2025 SupremeCourtOnline 0109 Surguja Bricks Industries Company v. State of Chhattisgarh, #1410801

Supreme Court of India

Present: Justice Manoj Misra and Justice Ujjal Bhuyan.

M/S. SURGUJA BRICKS INDUSTRIES COMPANY v STATE OF CHHATTISGARH

Civil Appeal No. 14859 of 2025 (Arising Out Of SLP (Civil) No. 10039 of 2025)

(i) Tenders and Contracts – Eligibility criteria – Interpretation – Legal certainty – When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks – If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment – It is the responsibility of the tendering authority to issue clear and unambiguous instructions in a NIT – When there is vagueness or subjectivity in the norms, it may result in an unequal and discriminatory treatment and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts. [Paras 24-26]

: "We are of the unhesitant view that an eligibility criteria should be clear and unambiguous. Otherwise, it may lead to arbitrary exercise of power by the State disqualifying a tenderer who would otherwise meet the eligibility criteria. In West Bengal State Electricity Board v. Patel Engineering, (2001) 2 SCC 451 this Court declared that to hold that a State or its agencies can reject a tender for breach of a term or condition in the tender document which is not explicit in the tender documents is to give room to the State or its agencies to arbitrarily reject tenders even when clear terms or conditions of tender documents are complied with." [Para 24]

(ii) Tenders and Contracts – Joint venture – Experience certificate – Proportionate experience – A contractor who was a partner in a joint venture is entitled to claim proportionate experience of the joint venture for the purpose of eligibility criteria – In respect of a joint venture, its experience can only mean the experience of the constituents of the joint venture – Failure to consider the proportionate experience of a joint venture partner renders the decision arbitrary and irrational – New Horizons Limited v. Union of India, (1995) 1 SCC 478 and Ganpati PV – Talleres Alegria Track Pvt. Ltd v. Union of India, (2009) 1 SCC 589 followed. [Paras 21-22, 28]

"In respect of a joint venture, its experience can only mean the experience of the constituents of the joint venture. For the purpose of considering whether New Horizons had the experience as contemplated by the advertisement, the experience of the constituents of New Horizons had to be taken into consideration by the Tender Evaluation Committee. Failure to consider the same had rendered the decision arbitrary and irrational, leading to interference by this Court." [Para 21.5]

(iii) Tenders and Contracts – 'Joint venture' – Meaning – The expression 'joint venture' connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks – It requires a community of interest in the performance of the subject matter and to share both in profit and losses – New Horizons Limited v. Union of India, (1995) 1 SCC 478 referred. [Para 21.4]

"As to the expression 'joint venture', this Court observed that the expression 'joint

venture' connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject matter and to share both in profit and losses." [Para 21.4]

(iv) Tenders and Contracts – 'Prime contractor' – Meaning – Where the phrase 'prime contractor' is not a defined expression either in the pre-qualification document or in the NIT, the common parlance test has to be applied – The expression 'prime contractor' in the context of the NIT would mean the tenderer who has submitted the tender in terms of the instant NIT – If there is more than one contractor bidding together then it would mean the contractor who is primarily responsible for the contract offer. [Para 20]

"We find that the phrase 'prime contractor' is not a defined expression either in the pre-qualification document or in the NIT. If that be the position, the common parlance test has to be applied. The expression 'prime contractor' in the context of the NIT would mean the tenderer who has submitted the tender in terms of the instant NIT. If there is more than one contractor bidding together then it would mean the contractor who is primarily responsible for the contract offer." [Para 20]

(v) Tenders and Contracts – Experience requirement – Approach to be adopted – While considering the requirement regarding experience, it has to be borne in mind that such requirement is contained in a document inviting offers for a commercial transaction – The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman – The tendering authority should look not by the name of the company but by the persons behind the company – New Horizons Limited v. Union of India, (1995) 1 SCC 478 referred. [Para 21.3]

"The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the work. He would go not by the name of the company but by the persons behind the company." [Para 21.3]

(vi) Tenders and Contracts – Eligibility criteria – Exclusion of joint venture experience – Must be explicit – Where there is no specific or explicit exclusion of work experience gained by a contractor in a joint venture or partnership in the NIT or pre-qualification document, the tendering authority cannot reject a tender on the ground that the experience was gained as a member of a joint venture and not in the tenderer's individual name. [Para 23]

"From a perusal of the NIT or the conditions in the pre-qualification document, we do not find any criteria or condition therein stating that past experience as member of a joint venture would not be considered. There is, thus, no specific or explicit exclusion of the work experience gained by a contractor in a joint venture or partnership." [Para 23]

(vii) Constitution of India, Art. 14 – Tenders and Contracts – State action – Arbitrariness – In the matter of entering into a contract, the State does not

stand on the same footing as a private person who is free to enter into a contract with any person he likes – The State is governed by the mandate of Art. 14 which excludes arbitrariness in State action and requires the State to act fairly and reasonably – The action of the State in the matter of award of a contract has to satisfy this criterion – Not considering the proportionate experience certificate of the tenderer as a member of the joint venture is arbitrary and unreasonable rendering the decision-making process in breach of the mandate of Art. 14. [Paras 21.1, 28]

