



2025:CGHC:21279-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 2271 of 2025**

M/s Jai Ambey Emergency Services (I) Pvt Ltd., A Company Registered Under The Companies Act, 2013 Having Its Registered Office At 2nd Floor, Right Side Global Tower, Near Vidhya Niketan School, Avanti Vihar, Raipur - 492001, Chhattisgarh (C.G.)

--- Petitioner(s)**versus**

1 - State Of Chhattisgarh Through Principal Secretary, Department Of Health And Family Welfare, Government Of Chhattisgarh, Swastha Bhawan, North Block, Sector 19, Atal Nagar, Nava Raipur, District- Raipur Chhattisgarh - 492101.

2 - Chhattisgarh Medical Services Corporation Limited (Cgmsc) Through Its Managing Director 4th Floor, C.G. Housing Board Commercial Complex, South East Corner, Sector 27, Atal Nagar, Nava Raipur, District- Raipur, Chhattisgarh - 492015.

--- Respondent(s)**WPC No. 2303 of 2025**

M/s Jai Ambey Emergency Services (I) Pvt. Ltd., A Company Registered Under The Companies Act, 2013 Having Its Registered Office At 2nd Floor, Right Side Global Tower, Near Vidya Niketan School, Avanti Vihar, Raipur - 492001, Chhattisgarh (C.G.).

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

1 - State Of Chhattisgarh Through Principal Secretary, Department Of Health And Family Welfare, Government Of Chhattisgarh, Swastha Bhawan, North Block, Sector 19, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh 492101.

2 - Chhattisgarh Medical Services Corporation Limited (Cgmsc) Through Its Managing Director 4th Floor, C.G. Housing Board Commercial Complex, South East Corner, Sector 27, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh - 492015.

--- **Respondent(s)**

For Petitioner(s)	:	Mr. Manoj Paranjpe and Shikhar Shrivastava, Advocates.
For Respondent No. 1/ State	:	Mr. Prafull N Bharat, Advocate General alongwith Mr. S.S.Baghel, Deputy Government Advocate.
For Respondent No. 2	:	Mr. Prafull N Bharat, Senior Advocate assisted by Mr. Trivikram Nayak, Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Arvind Kumar Verma, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

08/05/2025

- 1** Heard Mr. Manoj Paranjpe, learned counsel for the petitioner, Mr. Prafull N Bharat, learned Advocate General assisted by Mr. S.S.Baghel, learned Deputy Advocate General 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 No. 2.
- 2** Since in both the above petitions, the facts and issues involved are similar have been filed by same Company, they are being considered and decided by this common order.
- 3** The petitioner, in WPC No. 2271/2025, has prayed for the following relief(s):

“a) Issue an appropriate writ, order, or direction declaring that

the eligibility conditions stipulated under Clauses 3.1.6, 3.2.4, 3.26, 3.2.10, 3.3.1, 3.3.2, and 3.46 of the Request for Proposal dated 09.04.2025 bearing Tender No. 194/CGMSCL/108 Sanjeevani Express/2025-26 are arbitrary, unreasonable, discriminatory, and violative of Articles 14 and 19(1)(g) of the Constitution of India,

a1) Issue an appropriate writ, order, or direction declaring that the amendment carried out by the Corrigendum dated 06.05.2025 to Clauses 3.2.10, 3.3.2, and Annexure 6 of the Request for Proposal dated 09.04.2025 bearing Tender No. 194/CGMSCL/108 Sanjeevani Express/2025-26 are arbitrary, unreasonable, discriminatory, and violative of Articles 14 and 19(1)(g) of the Constitution of India;"

b) Issue an appropriate writ, order, or direction declaring that the technical evaluation criteria prescribed under Clause 35 and Annexure 6 of the said Request for Proposal are arbitrary, vague, mechanical, and violative of the principles of fair, equal, and transparent competition in public procurement.

c) Issue an appropriate writ, order, or direction quashing and setting aside the impugned Request for Proposal dated 09.04.2025 bearing Tender No. 194/CGMSCL./108 Sanjeevani unreasonable, Express/2025-26, as being arbitrary, discriminatory, illegal, and unconstitutional;

d) Direct the Respondents to re-issue a fresh Request for Proposal for operation, maintenance, and management of 108 (Sanjeevani Express) Emergency Ambulance Services with fair, reasonable, and transparent eligibility and evaluation criteria, ensuring a level playing field and meaningful participation of all competent bidders,

e) Pass such other order(s) or direction(s) as this Hon'ble Court may deem just, equitable, and proper in the interest of justice."

