

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

**SRI JUSTICE VIPIN SANGHI, C.J.**  
**AND**  
**SRI JUSTICE RAKESH THAPLIYAL, J.**

Judgment Reserved on 13.10.2023  
Judgment Delivered on 20.10.2023

**Writ Petition (MB) No. 03 of 2023**

Ashok Kumar Singh. ....Petitioner.

**Versus**

State of Uttarakhand  
and others. ....Respondents.

Presence of Advocate:

Counsel for the petitioner

Mr. Shobhit Saharia, learned counsel.

Counsel for the State of  
Uttarakhand

Mr. C.S. Rawat, Chief Standing  
Counsel with Mr. J.C. Pande & Mr.  
Gajendra Tripathi, learned Standing  
Counsel for the State of Uttarakhand.

Counsel for respondent no. 5

Mr. Avatar Singh Rawat, learned  
Senior Counsel assisted by Mr.  
Vikas Bahuguna, learned counsel.

Upon hearing the learned Counsel for the parties, the Court made the following judgment:

**Per: Rakesh Thapliyal, J.**

1. By the instant writ petition, the petitioner is questioning the action of respondent authorities whereby respondent no. 5 was awarded a contract to run parking namely Pantdeep on government land in Haridwar measuring 94506.76 sq. m. pursuant to the tender floated on 23.02.2019 for three years and thereafter, under the garb of condition no. (1) of the tender notice, the Chief Engineer, Level-II, Irrigation Department, Haridwar, on the recommendation of the Superintendent Engineer, extended the period of parking in favour of respondent no. 5 initially, in the first phase for 400 days and thereafter, in the second phase for 229 days i.e. for total 629 days. The extension granted to

respondent no. 5 is challenged by the petitioner on the ground that as per the condition of the tender notice, period of tender can be extended, if parking area is declared as zero parking zone or containment zone during the Covid pandemic, but no such record is available with the respondents. In addition to this challenge, petitioner is further seeking a writ of mandamus directing the respondents to call for e-auction of the said Pantdeep parking.

2. The facts of the case are that initially, an auction notice was issued for Pantdeep parking for three years by auction notice dated 05.02.2019, pursuant to instructions issued by the Superintendent Engineer, Irrigation Department by office letter dated 01.02.2019, which was published in daily newspaper. However, by office memo dated 08.02.2019, the said auction notice was cancelled. It is contended by the petitioner that earlier, parking was allotted through tender on year to year basis for a period of one year. However, by the aforesaid e-auction notice dated 05.02.2019 the tender was invited for awarding the contract to run parking for three year.

3. It is also contended by the petitioner that by the auction notice dated 05.02.2019, the contractor was also required to undertake certain civil work for development of the parking area and the estimated cost of carrying development work was given as Rs. 5.5 crore and since by the said auction notice, it was proposed to carry out development work of the parking area, which included civil work, therefore, a condition was stipulated that the bidder should be registered as "A" Class or higher class Contractor with Irrigation Department. It is further contended by the petitioner that as per information sought under the Right to Information Act, certificate of registration under Class "A", "B"

“C” and “AA” is required only the purpose of civil construction work and for running a parking, there is no such requirement to put a condition that only bidders having registration of “AA” Class Contractor are eligible to participate.

4. After cancelling the earlier tender notice, a fresh tender notice was issued on 23.02.2019 for auction of Pantdeep parking in Haridwar and last date of submission of bid was 05.03.2019. Further a corrigendum was issued on 28.02.2019 whereby the mode of auction from “e-auction” was directed to be read as “auction” only. It is contended that while issuing the said corrigendum dated 28.02.2019, it appears that the bidders were allowed to submit their bids off line also. It is submission of the petitioner that earlier condition of carrying out the civil development work to the tune of Rs. 5.5 Crore was deleted. However, condition no. 5 (i), which provides that only the “AA” Class Contractor registered with the Irrigation Department, as an essential condition for participating in auction, was remain unchanged. It is submitted by the petitioner that there was no such need to put this condition that only “AA” Class Contractor shall participate in the tender process, since civil work for development of parking was deleted in the subsequent auction notice. It is further submitted by the petitioner that making this condition mandatory is nothing but to favour the respondent no. 5 and oust the other bidders. The conditions of the tender floated on 23.02.2019 contained different conditions, however, for proper adjudication of the issues, as raised in this writ petition, three conditions are relevant, which are reproduced as under:

