-1 without the EIC's certificate and the value that the petitioner assumed to his total value of all civil works executed/completed in one financial year (2022-23) to be Rs. 52.52 Crores which it had derived randomly from a Turnover Certificate of Chartered Accountant (which had been submitted in the Tender but surprisingly not annexed in the present Petition). The petitioner had put this value of 52.52 Crores in the Annexure-1 against the constant value of 1.21 for indexing and the petitioner arrived at his Value of A to be Rs. 63.54 Crores, and the petitioner had put in values of N to be 0.5, M constant which is 2.5 and value of B is derived from Annexure-4 which is Rs. 5556.35 Lakhs (Rs. 55.56 Crores approx.). As per the petitioner's own calculation sheet of his bid capacity which he has submitted in the tender, he has calculated the ABC with the following values i.e.  $ABC = A \times N \times M - B$  i.e.  $63.54 \times 0.5 \times 2.5 - 55.56$  which results into Rs. 23.865 Crores and accordingly, the petitioner claims that he is qualified for the tender, whereas, in reality, this calculation of petitioner is improper, incorrect and arbitrary and the value of A derived by petitioner is incorrect and moreover it is not as per the prescribed format i.e. Annexure-1 is without the EIC's certificate which could have authenticated the value of the same. Now, as the petitioner had also annexed the Annexure-3 (all civil works executed/completed) & Annexure-4 (ongoing works) with his bid in the

matter at hand as per the documents submitted by him the requisite value in Annexure-3 for year 2022-23 is Rs. 2200.89 Lakhs i.e. Rs. 22 Crores approx. (Annexure 3 deals with value of all works performed/ executed) and the requisite value of all existing/pending works submitted by Petitioner in Annexure-4 is Rs. 5556.35 Lakhs i.e. Rs. 55.56 Crores approx. As per the respondent-CSIDC, the ABC of petitioner as per the formula  $ABC = A \times N \times M - B$  comes out to be  $ABC = 22 \times 0.5 \times 2.5 - 55.56 = (-) 2227.51$  Lakhs or  $(-) 22.27$  Crores, as a corollary, the ABC of petitioner in fact turns out to be less than the PAC i.e. 5.21 Crores (probable amount of contract) which was a necessary condition and accordingly, the petitioner does not qualify as per Clause 2 of the Pre-Qualification Document of the Tender.

17. It is further submitted by Mr. Bharat that the value derived by petitioner to assess his ABC is wrong, improper and erroneous as petitioner relies on the Turnover Certificate of the Chartered Accountant (which is not a proof to assume the civil work completed/executed by any party) for arriving at the value of A rather than the requisite certificate of EIC in Annexure-1 and accordingly the petitioner's calculation is flawed and erroneous. Despite the said fact, the respondent-CSIDC, on the basis of documents submitted and annexed by petitioner himself i.e. value of all civil works completed/executed and value of all ongoing works had been taken from the documents submitted i.e. Annexure-3 and Annexure-4 and from which it becomes evident that the petitioner firm is not eligible in the instant tender. The Committee comprising of the relevant Officers of respondent-CSIDC had opened the technical bids of the participating bidders, wherein on 14.01.2025, it was found that the petitioner is ineligible and has not qualified as per the requisite criteria in the techno-commercial evaluation. Accordingly, an email was also sent on 14.01.2025 itself and it was clearly mentioned therein that the