- 4** The petitioner, in WPC No. 2303/2025, has prayed for the following relief(s):

"a) Issue an appropriate writ, order, or direction declaring that the conditions stipulated under Clauses 2.1.10, 3.1 (S. No. 4 and S. No. 8), 3.3.6 (S. No. 5), and Annexures 1, 3, and 5 of the Request for Proposal dated 04.04.2025 bearing Tender No.196/CGMSCL/Haat Bazar/2025-26 dated 04/04/2025 are arbitrary, unreasonable, discriminatory, ultra vires Articles 14 and 19(1)(g) of the Constitution of India;

a1) Issue an appropriate writ, order, or direction declaring that

the amendment carried out by the Corrigendum -dated 07.05.2025 to Clause 3.1 S. No. 8 & Annexure 5 of - the Request for Proposal dated 04.04.2025 bearing Tender No. 196/CGMSCL/Haat Bazar /2025-26 issued by Respondent No. 2 for the Operationalization of Mobile Medical Unit across 12 districts of Chhattisgarh under Haat Bazar Clinic Yojana are arbitrary, unreasonable, discriminatory, and violative of Articles 14 and 19(1)(g) of the Constitution of India

b) Issue an appropriate writ, order, or direction declaring that the technical experience requirement prescribed under Clause 3.1 (S. No. 4) and the evaluation criteria under Clause 3.3.6 (S. No. 5) mandating prior experience in technology-based screening for limited disease areas are arbitrary, irrational, bear no rational nexus with the field-based healthcare services contemplated under the tender, and are violative of the constitutional principles of fairness, equality, and non-arbitrariness in public procurement;

c) Issue an appropriate writ, order, or direction quashing and setting aside the impugned Request for Proposal dated 04.04.2025 bearing Tender No.196/CGMSCL/Haat Bazar/2025-26 dated 04/04/2025 for selection of an agency for operationalization of Mobile Medical Units in selected districts of Chhattisgarh as being arbitrary, discriminatory, unconstitutional; unreasonable, illegal, and

d) Direct the Respondents to re-issue a fresh Request for Proposal for operationalization of Mobile Medical Units in selected districts of Chhattisgarh with fair, reasonable, proportionate, and transparent eligibility and evaluation criteria, ensuring a level playing field and facilitating effective competition amongst all capable and competent bidders;

e) Pass such other or further writ(s), order(s), or direction(s) as this Hon'ble Court may deem just, fit, and proper in the facts and circumstances of the case, in the interest of justice."

- 5** The facts, as projected by the petitioner {in WPC No. 2271/2025} are that the petitioner is a body corporate incorporated under the provisions of the Companies Act, 2013, engaged as a leading healthcare infrastructure and service provider offering comprehensive solutions for hospital operations, emergency medical services, and management across India. On 08.07.2019, the Respondent No. 2 had issued a Request for Proposal (Old Tender) bearing Tender No. 01/DHS/2019 for

"Operation and Maintenance of 108 (Sanjeevani Express) Emergency Ambulance Services" for a fleet comprising of 270 Basic Life Support (BLS) ambulances and 30 Advanced Life Support (ALS) ambulances, supported by a 30-seater call center at Raipur, Chhattisgarh. On 29.07.2019, a Corrigendum was issued by the Respondent No. 2 wherein, among other clarifications, the earlier disqualification condition relating to pendency of criminal proceedings was relaxed, and only entities debarred/blacklisted as on the date of submission were rendered ineligible, thereby promoting wider and fairer participation. Meanwhile, on 15.07.2022, Petitioner was blacklisted for a period of one year by the Additional Director General of Police, Police Headquarters, Bhopal, Madhya Pradesh, in relation to procedural compliance issues under a completely different project, namely the "Upgradation, Operation and Maintenance of Dial 100/112 Services in Madhya Pradesh. The said blacklisting was solely on account of alleged deficiencies in vehicle documentation and not due to any operational failure, misconduct, or deficiency in service delivery. Importantly, the Dial 100/112 Services project is entirely distinct and unrelated to the 108 Sanjeevani Express Ambulance Services now tendered by Respondent No. 2, in which the Petitioner has demonstrated successful and uninterrupted operations over the past five years. The Petitioner had duly requested the concerned authority for issuance of updated experience certificates required for participation in the present tender, however, despite repeated requests and issuance of reminder letters, the concerned authority has failed to provide the necessary certificates. The inaction and delay on the part of the authority have prejudicially affected the Petitioner's ability to comply with Clause 3.3.1 of the tender conditions, thereby jeopardizing its participation in the bidding. Following the

conclusion of the bidding process, the Petitioner was declared the successful bidder and an agreement was duly executed on 18.11.2019 between the Petitioner and the Respondent No. 2 for the operation and management of 300 ambulances along with a 30 seater call center for a period of five years.