“01. जनपद हरिद्वार स्थित पन्तद्वीप वाहन पार्किंग स्थल का नीलाम (कांवड मेला / अन्य विशेष स्नान पर्वों की अवधि में जिला प्रशासन / पुलिस प्रशासन के द्वारा यातायात की व्यवस्था की दृष्टि से पार्किंग स्थल में वाहन आने-जाने पर रोक लगाये गये या जीरो जोन घोषित किये गये दिवसों को

छोड़कर) कब्जे के दिनांक से तीन वर्ष हेतु इस निमित्त गठित समिति द्वारा किया जायेगा।

2. वाहन पार्किंग स्थल की न्यूनतम विभागीय बोली रू ० 8.00 करोड़ (आठ करोड़) से प्रारम्भ होकर सबसे उच्चतम बोली पर समाप्त होगी।

X X X X X

9. नीलाम स्वीकृति के एक सप्ताह के अन्दर नीलाम की धनराशि पर शासन द्वारा निर्धारित स्टाम्प पेपर जमा कराकर अनुबन्ध पूर्ण करना होगा।”

5. The Superintendent Engineer by order dated 05.03.2019 constituted a four-Member Committee to undertake the auction process and while issuing this order, the Superintendent Engineer himself inducted as the Chairman of that Committee. The composition of the four-Member Committee is quoted as under:

- “01. Superintendent Engineer,  
Irrigation Work Division, Haridwar – Chairman.
02. Executive Engineer,  
Irrigation Division, Haridwar. – Member.
03. Executive Engineer,  
Irrigation Division, Roorkee. – Member.
04. Deputy Revenue Officer,  
Irrigation Division, Haridwar. – Member.”

6. In the tender process, only two bidders of District - Amroha, Uttar Pradesh, participated and their details are as follows:

- “i. M/s Riddhim Associates, Avantika Colony, near Rice Mill, Kailsa Road, Amroha; and
- ii. M/s Arun Construction, Avantika Colony near Rice Mill, Kailsa Road, Amroha.

Proprietor of M/s Riddhim Associates is Mr. Ajay Kumar, son of Mr. Veer Singh and proprietor of M/s Arun Construction is Mr. Arun Kumar, son of Mr. Veer Singh.

7. It is specifically pleaded by the petitioner in the writ petition that proprietor of both firms are real brother and both firms participated in the tender process and both the firms uploaded their bids from same IP address.

8. Bidding documents of both the bidders are also brought on record and perusal of which it transpires that both the bidders uploaded their bids on the same day i.e. on 05.03.2019 with different timing. M/s Riddhim Associates uploaded its bid at 12.52 p.m. whereas M/s Arun Construction uploaded its bid at 12.25 p.m. Copy of the bid acknowledgement is enclosed in the writ petition. On perusal of the same, it appears that the IP address of both the bidders are same, which is "103.81.182.47".

9. In paragraph 19 of the writ petition, it is specifically pleaded that as per the information obtained under the Right to Information Act, M/s Riddhim Associates relied upon an experience certificate for complying with the condition no. 5 (ix) of the tender notice, which was issued by proprietor of M/s Arun Construction and proprietor of both the firms namely Mr. Ajay Kumar and Mr. Arun Kumar, are real brother.

10. Petitioner has seriously questioned the experience certificate submitted by the proprietor of M/s Riddhim Associates, which, in fact, was submitted as per condition no. 5 (ix) of tender notice and in reference to this, it is submitted that the work of reconstruction of flood protection was awarded to M/s Arun Construction, pursuant to work order no. 07/AC/05.04.2018 and as per information obtained under the

Right to Information Act, the respondent department informed that work was awarded to M/s Arun Construction and there was no condition to sublet the same, so on this aspect, petitioner has questioned the experience certificate furnished by M/s Riddhim Associates. In support of this assertion, the experience certificate of M/s Riddhim Associate is also brought on record. The extract of the same is reproduced as under:

