

M/s. Steag Energy Services (India) Pvt. Ltd. Vs. GSPC PIPAVAV Power Company Ltd. (GPPC) & Ors.

Civil Appeal No(s)._____ of 2026 arising out of SLP (C) No(s). 30209-30210 of 202 · Supreme Court of India · 2026-03-25 · Pamidighantam Sri Narasimha · Alok Aradhe · F2J-C-1146

Full judgment text

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1. Leave granted.

2. These appeals arise out of the judgment and order passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 7289 of 2025 and Special Civil Application No. 12328 of 2025.

3. Facts leading to filing of these appeals lie in a narrow compass. The first respondent GSPC PIPAVAV Power Company Limited, (hereinafter referred to as GPPC) commissioned in the year 2013-2014 a gas based combined cycle power plant of 702.86 MW. In January 2025, GPPC floated a public tender inviting bids for operation and maintenance of the combined cycle power plants for an initial period of 5 years.

4. The tender was based on Quality and Cost Building System (QCBS) in which weightage is given to quality as well as cost for the purpose of evaluation and grant of tender. Quality quotient would consider the technical strength/evaluation of the bidders wherein the financial capability of the bidder is taken into account as per the tender terms. The cost quotient considers the cost of the owner for hiring i.e. the financial bid submitted by the bidder. The weightage is 70% to the technical evaluation and 30% to the cost evaluation. The terms of the tender relating to evaluation of bids and award of contract is contained in clause 20.2 of the tender document.

5. It is necessary to reproduce clause 20 to the extent that it is relevant for our consideration:

"20.0 EVALUATION OF BIDS AND AWARD OF CONTRACT

20.1 The Contract will be awarded to the competitive responsive Bidder, with most optimized evaluated price, for five years, offering the technically acceptable Bid in conformity with the requirements of this enquiry specification. A responsive Bid is one which accepts all terms and conditions of these specifications and documents without any modifications. A modification is one which affects in any way the prices, quality, quantity of the Works or which limits in any way the responsibilities or liabilities of the Bidder or any rights of the Owner as required in these specifications. The decision of Owner is final in this regard.

20.2. i) Evaluation of offer/ proposal shall be done on Quality and Cost Based System (QCBS) wherein the Technical Score i.e. Marks Given During Unpriced Technical Bid Evaluation will be allotted weightage of 70 % and the price proposal will be allotted weightage of 30% as Mentioned below:

A combined "Score (S)" will be arrived at after considering weightages 30% for price bid and 70% for technical scores, according to the following methodology.

$S = (St \times Tw) + (Sf \times Fw)$ Where S = Total Score

St = combined technical score (Total marks scored as per evaluation methodology) Sf = Combined financial score = $100 \times Fm / F$ Fm = Lowest Cost F = Price Bid of the bidder of whom Sf is to be calculated Tw = Weight assigned to technical score i.e. 70% or 0.70 Fw = Weight assigned to financial score i.e. 30% or 0.30

The successful bidder will be the one who has highest score (S).

ii) Evaluation Technical scores (St): (Allocation of marks against each parameter shall be as per the marks defined for each parameter and Pro-Rata calculation wherever mentioned in the table given below.

iii. Bids from all the bidders shall be evaluated and point/mark shall be allocated based on the documents submitted by the bidders. Individual points/marks given for each criteria shall be summed up to arrive at the total score/mark of each bidder.

iv. Proposals from bidders who meet the techno-commercial qualification criteria (based on the Bid Evaluation Criteria) as defined in the tender documents and achieve as minimum technical score (St) of 60 marks in the quality technical parameters will be considered for further evaluation. The price bids will only be opened for those bidders who meet the above criteria.

v. After opening of priced bids of all qualified bidders, the bidder with the lowest cost (Fm) shall be given financial score (Sf) of 100 points. The relative financial score of other bidders shall be computed as per the formulae given above.

vi. The total score of the bidder shall be obtained by weighting the combined quality/technical scores and cost scores and adding them as follows.

$$S = (St \times Tw) + (Sf \times Fw)$$

22.0 Award Criteria

22.1 GPPC will award the Contract to the Bidder whose Bid has been determined to be fully responsive to the bidding documents and evaluated as per the Bid evaluation criteria specified in this tender"

6. On 23.01.2025 a pre-bid meeting was held. The writ petitioner did not participate in the same. Subsequently, we are informed that the writ petitioner neither raised any pre-bid queries nor expressed any concern about the evaluation method and proceeded to issue the Declaration of Unconditional Offer (DUO) dated 04.04.2025.