respondent-CSIDC may be contacted for further clarifications, which was not exercised. However, it is a matter of fact that the petitioner is not eligible which can also be seen from the minutes prepared by the respondent-CSIDC regarding eligibility and ineligibility of bidders which clearly indicates the reason as to how the petitioner is not qualified as per the terms and conditions of the instant tender. Subsequently, from the records in the instant tender it is evident that as on 14.01.2025, the Tender Committee had found respondent-M/s. Anandi Builders as a qualifying firm in all the criteria and more particularly as per Annexure-1, Annexure-3 and Annexure-4. Accordingly, respondent-M/s. Anandi Builders had the requisite bid capacity as required under Clause 2 of the Pre-Qualification Document of Tender. That is to say that as per respondent-M/s. Anandi Builder's Annexure-1, Annexure-3 and Annexure-4 the value of A (all executed/completed civil works) comes out to be 1398.70 Lakhs for year 2020-21 multiplied by indexing value of 1.46 i.e.  $A = 2042.10$  Lakhs (Rs. 20.42 Crores approx.), value of N is same as 0.5 and value of M constant is same as 2.5 and finally the value of B (all ongoing/existing works) comes out to be 0.00. Hence, as per the formula of  $ABC = A \times N \times M - B$   $20.42 \times 0.5 \times 2.5 - 0.00 = \text{Rs. } 25.52$  Crores. Accordingly, the available bid capacity of respondent-M/s. Anandi Builders is 25.52 which is greater than the PAC (probable amount of contract i.e. Rs.5.21 Crores). The respondent-M/s. Anandi Builders on having being found to be eligible was declared qualified and his financial bids were open and subsequently the bid submitted by respondent-M/s. Anandi Builders was declared L-1. There is no infirmity in declaring and opening bid of any single eligible entity as this is the 3rd call of tender and as per the order dated 28.01.2014 of the Government of Chhattisgarh, except in 1st call, if only single bid is received it would not be opened but if there is only single eligible bidder/bid received in 2nd

call and so on, then the same can be opened.

18. Mr. Bharat next submits that after proper evaluation and consideration, the respondent-M/s. Anandi Builders having been declared L-1, was allotted the tender and work order was issued in favour of present respondent-M/s. Anandi Builders on 16.01.2025 in the instant tender and the concerned site has also been handed over to them as on 17.01.2025. The petitioner has not only failed to comply with the requisite mandatory tender conditions but also does not qualify as per the available bid capacity Clause 2 of the Pre-Qualification Document of the tender and therefore it is an unsuccessful bidder who has made false and frivolous allegations against the respondent-CSIDC on account of their disqualification and any such allegation(s) is categorically and vehemently denied. It is well settled that the satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids and such decision does not warrant for interference in grant of contract to a successful bidder. In support of his contentions, Mr. Bharat relies on the decision of the Supreme Court in the matter of ***N.G. Projects Ltd. v. Vinod Kumar Jain***<sup>2</sup>, reported in as well as ***Tata Motors Ltd.*** (*supra*).
19. Placing reliance on the rejoinder filed, Mr. Bhaduri submits that the respondent-CSIDC is a Government of Chhattisgarh undertaking and it is not a Department of the State of Chhattisgarh unlike Public Works Department or Irrigation Department etc. Therefore, CSIDC does not have an EIC of its own. As a result, the specification of requirement of a certificate of EIC also required explicit directive that EIC of which Department i.e. whether PWD/ Irrigation etc. ought to have issued such certificate. Each Department has its own rules and regulations for issuing such a certificate and each Department only accepts its own

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certificate. Therefore, in absence of an EIC of CSIDC and not specifying the Department, the condition itself is vague. Secondly, the petitioner is only a civil construction firm and has, as part of tender documents, provided audited report and balance sheet which has been approved by the Income Tax Department. If the annual turnover was to be determined and Annexure-1 was not being relied on, instead of using the Annexure-3, the respondent-CSIDC could have relied on the audited accounts of the petitioner approved by the Income Tax Department. Lastly, the respondent-CSIDC did not want effective participation as despite multiple letters of the petitioner for reasons for rejection of bid of petitioner in round 1 and round 2, the respondent-CSIDC refused to indicate reasons. The respondent-CSIDC in their reply have not addressed why the reasons for rejection were not given to the petitioner despite multiple letters and e-mails. It only shows their malafide to secure single bids in the tender by rejecting all other bidders. Further, respondent-M/s. Anandi Builders has submitted an invalid certificate and is it only valid for bids made in financial year 2023-2024 but the present bid is for financial year 2024-2025. The relevant page i.e. the covering page of the certificate has been suppressed by the respondent-CSIDC in their reply, which shows that the certificate is not valid for the current financial year. Secondly, as a corollary, the certificate is not in prescribed format as the format requires the data of civil engineering work of all 5 immediate years, as against the submitted certificate of private respondent which is only for four immediate years. The data for financial year 2023-2024 is missing from the certificate, hence the bid of the private respondent should also be declared invalid. Furthermore, the Pre-Contract Integrity Pact is silent on the parties which has been left blank, as well as the name of the work is also not mentioned which makes it unenforceable. The same has been blindly accepted as per