"In the matter of entering into a contract, the State does not stand on the same footing as a private person who is free to enter into a contract with any person he likes. The State is governed by the mandate of Article 14 of the Constitution of India which excludes arbitrariness in State action and requires the State to act fairly and reasonably. The action of the State in the matter of award of a contract has to satisfy this criterion." [Para 21.1]

(viii) Tenders and Contracts – Judicial review – Scope – Deference to tendering authority – Limitations – Ordinarily constitutional courts should defer to the understanding of the tender inviting authority of the tender documents – However, this principle has its own limitations – If the interpretation of the tender inviting authority is vitiated by mala fides or perversity, there is no question of a constitutional court showing deference to such understanding – Likewise, if the interpretation of the tender inviting authority of a particular condition of tender is irrational or absurd leading to arbitrary consequences, it would be the duty of a constitutional court to interdict such a decision-making process – To hold otherwise would render the very object of judicial review otiose. [Para 27]

"There is no dispute to the proposition that the tender inviting authority is the best judge to understand and appreciate its requirements and interpret its documents. However, this principle has its own limitations. If the interpretation of the tender inviting authority or its understanding of the tender conditions is vitiated by mala fides or perversity, there is no question of a constitutional court showing deference to such understanding. Likewise, if the interpretation of the tender inviting authority of a particular condition of tender, such as, an eligibility criteria as in the present case is irrational or absurd leading to arbitrary consequences, it would be the duty of a constitutional court to interdict such a decision making process. To hold otherwise would render the very object of judicial review otiose." [Para 27]

Cases Referred to:

1. (1995) 1 SCC 478, New Horizons Limited v. Union of India – Joint venture experience; experience of constituents to be considered; approach of prudent businessman. [Paras 8, 14.6, 21-21.5]

2. (2009) 1 SCC 589, Ganpati PV – Talleres Alegria Track Pvt. Ltd v. Union of India – Experience as joint venture partner; followed New Horizons. [Paras 14.6, 22]

3. (2001) 2 SCC 451, West Bengal State Electricity Board v. Patel Engineering – Legal certainty in tender conditions; rejection for breach of unexplicit condition arbitrary. [Paras 24, 26]

4. (2007) 8 SCC 1, Reliance Energy Limited v. Maharashtra State Road Development Corporation Ltd. – Legal certainty; norms and benchmarks in tender; doctrine of level playing field. [Paras 14.5, 25]

5. (2010) 13 SCC 364, Indian Railways Catering and Tourism Corporation Ltd. v. Doshion Veolia Water Solutions Pvt. Ltd. – Rule of law in tender process; transparency and fairness. [Paras 14.5, 26]

6. (2016) 16 SCC 818, Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corp. Ltd. – Deference to interpretation of tender inviting authority. [Paras 15.4, 27]

7. (2020) SCC OnLine SC 335, Bharat Coking Coal Ltd. v. AMR Dev Prabha – Interpretation of tender conditions by tendering authority. [Paras 15.4, 27]

8. (1997) 1 SCC 53, Dutta Associates (P) Ltd. v. Indo Merchantiles (P) Ltd. – Tender procedure must be transparent, fair and open; viability range not specified in tender. [Para 26.1]

9. 2025 SCC OnLine SC 1942, Maha Mineral Mining & Benefaction Pvt. Ltd. v. Madhya Pradesh Power Generating Co. Ltd. – Legal certainty in tender conditions. [Para 14.5]

Respondent No. 3 issued a NIT dated 08.01.2025 for construction of a road, the probable amount of contract being Rs. 4521.56 lakhs. As per the eligibility criteria, each prime contractor in the same name and style must have satisfactorily completed atleast one similar work equal in value to 50 percent of the probable amount of contract. The appellant submitted its tender along with an experience certificate relating to similar work undertaken by a joint venture (MPSBI-JV) of which appellant was a partner with 49% share. The total value of work completed by the joint venture was Rs. 4904.09 lakhs, and appellant's proportionate experience was Rs. 2404.00 lakhs (above the required 50% threshold of Rs. 2261.00 lakhs).

The Technical Evaluation Committee disqualified the appellant on the ground that the main experience certificate pertained to work done by a joint venture which was not acceptable. The appellant's challenge before the High Court under Art. 226 was dismissed, with the High Court holding that it could not enter into examination of conditions stipulated by the tendering authority and that the decision-making process did not suffer from malice or unreasonableness. Appeal ALLOWED. The impugned judgment and order of the High Court dated 04.04.2025 set aside and quashed. The decision of respondent No. 3 dated 19.03.2025 disqualifying the appellant set aside. Respondents directed to reconsider the case of the appellant by accepting its experience certificate as member of the joint venture MPSBI-JV.