7. The bid document contemplated a three-stage bid evaluation namely (i) Preliminary Evaluation of Bid (ii) Evaluation of Technical Bid and (iii) Pre-Bid. Out of 4 bids that were submitted, 3 bidders qualified. They are the appellant, O&M Solutions Pvt. Ltd. (hereinafter referred to as the writ petitioner) and another party. On evaluation while the writ petitioner got a score of 8 out of 10 marks with respect to technical experience, the appellant scored 10 out of 10 on this count.

Finally, while the writ petitioner got a total score of 93 out of 100 in the technical evaluation, the appellant scored 95 of 100. the consultant Fichtner Consulting Engineers India Private Limited (hereinafter referred to as Fichtner) also, evaluated the price bid of all 3 technically qualified bidders as per the price bid evaluation report, in which the writ petitioner got a score of 95.09989831 and the appellant scored 95.4978453. After following the evaluation, the appellant was declared as the successful bidder.

8. The GPPC was anxious to execute the contract as the existing terms of contract was coming to an end in June. They felt it was necessary to award the contract to the successful bidder in a timely manner so that the necessary handover/takeover can take place before 30th of June 2025. The tender document itself provided the schedule of mobilisation in Schedule D so that there could be a gradual and smooth take over and the new contractor deploys its staff and get acquainted with operation of plant and machinery for its maintenance. It was felt that for proper operation and maintenance of the plant and machinery, skilled personnel must be posted expeditiously so that they acquaint themselves before the operations commence.

9. The Board of Directors of GPPC in their 81st Board meeting dated 05.05.2025 resolved to award the contract to the successful bidder, the appellant herein. GPPC thus issued the LOA on 09.06.2025 to the appellant. The appellant is also said to have accepted the offer.

10. At this stage, it may be relevant to refer to clause 20.04 and 20.05 of the tender document which relates to grant of LOA which is as under:

"20.4 Once the contract is awarded, the manpower requirement as agreed shall be considered fixed as proposed in Form AA and considered a guarantee by O&M Contractor that he will fulfil his obligations fully under the contract. No reduction in manpower shall be subsequently allowed any increase manpower becoming necessary by the O&M Contractor to fulfil his obligations shall be at his cost and risk.

20.5. After selection, a Letter of Intent ("LOI") shall be released by the Owner to the selected Bidders. And one week time shall be given for acceptance. Letter of Acceptance ("LOA") by the Bidder must be

submitted within the stipulated period. No delay shall be permitted, and in the event acceptance is not received by stipulated date, the Bid Security of such Bidder shall be appropriated by the Owner as mutually agreed genuine preestimated compensation of damage suffered by the Owner on account thereof, and the next eligible lowest Bidder may be considered."

11. We are also informed that pursuant to the grant of LOA, the appellant mobilised its manpower and machinery and took over the plant and commenced work. Further, on 01.07.2025, even the formal contract is said to have been executed between GPPC and the appellant.

12. In the meanwhile, the writ petitioner approached the High Court by filing a writ petition initially challenging the tender evaluation process as arbitrary¹ and violative of Article 14 of the Constitution. After GPPC issued LOA in favour of the appellant, the writ petitioner sought amendment of the original Prayer by substituting prayer 'C' for quashing of the LOA².

13. Pending disposal of the writ petition, the Court directed GPPC to have the technical bid re-evaluated by its consultant, Fichtner and submit a report on the allocation of marks after hearing all the parties. While there was no stay of the contract executed in favour of the appellant, the Court ordered that it shall be subject to further orders of the Court.

14. Pursuant to the directions of the Court, GPPC filed an affidavit, placing on record the report of the consultant dated 14.08.2025. Paragraph 2.2.1 of the report submitted by the consultant is as follows:

"2.2.1 STEAG will be allotted 8 marks out of 10 towards item 3 of Clause 20.2B. The marks allotted is based on Experience of planning and supervising of two (2) numbers of HGPI and one (1) number of CI during the period of last seven (7) years i.e. from 01.01.2018 to 31.12.2024. The earlier allotted marks to STEAG was 10 and during the re-evaluation it is found that one (1) out of three (3) numbers of HGPI earlier claimed by STEAG is carried out beyond the evaluation period which was not evident in the document earlier submitted by STEAG."

15. It is evident from the record that the appellant was initially allocated 10 out of 10 marks for item no. 3 of clause 20.2(1)(B) relating to "Experience of Planning and Supervising of Major Overhaul, HGPI and CI of 1 (one) GT (Gas Turbine of ISO rating more than 100 MW). However, this marks stood revised to 8 marks. Consequently, the status of the two competing bidders, the appellant and the writ petitioner, was altered, resulting in a tie between them. This is because with reduction of 2 marks under 20.2(1)(B) the two competing bidders achieved the technical score of 93.