- 6** On 09.04.2025, the respondent No 2 issued a fresh Request for Proposal bearing Tender No. 194/CGMSCL/108 Sanjeevani Express/2025-26 for Operation, Maintenance and Management of 108 (Sanjeevani Express) Emergency Ambulance Services," seeking to operationalize a larger fleet of 300 equipped BIS, 70 ALS, and 5 Neo Natal ALS ambulances along with a 30-seater integrated call center. RFP was to be downloaded by the prospective bidders by 09.04.2025, the pre-bid conference was scheduled on 16.04.2025 at 12:00 p.m., the last date for replying to the queries raised in pre-bid meeting was 21.04.2025 at 5:00 p.m. and the last date of submission of bid was 09.05.2025, which according to the petitioners, have been extended to 16.05.2025. Desirous of participating in the new tender process, the Petitioner raised objections and submitted pre-bid queries via letter and e-mail dated 16.04.2025, highlighting several arbitrary, onerous, and unconstitutional conditions imposed in the eligibility criteria, financial thresholds, and technical evaluation parameters, including those prescribed under Clauses 3.1.6, 3.2.6, 3.2.10, 3.3.1, 3.3.2, 3.4.6, 3.5, Annexure 6, and relating to EMD. Despite the Petitioner's specific objections, no corrigendum has been issued by the Respondent No. 2 till date to address the grievances, and the impugned tender terms continue to remain ambiguous, arbitrary, and violative of Articles 14 and 19(1)(g) of the Constitution of India.

7 During the pendency of the present proceedings, this Hon'ble Court vide order dated 05.05.2025 directed the Respondents to seek instructions on petitioner's objections raised with reference to Clauses 3.2.10, 3.3.2, and Annexure 6 of the tender in view of judgments relied upon by the petitioner. Also, the Petitioner sent additional representation by email dated 05.05.2025 and requested the Respondent No. 2 to consider judgments and observations made by the Hon'ble Supreme Court as well as the Hon'ble High Court of Delhi, which bear direct relevance to the impugned Clauses 3.2.10, 3.3.2, and Annexure 6, in order to amend eligibility criteria for any bidder from any debarment / blacklist "in the past" to "as on date of submission of the bid". Moreover, it was also requested that the pre-bid queries and objections submitted by the petitioner on 16.04.2025 may be objectively evaluated in the interest of fairness. The Respondent No. 2 issued Corrigendum whereby Clauses 3.2.10, 3.3.2, and Annexure 6 were modified to prescribe disqualification based on debarment/blacklisting "in last five years from date of publication of tender". Details of the original condition and amended condition, which are under challenge in this petition, are as under:

<i>Clause & Page No.</i>	<i>Original Term</i>	<i>Amended Term</i>
<i>3.2.10 @ Pg No. 132 of the petition</i>	<i>The bidder should not be debarred/blacklisted/banned/prohibited/ suspended or convicted by any organization/Institution Department of any State Govt./ Govt. of India for corrupt and fraudulent practices and its promoters or directors should not have been convicted in India in the past or present. A declaration in this regard must be submitted failing which will lead to ineligibility.</i>	<i>The bidder should not be debarred/blacklisted/banned/prohibited/ suspended or convicted by any organization / Institution Department of any State Govt / Govt. of India for corrupt and fraudulent practices and its promoters or directors should not have been convicted in India in last five years from the date of publication of the tender. Updated Annexure 6 Format for Affidavit is attached</i>