For the Petitioner : Mr. Mohit Negi

For the Respondent : Mr. Bishwajit Dubey, A.A.G., Mr. Vinayak Sharma, Standing Counsel, Mr. Ravinder Kumar Yadav, Mr. Karan Khetani, Mr. Kshitiz Agarwal, Ms. Kritika Yadav and Mr. Yashvardhan Shah, Advocate.

JUDGMENT

Ujjal Bhuyan, J. – *(18-12-2025)* – Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 04.04.2025 passed by a Division Bench of the High Court of Chhattisgarh at Bilaspur (briefly, 'the High Court' hereinafter) in ***Writ Petition (Civil) No. 1745 of 2025 (M/s. Surguja Bricks Industries Company v. State of Chhattisgarh)***.

2.1. Be it stated that respondent No. 3 had issued a notice inviting tender dated 08.01.2025 for construction of a road pursuant to which the appellant had submitted its tender. After exchanging correspondences, respondent No. 3 vide letter dated 19.03.2025 disqualified the appellant at the stage of technical evaluation on the ground

that one experience certificate of the appellant was of lesser value than 50 percent of the contract value while the other experience certificate was that of joint venture of which appellant was a partner; thus appellant failed to meet the eligibility criterion. Appellant challenged rejection of its tender on the aforesaid ground before the High Court by filing a petition under Article 226 of the Constitution of India. By the impugned judgment and order dated 04.04.2025, High Court did not find any merit in the writ petition and accordingly dismissed the same.

3. Aggrieved thereby, appellant preferred the related special leave petition before this Court. On 08.04.2025, this Court recorded the contention of the appellant as under:

> The learned senior counsel for the petitioner invited our attention to the qualification criteria in the Notice Inviting Tender document, which uses the expression "each prime contractor in the same name and style, in its name must have in the last five years ....". It has been, inter alia, argued that the use of the phrase "each prime contractor" would mean that if the past experience is in the form of a Joint Venture, each participant of that Joint Venture, if a bidder under this tender notice, would be eligible if he qualifies the financial criteria. It has been submitted that if the qualification criteria is interpreted in the manner as suggested above, the petitioner meets the financial and experience criteria and, therefore, would be technically eligible.

3.1. This Court after observing that the matter requires consideration, issued notice and passed an interim order to the effect that if the financial bids had not been opened, the same shall not be opened till the next date.

4. Relevant facts may be briefly noted.

5. On 08.01.2025, the Chief Engineer (Central Tender Cell), Office of the Engineer-in-Chief, Public Works Department, Naya Raipur ('respondent No. 3' hereinafter) issued a tender notice being first call NIT No. 246/TC/24-25 for the work: construction of road from gram Ramgarh to gram Kotadal length 27.20 kilometers, District Korea, Chhattisgarh work code W25598, the probable amount of contract being Rs. 4521.56 lakhs, to be completed within a period of 12 months (referred to hereinafter as the NIT). As per the eligibility criteria (1) of the pre-qualification document, it is stated that to qualify for award of the contract, each prime contractor in the same name and style (tenderer) in its name must have in the last five years (a) achieved in any one financial year a financial turnover (in all classes of civil engineering construction works) of construction work of atleast 60 percent of the probable amount of contract for which the bid has been invited and (b) (i) satisfactorily completed atleast one similar work equal in value to the extent of 50 percent of the probable amount of contract as on the date of submission of the financial offer or (ii) satisfactorily completed atleast two similar works each costing minimum 40 percent of the probable amount of the contract work for which the tender is invited as on the date of submission of the financial offer or (iii) satisfactorily executed atleast one similar work having received payment of value not less than 60 percent of the value of probable amount of contract as on the date of submission of financial offer.

6. Pursuant to the aforesaid NIT, appellant submitted its tender in the online portal of the Public Works Department, Chhattisgarh (PWD) within the stipulated period. Alongwith the tender, it had submitted all the relevant documents as per the NIT.

7. Respondent No. 3 issued letter dated 03.03.2025 to the appellant stating that upon

evaluation of the documents submitted online by it pursuant to the NIT, the Technical Evaluation Committee found certain deficiencies in the tender of the appellant. It was stated that one experience certificate given for similar nature of work was executed through a joint venture and in so far the other work is concerned, the financial turnover was less than the amount sought for in the NIT. Therefore, Clause 1(b)(i), (ii) and (iii) of the eligibility (qualification) criteria of the NIT was not fulfilled. Appellant was called upon to submit its views and documents.

8. Vide letter dated 05.03.2025 addressed to the third respondent, appellant explained that work order of similar nature of work was issued by the Chhattisgarh Rural Road Development Agency in the name of a joint venture viz, MPSBI-JV comprising of two partners: (i) Mohan Poddar 51 percent and (ii) M/s. Surguja Bricks Industries i.e. the appellant 49 percent. In the experience certificate issued by the Executive Engineer of Chhattisgarh Rural Road Development Agency, it has been specifically mentioned in Column 16 of Sr. No. 2 that the total value of work completed was 4904.09 lakhs and 49 percent experience of M/s Surguja Bricks Industries is Rs. 2404.00 lakhs. Appellant pointed out that constituent of a joint venture is entitled to proportionate experience of the joint venture and in this connection placed reliance on a decision of this Court in ***New Horizons Limited v. Union of India, (1995) 1 SCC 478***. Appellant clarified that it was relying upon the work completion certificate of the joint venture only to the extent of Rs. 2404.00 lakhs.