prescribed format. The petitioner would have been declared L-1 in all four tenders which are the subject matter of challenge in the present petition as well as in WPC 548/2025, WPC 550/2025 and WPC 551/2025. Therefore, there is a financial loss of 2.5 crores which is collectively being caused to the Government as tabulated in the annexed Table A (Annexure Rej-4). Secondly, in second call of the tender, private respondent was the only party that qualified. It was only when complaints were made and irregularity was highlighted in the newspapers that the tenders were cancelled and round 3 was called. No action was taken against the private respondents. The petitioner wrote multiple letters for reasons but was not informed of the same. It clearly shows that the tenders are being conducted only to benefit the private respondent whose bid are being accepted despite defaults in the certificate as well as Pre-Contract Integrity Pact. Thirdly, the tenders are being given out above and beyond the available bid capacity of the private respondent which can be seen from the annexed Table B (Annexure Rej-5), which shows that total value of the tenders allotted to the private respondent. The available bid capacity of the private respondent would need to be recalculated after each allotted tender and the total allotted tender value cannot be beyond the total available bid capacity. The same has been recommended by the Accountant General (Audit) in its report (annexed) and failure to do this allocate the tender can lead to disciplinary action and vigilance enquiry. Fourthly, the notification dated 17.07.2012 issued by PWD Department mandates that only after 7 days after rejection of the technical bid can financial bids be opened. This procedure was not followed and immediately after rejection on 14.01.2025, the bids were opened on the same day.

- 20.** Controverting the above submission and placing reliance on the objection filed to the rejoinder, Mr. Bharat submits that petitioner being



an unqualified firm, has made fresh round of allegations on the basis of documents which were already available through the online tender portal and it is submitted that the same is being done to malign the entire process only after realizing that the petitioner could not succeed in his technical bid as detailed and clear reasons have been provided for his disqualification. The petitioner has alleged that the succeeding firm's integrity pact is not as per format. As per Annexure Rej/3 filed by petitioner, it is clarified that as per Clause 30 sub-clause 5, the essential condition for providing the integrity pact was that the said document must be 'duly notarised that too in a 'Rs. 100 Non-judicial stamp paper' and the aforementioned two conditions have been met out by the respective firm moreover the succeeding firm has signed the same, hence there is no infirmity with the same. The petitioner has alleged that the EIC certificate of respondent firm which has qualified is itself defective and the same should not be considered. It is first and foremost submitted that the requirement of the total value of all civil works executed i.e. value of 'A' is the relevant part which is needed in calculation of the total value of all civil works executed which is the basis for calculation of the value of 'A' in the formula of assessing bid capacity as per Clause 2 of Pre-Qualification Document. Accordingly, in case of petitioner as he had not provided the same i.e. Annexure-1 as per format, howsoever, as per the tender conditions since only the value of his all executed civil works was required accordingly the same had been derived from the Annexure-3 to assess the same and hence his bid capacity was calculated which was found to be deficient. Now, when the respondent firm/ presently successful firm had annexed its document, the same is as per the mandatory requirement of EIC, moreover as we recall the formula as per Clause 2 of PQD- "Assessed Available Bid Capacity = (A x Nx M - B)" where A = Maximum value of all civil