*“Experience Certificate  
To Whom it may Concern,*

*We Certify that M/s Ridam Associates, Address Avantika Colony Near Rice Mill, Kailsa Road, Amroha has completed work satisfactorily as below under Work Order no. 07/AC/Date 05-04-2018. He has Executed the work namely reconstruction of flood protection work on left bank of Mandakini river in Shri Kedarnath Dham (190 to 380 metre) Distt. Rudraprayag.*

*The total cost of completed work was Rs.7,08,16,120.00 (Seven Crore Eight Lakhs Sixteen Thousand One Hundred Twenty Only.)*

*For M/s. Arun Construction  
Proprietor  
Dated 15.10.2018”*

11. In reference to this, an information under the Right to Information Act was sought whether reconstruction of flood protection work, as awarded to M/s Arun Construction can be sublet or not. The information furnished by the Department is also brought on record. The extract of the information which was supplied reads as under:

*“बिन्दु संख्या 2- श्री केदारनाथ धाम में मन्दाकिनी नदी के बांये तट पर बाढ़ सुरक्षा कार्य (रीच 0.00-380.00) हेतु सब्लेट का प्राविधान नहीं था।”*

12. Learned counsel for the petitioner on the basis of said information obtained under the Right to Information Act seriously objects the experience certificate issued by M/s Arun Construction in favour of M/s Riddhim Associates and submits that this certificate was procured to get the contract to run the

parking for which tender was floated by the respondent Department. Learned counsel for the petitioner submits that if there was no provision to sublet the tender work, then how M/s Arun Construction issued the experience certificate to M/s Riddhim Associates. In response to this, there is no specific denial of the respondents in their counter affidavit.

13. The technical evaluation of the bid was carried out by the Committee, constituted by the Superintendent Engineer by letter dated 05.03.2019 and on 06.03.2019, as per technical evaluation, bids of both M/s Riddhim Associates and M/s Arun Construction were found to be technically responsive. The technical evaluation sheet is also brought on record as Annexure No. 6 to the writ petition.

14. In this technical evaluation sheet, there is description of requirement / condition of the bidders. First condition was with regard to certificate of registration of contractor in Uttarakhand in "AA" Category. As per this technical evaluation sheet, both the bidders furnished said certificate of registration "AA" category contractor and thereafter, on 07.03.2019, financial bid was opened in the office of respondent no. 4 i.e. Superintendent Engineer in the presence of four-Member Committee, which was constituted by the Superintendent Engineer by office memo. dated 05.03.2019. Copy of the minutes dated 07.03.2019 is also brought on record. Perusal of the said minutes reveals that M/s Riddhim Associates offered 8.05 crores, thereafter, M/s Arun Construction offered 08.10 crores and subsequent thereto, M/s Riddhim Associates again quoted Rs. 08.15 crore, which was Rs. 15 Lakh more than the minimum amount fixed i.e. Rs. 08 crore. The four-Member Committee, thereafter, decided to recommend for grant of the tender of Pantdeep parking in favour of M/s Riddhim

Associates. The relevant extract of the recommendation, as made by the four-Member Committee dated 07.03.2019 wherein M/s Riddhim Associates was recommended for awarding the work to run parking is also being extracted hereinbelow:

“नियमानुसार नीलामी से पूर्व निश्चित तिथि दिनांक 07.03.2019 को इच्छुक बोली दाताओं द्वारा पूर्व में इस कार्यालय में वांछित प्रपत्र जमा कराये गये जो प्रपत्र (एक) में अंकित व हस्ताक्षरित है। निश्चित नीलामी तिथि दिनांक 07.03.2019 को पात्र बोली दाताओं को वाहन पार्किंग की नीलामी को पढ़कर सुनाया गया है। समस्त बोली दाताओं द्वारा सहमत व संतुष्ट होकर नीलामी शर्तों की मूल प्रति पर हस्ताक्षर किये गये तत्पश्चात् खुली बोली की कार्यवाही प्रारम्भ की गयी। जिसमें दो बोली दाताओं द्वारा सक्रिय रूप से भाग लिया गया।