16. On the basis of the report submitted by the consultant, the High Court simply proceeded to evaluate and determine the competing claims of the appellant and the writ petitioner. For this purpose, the following comparative chart was reproduced in the High Court order;

17. When the technical score of the appellant and the writ petitioner stood at 93 each, the High Court examined the prices quoted by the writ petitioner and the appellant being Rs. 19,65,55,668 and Rs.19,65,69,120 respectively. Solely based on the marginal difference in the price, the High Court allowed the writ petition, quashed and set aside the LOA and contract awarded to the appellant. It directed the GPPC to proceed further and award the contract to the writ petitioner. For achieving this purpose, the High Court relied on 20.2 (vi) which provided that "The bidder with the highest total score (S) shall be considered for award of job."

18. The High Court's decision clearly indicates that there is no arbitrariness or illegality in the actions taken by the owner "GPPC" or its consultant in fact the High Court records that the total score of the writ petitioner is marginally higher and also that the difference is miniscule. The relevant portion of the High Court's Order is as follows:

"47. In the present case, as noted hereinabove, the total score "S" of the petitioner - O & M is marginally higher than that of the respondent No.3, though the difference is minuscule, being 95.09989831 as against 95.0978453 i.e. the difference of 0.00205301, this Court cannot ignore the conditions of Clause (VI) and validate the contract awarded to the respondent No.3- STEAG. The recitals of the bid document do not permit the course suggested by respondent No.3-STEAG of matching the price bid by reduction."

19. Mr. D.V.S. Somayajulu, learned senior counsel appearing on behalf of the appellant, relied on the decision of this Court in *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*³ to submit that the High Court committed a serious error in interfering with the decision, particularly when the difference between the appellant and the writ petitioner is marginally higher. The relevant portions of this

precedent are as follows:

"11. Recently, in *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)* [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] it was held by this Court, relying on a host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision-making process is mala fide or is intended to favour someone.

Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.

13. In other words, a mere disagreement with the decisionmaking process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision."

20. In similar circumstances, while considering the scope of judicial review, this Court in *Montecarlo Ltd. v. NTPC Ltd.*⁴ expressed a word of caution emphasising that judicial review should be confined to ensuring that there is no arbitrariness or mala fide in the process of evaluation. The relevant portions of the judgement are reproduced below:

"26. We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinized by the technical experts and sometimes third party assistance from those unconnected with the owner's organization is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts.

In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule.

But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or malafide or procedure adopted is meant to favour one. The decision making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in Page 29 29 consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint.

Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints."

21. The emphasis in the above referred decision is on two principles, the first being the principle of restraint in judicial review of contractual matters and the second being the freedom of contract permitting allowance of free play in the joints.

22. Ms. Meenakshi Arora, learned senior counsel supporting the decision of the High Court raised an important point that as tender mandates a maximum and a minimum benchmark within which tenderers could bid, the difference in the price would naturally be marginal. She would submit that it is therefore compelling, rather inevitable that difference in the price of competing bidders will be very less. This is true, particularly when highly competitive bidding takes place. However, the judicial

solution for such problems arising out of the fierce competition between competing bidders is not to be found in the mathematical precision or application of rigid formulae.

While scrutinizing the process by which evaluation is undertaken, courts must ensure a measure of reason and integrity so that the action is not fraught by illegality or arbitrariness. Judicial review must balance justice with flexibility, and this would require the courts to exercise a nuanced discretion between multiple outcomes and binary choices. In the process the judicial wisdom to subserve the purpose and object of the tendering process should not be lost. Without this approach, it will be difficult to balance certainty in market with fair play in action, in other words to maintain the equilibrium between the need for order and quest for justice.

23. There is yet another point that Ms. Meenakshi Arora raised to sustain the decision impugned before us, which is that the High Court has merely applied the contractual condition for selecting the writ petitioner and no more. Answer to this question again takes us back to the approach that the judicial review proceeding should adopt while considering highly competitive bids.⁵ In its precedents, this court has emphasized that "using a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder."

24. It is rather strange that in the whole process of judicial Scrutiny the contesting contractors as well as the Court lost sight of the needs and requirements of the Owner. It is not uncommon that when judicial review proceedings are invoked by one or the other parties the entire focus of the court is in choosing the most eligible party.

This enquiry is necessary, however judicial review courts cannot ignore the needs of the owner(s), the speed at which they would want the appropriate contractor to be identified and other considerations that weigh in their endeavour. Let's take this very case, GPPC floated the tender way back in January 2025 and LOA itself was granted on 09.06.2025 from which date more than a year has already passed. Who is to account for the delay in the execution of the contract and commencement of the work?