engineering work executed in "any one financial year" during the last five year (updated to the price level at the current financial year at the compounded rate of 10% (Ten percent) a year taking into account the completed as well as work in progress. [i.e. A is the Total Value of All Civil Works Completed/executed in any one financial year) and accordingly, only the highest value of 'A' in any of the last 5 years had to be taken into account as per the data submitted by the Respondent firm, his value of A highest in any one of the past preceding financial years as certified by EIC in the past preceding years had to be considered and as per the format the said value had to be multiplied with the corresponding indexing factor as mentioned in the table of Annexure-1, as per Respondent firm himself his value for A that he has taken into consideration is for the year 2020-21 which is 1591.04 multiplied by the indexing factor and the said firm derives its value of A to be 1860.27 Lakhs. Whereas, the respondent-Department had calculated the bidding capacity of all the requisite participating firms as per the standard formula wherein as far as the respondent firm is concerned his value of A was taken from the financial year 2022-23 (year in which it had highest/maximum value as per the formula). Accordingly, the value of all executed civil works of respondent firm turned out to be 1540.25 multiplied by the indexing factor as per Annexure-1 i.e. 1.21 for the year 2022-23 and thereby the value of 'A' calculated for the respondent firm in question was found to be 1863.70 Lakhs. It is reiterated that only on the basis of the formula as mentioned in Clause 2 of the Pre-Qualification document the bid-capacity has been calculated and the same is correct as per the respondent-Department. Also, no material fact has been concealed and the allegation of petitioner is baseless and bereft of merit and substance. The petitioner has assumingly submitted that it would have been the only L-1 firm in the 2nd call of the present tender and due

to irregularity in the tender the 2nd round was terminated. It is based on hypothetical and imaginary facts being coughed up by the petitioner. The minutes of meeting of the tender committee for the 2nd tender call would clearly indicate that only two firms had qualified in the 2nd round of tender and the petitioner firm is not amongst them, no question remains of declaring any ineligible firm as L-1. The minutes clearly indicate that, the 2nd round was annulled because it would have costed the exchequer 13.20% above the PAC (Probable Amount of Contract) i.e. the rates quoted by the then L-1 qualified bidder was found to be 13.20% above PAC, hence the 2nd Call w.r.t. tender of the respective industrial area was cancelled and not for any other reasons as misleadingly alleged by petitioner. The contention of the petitioner that for each and every tender the available bid capacity must be re-assessed, is not correct. It is submitted that firstly when the bid capacity is calculated, it is part of technical qualification criteria and once the technical qualification process (which includes among other thing, calculation of bid capacity) is completed then only financial bids of those who are technically qualified is opened, hence, at the stage when the technical bid of any bidder say for e.g. the present qualified respondent firm is concerned- all 4 subject tenders in challenge by petitioner were simultaneously opened together on the same day, until that very moment it was not known as to who all would qualify and to whom the work would be awarded in the said very tenders. Now, once financial bids is open the clock cannot be turned back to the stage of technical evaluation and re-assess the bid-capacity which was at the technical stage. Furthermore, considering the same issue, clarification was also sought from the Chief Engineer, PWD and it was clarified vide letter/order dated 17.01.2025 that once the bids are opened and if the bidder secures L-1 in a tender due to which his bid capacity gets reduced, then if the bids of

different tenders are opened on the same day and the same is not barred by tender conditions then there is no requirement to re-calculate the bid capacity moreover the tender condition does not call for re-calculation of the same. The recommendation of the concerned authority would have been complied with and if the query referred above was replied in negative then in that case too, it would have been complied and any party's bid violating the same would have been rejected at any stage. Howsoever, as the concerned authority has issued directions which is what the respondent-CSIDC have in principle followed, as a corollary, there is no irregularity/infirmity in considering the bid capacity and hence there is no need to re-assess and re-evaluate the same after each and every tender which have opened on the same day.

- 21.** It is further submitted by Mr. Bharat that the present tender was an urgent one as has been reiterated numerous times and the timeline for completion of the said project is 31.03.2025 and accordingly, in the present tender special permission was sought from the State Government vide letter dated 25.11.2024 and same was provided by the State Government vide order dated 26.11.2024 in relation to the 2nd call for tender. As far as the present i.e. 3rd call is concerned it can be called within 10 days in light of the Standing Order of the Government of Chhattisgarh dated March 2005, so that the tender process can be expeditiously processed. Therefore, the tender has been proceeded with as per the requisite rules and terms and conditions and the entire tender process is just, proper and reasonable. In light of all the submissions made, the present petition deserves to be dismissed.
- 22.** Identical submissions as aforesaid have been made by the learned counsel for the respective parties with respect to other petitions viz. WPC No.548/2025, 550/2025, 551/2025.