9. After exchange of correspondences, the third respondent wrote to the appellant vide letter dated 17.03.2025 stating that the Technical Evaluation Committee was of the opinion that its tender was not submitted in the prescribed format. Appellant was given time till 19.03.2025 to submit the relevant documents either in-person or through departmental email address. Appellant was put on notice that in the event of default, it would be disqualified from the tender.

10. Responding to the aforesaid letter, appellant wrote back to the third respondent vide letter dated 19.03.2025 reiterating that it had filed the tender online alongwith the relevant documents and that the eligibility criteria was fully complied with. It was pointed out that the experience certificate attached with the tender has been signed by the competent officer of the Pradhan Mantri Gram Sadak Yojana i.e. the Executive Engineer. Appellant pointed out that in case of any doubt in respect of the experience certificate, it could be verified from the concerned department. Appellant requested the third respondent to accept the experience certificate attached with the online tender and thereafter to open the tender of the appellant.

11. On the same day, the third respondent informed the appellant vide letter dated 19.03.2025 that as per the experience certificates filed by the appellant, one work was executed by forming a joint venture and the amount covered by the second contract work was less than the amount required as per the NIT. Though the appellant had presented its case, the Technical Evaluation Committee disagreed with the same and decided to disqualify the appellant.

12. Aggrieved by the aforesaid action of the respondents, appellant filed the related writ petition before the High Court under Article 226 of the Constitution of India assailing the legality and validity of the letter dated 19.03.2025 disqualifying the appellant from the tender; further seeking a direction to the respondents to consider the appellant as an eligible tenderer and thereafter to proceed with the opening of the financial bid of the appellant. The writ petition was registered as W.P. (C) No. 1745 of 2025.

13. The High Court vide the impugned judgment and order dated 04.04.2025 recorded the facts as under:

> 7. From perusal of the prayers and pleadings made in the writ petition, further taking into consideration, the rival submissions advanced by learned counsel for the parties and the qualification criteria of the NIT in question, it transpires that to qualify for award of the contract, each prime contractor in the same name and style (tenderer), in its name must have in the last five years achieved in "any one financial year" a financial turnover of construction work of at least 60% of the probable amount of contract for which bid has been invited, but the petitioner has submitted his tender in the name of M/s Surguja Bricks Industries Company, whereas he has submitted the experience certificate of joint venture having its 1st partner as M/s Poddar (MP) 51 % and 2nd partner as M/s Surguja Bricks Industries SBI 49%, therefore, the petitioner was issued show-cause vide letter dated 03.03.2025, but, when satisfactory reply was not submitted by the petitioner, vide impugned letter dated 19.03.2025, he was declared disqualified.

13.1. After referring to various decisions of this Court, the High Court was of the view that it could not enter into an examination of the conditions stipulated by the authority while issuing the NIT. Holding that the decision making process did not suffer from any malice or unreasonableness, the High Court dismissed the writ petition in the following manner:

> 11. This Court cannot go into the niceties of the conditions stipulated by the authority issuing the NIT, but can only examine whether the process adopted by the said authority is malafide or intended to favour someone or whether the process adopted or decision made is so arbitrary or irrational that the Court may arrive at a finding that the decision is such that no responsible authority acting reasonable (sic) and in accordance with the relevant law could have reached and further whether the public interest is affected by such action. In the present case, we do not find any such situation in existence and as such, this Court does not find any merit in this petition and the petitioner is not entitled to any relief as claimed.

14. Ms. Pooja Mehra Saigal, learned senior counsel for the appellant, at the outset has taken us to the conditions of the NIT. Referring to clause (1)(b)(i) of the NIT which lays down the qualification criteria, she submits that as per this criterion, to qualify for the award of the contract, each prime contractor in the same name and style (tenderer) in its name must have in the last five years satisfactorily completed atleast one similar work equal in value to the extent of 50 percent of the probable amount of the contract as on the date of submission of the tender. The probable amount of contract is mentioned as Rs. 4521.56 lakhs. 50 percent of the aforesaid amount would be 2261.00 lakhs. She submits that appellant submitted its bid within the stipulated period alongwith an experience certificate, amongst others, which was in relation to similar work undertaken by the joint venture MPSBI-JV for a work having contract value of Rs. 4904.09 lakhs (construction of 70 kilometres road in the district of Surajpur). The constituents of the joint venture alongwith their partnership contribution were as under: (i) appellant 49 percent and (ii) M/s. Mohan Poddar 51 percent. Therefore, appellant's experience share of the work undertaken by the joint venture would work out to Rs.

2452.00 lakhs, which was way above the 50 percent mark.