सर्व प्रथम मैसर्स रिद्धिम एसोसियेट्स , अवन्तिका कालोनी अमरोहा, उत्तर प्रदेश द्वारा ₹ 8,05,00,000.00 (आठ करोड़ पाँच लाख) की बोली दी गयी , व मैसर्स अरूण कस्ट्रक्शन , 0 (जिरो), न बस्ती, जसपुर उद्धमसिंह नगर , उत्तराखण्ड द्वारा ₹ 8,10,00,000.00 (आठ करोड़ दस लाख) की बोली गयी। अन्तिम / अधिकतम बोली मैसर्स रिद्धिम एसोसियेट्स अवन्तिका कालोनी , अमरोहा, उत्तर प्रदेश द्वारा ₹ 8,15,00,000.00 (आठ करोड़ पन्द्रह लाख) की द्वितीय बोली दी गयी , जो प्रपत्र (दो) में अंकित एवं हस्ताक्षरित है। जोकि विभागीय न्यूनतम बोली 8,00,00,000.00 (आठ करोड़) से 15,00,000.00 अधिक है।

अतःसमिति द्वारा दिनांक 07.03.2019 को प्रातः 12:00 बजे से अपराह्न 1:00 बजे तक हुई नीलामी की कार्यवाही पर विचार - विमर्श कर अधिकतम बोली दाता मैसर्स रिद्धिम एसोसियेट्स अवन्तिका कालोनी अमरोहा , उत्तर प्रदेश के पक्ष में ₹ 8,15,00,000.00 की पंतद्वीप पार्किंग की नीलामी की स्वीकृति प्रदान करने की संस्तुति की जाती है।”

15. Thereafter, recommendation of four-Member Committee was accepted on the same date by the Chief Engineer - respondent no. 3 i.e. on 07.03.2019 and on the same date,



permission was granted by the Superintendent Engineer, who was the Chairman of the four-Member Committee, to run the parking for three years to M/s Riddhim Associates. While issuing office memo dated 07.03.2019 by the then Superintendent Engineer Mr. R. K. Tiwari further instruction was issued to another Member of four-Member Committee i.e. Deputy Revenue Officer, Irrigation Division, Haridwar to ensure to give possession of the parking to respondent no. 5 with immediate effect to ensure functioning of the parking in compliance of instructions issued by him in office memo dated 07.03.2019. On the next date i.e. on 08.03.2019 the Deputy Revenue Officer, Irrigation Division, Haridwar handed over the parking area to M/s Riddhim Associates with the direction that they ensure for functioning of the parking for three years.

16. Against the process adopted by respondent authorities in awarding the contract to respondent no. 5 various complaints were made against some officials including the then Superintendent Engineer Mr. R.K. Tiwari. One of such complaints is supported by an affidavit of one Mr. Lakhan Lal Chauhan, son of late Shri Khushi Ram Chauhan, resident of District Haridwar and on the said complaint, a show cause notice was issued to the Superintendent Engineer Mr. R. K. Tiwari on 19.02.2020. A clarification / explanation was sought from Mr. R.K. Tiwari, the Superintendent Engineer, on 17.03.2021, however, surprisingly, the Secretary, Government of Uttarakhand, Dr. Bhupender Singh Aulakh issued office letter dated 05.05.2020 addressed to the Head of the Irrigation Department, communicating that proposed disciplinary proceedings against Mr. R.K. Tiwari is dropped, since the issue relating to auction of Pantdeep parking is subjudice in WPMS No. 593 of 2019 (M/s Sharma Traders Vs. State of Uttarakhand and

others) before this High Court and by this letter, it was further informed that further course of action will be taken after receiving judgment in the said writ petition.

17. From perusal of the annexure appended to the writ petition, it reveals that by various complaints, inquiry was sought either from Vigilance department or by constituting a SIT and that was the reason, the Deputy Secretary, Government of Uttarakhand by letter dated 27.08.2019 instructed one of the complainants Mr. Lakhan Lal Chauhan to submit his affidavit and the documents relevant in support of his complaint. In compliance thereof, Mr. Lakhan Lal Chauhan submitted his affidavit on 17.09.2019 which is also placed on record. We have perused the same along with complaint which was of dated 21.07.2019 and also placed on record as Annexure No. 14 to the writ petition.