23. So far as WPC No. 843/2025, 848/2025 and 853/2025 are concerned, Mr. Anshuman Shrivastava, learned counsel for the petitioner-M/s. Avinash Buildcon Infrastructure Pvt. Ltd. submits that the NIT in question is the third call for the same work. The first two calls were cancelled and the third call was made on 27.12.2024 wherein the petitioner alongwith respondent No. 4,-Anandi Builders, respondent No. 5-Macadum Makers Infrastructure Pvt. Ltd. and respondent No. 6.- M/s. Shraddha Construction Company, participated. The bid of the petitioner was rejected during part I (Envelope B) evaluation i.e. techno commercial evaluation without assigning any reason and also without communicating the scheduled bid opening date and the reason for rejection of the petitioner's bid is stated only as 'due to others' and the petitioner has been disallowed to participate in the price opening bid. The respondent-CSIDC has rejected the bid document of other two respondents i.e. respondent No. 5 and 6 as well and only the respondent No. 4-Anandi Builder has been successful bidder in the technical evaluation. The conduct of the respondent-CSIDC itself goes to show that the entire exercise has been done just to favour one party i.e. the respondent No. 4 in respect of all the tenders floated for four different Industrial Areas. The effect of disqualification of the other bidders is that only respondent-M/s. Anandi Builder is left to execute the contract and irrespective of the capacity, quality and lowest price of other bidders, the CSIDC cannot bargain with any other bidder and would be forced to execute contract with only M/s. Anandi Builders. For last 14-15 days the petitioner has been orally seeking reasons for rejection of bid document submitted by the petitioner on technical grounds and also seeking the work order and award of contract, if executed, to the respondent No. 4. The respondent No. 1 and 2 are neither receiving any representation nor providing any information about the same. Hence, he prays for allowing

these petitions.

- 24.** Relying on the return filed, Mr. Bharat, learned Senior Advocate submits that so far as these three petitions i.e. WPC No. 843/2025, 848/2025 and 853/2025, in addition to what has been stated in respect of other petitions, clause 30 of the Tender Terms and Conditions clearly provided the list of key plant and machinery required in the project and it specifically provided that the same must be strictly adhered to.
- 25.** The relevant part of Clause 30 is reproduced below for ready reference-

*“एनेक्जर 10 में उल्लेखित टूल्स एण्ड प्लांट्स स्वयं के स्वामित्व का हो, जिसका प्रमाण पत्र कार्यापालन अभियंता समकक्ष द्वारा जारी किया गया हो। जिसमें जावक क्रमांक एवं दिनांक अंकित किया गया हो, जारी किया गया प्रमाण पत्र निविदा जारी दिनांक से दो व से अधिक अवधि का होने पर मान्य नहीं किया जावेगा।*

*यदि उक्त उल्लेखित टूल्स एण्ड प्लांट्स किराये पर लिये जाते है तो राशि रू 100.00 के भारतीय गैर न्यायिक स्टाम्प पेपर (नोटरी से सत्यापित) पर किये जाने वाले किरायेनामा अनुबंध पत्र जो इसी कार्य के लिए जारी किया हो, जिसमें उपलब्ध उक्त आवश्यक मशीनों का स्पष्ट रूप से उल्लेख हो एवं जिससे किरायानामा अनुबंध निष्पादित किया गया हो उस एजेंसी का टूल्स एण्ड प्लांट्स का स्वामित्व का सत्यापन कार्यापालन अभियंता या समकक्ष द्वारा जावक क्रमांक एवं दिनांक अंकित सहित जारी किया गया हो (जारी किया गया प्रमाण पत्र निविदा जारी दिनांक से दो वर्ष से अधिक अवधि का होने पर मान्य नहीं किया जावेगा) अथवा टूल एण्ड प्लांट्स के स्वामित्व के संदर्भ में copy of Invoice/RTO Registration की सत्यापित प्रति/प्रमाण पत्र संलग्न किया जाना आवश्यक होगा। उपरोक्त के अभाव में ठेकेदार की अनर्हता मानते हुये निविदा नहीं खोली जावेगी।”*

