



A TENDER CONDITION CANNOT BE TREATED AS MANDATORY WHEN THE TENDER DOCUMENT ITSELF MAKES IT OPTIONAL

It is a settled principle of public procurement law that tender conditions must be interpreted in accordance with their plain language. While courts ordinarily refrain from interfering in tender matters, they will intervene where an authority or a court reads into a tender condition a requirement that the tender document itself does not impose.

The Supreme Court, in **RR Constructions and Infrastructure India Pvt. Ltd. v. Gayatri Ventures & Ors., 2026 INSC 514**, reaffirmed an important principle governing public procurement: a bidder cannot be disqualified for non-compliance with a condition that the tender document itself does not prescribe as mandatory. The judgment underscores that while courts ordinarily exercise restraint in matters relating to tender evaluation, such restraint cannot extend to endorsing an interpretation that is contrary to the plain language of the tender conditions.

The dispute arose from a tender process conducted by the Water Resources Department of the State of Chhattisgarh (hereinafter the "Tendering Authority").



RR Constructions and Infrastructure India Pvt. Ltd. ("Appellant"), an out-of-state bidder, participated in the tender process. Gayatri Ventures and the other contesting parties ("Respondents") were parties to the dispute concerning the Appellant's qualification under the tender conditions.

The controversy centred on the mode of furnishing the Earnest Money Deposit ("EMD"). The Appellant furnished the EMD by way of a Fixed Deposit Receipt ("FDR") issued by Punjab National Bank. However, its technical bid was rejected on the ground that out-of-state bidders were required to furnish the EMD through a Demand Draft ("DD"). The rejection was subsequently upheld by the High Court, which treated submission of a DD as a mandatory condition applicable to all out-of-state bidders.

Upon examining the tender conditions, the Supreme Court found that the approach adopted by the High Court was inconsistent with the language of the tender itself. The Court noted that the relevant clauses repeatedly employed the expression "may submit" while referring to submission of a DD by out-of-state bidders. The use of permissive language, according to the Court, clearly indicated that a DD was one permissible mode of furnishing the EMD and not the exclusive mode available to such bidders.



In the absence of any express stipulation making a DD compulsory, an optional condition could not be elevated into a mandatory eligibility requirement through interpretation.

The Court further observed that the FDR furnished by the Appellant was issued by Punjab National Bank and stood in favour of the Executive Engineer, Water Resources Division, Chhuikhadan, Chhattisgarh. The object underlying the EMD requirement, namely securing the bidder's commitment to the tender process, stood fully satisfied. The Court therefore found that the essential purpose of the EMD requirement had been fulfilled and that no substantive deficiency existed in the Appellant's bid that could justify disqualification at the technical evaluation stage. Significantly, the Court also took note of the State's own stand that FDRs had been accepted in similar situations and that the Tendering Authority itself had subsequently acknowledged that rejection of the bid was not justified.

In setting aside the High Court's judgment, the Supreme Court emphasised that judicial review in tender matters must remain anchored to the actual terms of the tender document. Tender conditions undoubtedly require strict compliance; however, strict compliance can only be demanded in relation to conditions that are clearly prescribed. Courts and authorities cannot introduce restrictions, qualifications, or disqualifications that the tender document itself does not contain.



The Court, however, clarified that its decision was confined to the issue concerning submission of the EMD and the consequent disqualification at the stage of evaluation of Envelope A. The Court expressly refrained from examining the merits of a subsequent disqualification arising at the stage of evaluation of Envelope B, which related to the Appellant's pre-bid qualification certificate. Since the High Court's judgment had effectively prevented the Appellant from pursuing remedies against that subsequent disqualification, the Supreme Court granted liberty to the Appellant to submit an appropriate representation before the Tendering Authority within the period stipulated in the judgment, to be considered in accordance with law.

The judgment serves as a valuable reminder that fairness in public procurement is achieved not only by enforcing tender conditions but also by ensuring that bidders are assessed strictly on the basis of those conditions and nothing more. Where the tender document confers a choice between permissible modes of compliance, that choice must be respected. An authority cannot subsequently convert an optional requirement into a mandatory one, nor can a bidder be penalised for adopting a course expressly permitted by the tender itself.



This decision is likely to be of particular relevance in procurement disputes involving bid qualification criteria, interpretation of tender conditions, and challenges arising from technical disqualifications. It reinforces the principle that the tender document itself constitutes the governing framework of the bidding process and that neither administrative authorities nor courts can rewrite its terms under the guise of interpretation. The decision further clarifies that a condition expressed in permissive terms cannot subsequently be treated as a mandatory requirement to the detriment of a bidder.

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