25. It is true that the tender document specifically provides that "The bidder with the highest total score (S) shall be considered for award of job". It is important to note that the entity to consider is the 'Owner' and not the court. It is for the reason that while considering the competing scores the owner must have the necessary "Fair play in the Joints". We may note that tender document itself provides that GPPC has a right to accept any bid and to reject any or all bids. Clause 23.0 and 23.1 is as follows;

"23.0 GPPC'S RIGHT TO ACCEPT ANY BID AND TO REJECT ANY OR ALL BIDS

23.1 GPPC reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the GPPC's action."

26. The final choice is of the owner, and it is for the owner to take the final decision with necessary flexibility and pragmatism. While exercising judicial review of contractual matters, constitutional courts do not exercise, should not exercise ex-ante jurisdiction to pre-empt executive actions. On this count, High Court has exceeded the first principle of judicial restraint in contractual matters.

27. Having considered the matter in detail, we are of the opinion that there was no justification to interfere with the grant of LOA dated 09.06.2025, followed by the execution of the contract on 01.07.2025. Even otherwise, when the report of the consultant was placed before the Court, considering the marginal difference between the appellant and the writ petitioner, the High Court should have restrained from interfering. The High Court's observation that "since the learned advocate Mr. Aspi M. Kapadia, appearing for GSPC agreed to the re-evaluation of the marks through its consultant directed the consultant to prepare a fresh report on the allocation of marks after hearing the respective parties" cannot be an additional ground for an intense inquiry.

When constitutional courts seek further scrutiny of contested fact, counsels appearing for the Government or its instrumentalities co-operate with the court, which is an important facet of good practices at the bar. Even before this court Mr. Aspi M. Kapadia assisted us with a straight bat and left the decision to the court. However, we believe that the burden is always on the court and the decision to interfere with the process must be based on settled principles that we have indicated hereinabove.

28. As regards the other submission of Mr. Somayajulu, with respect to the claim of additional 5 marks under clause 4 of 20.02 (B) towards operation and maintenance of sea water system experience of the

appellant, we see no justification whatsoever to interfere with the wellconsidered decision of the High Court. The findings of the High Court as regards clause 4 are based on true and correct fact and reasonable interpretation of the tender Document. We, therefore, reject this submission and the Civil Appeal arising out of Special Civil Application No. 12328 of 2025 stands dismissed.

29. In view of the above analysis, we are of the opinion that the Letter of Award (LOA) dated 09.06.2025 followed by the execution of the contract dates 01.07.2025 by GPPC in favour of the appellant should be upheld. GPPC can now proceed to have the contract performed without any hindrance.

30. The Civil Appeal arising out of Special Civil Application No. 7289 of 2025 is allowed and judgment and order passed by the High Court is set aside.

31. There shall be no order as to costs.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Alok Aradhe]

New Delhi;

March 25, 2026.

1 The petitioner, therefore, prays that -

A) Your Lordships be pleased to admit and allow petition;

B) Your Lordships may be pleased to issue appropriate writ, order or direction quashing and setting aside the tender evaluation process as being arbitrary, unreasonable, against the Tender and CVC Guidelines as well as being violative of Article 14 of the Constitution of India.

C) Your Lordships may be pleased to issue an appropriate writ, order or direction to Respondent NO. 1 to call for a fresh tender removing the financial price restriction and conduct a fresh, fair, and transparent evaluation process as per the Tender and CVC Guidelines.

D) In the alternative, issue an appropriate writ, order or direction, to call the evaluation records to ensure that no manipulation has happened in the technical marks scoring after disclosure of the financial proposals.

E) Pending Admission, Final hearing and Disposal of this Petition Restrain the Respondent No. 1 and its agents or employees from issuing a Letter of Award (LOA) or entering into any contract with any party pursuant to and pertaining to the impugned Tender No. GPPC/COM/CCPP?O&M/2024-25/12, until the final disposal of this petition.

F) Your Lordship may be please to pass any other orders that may be deemed fit and proper, in interest of justice and equity.

2 C. Your Lordships may be pleased to issue an appropriate writ, order or direction quashing and setting aside the Letter of Intent/Letter of Award dated 9th June 2025 issued to respondent no. 3 i.e. Steag Energy Services (India) Pvt Ltd. by respondent no. 1 i.e. GSPC PIPAVAV Power Company Limited (GPPC) and direct the Respondent No. 1 to issue the LOI to the petitioner as the successful bidder.

3 (2016) 16 SCC 818

4 (2016) 15 SCC 272

5 Tata Motors Ltd. v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST), (2023) 19 SCC 1:

50. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See Silppi Constructions Contractors v. Union of India [Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489].)

55. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set

at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in *Assn. of Registration Plates v. Union of India* [Assn. of Registration Plates v. Union of India, (2005) 1 SCC 679] .

56. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

Disclaimer: General information only. Verify the current legal position and obtain professional advice before acting.