3.3.2 @ Pg. No. 133 of the petition	An affidavit to the effect that the bidder has not been blacklisted/ suspended/ debarred in the past by any of the State /Union Governments / any government organization or by any court of law for any criminal or civil offenses across the country and that he will not form any Coalition with any other bidder. Bidder has to submit an affidavit on Rs 100 stamp paper in this regard stating that they are not defaulter/ convicted/ fraudulent practices/ misleading/ suspended or blacklisted.	The bidder must not be debarred/ blacklisted/ banned / prohibited/ suspended or convicted by or any organization/ Institution Department of any State Govt./ Govt. of India for corrupt and fraudulent practices and its promoters or directors should not have been convicted in India in last five years from the date of publication of the tender Updated Annexure 6- Format for Affidavit is attached
Annexure 6	I, M/s.(the names and addresses of the registered office) hereby certify and confirm that we or any of our promoter(s) / director(s) are not barred by CGMSCL/ or any other entity of GOCG or debarred/ blacklisted by any state government or central government /department / organization in India in the past or present from participating in Project/s, as on the (Date Signing of Application).	The bidder must not be debarred / blacklisted / banned/ prohibited/ suspended or convicted by any organization/Institution Department of any State Govt./ Govt of India for corrupt and fraudulent practices and its promoters or directors should not have been convicted in India in last five years from the date of publication of the tender. Updated Annexure 6 Format for Affidavit is attached.

- 8 It is notable that in the Corrigendum, for Annexure 6, amended part has been merely copy pasted in a mechanical manner to align the same with Sr. no. 6 and 7 for clauses 3.2.10 and 3.3.2 respectively, however, the actual format of the Annexure 6 has been changed in a different manner, which is not mentioned in the Remark Column of the Corrigendum as evident from Sr. No. 11 @ Page 41 of the Corrigendum. The last date for submission of bids under the impugned tender is scheduled on 09.05.2025, which according to the learned counsel for the parties, has been extended to 16.05.2025. In view of the absence of any corrective

action by the respondents and to safeguard its legal rights and interests, the Petitioner is constrained to file the present writ petition before this Hon'ble Court.

- 9** The facts, as projected by the petitioner, in WPC No. 2303/2025, are that the Respondent No. 2 issued a Request for Proposal, bearing Tender No.196/CGMSCL/Haat Bazar/2025-26 dated 04/04/2025 for Selection of an Agency for Operationalization of Mobile Medical Unit in selected districts of Chhattisgarh under Haat Bazar Clinic Yojana, to deploy and manage 75 MMUs across 12 Districts. Meanwhile, the Respondent No. 2 also issued another Request for Proposal bearing Tender No. 195/CGMSCL/Rural Mobile Medical Unit in Selected Districts of Chhattisgarh/2025-26 dated 11/04/2025 for "Operation, Maintenance and Management of Rural Mobile Medical Units (RMMUs) in selected districts of Chhattisgarh" for deployment and operation of 30 Mobile Medical Units across 19 Districts of the State to provide primary healthcare services in rural and remote areas. Desirous of participating in the tender process, the Petitioner raised objections and submitted pre-bid queries via letter and e-mail dated 14.04.2025, highlighting several arbitrary, onerous, and unconstitutional conditions imposed in the eligibility criteria, financial thresholds, and technical evaluation parameters. On 15.07.2022, Petitioner was blacklisted for a period of one year by the Additional Director General of Police, Police Headquarters, Bhopal, Madhya Pradesh, as detailed in the first petition. The tender scheduled stated that the document could be downloaded on 04.04.2025, the pre-bid meeting was scheduled on 11.04.2025 at 12:00 p.m. , the last date for replying to the queries raised in the pre-bid meeting was 15.04.2025 by 5:00 p.m. and the document download / sale end date was 05.05.2025 at 5 p.m. Despite the Petitioner's specific

objections, no corrigendum has been issued by the Respondent No. 2 till date to address the grievances, and the impugned tender terms continue to remain ambiguous, arbitrary, and violative of Articles 14 and 19(1)(g) of the Constitution of India. The last date for submission of bids under the impugned tender is scheduled on 05.05.2025 which has been extended to 14th May, 2025. In view of the absence of any corrective action by the Respondents and to safeguard its legal rights and interests, the Petitioner is constrained to file the present writ petition before this Hon'ble Court. During the pendency of the present proceedings, the Respondent No. 2 issued Corrigendum whereby Clause 3.1 S. No. 8 and Annexure 5 were modified to prescribe disqualification based on debarment/blacklisting in the preceding last five (5) years as on the date of the publication of this RFP/Tender" and "in last 5 (five) years till completion of the Selection Process under this RFP document" respectively, which reads as under:

<i>Clause & Page No.</i>	<i>Original Term</i>	<i>Amended Term</i>
<i>3.1 Sr. No. 8 at Pg. No. 42 of petition</i>	<i>The Bidder(s) shall not have been debarred blacklisted by any Central Govt./ State Govt/ Union territories/ its Drug procurement agencies NHM of other states.</i>	<i>To be read as: The Bidder(s) shall not have been debarred blacklisted by any Central Govt. / State Govt./ Union territories/ its Drug procurement agencies/ NHM of other states in the preceding last five (5) years as on the date of publication of this RFP/Tender.</i>
<i>Annexure 5</i>	<i>It is declared that the firm.....[Insert name of Bidder].....is not declared insolvent any time in the past. Not debarred/ blacklisted by CGMSCL/ NHM-CG / Central Govt. State Govt.Public Sector</i>	<i>It is declared that the firm(insert name of Bidder) is not declared insolvent any time in the past. Not debarred/ blacklisted by either CGMSCL/ NHM-CG/ Central Govt. /State Govt. / Public Sector</i>

	<i>Undertaking/ any other local body till completion of the Selection Process under this RFP document nor convicted under the provision of Indian Penal Code, 1860 or Prevention of Corruption (Amendment) Act, 2018, nor</i>	<i>Undertaking/ any other local body in last 5 (five) years till completion of the Selection Process under this RFP document nor convicted under the provision of Indian Penal Code, 1860 or Prevention of Corruption (Amendment) Act, 2018, nor</i>
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- 10** Mr. Manoj Paranjpe, learned counsel appearing for the petitioner, in WPC No. 2271/2025 submits that as the financial eligibility criteria stipulated under Clauses 3.2.4 and 3.2.6 of the impugned tender, requiring an average turnover of INR 150 Crores and a net worth of INR 75 Crores are wholly arbitrary excessive, and disproportionate to the scale and scope of services envisaged The project involves only a marginal increase in the number of ambulances (from 300 to 375) compared to the previous tender issued in 2019, under which a much lower turnover requirement of INR 45 Crores and merely positive net worth sufficed. The artificial inflation of financial thresholds without any corresponding expansion of project complexity amounts to an unreasonable restriction on fair competition, violative of Articles 14 and 19(1)(g) of the Constitution. The impugned tender, under Clauses 3.2.10, 3.3.2, and 3.4.6, imposes a sweeping and blanket disqualification based on any past blacklisting, debarment, suspension, or conviction, without any time limitation or relevance to the present project. In contrast, under the 2019 tender, the Respondent No. 2 had clarified through corrigendum that only subsisting blacklisting "as on the date of submission of bid would render a bidder ineligible, thereby facilitating broader participation. The adverse consequences of blacklisting cannot be indefinite and must cease once the prescribed debarment period has lapsed. Any perpetual disqualification imposed

herein amounts to civil death for bidder and is wholly antithetical to the principles of proportionality, fairness, and reasonableness enshrined under Articles 14 and 2 of the Constitution. The petitioner was blacklisted for a limited period of one year by the Additional Director General of Police, Police Headquarters, Bhopal, Madhya Pradesh, under an entirely different project, namely Upgradation, Operation and Maintenance of Dial 100/112 Services, on 15:07 2022, which pertained to a distinct and unrelated project and has since lapsed. Despite there being no rational nexus between the past blacklisting and the Petitioner's capability to operate 108 Sanjeevani Express Ambulance Services-the Petitioner cannot participate in the impugned tender due to the arbitrary blanket disqualification based on any past blacklisting. Clause 3.3.1 of the impugned tender mandates submission of experience certificates not older than six months from the date of application, which places the Petitioner in a manifestly disadvantageous position through no fault of its own. The Petitioner has been consistently seeking updated experience certificates from the Concerned Authority (Directorate of Health Services, Raipur), however, the Concerned Authority has failed and neglected to issue the requisite certificates within time or at all, thereby frustrating the Petitioner's ability to comply with the eligibility requirements. The technical evaluation criteria prescribed under Clause 3.5 are arbitrary, mechanical, and discriminatory. Specifically, S. No. 5 under Clause 3.5 allocates merely 1 mark per project of ambulance/health services handled in different States or by different clients, without proportionately rewarding the scale quality, or operational excellence of such projects. The same mark is granted for vastly different project complexities, thereby incentivizing numeric accumulation over substantive merit. Consequently, bidders