- 26.** It is submitted that any tenderer/bidder must satisfy the requisite criteria mentioned in clause 30 about list of key tools and machinery i.e. either the tools/plant/ machinery mentioned in Annexure 10 must be self-owned and its relevant certificate should be issued from any Executive Engineer or similar post and it should also mention the outgoing number and date plus it should be valid for a period of 2 years or more. However, in case where the tools/plants/machinery are not self-owned but have been rented out then in that case the bidder must provide the rental agreement in Rs. 100/- non judicial stamp paper (notarized) wherein it

should be mentioned that for this specific project/work it has been issued to and also it must be specified from the owner of such plant/tool/machinery that it is their own property and further this must be certified by the Executive Engineer and it should be valid for 2 years or more. In furtherance of the requirement as mentioned in Clause 30 of Tender, the corresponding Annexure-10 reiterated the same clause and it provides a mandatory list of total 12 machines/plants/tools which are necessary for the project involved and accordingly as the project is sensitive and related to infrastructure project and public utility, the Annexure-10 also mentions the required minimum quantity of the said 12 plants/tools/machinery. Compliance of Clause 30 read with corresponding Annexure-10 is a must as it is a mandatory and necessary condition of the tender and non-compliance of the same by any party/tenderer would *ipso facto* disqualify him for non-compliance of such essential condition. The list of plants and equipment has been provided in Annexure-10 of the tender document. In the case in hand, the technical bids of participating tenderers including petitioner were opened and the respondent-CSIDC had verified the list of tools/plants/machinery as mentioned in Annexure-10 of the Tender documents with the Annexure-10 submitted by the parties. With respect to Kapan Industrial Area, it was found that though the petitioner had submitted his Annexure-10 but that was not in prescribed format (surprisingly the Petitioner has not annexed in the present Petition his tender documents which he had submitted for participating in the tender). As per the petitioner's own Annexure-10 submitted, it mentions a list of total 32 plants/ equipments/tools, etc., however, what has to be seen is whether the requisite list complies with the mandatory list of 12 machinery/equipment/tools/plants specified in Annexure-10 of Tender, documents. On due verification by the respondent-CSIDC, it was found

that as per the Tender document Annexure-10 serial No. 10 and 12 the requisite tools/equipment/plants mentioned therein were not found in the Annexure-10 submitted by the petitioner i.e. as per serial No. 10 there had to be '1-Cube Testing Machine' and as per serial No. 12 there should have been at least '12 cube moulds', whereas, it was found that the said details are missing from the Annexure-10 submitted by the petitioner in his Annexure-10 and on further scrutiny of the annexed bills/invoices attached with Annexure-10 by petitioner, it was found that he has '6-cube moulds' in total out of the requisite '12 cube moulds required' and still he did not have the '1-cube testing machine'. Accordingly, it is submitted that the petitioner failed to comply with the quintessential condition about the list of plants/machinery/tools, etc. as specified in Clause 30 read with Annexure-10 of Tender terms and Conditions. The Committee comprising of the relevant officers of respondent-CSIDC had opened the technical bids of the participating bidders, wherein on 14.01.2025, it was found that the petitioner is ineligible and has not qualified as per the requisite criteria in the techno-commercial evaluation. Accordingly, an email was also sent on the same day itself and it was clearly mentioned therein that the respondent-CSIDC may be contacted for further clarifications, which was not exercised. Howsoever, it is a matter of fact that the petitioner is not eligible which can also be seen from the minutes prepared by the respondent-CSIDC regarding eligibility and ineligibility of bidders which clearly indicates the reason as to how the petitioner is not qualified as per the terms and conditions of the instant tender. The Tender Committee had found respondent- M/s Anandi Builders as a qualifying firm in all the criteria and more particularly as per Annexure-10, submitted by respondent- M/s Anandi Builders. Accordingly, respondent- M/s Anandi Builders had the requisite list of key



tools/plants/machinery as required. The respondent- M/s Anandi Builders on having being found to be eligible was declared qualified and his financial bids were open and subsequently the bid submitted by respondent- M/s Anandi Builders was declared L-1. Furthermore, the fact has to be considered that the project is to be completed in a time bound manner within 2.5 months i.e. before 31.03.2025 and accordingly, the bid was opened and respondent- M/s Anandi Builders was declared as L-1 by the respondent-CSIDC. The petitioner- M/s. Avinash Buildcon has not only failed to comply with the requisite mandatory tender conditions but also does not qualify as per the mandatory list of plants/tools/equipment.