18. M/s Sharma Traders through its partner Mr. Madhukar Sharma had also submitted his representation dated 07.03.2019 addressed to the Superintendent Engineer, which was received in the office of Senior Administrative Officer, Irrigation Work Division, Haridwar wherein procedure adopted in this tender process was seriously objected particularly in reference to the condition of registration of contractor with the Department in "AA" Class category and pointed out that in reference to this condition a writ petition was preferred by him bearing WPMS No. 593 of 2019. He further alleged in the complaint that in the pre bidding meeting held on 28.02.2019, he has submitted his objection before the Committee but no decision was taken on those objections and due to this condition, he was ousted from participating in the tender process and ultimately, tender was awarded to respondent no. 5 to whom it appears that officials were in hand in glove to the said bidder - respondent no. 5. In

this representation, he stated that on 07.03.2019 tender was awarded to the highest bidder with the cost of Rs. 8.15 crore and he proposed to accept this work with cost of Rs. 09.15 crore but it appears that no action was taken on the said representation. The proposal, which he has proposed in this representation is being extracted herein below:

“उपरोक्त पंतदीप पार्किंग की नीलामी में आज दिनांक 7-3-2019 को सिंचाई विभाग द्वारा प्राप्त हुई उच्चतम बोली रु ० 8,15,00,000/- के सापेक्ष प्रार्थी की फर्म रु ० 9,15,00,000/- पार्किंग संचालन के लिए सहमत है।”

19. Learned counsel for the petitioner submits that there was no justification, on the part of the respondent authorities, to drop the disciplinary proceedings against the Superintendent Engineer on the premise that one Writ Petition No. 593 (MS) of 2019 is pending before this Court since in that writ petition the only challenge is made to the condition stipulated in the tender i.e. requirement of “AA” Class contractor, which is the eligibility for participating in the tender process.

20. The most relevant aspect of the matter, which has been pleaded in paragraph 28 of the writ petition, is that illegal favours were extended to respondent no. 5. As per condition no. 9 of the tender notice, before taking possession of the parking, agreement has to be executed between the parties but neither stamp duty was paid nor agreement was executed. Condition no. 9 of the tender notice has already been quoted in the preceding paragraphs. Learned counsel for the petitioner submits that neither the stamp duty of more than 16 lakh was deposited by respondent no. 5 nor he was asked to deposit the same and in absence of such deposit possession of the parking was given to respondent no. 5 on 08.03.2019. Thereafter, due to non deposit of

stamp duty, audit objection was raised and the same was brought to the notice of the Superintendent Engineer on 30.07.2022 along with audit noting dated 16.07.2020.

21. In paragraph 30 of the writ petition, it is specifically mentioned that in the audit note, it is clearly mentioned that neither requisite stamp duty was collected nor registration of lease was done, which caused revenue loss to the tune of Rs. 16.30 lakh, as stamp duty and Rs. 0.25 lakh, as registration fees, total a sum of Rs. 17.05 lakh. The audit report is also brought on record along with statement of facts of Deputy Accountant General, AMG - II. In this statement of facts, it is clearly pointed out that the division neither collected requisite stamp duty, as prescribed by the Government nor registration of lease was done, resulting in loss of revenue of Rs. 17.05 lakh.

22. Learned counsel for the petitioner by giving reference to the audit report submits that the parking fee to be collected from the parking was increased 20% to 100% in respect of different vehicles and simultaneously, time for parking the vehicles was reduced from 24 hours to 12 hours. This clearly reveals that undue favour was given to respondent no. 5.

23. In paragraph 31 of the writ petition, it is pleaded that in the year of 2017, for one year parking tender was given for Rs. 2.58 crore while in the year 2019 the same parking was settled in favour of respondent no. 5 for Rs. 2.67 crores and such increase is negligible, since parking fees was increased from 20% to 100% for different vehicles and timing was also reduced.

24. It is contended by the petitioner that audit report was forwarded by letter dated 24.02.2020 but no explanation was provided by the respondents despite so many reminders. Copy

of these reminders is obtained under the Right to Information Act. Thereafter, so many complaints were made.

25. After audit objection, on 28.10.2020, respondent no. 5 purchased the stamp papers of Rs. 16.30 lakh and only thereafter, agreement was entered between respondent no. 5 and the department and in reference to this e-stamp certificate dated 28.10.2020 is also placed on record.

