



2025:DHC:9411



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on: 28.10.2025*

+ **W.P.(C) 4083/2023 and CM APPL.15889/2023**

PNC INFRA TECH LIMITED

.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv.,  
Mr. Arvind Nayyar, Sr. Adv. and  
Mr. Nilava Bandyapathyay, Mr. Adhi  
P. Roy and Ms. Riya Kumar, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Respondent

Through: Ms. Madhu Sweta and Mr. Yash  
Kapoor, Advs. for NHAI.

**CORAM:**

**HON'BLE MR. JUSTICE SACHIN DATTA**

**JUDGMENT**

1. The present petition has been filed by the petitioner / PNC Infratech Limited, seeking quashing of the impugned letter dated 27.03.2023 issued by the respondent/ National Highways Authority of India ("NHAI"), whereby the respondent threatened invocation of the petitioner's Bid Security furnished in the form of Bank Guarantee No. 09830ILG009122, amounting to Rs.7.14 Crore, submitted in connection with the tender process. The petitioner further seeks a direction for return of the said Bid Security.

2. The factual matrix set forth by the petitioner is that pursuant to the Request for Proposal ("RFP") dated 15.07.2022, issued by the respondent



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for the development, operation and maintenance of the “4-Laning of Bhiwani - Hansi road section of NH 148B (Design Length 42.934 km) under Bharatmala Pariyojana in the State of Haryana,” the petitioner submitted its bid and Bid Security in the form of a Bank Guarantee bearing No. 09830ILG009122.

3. Upon opening the financial bids on 22.12.2022, a discrepancy was noted in the petitioner’s bid between the amount quoted in figures (Rs.1035 Crore) and in words (“One Hundred Thirty Five Crore”). On the same date, the petitioner issued a clarification to the respondent, stating that the said discrepancy was a typographical error and that the intended bid amount is Rs.1035 Crore, in line with the project cost of Rs.713.62 Crore. The petitioner requested that its bid be treated as non-responsive.

4. Subsequently, the respondent annulled the original tender process vide notice dated 05.01.2023 and issued a fresh RFP for the same project. Thereafter, *vide* letters dated 09.01.2023 and 16.01.2023, the respondent called upon the petitioner to submit original bid-related documents, including the Bid Security, which the petitioner, in compliance, submitted on 21.01.2023.

5. Pursuant the fresh tender process initiated on 05.01.2023, the project was awarded to another successful bidder *vide* Letter of Award dated 07.03.2023. The petitioner’s grievance arises from the respondent’s failure to return the Bid Security despite the petitioner’s written requests dated 17.03.2023 and 22.03.2023 and the subsequent issuance of the impugned



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letter dated 27.03.2023, whereby the respondent invoked Clause 2.20.7 of the RFP and threatened encashment of the petitioner's Bank Guarantee.

6. Learned senior counsel for the petitioner contends that the respondent's actions are in manifest violation of Clause 2.20.4 of the RFP, which mandates that upon cancellation of the bidding process, Bid Security furnished by unsuccessful bidders shall be returned "as promptly as possible," and in any event, within ninety days from the 'Bid Due Date'.

7. Further, it is submitted that the clarification dated 22.12.2022 was a bona fide correction of a typographical error and does not amount to withdrawal of bid within the meaning of Clause 3.2 of the RFP. The petitioner also relies on Clause 2.6.1, which empowers the respondent to verify all statements and documents submitted by bidders, and Clauses 3.1.3 and 6.2(a), which permit the respondent to seek clarifications or engage in consultations with bidders.

8. *Per contra*, learned counsel for the respondent submits that the petitioner's letter dated 22.12.2022, amounts to withdrawal of bid, thereby attracting forfeiture of Bid Security under Clause 2.20.7 of the RFP. It is further submitted that, in terms of Clause 2.1.5, where there is a discrepancy between figures and words, the amount expressed in words shall prevail, thereby, the petitioner was rendered the lowest bidder (L-1) but declined to accept the Award.

9. The respondent also places reliance on the undertaking dated 01.11.2022 furnished by the petitioner, wherein the petitioner agreed to remit up to 5% of the Bid Security as damages.



