



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 1590/2025

M/s Bhati Constructions, Having Its Registered Office At 378, J.n. Vyas Colony, Jaisalmer, District Jaisalmer Raj, Through Its Proprietor Nakhat Singh Bhati S/o Karan Singh, aged About 62 Years, Resident Of Naya Bas, Amar Sagar, Jaisalmer, District Jaisalmer (Raj.).

----Appellant

Versus

1. State Of Rajasthan, Through District Collector Jaisalmer Working As Chairman, Urban Improvement Trust Jaisalmer, Having Its Office At Collectorate Premises, tehsil And District Jaisalmer.
2. Sub Divisional Officer, Jaisalmer Working As Secretary, Urban Improvement Trust, Jaisalmer, Having Its Office At Collectorate Premises, Tehsil And District Jaisalmer.
3. Secretary, Urban Development And Housing Department, Government Of Rajasthan, Secretariat, Jaipur.

----Respondents

Connected With

D.B. Spl. Appl. Writ No. 1589/2025

M/s Bhati Constructions, Having Its Registered Office At 378, J.n. Vyas Colony, Jaisalmer, District Jaisalmer (Raj), through Its Proprietor Nakhat Singh Bhati S/o Karan Singh, Aged About 62 Years, Resident Of Naya Bas, Amar Sagar, Jaisalmer, District Jaisalmer (Raj.).

----Appellant

Versus

1. State Of Rajasthan, Through District Collector Jaisalmer, Working As Chairman, Urban Improvement Trust, Jaisalmer, Having Its Office At Collectorate Premises, tehsil And District Jaisalmer.
2. Sub Divisional Officer, Jaisalmer Working As Secretary, Urban Improvement Trust, Jaisalmer, Having Its Office At Collectorate Premises, Tehsil And District Jaisalmer.
3. Secretary, Urban Development And Housing Department, Government Of Rajasthan, Secretariat, Jaipur.

----Respondents

For Appellant(s) : Mr. Priyanshu Gopa
For Respondent(s) : Ms. Versha Paliwal
Mr. Ankur Mathur



HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE SANDEEP SHAH

Judgment

1. Date of conclusion of arguments	20.01.2026
2. Date on which judgment was reserved	20.01.2026
3. Whether the full judgment or only the operative part is pronounced:	Full Judgment
4. Date of pronouncement	06.03.2026

Reportable

Per Dr. Pushpendra Singh Bhati, J:

1. At the outset, it is clarified that D.B. Special Appeal (Writ) No. 1589/2025 is being treated as the lead case, as both the present appeals arise out of the same factual matrix, challenge the same tender process and impugned order, and seek identical reliefs. Accordingly, the facts are being taken from D.B. Special Appeal (Writ) No. 1589/2025, and the decision rendered therein shall govern the connected appeal i.e., D.B. Special Appeal (Writ) No. 1590/2025 as well.

2. The appellant has preferred the present Special Appeal praying for the following relief:

"It is, therefore, most humbly and respectfully prayed that the Special Appeal may kindly be allowed and the impugned order dated 24.09.2025 passed by the learned Single Judge in S.B. Civil Writ Petition No. 18160/2025 — M/s Bhati Construction Vs State of Rajasthan may kindly be quashed and set aside, and the writ petition may kindly be allowed in the terms as prayed therein.

Any other writ, order, or direction that this Hon'ble Court deems just and proper in the facts and circumstances of the case may kindly also be issued in favor of the petitioner."





3. The present intra-court appeals arise out of the order dated 24.09.2025 passed by the learned Single Judge in S.B. Civil Writ Petition No. 18191/2025, whereby the writ petition preferred by the appellant came to be dismissed.

3.1. The Urban Improvement Trust, Jaisalmer (hereinafter referred to as "UIT") issued a Notice Inviting Bid (NIB) No. 04/2025-26 (SL-2) dated 22.07.2025 for execution of renovation and strengthening work of road from Ambedkar Chowk to GSS Jodhpur Road, Jaisalmer. The appellant, a registered contractor, participated in the tender process by submitting its bid along with Earnest Money Deposit (EMD).

3.2. As per the conditions of the NIB, the EMD was required to be furnished in the prescribed mode, namely through Demand Draft/ Banker's Cheque or other permissible modes specified under the applicable procurement rules. The appellant submitted the EMD initially in the form of Fixed Deposit Receipts (FDRs) lien-marked in favour of the UIT within the stipulated time. Subsequently, on 23.08.2025, prior to opening of the technical bid, the appellant submitted a Demand Draft of the equivalent amount.