26. It appears that on the audit objection, explanations were asked from Mr. R.K. Tiwari but he deliberately avoided to give his explanation despite several reminders, which is evident from the record of the writ petition and first letter for seeking explanation was of 11.08.2020 followed by reminders dated 18.08.2020, 08.09.2020, 21.09.2020. However, the Superintendent Engineer gave his explanation on 15.09.2020 wherein he has mentioned that as per his knowledge, the respondent no. 5 had deposited the stamp duty as per rules but in case, he had not deposited the same appropriate action, as per law, may be taken against him and only thereafter, after this letter dated 15.09.2020, respondent no. 5 purchased the stamp paper on 28.10.2020 and got the agreement registered.

27. Despite serious audit objection for causing loss to the public exchequer by the official respondents in connivance with respondent no. 5, vide letter dated 17.08.2021, rate of parking of various vehicles, in order to give favour to the respondent no. 5, was increased on the premise that in the financial year 2020-21 and till June, 2021 because of Covid pandemic, no vehicle was parked in the said parking. This office memo is placed on record as Annexure No. 19 to the writ petition, which was issued by the Superintendent Engineer and signed by members of four-Member Committee, which was constituted earlier by the

Superintendent Engineer by letter dated 05.03.2019 by which he himself inducted as Chairman. Immediately after revising the rate of parking fee, on 19.08.2021 on the letter of respondent no. 5 dated 11.08.2021 the proposal for increasing the tenure of respondent no. 5 for 400 days was forwarded by giving reference of condition (1) of the tender document and this recommendation was accepted by the Chief Engineer by letter dated 31.08.2021. The request letter of respondent no. 5 dated 11.08.2021, recommendation of the Superintendent Engineer for extension of period dated 19.08.2021 and approval for extension, which was accorded by the Chief Engineer on 31.08.2021 are placed on record. We have also perused the same. It is pleaded that not only this, the Chief Engineer by order dated 17.12.2022 has further extended the period of contract in favour of respondent no. 5 for another 229 days. Due to this extension, now the total period of extension, as given to respondent no. 5 is 629 days and the same now will come to an end on 05.12.2023.

28. Being aggrieved with this illegal extension, in order to give undue advantage to respondent no. 5 in collusion with respondents officials of the department present writ petition has been preferred for quashing the extension order, as given by order dated 17.12.2022 and further a direction has been sought that respondent authorities may immediately proceed with e-auction for Pantdeep parking. This Court while issuing notice on 31.03.2023 directed the respondents no. 1 to 4 to file their counter affidavit disclosing therein on what basis, the respondents have decided to grant an extension to respondent no. 5 for the parking contract, by 629 days. The relevant file noting showing application of mind to the said aspect was also directed to be placed on record along with the counter affidavit. It is specifically mentioned in the said order that counter affidavit should be filed

by the Secretary, Department of Irrigation, after examining the records. The matter came up before us on 29.09.2023 and on that date, Mr. A.S. Rawat, learned Sr. Advocate, who represented the respondent no. 5, tendered in the Court the original file and one register. We took the same on record and directed the Registrar (Judicial) to seal the same. All the respondents have filed their counter affidavit.

29. We have perused the counter affidavit filed by the respondents. From perusal of the counter affidavit filed by respondent no. 1 and respondents no. 2 to 4, it appears that both the counter affidavit are verbatim same and cyclostyled in nature. Along with counter affidavit, a chart is also placed on record duly signed by the Chief Engineer on 20.07.2023, which pertains to period commencing from 08.03.2019 to 06.03.2022. We have compared this chart, which is signed by the Chief Engineer, Haridwar with office memo dated 17.08.2021 (Annexure No. 19 to the writ petition), which also contained the details of vehicles parked in Pantdeep parking in the financial year 2019-20, 2020-21 and 2021-22.

30. It reveals from the office memo dated 17.08.2021 that in the financial year 2021-22, in the month of August, till 15.08.2021, 7239 cars, 197 buses, 93 tractors, 172 motor bikes and 182 three wheelers were parked, however, chart placed in the counter affidavit shows that in August, 2021 for not a single day parking was allowed to function. On perusal of these two documents, it reveals that respondents officials by way of counter affidavit gave misleading statement by giving wrong figures.