handling large, integrated operations are unfairly disadvantaged compared to those having fragmented smaller assignments, thus defeating the principle of selecting the most capable service provider. The rigidity imposed through Annexure 6 mandating strict compliance with affidavit and document formats without providing flexibility for bona fide deviations, creates an unfair risk of disqualification on purely technical or procedural grounds. Such mechanical formalism without substantive scrutiny violates the principle that tenders must be evaluated based on core eligibility and capability rather than minor technicalities, particularly where no prejudice is caused. The impugned eligibility and evaluation structure, taken as a whole, erects high and arbitrary barriers to entry, creates conditions favoring a narrow segment of large incumbents, and stifles fair and healthy competition and undermines principle of providing a level playing held. The Corrigendum dated 06.05.2025, while limiting disqualification to any blacklisting in last five years from the date of publication of the tender, still fails to satisfy the test of reasonableness and proportionality. It mechanically treats all past debarment as fatal, even those which are already expired, and has no nexus to the present scope of services. Any disqualification based on "debarment /blacklisting in last five years from the date of publication of the tender unjustifiably disqualifies bidders despite having demonstrated satisfactory past performance and disproportionately penalizes entities beyond period of blacklisting order. Thus Clauses 3.2.10, 3.3.2, and Annexure 6 of the tender are arbitrary and bad in law in view of judgment passed by the Hon'ble Apex Court in ***M/s Kulja Industries Limited v. Chief General Manager W.T. Proj. BSNL & Ors.*** {(2014) 14 SCC 731} and Division Bench of the High Court of Delhi in ***MI2C Security Facilities Pvt. Ltd. versus North Delhi Municipal Corporation and***

Ors., {2021 SCC Online Del 3682}. The Petitioner was previously awarded the tender for operating and managing the 108 Sanjeevani Express Emergency Ambulance Services in the State of Chhattisgarh, covering nearly 300 ambulances, a project of similar scale to the present tender. Despite a blacklist order dated 15.07.2022 issued by the Government of Madhya Pradesh in relation to an entirely unrelated project, the Respondents have continued to engage the Petitioner's services without interruption, and this shows that the Petitioner's performance in Chhattisgarh has remained unhindered even post-blacklisting. However, despite such proven credentials and operational track record, the Petitioner is now debarred from participating in the impugned tender solely due to the mechanical and arbitrary application of Clauses 3.2.10, 3.3.2, and Annexure 6-clauses which completely disregard contextual relevance, expiry of the blacklist order, and satisfactory post-blacklisting conduct of the Petitioner in the present 108 Services in State of Chhattisgarh. The impugned eligibility clauses Clauses 3.2.10, 3.3.2, and Annexure 6 have the effect of excluding not only the Petitioner but also other competent and qualified service providers solely due to past blacklisting which has already expired. Such blanket disqualifications distort level playing field and restrict meaningful competition, thereby undermining the principles of fair tendering and hampers the larger public interest in securing the best possible services for critical emergency healthcare operations such as the 108 Sanjeevani Express. The only legally tenable interpretation of Clauses 3.2.10, 3.3.2, and Annexure 6 is to restrict their application to existing or subsisting blacklisting. Any interpretation that extends their applicability to expired blacklisting orders-especially in the absence of present disqualification or misconduct-would be manifestly arbitrary and violative of Article 14 of

the Constitution. Such an interpretation is also inconsistent with the established principle that the adverse consequences of blacklisting must cease with the expiry of the order itself, particularly where the bidder has subsequently demonstrated satisfactory performance." The EMD requirement of INR 10 Crores stipulated under the impugned tender is exorbitant, disproportionate, and prohibitive, particularly when compared to the INR 50 Lakhs EMD prescribed under the previous 2019 tender for essentially the same project. The steep escalation in EMD bears no rational nexus to any increased project risk or scale and operates as an unjust financial barrier, discouraging otherwise eligible and competent bidders, thereby defeating the constitutional mandate of ensuring fair and non-discriminatory public procurement. Despite the Petitioner's detailed objections raised during the Pre-Bid Query process highlighting the arbitrary financial, eligibility, and technical evaluation parameters, the Respondent No 2 has failed to issue any corrective corrigendum or amendments. The failure to consider legitimate grievances and proceed with the impugned tender in its present form reflects non-application of mind, denial of Opportunity, and an unjustified exclusion of fair bidders.