10. Respective counsel for the parties have been heard at some length.
11. The central issue in the present matter is whether the petitioner's letter dated 22.12.2022 amounts to "withdrawal of bid" and whether the respondent is justified in invoking the Bid Security.
12. It is noticed that the Project Cost for the subject work, as per the RFP floated by the respondent, was Rs. 713.62 Crore. The petitioner quoted Rs.1035 Crore in figures, while the bid amount in words was stated as "One Hundred Thirty Five Crore." It is quite apparent that the petitioner's intended bid amount was Rs.1035 Crore and not Rs. 135 Crore. The discrepancy was, evidently, a typographical error. Further, there is merit in the contention that the petitioner's letter dated 22.12.2022 was in the nature of a bona fide clarification, and does not amount to withdrawal of the bid.
13. In *ABCI Infrastructures Private Limited vs. Union of India & Ors.*, (2025) 6 SCC 813, the Supreme Court, in a similar factual conspectus, held as under:

*"15. The short question before us is whether BRO was justified in accepting the bid of Rs 1569, and on the failure of the appellant to execute the agreement asking for forfeiture vide encashment of bank guarantee of Rs 15,04,64,000.*

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*17. This will not be a case covered by Section 20 of the Contract Act. However, this is not the first time that this question has arisen either before this Court or courts outside of India. In W.B. SEB v. Patel Engg. Co. Ltd. [W.B. SEB v. Patel Engg. Co. Ltd., (2001) 2 SCC 451] , this Court referred to para 84 of American Jurisprudence (2nd Edn., Vol. 64 at p. 944), which reads: (SCC p. 468, para 26)*

*"26. ... 'As a general rule, equitable relief will be granted to a bidder for a public contract where he has made a material mistake of fact in the bid which he submitted, and where, upon the*



*discovery of that mistake, he acts promptly in informing the public authorities and requesting withdrawal of his bid or opportunity to rectify his mistake particularly when he does so before any formal contract is entered into.’ ”*

**18.** *Thereafter, reference was made to two decisions of the Supreme Court of the United States in Moffett Hodgkins Clarke Co. v. City of Rochester [Moffett Hodgkins Clarke Co. v. City of Rochester, 1900 SCC OnLine US SC 154 : 44 L Ed 1108 : 178 US 373 (1900)] and Hearne v. Marine Insurance Co. [Hearne v. Marine Insurance Co., 22 LEd 395 : 87 US 488 (1874)] wherein it is observed that where the mistake is apparent and the party promptly informs the other as soon as it is discovered but before entering into a contract, equitable orders may be passed. However, the mistake should be clear, explicit, and undisputed. Further, a mistake on one side may be a ground for rescinding but not for reforming a contract where the minds of the parties have not met, yet there is no contract and hence none to be rectified. Relief may not be granted where it is inequitable.*

**19.** *While accepting this legal position, this Court in W.B. SEB v. Patel Engg. Co. Ltd., (2001) 2 SCC 451] has propounded the following exceptions to the general principle on a person seeking relief in equity on account of mistake: (SCC p. 469, para 27)*

*“27. ... (1) Where the mistake might have been avoided by the exercise of ordinary care and diligence on the part of the bidder; but where the offeree of the bid has or is deemed to have knowledge of the mistake, he cannot be permitted to take advantage of such a mistake.*

*(2) Where the bidder on discovery of the mistake fails to act promptly in informing to the authority concerned and request for rectification, withdrawal or cancellation of bid on the ground of clerical mistake is not made before opening of all the bids.*

*(3) Where the bidder fails to follow the rules and regulations set forth in the advertisement for bids as to the time when bidders may withdraw their offer; however where the mistake is discovered after opening of bids, the bidder may be permitted to withdraw the bid.”*

**20.** *This judgment also refers to a decision of the Superior Court of New Jersey in Spina Asphalt Paving Excavating Contractors Inc. v. Borough of Fairview [Spina Asphalt Paving Excavating Contractors Inc. v. Borough of Fairview, 304 NJ Super 425 (App Div 1997)] . The said case is related to the rectification of mistakes in the bid*



specifications. Relief granted in the said case was upheld by the Superior Court with the caution that generally an error in the statement of a price would not be treated as immaterial and it is only when the case of error was patent and the true intent of the bidder obvious that such an error might be disregarded.

21. In *W.B. SEB [W.B. SEB v. Patel Engg. Co. Ltd., (2001) 2 SCC 451]*, the private party, the bidder did not succeed for several reasons, including the factum that the error was not obvious and self-evident. Further, the correction of such mistakes after one-and-a-half months after the opening of the bids would have violated the express clauses relating to the computation of the bid amount. Thus, waiver of the rule or conditions in favour of the one bidder would have created unjustifiable doubts in the minds of others impairing the rule of transparency and fairness and providing room for manipulation for awarding contracts.