31. Apart from this, respondent officials tried to justify their stand in reference to the averments made in the writ petition. With regard to the fact that both the bidders, who participated in

the tender process, whose technical bids were found to be responsive, are real brother, they submitted that both are separate legal entity. They also tried to justify the experience certificate given by respondent no. 5, who has procured the same from his real brother, who is proprietor of the second bidder firm and further tried to justify their stand in reference to show cause notice by submitting that proposed disciplinary proceedings against Mr. R.K. Tiwari were dropped, since the issue relating to auction of Pantdeep parking is sub judice before this Court in WPMS No. 593 of 2019 (M/s Sharma Traders Vs. State of Uttarakhand and others). Respondents also tried to justify the condition stipulated in the tender notice that only "AA" Class Contractors are eligible to participate in the tender process, as the amount of tender is more than 10 crore. The respondents also tried to justify their stand unsuccessfully with regard to increase in parking fee, reduction of parking time, delay in payment stamp duty and execution of the agreement.

32. It appears that the issues, as raised in this writ petition, are avoided by respondents by responding in incorrect manner which is clearly evident from the fact that parking area was handed over to the successful bidder on 08.03.2019 but when several complaints were received questioning the procedure adopted by official respondents and when audit report came forward, it appears on intervention of the audit department the successful bidder - respondent no. 5 deposited the stamp duty, purchased on 28.10.2020 and only thereafter the agreement was executed.

33. Despite clear breach of terms and conditions of the tender notice, viz. non deposit of stamp duty and execution of agreement, firstly, the respondent officials had handed over the



possession of parking area to respondent no. 5 and then process for extension of period of tender under the garb of Covid pandemic and Kumbh Mela and total 629 days were extended for parking in favour of respondent no. 5 and this extension was granted without examining record, which is evident from the fact that on 11.08.2021 respondent no. 5 submitted a request letter for extension of parking period by giving reference of condition no. 1 of tender notice and thereafter, the Superintendent Engineer had forwarded the same on 19.08.2021 and ultimately, the said recommendation / proposal was accepted by the Chief Engineer Level - II by letter dated 31.08.2021. After examining all these aspects, what we have observed is that there was clear breach of tender condition since stamp duty was not furnished by respondent no. 5 and parking was handed over to respondent no. 5 much earlier i.e. on 08.03.2019 though as per condition no. 9, successful bidder has to furnish stamp duty and then, next step was to execute the agreement but in connivance with official respondents undue advantage has been given to respondent no. 5 by handing over the parking area. The connivance of the respondents officials cannot be ruled out, particularly, when only two firms were declared to be technically responsive and both the firms are owned by the real brothers and their addresses are also same and on the same date, they had uploaded their bids from same IP address.

34. It is very surprising that for finalizing the tender process Superintendent Engineer himself constituted a four-member Committee, in which, he himself was inducted as Chairman and declared one of the bidders i.e. respondent no. 5 as successful bidder.

35. What was the justification for constitution of the Committee and if that Committee was constituted and then, what was justification, on the part of the Superintendent Engineer for inducting himself as the Chairman of that Committee. The conduct of the then Superintendent Engineer appears to be very doubtful, which shows that the respondent no. 5 was given undue advantage, which is evident from the fact that under the garb of condition no. 1 of tender notice, respondent no. 5 requested for extension of 400 days but the Chief Engineer granted the approval of 629 days.

36. We have also examined that audit report and in the audit report certain observations were made that the manner, in which contract was awarded, the manner, in which rate of parking fee was increased and time of parking was reduced, the manner, in which without depositing the stamp duty and without execution of agreement, area of parking was handed over to respondent no. 5 and when explanation was called from the department, the explanation was not specific and ultimately, the audit team came to the conclusion that revenue loss was caused to the public exchequer.

37. Now, so far as grant of extension of 629 days is concerned, in reference to this, the Court has gone through the condition no. 1 of the tender and on perusal of this condition, it reveals that if there is any restriction or prohibition, the respondents should place all record those documents but it is very strange that no such documents are brought on record at any point of time, which itself reveals there is no such document declaring the said parking as zero zone or containment zone.

38. Learned counsel for the petitioner gives reference of letter of Chief Engineer dated 21.11.2022 and this letter pertains to the

extension, which was sought by the respondent no. 5 and what the Chief Engineer has observed in this letter is that if there is any declaration of zero zone of this parking area, then document should be available in the department and this letter clearly mentioned that there is no such record available with the department for declaring the said parking area as zero zone.