14.1. Rejection letter of respondent No. 3 mentioned that the appellant was disqualified from the bidding process on the ground that the main work experience certificate furnished by the appellant pertained to work done by a joint venture which was not acceptable. The other experience certificate pertained to individual work undertaken by the appellant which was below the requisite amount.

14.2. Learned senior counsel submits that refusal by the respondents to consider the experience of the appellant as part of a joint venture is wholly arbitrary and contrary to its own conduct. She submits that tenders were invited for contractors registered in 'A class' as per the unified registration system with Chhattisgarh PWD. In case the tenderer was not registered in 'A class', the tenderer could participate in the auction process but had to register itself with the Chhattisgarh PWD within 15 days from the date of acceptance of its bid. Therefore, the conditions stipulated under the unified registration system rules are mandatory and binding on all tenderers. She submits that as per clause 5.2.3, if any partner of a firm wishes to separate from the firm or register under a different name, his experience shall be valid in proportion to his percentage of partnership in the previous registered firm. Since the NIT mandates application of unified registration system on all the tenderers, partners of joint venture are allowed to use their weighted experience as a partner of a joint venture to register themselves as a contractor in 'class A'. Having previously accepted the experience of a joint venture partner at the time of registration, action of the respondents in refusing to permit the appellant to rely on its previous experience as a joint venture partner, therefore, would lead to a contradictory approach which would be arbitrary and unjust.

14.3. Otherwise also the reason given by the respondents for disqualifying the appellant does not stand to reason at all.

14.4. Learned senior counsel specifically points out that as far back as on 05.01.2016, the third respondent had informed the Principal Secretary to the Government of Chhattisgarh, PWD that work experience certificates relating to joint ventures in the name of the prime contractor under which the contractor is registered should be accepted. This was followed by another correspondence dated 10.02.2017 whereby and whereunder the third respondent informed the State Government in the PWD that because of some confusion qua the definition of prime contractor, it was clarified that for any sub-contracted work done in the State of Chhattisgarh with the prior approval of the competent authority, such sub-contractor would also get the credit for the work executed towards his experience. Such a subcontractor would be construed to be the prime contractor for the sub-let part of the contract. Therefore, the third respondent proposed that the contract works sub-let after permission of the competent authority and that part of the work done as joint venture which is done by a tenderer as a partner of the joint venture should be treated as work done by the prime contractor. She submits that such understanding of the department is completely in sync with the legal position and therefore there could not have been any reason for the respondents to deviate therefrom and disqualify the appellant by adopting a different standard.

14.5. When tenders are invited, the terms and conditions must indicate with legal certainty, the norms and benchmarks. In other words, the conditions provided in the tender documents must be (i) clear and unambiguous, and (ii) must conform to legal certainty. In this connection, learned senior counsel has placed reliance on the following decisions:

(i) ***Reliance Energy Limited v. Maharashtra State Road Development Corporation Ltd., (2007) 8 SCC 1***;

(ii) ***Indian Railways Catering and Tourism Corporation Ltd. v. Doshion Veolia Water Solutions Pvt. Ltd., (2010) 13 SCC 364***; and

(iii) ***Maha Mineral Mining & Benefaction Pvt. Ltd. v. Madhya Pradesh Power Generating Co. Ltd., 2025 SCC Online SC 1942***

14.6. It is submitted that weighted experience of the appellant as a partner in a joint venture ought to have been considered towards the experience of the appellant in its own name and style. Referring to *New Horizons*, learned senior counsel submits that purpose of creating a joint venture is to ensure that the contractor is able to obtain the relevant work experience in the requisite field. As such, a contractor is allowed to utilize such an experience as a partner of a joint venture. The instant NIT does not state or stipulate that the experience of a tenderer while being a part of a joint venture would not be considered. Learned senior counsel submits that *New Horizons* holds the field even today and has been followed in subsequent decisions including in ***Ganpati PV – Talleres Alegria Track Pvt. Ltd v. Union of India, (2009) 1 SCC 589***.

14.7. Thus, learned senior counsel would submit that appellant has fulfilled the criteria of prior work experience requirement as it was a partner in the joint venture MPSBIJV comprising of M/s. Mohan Poddar (51 percent share) and the appellant (49 percent share). Appellant would thus be entitled towards the 49 percent of the experience of the total work executed by the joint venture.

14.8. Learned senior counsel submits that the High Court misconstrued the challenge of the appellant and proceeded on the sole premise that interpretation of tender conditions by the employer should be accepted; since appellant was not able to satisfy the financial turnover requirement as per interpretation of the respondents, its technical bid has been rightly rejected. She submits that this view of the High Court is wholly erroneous and requires interference.

14.9. Finally, learned senior counsel submits that respondent No. 3 was wholly unjustified in rejecting the tender of the appellant on the aforesaid ground. The High Court also fell in error in rejecting the challenge of the appellant. The impugned judgment and order of the High Court dated 04.04.2025 and the impugned decision of the respondent dated 19.03.2025 are thus liable to be set aside and quashed.