3.3. The respondent-authorities, however, rejected the appellant's technical bid on the ground that the EMD had not been submitted in the prescribed mode at the time of bid submission and thus did not comply with the mandatory tender condition. The appellant submitted a representation dated 23.08.2025, which came to be rejected by the competent authority vide order dated 02.09.2025.





3.4. Aggrieved thereby, the appellant preferred S.B. Civil Writ Petition No. 18191/2025 before this Hon'ble Court. The learned Single Judge, after hearing the parties, dismissed the writ petition vide order dated 24.09.2025, declining interference in the tender process.

3.5. During the interregnum, the tender process culminated in issuance of Letter of Acceptance dated 17.09.2025, followed by issuance of work order dated 18.09.2025 in favour of the successful bidder, and the work pursuant thereto is stated to be in progress.

3.6. Being dissatisfied with dismissal of the writ petition, the appellant has preferred the present Special Appeals.

4. Learned counsel for the appellant submitted that the learned Single Judge erred in dismissing the writ petition in limine without examining the factual and legal issues raised by the appellant, despite the matter involving substantial questions relating to fairness in public procurement and legality of administrative action. It was submitted that the impugned order dated 24.09.2025 does not assign adequate reasons and therefore suffers from the vice of being a non-speaking order, contrary to settled principles requiring judicial orders to disclose reasons.

4.1. Learned counsel submitted that the appellant is a registered contractor who had participated in the tender process pursuant to NIB No. 04/2025-26 (SL-2) dated 22.07.2025 and had furnished the Earnest Money Deposit (EMD) within time through lien-marked Fixed Deposit Receipts. It was further submitted that owing to





procedural delay in procuring a Demand Draft, the appellant subsequently submitted a Demand Draft of the equivalent amount on 23.08.2025, prior to opening of the technical bid, thereby curing any alleged procedural irregularity.

4.2. It was submitted that rejection of the appellant's bid on the ground of initial submission of EMD in the form of FDR instead of Demand Draft/Banker's Cheque was hyper-technical and contrary to the object of tender conditions, as the financial security of the employer remained fully protected at all times. Learned counsel submitted that substantive compliance having been achieved prior to technical evaluation, disqualification of the appellant defeated the very purpose of competitive procurement.

4.3. Learned counsel further submitted that the respondent-authorities adopted a discriminatory approach inasmuch as other bidders, who allegedly violated the mandatory Finance Department Circular dated 15.07.2025 requiring deposit of tender fees through e-GRAS mode, were permitted to participate, whereas the appellant alone was disqualified. Such selective enforcement of tender conditions, it was submitted, amounted to arbitrariness violative of Article 14 of the Constitution of India.

4.4. It was also submitted that the appellant's representation dated 23.08.2025 was rejected through a mechanical and non-speaking order dated 02.09.2025, despite directions of this Hon'ble Court dated 27.08.2025 requiring consideration with application of mind. According to learned counsel, the rejection order failed to consider the appellant's explanations and





supporting material and was passed in violation of principles of natural justice.

4.5. Learned counsel submitted that the appellant's financial bid was substantially lower than the accepted bid and exclusion of the appellant resulted in significant financial loss to public exchequer.

It was argued that public procurement must prioritize competition, transparency, and value for public money as envisaged under Sections 4, 5 and 6 of the Rajasthan Transparency in Public Procurement Act, 2012.

4.6. It was further submitted that correction of the EMD mode prior to opening of technical bids caused no prejudice to any competing bidder, nor had any vested rights accrued at that stage. Therefore, rejection of the bid was disproportionate and unreasonable.

4.7. Learned counsel also submitted that ambiguity existed between the bid documents and the NIB regarding permissible modes of EMD submission, and in cases of ambiguity, interpretation favouring broader participation ought to be adopted.

4.8. It was contended that the appellant had a legitimate expectation that curable procedural defects would not result in outright disqualification once compliance was achieved before evaluation. The action of the respondents, according to the appellant, amounted to a colorable exercise of power intended to exclude the lowest bidder.

4.9. Lastly, learned counsel submitted that availability of an alternative remedy under the RTPP Act would not bar exercise of





writ jurisdiction in the present case, particularly where allegations of arbitrariness, violation of natural justice, and constitutional infirmities were raised. It was thus prayed that the impugned order of the learned Single Judge as well as the rejection of the appellant's bid be set aside.