- 11** So far as WPC No. 2303/2025 is concerned, Mr. Paranjpe submits that Clause 2.1.10, when read with Annexures 1, 3, and 5, converts a disclosure obligation into an effective disqualification by requiring an unqualified negative certification regarding any termination, expulsion, or penalty within the past three years. This framework fails to assess a bidder's present eligibility as on the bid submission date and treats even isolated or expired past actions as fatal disqualifications, proportionality. Clause 2.1.10, when read with Annexures 1, 3, and 5, creates an absolute bar on participation, which contradicts Clause 3.1 S. No. 8, which only disqualifies bidders who are presently blacklisted. The contradiction

between these provisions results in legal uncertainty and arbitrary application. Annexure 5 introduces further ambiguity by requiring a declaration that the bidder is "not debarred till the completion of the selection process," without clarifying whether this includes past or lapsed debarments, thus enabling an arbitrary and discretionary interpretation detrimental to fair participation. The Petitioner's blacklisting and termination of contract by letter dated 15.07.2022 by the Madhya Pradesh Police in connection with a different project entirely Dial 100/112 operations and for procedural lapses unrelated to service quality or performance. The said blacklisting has since lapsed and bears no nexus to the present tender for ambulance-based MMU services in Chhattisgarh. However, treating a contract termination or blacklisting, which is irrelevant to MMU Work, as disqualification violates Articles 14 and 21 and amounts to imposing a civil death on the bidder without due process. Clause 3.1 5. No. 4 and Clause 3.3.6 mandate prior experience in technology-based screening for specified diseases, which is wholly disconnected from the core objective of the tender-field-based ambulance services through MMUs. This requirement lacks any rational nexus to the subject matter and unjustly excludes competent field service providers. Clause 2.1.8 of the tender prohibits consortium participation, thereby preventing domain-specific service providers from partnering with IT firms to fulfill the eligibility criteria. This prohibition arbitrarily narrows participation and undermines the broader objective of effective public service delivery. The impugned tender conditions stand in stark contrast to CGMSCL's own RMMU tender dated 11.04.2025, (Tender No. 195/CGMSCL/Rural Mobile Medical Unit in Selected Districts of Chhattisgarh/2025-26 dated 11/04/2025) which pertains to the same operational framework (MMU services) but does not impose

any blanket disqualification for past termination or blacklisting and permits consortium participation. Its Clause 3.2.10 specifically limits disqualification to current blacklisting or pending criminal proceedings. The differential treatment in the impugned tender thus amounts to arbitrary and discriminatory procurement policy by the same authority for similar service objectives. The cumulative effect of the impugned conditions creates a high entry barrier, favors a select group of pre-qualified entities, and excludes competent operators from meaningful participation, violating the principles of equal opportunity and competitive neutrality under Article 14 of the Constitution. The Petitioner's detailed pre-bid queries dated 14.04.2025, highlighting these concerns, were not responded to by the Respondent through any corrigendum or clarification, reflecting a non-application of mind and denial of fair opportunity. The corrigendum dated 07.05.2025, while limiting disqualification to any blacklisting in last five years from the date of publication of the tender, still fails to satisfy the test of reasonableness and proportionality. It mechanically treats all past debarment as fatal, even those which are already expired, and has no nexus to the present scope of services. Any disqualification based on "debarment /blacklisting in last five years from the date of publication of the tender" unjustifiably disqualifies bidders despite having demonstrated satisfactory past performance and disproportionately penalizes entities beyond period of blacklisting order. Thus Clause 3.1 S.No. 8 and Annexure 5 are arbitrary and bad in law. The Petitioner is now barred from participating in the impugned tender solely due to the mechanical and arbitrary application of Clause 3.1 S.No. 8 and Annexure 5-clauses which completely disregard contextual relevance, expiry of the blacklist order, and satisfactory post-blacklisting conduct of the Petitioner in the present 108

Emergency & MMUs services in State of Chhattisgarh. The impugned eligibility clauses Clause 3.1 S.No. 8 and Annexure 5 have the effect of excluding not only the Petitioner but also other competent and qualified service providers solely due to past blacklisting which has already expired. Such blanket disqualifications distort level playing field and restrict meaningful competition, thereby undermining the principles of fair tendering and hampers the larger public interest in securing the best possible services for critical emergency healthcare operations such as the Operationalization of Mobile Medical Unit across 12 districts of Chhattisgarh under Haat Bazar Clinic Yojana. The only legally tenable interpretation of Clause 3.1 S.No. 8 and Annexure 5 is to restrict their application to existing or subsisting blacklisting, Any interpretation that extends their applicability to expired blacklisting orders-especially in the absence of present disqualification or misconduct would be manifestly arbitrary and violative of Article 14 of the Constitution. Such an interpretation is also inconsistent with the established principle that the adverse consequences of blacklisting must cease with the expiry of the order itself, particularly where the bidder has subsequently demonstrated satisfactory performance.