15. Mr. Bishwajit Dubey, learned Additional Advocate General, State of Chhattisgarh appearing for the respondents at the outset submits that the impugned judgment and order has rightly upheld the decision of the respondents declaring the appellant as ineligible as per the NIT. He submits that there is no ambiguity in the expression ‘each prime contractor in the same name and style (tenderer)’ which finds place in the eligibility criteria in the NIT. It clearly means that a tenderer needs to have the requisite experience in its own name, meaning thereby that it cannot rely on its prior experience gathered as member of a joint venture.

15.1. Learned counsel for the respondents sought to highlight the meaning of the expression ‘prime contractor’. Referring to Black’s Law Dictionary, he submits that a prime contractor is one who contracts for and completes an entire project, coordinating all work and sub-contractors. Appellant acting merely as a joint venture member does not satisfy the definition of ‘prime contractor’ as the experience has not been gained in

its name and style.

15.2. In any case, the joint venture was a distinct legal entity. That apart, clauses 3 and 4 of the joint venture memorandum of understanding dated 18.02.2020 clearly shows that M/s. Mohan Poddar was the lead member of the joint venture. Appellant cannot rely on the joint venture's credentials when bidding independently. Any inter departmental correspondence suggesting that joint venture experience may be considered are merely advisory and nonbinding.

15.3. Appellant's registration under the unified registration system alone does not prove its 'A-class' contractor status. Registration requirement is a separate requirement and the tendering authority can always come up with additional conditions and qualifications.

15.4. In any view of the matter, even if it is assumed that there is ambiguity in the aforesaid tender condition, then it is settled law that the interpretation given by the tendering authority should be accepted. Admittedly there is no allegation of any malafides or perversity or discrimination. In such a situation, the court may not substitute its views over the interpretation of the tendering authority. He submits that the tendering authority is the best judge while interpreting tender conditions. Judicial interference would arise only if a case of arbitrariness or malafides or perversity is demonstrated. In this connection, learned Additional Advocate General has placed reliance on the following decisions, amongst others:

(i) ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corp. Ltd., (2016) 16 SCC 818***; and

(ii) ***Bharat Coking Coal Ltd. v. AMR Dev Prabha, (2020) SCC Online SC 335***.

15.5. Learned Additional Advocate General submits that the experience certificate and the execution experience in the joint venture must be demonstrably in the name of the tenderer. Joint venture work is indivisible and cannot be apportioned to members. Therefore, respondents' refusal to accept the experience of the appellant as a member of the joint venture is rational and rooted in administrative prudence.

15.6. He also submits that as per the NIT, the tenderers are required to complete atleast one similar work equal to 50 percent of the probable contract value. In so far the appellant's other experience certificate is concerned, (which is as an individual contractor in its own name), the work value was Rs. 1675.86 lakhs only which did not meet the qualification criteria. Thus, appellant failed to meet the mandatory qualification criteria. Appellant's attempt to maintain the prior joint venture experience is misplaced and untenable.

15.7. In the above conspectus, learned Additional Advocate General submits that the impugned judgment and order of the High Court is sound in law as well as on facts. Therefore, no interference is warranted. Consequently, the appeal should be dismissed.

16. Submissions made by learned counsel for the parties have received the due consideration of the court.

17. The controversy in the present case arises from the interpretation of the expression in *each prime contractor in the same name and style (tenderer)* appearing in the qualification criteria and whether rejection of the appellant's tender on the ground that it had failed to meet the qualification criteria is legally tenable or not?

18. Clause (1) of the pre-qualification document lays down the qualification criteria. It

has got two parts: clause (1)(a) and clause (1)(b). It says that to qualify for the award of the contract, each prime contractor in the same name and style (tenderer) must have achieved in any one financial year in the last 5 years a financial turnover of construction work of atleast 60 percent of the probable amount of contract and must have satisfactorily completed atleast one similar work equal in value to 50 percent of the probable amount of the contract value as on the date of submission of the financial offer or must have satisfactorily completed atleast two similar works each costing minimum 40 percent of the probable amount of the contract value or must have satisfactorily executed atleast one similar work having received payment of value not less than 60 percent of the value of the probable amount of contract.

19. Therefore, as per the aforesaid qualification criteria, each prime contractor in its own name and style should be able to fulfill the criteria mentioned in clause (1)(b)(i), (ii) and (iii).

20. The bone of contention centers around the meaning of the expression 'prime contractor'. We find that the phrase 'prime contractor' is not a defined expression either in the pre-qualification document or in the NIT. If that be the position, the common parlance test has to be applied. The expression 'prime contractor' in the context of the NIT would mean the tenderer who has submitted the tender in terms of the instant NIT. If there is more than one contractor bidding together then it would mean the contractor who is primarily responsible for the contract offer. The eligibility requirement is that such a prime contractor should have in its own name and style satisfactorily completed atleast one similar work equal in value to 50 percent of the probable amount of the contract value as on the date of submission of financial offer. In the instant case, appellant is relying on his share of 49 percent in the joint venture MPSBI-JV which works out to Rs. 2403.00 lakhs which is well above the 50 percent probable amount of the contract value but respondents are of the view that appellant cannot claim the benefit of such an experience because such experience was gained as a member of the joint venture and not in its individual name. Therefore, it becomes important to understand the concept of a joint venture.