4.10. Learned counsel for the appellant further placed reliance upon the following precedents in support of his submissions:

1. **Mr. B.S.N. Joshi & Sons Ltd. vs. Nair Coal Services Ltd. & Ors.** [Appeal (Civil) 4613 of 2006 arising out of SLP (Civil) No. 24879 of 2005 decided on 31.10.2006]
2. **Poddar Steel Corporation vs. Ganesh Engineering Works and Ors.** (1991) 3 SCC 273
3. **Banshidhar Construction Pvt. Ltd. vs. Bharat Coking Coal Limited and Ors.** [Civil Appeal No. 11005 of 2024 (Arising out of Special Leave Petition (Civil) No. 17383/2024 decided on 04.10.2024]
4. **Omsairam Steels & Alloys Pvt. Ltd. vs. Director of Mines and Geology, BBSR and Ors.** [Civil Appeal No. ... of 2024 (Arising out of SLP (Civil) No. 6920 of 2023) decided on: 15.07.2024]

5. Learned counsel appearing for the respondents submitted that the rejection of the appellant's bid was strictly in accordance with the terms and conditions of the Notice Inviting Bid (NIB) as well as the provisions of the Rajasthan Transparency in Public Procurement Act, 2012 and the Rajasthan Transparency in Public Procurement Rules, 2013, and therefore no interference was warranted either by the learned Single Judge or by this Court in intra-court appellate jurisdiction.





5.1. Learned counsel submitted that the NIB specifically mandated submission of Earnest Money Deposit (EMD) in the prescribed mode, namely through Demand Draft/Banker's Cheque or other permissible modes recognized under the applicable procurement rules. The appellant admittedly failed to furnish the EMD in the prescribed form at the time of submission of the bid and thus committed a fundamental non-compliance with a mandatory tender condition.

5.2. It was further submitted that Rule 42(6) of the Rajasthan Transparency in Public Procurement Rules, 2013 clearly stipulates the permissible modes for furnishing bid security, and compliance with such requirement must exist at the time of bid submission itself. A subsequent change or rectification after submission of bid documents, it was argued, is impermissible in law and would vitiate the sanctity of the tender process.

5.3. Learned counsel submitted that the appellant's contention that submission of a Demand Draft on 23.08.2025 cured the defect was misconceived, as tender conditions are required to be complied with strictly at the time of submission of the bid and cannot be retrospectively rectified. Acceptance of post-submission compliance, according to the respondents, would amount to altering the conditions of tender to favour a particular bidder.

5.4. It was further submitted that the appellant's bid was rejected through a reasoned administrative decision after due consideration of the representation dated 23.08.2025 in compliance with the directions issued by this Hon'ble Court on 27.08.2025. The





competent authority examined the bid documents and recorded that the appellant had failed to comply with the mandatory condition relating to submission of EMD in prescribed mode.

5.5. Learned counsel submitted that allegations of discrimination and unequal treatment were wholly unfounded. It was argued that enforcement of the EMD condition against the appellant was necessary to maintain discipline, transparency, and uniformity in public procurement and did not amount to arbitrary action under Article 14 of the Constitution of India.

5.6. It was also submitted that the tender process had already culminated in issuance of Letter of Acceptance dated 17.09.2025 and work order dated 18.09.2025 in favour of the successful bidder, pursuant to which execution of public work is presently in progress. Any interference at this stage would disrupt an ongoing public project and cause serious prejudice to public interest.

5.7. Learned counsel further submitted that the scope of judicial review in contractual and tender matters is limited and courts ordinarily do not interfere unless arbitrariness, mala fides, or statutory violation is clearly established. In the present case, no such infirmity was demonstrated by the appellant.

5.8. It was contended that the learned Single Judge, after considering the submissions of the parties, rightly declined to interfere with the administrative decision taken in accordance with tender conditions and procurement rules, and therefore the impugned order does not warrant interference in appeal.





5.9. Lastly, learned counsel submitted that all grounds raised by the appellant were misconceived and contrary to the record, and since the appellant admittedly failed to comply with a mandatory condition of the NIB, the Special Appeals deserve dismissal with costs.