- 12 On the other hand, Mr. Prafull N Bharat, learned Senior Advocate who appears both on behalf of the State as well as the respondent-CGMSC submits that it is the prerogative of the authority issuing the tender to impose conditions as per its requirement and the same cannot be as per the feasibility of the petitioner. Mr. Bharat places reliance on the decisions of the Supreme Court in ***Slippi Constructions Contractors v. Union of India*** {(2020) 16 SCC 489} and ***N.G.Projects Ltd. v. Vinod Kumar Jain*** {(2022) 6 SCC 127} to contend that the position of law with regard to interpretation of the terms of contract is that the

question as to whether a term of contract is essential or not is to be viewed from the perspective of the employer and by the employer. Further, the scope of judicial review in respect of government contract is the exercise of restraint and caution. If two interpretations are possible, then the interpretation of the author must be accepted. The Courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable. Mr. Bharat further submits that conditions of the NIT upon which the petitioner had objection, was revisited by the State and has been amended as aforesaid and as such, the grievance raised by the petitioner stands redressed. However, each and every condition stipulated in the NIT cannot suit all the intending bidders and neither the respondents are obliged to lay down the conditions as per the wishes of the bidder.

- 13** We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
- 14** On 05.05.2025, learned counsel for the respondent No. 2 was directed to seek instructions with regard to the submissions made by the learned counsel for the petitioner, pursuant to which corrigendum has been issued by the respondent No. 2 on 06.05.2025 amending clauses 3.2.10, 3.3.2 and Annexure 6 and another corrigendum has been issued on 07.05.2025, amending the clauses 3.1 Sr. No. 8 and Annexure 5, which are under challenge in WPC No. 2271/2025 and 2303/2025, respectively.
- 15** There is no disagreement on the point that the authority issuing the NIT can lay down the conditions as per its requirement but if the authority issuing the NIT is the State or its instrumentalities, the conditions cannot be laid arbitrarily. The conditions which are sought to be challenged in

these petitions are purely within the domain of the respondents, however, the clauses which relate to the fact that any intending bidder is blacklisted in the past and the blacklisting is generally for a specified period of time, and after expiry of the said period, the said party is permitted to participate. However, in the present cases, the clauses relating to blacklisting are such that a party, even if it had been blacklisted at any point of time or that the blacklisting period is over, then also, it would be debarred from participating in the tender process which appears to be unreasonable. The Annexures in which declaration is to be given that the said party was never blacklisted, also appears to be unjustified. If any intending bidder has been blacklisted on any earlier point of time, then he can never file an affidavit stating that he had never been blacklisted the result of which would be that such bidder will not have the opportunity even to participate.

- 16 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**¹, 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, 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**², 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

1 (1993) 1 SCC 445

2 (1994) 6 SCC 651

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 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**³, 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**⁴, 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;”

3 (2004) 3 SCC 553

4 (2007) 14 SCC 517

(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**⁵, while observing that the government contracts granted by the government bodies must uphold fairness, equality and rule of 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**⁶, 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

5 (2022) SCC OnLine SC 574

6 (2016) 8 SCC 622

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."

- 17** In view of the above discussion, this Court is of the considered opinion that the clause 3.2.10 and 3.3.2 and Annexure 6 of the Request for Proposal dated 09.04.2025 bearing Tender No. 194/CGMSCL/108 Sanjeevani Express/2025-26 (as amended vide Corrigendum dated 06.05.2025) {in WPC No. 2271/2025} and clause 3.1, Sl. No. 8 and Annexure 5 of the Request for Proposal dated 04.04.2025 bearing Tender No. 196/CGMSCL/Haat Bazar/2025-26 (as amended vide corrigendum dated 07.05.2025) {in WPC No. 2303/2025} so far it relates to the blacklisting only, is quashed. It is made clear that if the bidder has earlier been blacklisted and the period of blacklisting is over,

he would be eligible to participate in the tender process subject to fulfillment of other stipulated conditions. It is further made clear that if the blacklisting of any bidder is in operation/existence, the said bidder would not be entitled to participate in the tender process/NIT. It is ordered accordingly.

- 18** With the aforesaid observation and direction, these petitions stand **disposed of.**

Sd/-
(Arvind Kumar Verma)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Head Note

It is the prerogative of the authority issuing the tender to lay down the conditions as per its requirement, but the conditions should not be arbitrary or impracticable so as to restrict participation of intending bidders.