21. In *New Horizons*, this Court was examining a challenge to the contract for printing, binding and supply of telephone directories for three annual issues commencing from 1993 in terms of an advertisement published in various newspapers by the Department of Telecommunications, Telecom District, Hyderabad. Tender of *New Horizons* was not considered whereas tender of M & N Publications Ltd. was accepted. In the writ proceedings instituted by *New Horizons* where it challenged its rejection and consequential award of contract to M & N Publications Ltd., official respondents filed counter affidavit. The reason for non consideration of the offer of *New Horizons* was disclosed. It was stated that the offer of *New Horizons* did not disclose any evidence to show that it had in its name undertaken compiling, printing, binding and supply of telephone directories for large telephone systems with the capacity of more than 50 thousand lines.

21.1. It may be mentioned that in its tender, *New Horizons* had mentioned that it was a joint venture company established by Thomson Press (India) Limited, Living Media (India) Limited, World Media Limited and Integrated Information Private Limited, a wholly owned subsidiary of Singapore Telecom. It is in the above context that this Court examined the contours of a joint venture. However, at the outset, this Court declared that in the matter of entering into a contract, the State does not stand on the same footing as a private person who is free to enter into a contract with any person he likes.

The State is governed by the mandate of Article 14 of the Constitution of India which excludes arbitrariness in State action and requires the State to act fairly and reasonably. The action of the State in the matter of award of a contract has to satisfy this criterion. Moreover, a contract would either involve expenditure from the State exchequer or augmentation of public revenue and consequently the discretion in the matter of selection of the person for award of the contract has to be exercised keeping in view the public interest involved in such selection.

21.2. This Court thereafter observed that it is possible to visualize a situation where a person having past experience has entered into a partnership and the tender has been submitted in the name of the partnership firm which may not have any past experience in its own name. That does not mean that the earlier experience of one of the partners of the firm cannot be taken into consideration. Similarly, a company having past experience may undergo reorganization as a result of merger or amalgamation with another company which may not have such past experience and the tender is submitted in the name of the reorganized company. It could not be the purport of the requirement about experience that the experience of the company which has merged into the reorganized company cannot be taken into consideration because the tender has not been submitted in its name and has been submitted in the name of the reorganized company which does not have experience in its name.

21.3. This Court explained further that while considering the requirement regarding experience, it has to be borne in mind that the said requirement is contained in a document inviting offers for a commercial transaction. In that context, this Court held thus:

> 23. * * * * * * * *
>
> The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the work. He would go not by the name of the company but by the persons behind the company. While keeping in view the past experience he would also take note of the present state of affairs and the equipment and resources at the disposal of the company. The same has to be the approach of the authorities while considering a tender received in response to the advertisement issued on 22.04.1993.

21.4. As to the expression ‘joint venture’, this Court observed that the expression ‘joint venture’ connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject matter and to share both in profit and losses.

21.5. In the facts of that case, this Court held that *New Horizons* was constituted as a joint venture by the aforementioned companies. Once it was held that *New*

Horizons was a joint venture, the experience of its various constituencies had to be taken into consideration if the Tender Evaluation Committee had adopted the approach of a prudent businessman. In respect of a joint venture, its experience can only mean the experience of the constituents of the joint venture. For the purpose of considering whether *New Horizons* had the experience as contemplated by the advertisement, the experience of the constituents of *New Horizons* had to be taken into consideration by the Tender Evaluation Committee. Failure to consider the same had rendered the decision arbitrary and irrational, leading to interference by this Court.

22. In Ganpati, the commercial bid of the appellant was not considered on the ground that it had failed to meet the eligibility criteria. Appellant highlighted that it had the requisite experience as a joint venture partner. Relying upon the decision of this Court in *New Horizons*, the Bench in Ganpati held that view taken by the High Court that the appellant did not fulfill the eligibility criteria was not correct. The Bench accordingly directed the Tender Evaluation Committee to reconsider the bid of the appellant.

23. From a perusal of the NIT or the conditions in the pre-qualification document, we do not find any criteria or condition therein stating that past experience as member of a joint venture would not be considered. There is, thus, no specific or explicit exclusion of the work experience gained by a contractor in a joint venture or partnership. As a matter of fact, appellant has relied on a previous letter of the third respondent dated 10.02.2017 which had clarified that work done by a member of joint venture would be counted as the work experience of the bidding contractor who would be construed to be the prime contractor for that portion of the contract work which it had executed as a member of the joint venture. Though the learned Additional Advocate General for the State of Chhattisgarh has argued that such past departmental communications would not have a bearing on the eligibility conditions of the present NIT, that does not take away from the fact that there is no specific or explicit exclusion of work experience gained as a member of joint venture while considering eligibility as per the present NIT.