- 27.** We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
- 28.** It has been submitted by learned counsel for the respondent-CSIDC that after declaration of the private respondent-M/s. Anandi Builders, it has been issued the work order and the deadline for completion of the project is 31.03.2025.
- 29.** It is an admitted position that the tender in question is the third call and the earlier two NITs have been cancelled. Hence, there is a sense of urgency. The tender relates to various allied works to be carried out in the Industrial Area of District Bilaspur, Janjgir-Champa and District Mahasamund. Since the first two calls have already been cancelled and the present cases relate to the third call, this Court does not deem it fit to go into the issue with regard to cancellation of the first two calls and would deal with the issue relating to the third call only. The technical bids of all the intending bidders were opened by the CSIDC. The respondent-CSIDC has, vide its return, at paragraph No. 5 has explained the manner in which the available bid capacity (ABC) has to be calculated and as

per the calculations made by the respondent/CSIDC, the ABC of the petitioner has been assessed to be less than the probable amount of contract (PAC) which was a necessary condition and accordingly, the petitioner does not qualify as per clause 2 of the Pre Qualification Document of the tender. Clause 2 specifically mentions that the Tenderer who meets the minimum qualification criteria will be qualified only if their ABC for construction work is equal to or more than the PAC, which in the present cases, the petitioner does not fulfill, as per the calculation made by the respondent-CSIDC. Further, it is also the say of the respondent-CSIDC that the petitioner did not submit Annexure A-1 in the prescribed format and it was merely self attested without the EIC's certificate and the value that the petitioner assumed to be his total value of all civil works executed/completed in one financial year was derived randomly from a Turnover Certificate of a Chartered Accountant. The calculations made by the petitioner has been found to be erroneous and as such, he was not found to be qualified as per the requisite criteria in the techno commercial evaluation which has duly been communicated to the petitioner through e-mail on 14.01.2025. The Tender Committee, vide its minutes (Annexure R-2/4) have found all the other bidders except the private respondent-M/s. Anandi Builders to be ineligible and as such, the bid submitted by M/s. Anandi Builders was accepted and his financial bid was recommended to be opened.

- 30.** So far as WPC No. 843/2025, 848/2025 and 853/2025, are concerned, it is evident from the reply filed by the respondent-CSIDC that the petitioner has not been able to fulfill clause 30 of the Tender Terms and Conditions which provided for list of key plant and machinery required in the project which are necessary for successfully completing the work allotted to the intending bidder. Hence, the contentions raised by the petitioner is noticed to be rejected. The petitioner though is stated to

have submitted Annexure A-10, but as per the respondent-CSIDC it is not as per the prescribed format.

31. It also transpires from the materials available on record that the NITs in question are urgent in nature and the time line for completion of the said project is 31.03.2025 and accordingly, the State Government has granted permission for making second and third call when suitable bidders were not available. These petitions involve technical issues with respect to calculation of the ABC, which according to the petitioner fulfills and according to the respondent-CSIDC, the petitioner does not. This Court does not have the expertise to go into this aspect. In ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.***<sup>3</sup>, the Hon'ble Supreme Court has observed 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.

32. In ***N.G.Projects Ltd.*** (supra), the Apex Court has observed as under:

*“22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e., not satisfying the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona-fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.*

*23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is*

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3 (2016) 16 SCC 818

*a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”*

33. Recently, the Apex Court, in the matter of **Banshidhar Construction Pvt. Ltd. v. Bharat Coking Coal Ltd. & Others**, {Civil Appeal No. 11005 of 2024, decided on 04.10.2024}, taking note of the decisions rendered in various other celebrated judgments, observed as under:

*“21. There cannot be any disagreement to the legal proposition propounded in catena of decisions of this Court relied upon by the learned counsels for the Respondents to the effect that the Court does not sit as a Court of Appeal in the matter of award of contracts and it merely reviews the manner in which the decision was made; and that the Government and its instrumentalities must have a freedom of entering into the contracts. However, it is equally well settled that the decision of the government/ its instrumentalities must be free from arbitrariness and must not be affected by any bias or actuated by malafides. Government bodies being public authorities are expected to uphold fairness, equality and public interest even while dealing with contractual matters. Right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process and that the entire bidding process is carried out in absolutely transparent manner.*

*22. At this juncture, we may reiterate the well-established tenets of law pertaining to the scope of judicial intervention in Government Contracts.*

*23. In **Sterling Computers Limited vs. M/s. M & N Publications Limited and Others**<sup>4</sup>, this Court while dealing with the scope of judicial review of award of contracts held: -*

*“18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State,*

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4 (1993) 1 SCC 445

the Court is concerned primarily as to whether there has been any infirmity in the “decision making process”. In this connection reference may be made to the case of *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141] where it was said that: (p. 144a)

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court.”

By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141] the courts can certainly examine whether “decision-making process” was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.”

24. In ***Tata Cellular vs. Union of India***<sup>5</sup>, this Court had laid down certain principles for the judicial review of administrative action.

“94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary

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<sup>5</sup> (1994) 6 SCC 651

concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

25. It has also been held in **ABL International Limited and Another vs. Export Credit Guarantee Corporation of India Limited and Others**<sup>6</sup>, as under: -

“53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution.”

26. In **Jagdish Mandal vs. State of Orissa and Others**<sup>7</sup>, this Court after discussing number of judgments laid down two tests to determine the extent of judicial interference in tender matters. They are: -

“22. (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.”

27. In **Mihan India Ltd. vs. GMR Airports Ltd. and Others**<sup>8</sup>, while observing that the government contracts granted by the government bodies must uphold fairness, equality and rule of

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6 (2004) 3 SCC 553

7 (2007) 14 SCC 517

8 (2022) SCC OnLine SC 574

law while dealing with the contractual matters, it was observed in Para 50 as under: -

*“50. In view of the above, it is apparent that in government contracts, if granted by the government bodies, it is expected to uphold fairness, equality and rule of law while dealing with contractual matters. Right to equality under Article 14 of the Constitution of India abhors arbitrariness. The transparent bidding process is favoured by the Court to ensure that constitutional requirements are satisfied. It is said that the constitutional guarantee as provided under Article 14 of the Constitution of India demands the State to act in a fair and reasonable manner unless public interest demands otherwise. It is expedient that the degree of compromise of any private legitimate interest must correspond proportionately to the public interest.”*

28. It was sought to be submitted by the learned Counsels for the Respondents relying upon the observations made in **Central Coalfields Limited and Another vs. SLL-SML (Joint Venture Consortium) and Others**<sup>9</sup>, that whether a term of NIT is essential or not is a decision taken by the employer which should be respected. However, in the said judgment also it is observed that if the employer has exercised the inherent authority to deviate from the essential term, such deviation has to be made applicable to all the bidders and potential bidders. It was observed in Para 47 and 48 as under:-

*“47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in Jagdish Mandal [Jagdish Mandal v. State of*

*Orissa, (2007) 14 SCC 517] followed in Michigan Rubber [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216].*

*48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] . However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.”*

- 34.** Applying the well settled proposition of law to the facts of these cases, and further the fact that the work order has already been issued to the private respondent-M/s. Anandi Builders and the site has also been handed over and further the deadline for completion of the project is 31.03.2025, we do not find any merit in these petitions and the petitioners are not entitled to any relief as claimed in these petitions.
- 35.** As such, all these petitions are **dismissed**. No order as to cost.

Sd/-  
(Ravindra Kumar Agrawal)  
**JUDGE**

Sd/-  
(Ramesh Sinha)  
**CHIEF JUSTICE**



## HEAD NOTE

The Courts should be reluctant in interfering with contracts involving technical issues as the Courts lack the necessary expertise to adjudicate upon such issues. The approach of the Court is not to find fault with the decision of the authority issuing tender, instead the Court should examine as to whether the decision-making process was after complying with the procedure contemplated under the tender conditions.