5.10. Learned counsel for the respondents further placed reliance upon the following precedents in support of his submissions:

1. **Mr. B.S.N. Joshi & Sons Ltd. vs. Nair Coal Services Ltd. & Ors.** [Appeal (Civil) 4613 of 2006 arising out of SLP (Civil) No. 24879 of 2005 decided on 31.10.2006]
2. **Vidarbha Irrigation Development Corporation vs. Anoj Kumar Garwala** (2020) 17 SCC 577
3. **Central Coalfield Limited & Anr. vs. SLL-SML (Joint Venture Consortium) & Ors.** (2016) 8 SCC 622

6. Heard learned counsel for the parties at length and perused the material available on record.

6.1. This Court observes that the primary issue arising for consideration is whether rejection of the appellant's bid on account of non-submission of Earnest Money Deposit (EMD) in the prescribed mode at the time of bid submission warrants interference in exercise of judicial review under Article 226 of the Constitution of India and in the present intra-court appellate jurisdiction.

6.2. This Court notes that the Notice Inviting Bid (NIB) expressly required submission of EMD in the prescribed mode, namely through Demand Draft/Banker's Cheque or other permissible modes recognized under the Rajasthan Transparency in Public





Procurement Rules, 2013. It is not disputed that at the time of submission of the bid, the appellant furnished the EMD in the form of lien-marked Fixed Deposit Receipts and not in the prescribed mode.

6.3. This Court further observes that Rule 42(6) of the Rajasthan Transparency in Public Procurement Rules, 2013 specifies the permissible modes of furnishing bid security. Compliance with eligibility and bid conditions is required to exist at the time of submission of the bid itself, unless the tender conditions expressly permit rectification.

6.4. The contention of the appellant that subsequent submission of a Demand Draft prior to opening of the technical bid cured the defect cannot be accepted. This Court finds that permitting post-submission rectification of a mandatory tender condition would amount to altering the level playing field amongst bidders and would dilute certainty and discipline in public procurement.

6.5. This Court observes that the Hon'ble Supreme Court in **Central Coalfields Limited** (*Supra*) has categorically held that essential tender conditions must be complied with strictly and courts should refrain from substituting administrative wisdom in contractual matters. Similarly, in **Vidarbha Irrigation Development Corporation** (*Supra*), the Hon'ble Supreme Court reiterated the limited scope of judicial review in tender matters.

6.6. This Court also takes note of the judgments relied upon by the appellant, including **Poddar Steel Corporation** (*Supra*) and **B.S.N. Joshi & Sons Ltd.** (*Supra*); however, those authorities





recognize relaxation only where the condition is ancillary or directory in nature. In the present case, the requirement relating to mode of submission of EMD forms part of the eligibility framework ensuring financial seriousness and procedural uniformity and therefore cannot be treated as a merely technical or curable irregularity.

6.7. This Court further observes that allegations of discrimination have not been substantiated by cogent material. The appellant has failed to demonstrate that similarly situated bidders violating the same mandatory condition were treated differently. Mere assertion of unequal treatment, without demonstrable parity of circumstances, cannot invalidate an otherwise lawful administrative decision.

6.8. This Court notes that the representation submitted by the appellant was considered by the competent authority pursuant to directions of this Hon'ble Court and rejected by order dated 02.09.2025 assigning reasons relating to non-compliance with mandatory tender conditions. Thus, the decision-making process cannot be termed arbitrary or devoid of application of mind.

6.9. This Court further observes that judicial review in tender matters is concerned with the decision-making process and not the merits of the decision itself. Unless mala fides, arbitrariness, or statutory violation is established, courts ought not to interfere in commercial decisions taken by expert authorities.

6.10. A significant factual aspect which weighs with this Court is that the tender process has already culminated in issuance of





Letter of Acceptance dated 17.09.2025 and work order dated 18.09.2025, and the work pursuant thereto is stated to be in progress. Interference at this stage would unsettle a concluded contractual process and adversely affect execution of a public infrastructure project.

6.11. This Court observes that the Hon'ble Supreme Court has consistently cautioned that courts must exercise restraint where public projects have substantially progressed, as interference at a belated stage may cause greater public injury than alleged private prejudice.

6.12. This Court finds that the learned Single Judge rightly declined to interfere in the tender process keeping in view the limited scope of judicial review and absence of arbitrariness or illegality in the decision of the respondent-authorities.

6.13. In view of the foregoing analysis, this Court is of the considered opinion that no ground for interference is made out in the present intra-court appeals.

7. Consequently, the present special appeals stand **dismissed**. All pending applications, if any, also stand disposed of.

(SANDEEP SHAH),J

(DR.PUSHPENDRA SINGH BHATI),J

SKant/-