24. We are of the unhesitant view that an eligibility criteria should be clear and unambiguous. Otherwise, it may lead to arbitrary exercise of power by the State disqualifying a tenderer who would otherwise meet the eligibility criteria. In ***West Bengal State Electricity Board v. Patel Engineering, (2001) 2 SCC 451*** this Court declared that to hold that a State or its agencies can reject a tender for breach of a term or condition in the tender document which is not explicit in the tender documents is to give room to the State or its agencies to arbitrarily reject tenders even when clear terms or conditions of tender documents are complied with. Therefore, it is the responsibility of the tendering authority to issue clear and unambiguous instructions in a NIT. As pointed out by this Court in *Patel Engineering* (supra), when there is vagueness or subjectivity in the norms, it may result in an unequal and discriminatory treatment and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts.

25. In *Reliance Energy Ltd.*, this Court was examining the conditions in the global tender floated by the State of Maharashtra through the Maharashtra State Road Development Corporation Limited for completing the Mumbai Trans Harbour Link between Mumbai and Navi Mumbai on a BOT basis. In the aforesaid tender process, the tendering authority decided to exclude the appellants. Without entering into the details of the judgment in *Reliance Energy Ltd.*, we can gainfully extract the below mentioned portion from the said decision:

> 38. When tenders are invited, the terms and conditions must indicate with legal

certainty, norms and benchmarks. This “legal certainty” is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of “level playing field”.

26. *In Indian Railways Catering and Tourism Corporation Ltd.*, the issue pertains to a tender notice issued by the Indian Railway Catering and Tourism Corporation Ltd. for setting up of a packaged drinking water bottling plant to produce drinking water under the brand name ‘Rail Neer‘ for railway passengers. Again, without entering into the details of the case, we may mention that this Court referred to Patel Engineering and observed that the very purpose of issuing rules or instructions is to ensure their enforcement lest the rule of law should be a casualty and relaxation or waiver of a rule or condition, unless so provided under the instructions to bidders by the State or its agencies in favour of one bidder would create justifiable doubts in the minds of other bidders and would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing bidders for awarding contracts. This Court reiterated that to hold that the State or its agencies can reject a tender for breach of a term or condition in the tender document which is not explicit in the tender documents is to give room to the State or its agencies to arbitrarily reject tenders even where the clear terms or conditions of the tender documents are complied with.

26.1. This Court also referred to its earlier decision in the case of ***Dutta Associates (P) Ltd. v. Indo Merchantiles (P) Ltd., (1997) 1 SCC 53*** where this Court found that the offer of the lowest tenderer for wholesale supply of rectified spirit (Grade 1) to the Excise Department, Government of Assam, was not accepted on the ground that the price offered did not come within the ‘viability range’ and this Court held that the tender process was vitiated for the reason that the tender notice did not specify the ‘viability range’ nor did it say that only the tenders coming within the ‘viability range’ will be considered. In Dutta Associates (P) Ltd., this Court observed that whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the tender notice; the consideration of tenders received and the procedure to be followed in the matter of acceptance of a tender should be transparent, fair and open.

27. There is no dispute to the proposition that the tender inviting authority is the best judge to understand and appreciate its requirements and interpret its documents. In *Afcons Infrastructure Ltd.* and in *Bharat Coking Coal Ltd.* as well as in subsequent decisions, this Court has upheld this principle observing that ordinarily constitutional courts should defer to the understanding of the tender inviting authority of the tender documents. However, this principle has its own limitations. If the interpretation of the tender inviting authority or its understanding of the tender conditions is vitiated by *mala fides* or perversity, there is no question of a constitutional court showing deference to such understanding. Likewise, if the interpretation of the tender inviting authority of a particular condition of tender, such as, an eligibility criteria as in the present case is irrational or absurd leading to arbitrary consequences, it would be the duty of a constitutional court to interdict such a decision making process. To hold otherwise would render the very object of judicial review otiose.

28. Applying the principles as discussed supra to the facts of the present case, ***we find that there*** was no justification at all on the part of the respondents in not considering the proportionate experience certificate of the appellant as a member of the joint venture. Such

decision of the respondents is arbitrary and unreasonable rendering the decision making process in breach of the mandate of Article 14 of the Constitution of India.

29. For all the aforesaid reasons, ***we hold*** that the decision making process of the respondents in disqualifying the appellant from the tender by not taking into account its past proportionate experience in the joint venture is vitiated by irrationality leading to the arbitrary decision of declaring the appellant as disqualified. The said decision of respondent No. 3 dated 19.03.2025 cannot be sustained and is accordingly set aside. Since the High Court failed to notice such irrationality leading to arbitrary consequences, the impugned judgment and order dated 04.04.2025 is wholly untenable and is accordingly set aside and quashed.

30. In consequence thereof, respondents are directed to reconsider the case of the appellant by accepting its experience certificate as member of the joint venture MPSBIJV.

31. The appeal is accordingly allowed. However, there shall be no order as to cost.