22. The decision in *W.B. SEB [W.B. SEB v. Patel Engg. Co. Ltd., (2001) 2 SCC 451]* was referred to and followed where a relief to the bidder was apparent before this Court in *Omsairam Steels & Alloys (P) Ltd. v. State of Odisha [Omsairam Steels & Alloys (P) Ltd. v. State of Odisha, (2024) 9 SCC 697 : (2024) 4 SCC (Civ) 279 : 2024 INSC 520]*. This decision observes that while the Court must exercise a lot of restraint in exercising the power of judicial review in contractual commercial matters, the doctrine of proportionality nevertheless applies when the error or mistake is writ large and equity merits the grant of some relief.

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24. The present case does not fall under any exception, for the error or mistake in quoting a price of Rs 1569, does not require any argument and cannot be debated as it is self-evident. A contract of this nature for an estimated value of more than Rs 1500 crores spread over 48 months requiring construction of roads and tunnels of the length of more than 4 km in a hilly terrain can never be executed for a mere Rs 1569.”

14. Further, a Division Bench of this Court, in *M/s. Ceigall India Limited v. National Highway Authority of India & Another*, 2025 DHC 6797-DB, held the following view:

“17. Though the clauses are specific in their mandate, yet, the law is very clear. We, for a moment, do not doubt that every error may not be bonafide, and the Courts also have to apply the law as enunciated in *Omsairam* (supra)



*and ABCI (supra), not as Euclid's theorem, but on a case to case basis. The NHAI ought to have seen the inadvertence in the quoted bid and could have called the petitioner for clarification, which it did not. The nature and magnitude of the project itself would, perceivably, make the bid in "words" of "Rupees One Thousand Two Hundred Twenty only", seem ludicrous and unconceivable. We are also persuaded by the fact that the petitioner had in fact given the correct quote in "figures"- "Rs.1220,00,00,000".*

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19. Admittedly, the NHAI too made a glaring mistake in directing forfeiture of the security bid on 27.03.2025 and encashing the security bid vide letter dated 29.03.2025, while at the same time accepting the bid of the petitioner at Rs.1220/- by invoking clause 1.2.7 of RFP. However, the same was rectified immediately on 26.03.2025. It remains a mystery as to why NHAI proceeded for such penal action inspite of having accepted the bid of the petitioner and more importantly having regard to the fact that technical bid was declared "responsive" leaving no room or scope for any penal action at all, at least on that date. Indubitably, inadvertent errors, ipso facto, yet bonafide, appear to have been committed by both parties.

20. As an upshot of the analysis above, we are of the considered opinion that the error or mistake of the petitioner is inadvertent and bonafide, thus, the proposed action of the NHAI vide the impugned letters dated 27.03.2025 and 29.03.2025 is unsustainable and hence, is quashed and set aside  
21. However, the doctrine of proportionality as applied by the Hon'ble Supreme Court in Omsairam (supra) and ABCI (supra), needs to be made applicable to the petitioner. Though, we have held that the error is inadvertent and bonafide, yet, as a measure of caution and to ensure that bidders take the entire process more seriously and are careful and strict in compliances, particularly, while quoting the bid prices, we direct the petitioner to deposit a sum of Rs.15,00,000/- with the NHAI within two weeks from date. We further direct that on account of this bonafide mistake of the petitioner while submitting the bid qua the subject tender, no further action such as debarment etc. shall precipitate."

15. In light of the above conspectus and in view of the dicta laid down in **ABCI Infrastructures** (supra) and **M/S. Ceigall** (supra), it is apparent that the respondent is not justified in encashing the petitioner's Bank Guarantee. Further, in line with the directions in **M/S. Ceigall** (supra), applying the



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principle of proportionality and considering that a mistake was made by the petitioner, and given the necessity of some deterrence to avoid similar laxity in future, the petitioner is directed to pay 5% of the amount of the Bid Security, to the respondent. During the course of hearing, learned senior counsel for the petitioner acceded to the same.

16. Upon receipt of the said amount, the respondent shall return the petitioner's original Bank Guarantee within a period of two weeks.

17. The impugned letter dated 27.03.2023 is hereby quashed.

18. The petition stands disposed of in the above terms. All pending applications also stand disposed of.

**SACHIN DATTA, J**

**OCTOBER 28, 2025/ss**