39. Learned counsel for the petitioner submits that respondents could not brought on record even in the counter affidavit document declaring the said parking as zero zone or containment zone, despite this, extension was granted. In reference to Kumbh Mela, learned counsel for the petitioner submits that Kumbh Mela took place from 01.04.2021 to 31.04.2021 and this period is of only 30 days and in the counter affidavit, no such document has brought on record, in order to establish that during Kumbh Mela the authorities had taken over the possession of parking from respondent no. 5.

40. Learned Chief Standing Counsel could not brought any document declaring such parking as zero zone or containment zone and further could not place before this Court, at any point of time that during Kumbh Mela parking area was taken back and with regard to chart, as enclosed in the counter affidavit, no justification has been given in reference to the office letter, which was brought on record by the petitioner in the writ petition, which is office memo issued by Superintendent Engineer dated 17.08.2021 wherein the number of vehicles parked in the said parking till 15.08.2021 was given whereas in the chart appended to the counter affidavit figures as given are not tallied with the said office memo. Learned State Counsel could not justify their stand in respect of wrong figures, as given in the chart appended

with the counter affidavit and most surprisingly, this chart was prepared and signed by the Chief Engineer on 20.07.2023.

41. Though compilation of different Circulars issued by Government of India during Covid 19 Pandemic were also brought on record and this Court also perused the same but it appears by producing these Circulars, counsel for the respondents could not justify their stand on what basis extension was granted and they also failed to establish actually parking was functional or not, during Covid - 19 pandemic period whereas their own document i.e. office memo dated 17.08.2021 itself established that parking was functional, as in the office memo reference of different vehicles parked in the parking has been given.

42. Counsel for the respondent could not justify their stand for increasing the parking fees and reducing the time of parking of vehicles. There is no basis or rationale behind this. It appears that only to give undue advantage and benefit to respondent no. 5, parking fee was increased and time of parking was reduced.

43. Apart from this, we have also gone through the proposal given by Sharma Trader, who had proposed that he is ready to take over the parking with cost of Rs. 9,15,00,000/- but it appears that respondents officials had deliberately not acted upon such proposal, which was certainly a beneficial proposal in the interest of public exchequer. This firm had filed Writ Petition (MS) No. 593 of 2013, a reference of which has been given in the office letter whereby disciplinary proceeding against the then Superintendent Engineer was dropped. This aspect certainly creates doubt on the conduct of the official respondents and establishes that they are in collusion with respondent no. 5.

44. In view of granting the extension of 629 days for parking to respondent no. 5, increasing the parking fee and reducing duration of parking without producing any document relating to declaration of this parking as zero zone or containment zone, handing over the parking lot without agreement, this Court has no option except to condemn the action of respondents officials. Further, connivance of respondent no. 5 with the official respondents also cannot be ruled out. Observations of the audit department also cannot be over looked and that report reveals that procedure, as adopted for awarding the parking tender to respondent no. 5, caused revenue loss to the public exchequer. Grant of extension of parking even before expiry of period of agreement also creates serious doubt on the conduct of official respondents.

45. The conduct of the official respondents reveals that since beginning, respondent authorities favoured respondent no. 5, firstly by granting him contract for parking and thereafter, by extending the period of tender, which establishes that respondent authorities are hand in glove with respondent no. 5, which caused a huge loss to public exchequer.

46. Therefore, this Court is of the view that the extension, as granted to respondent no. 5 is absolutely illegal and contrary to the mandatory condition no. 1 of the tender notice. Accordingly, the impugned order dated 17.12.2022 passed by Chief Engineer, Haridwar is quashed. A writ of Mandamus is issued to the official - respondents to proceed for e-auction to Pantdeep parking, Haridwar immediately and the process of e-auction should be completed, strictly as per provisions of the Uttarakhand Procurement Rules, 2017, within two months from the date of production of certified copy of this order.

47. At this juncture, it is relevant to mention that now since this Court has quashed the impugned order dated 17.12.2022 whereby extension was granted to the respondent no. 5 but keeping in view of the fact that fresh tender process will take time for which respondents were granted two months time to conclude the entire exercise, we are of the view that till such time tender process is concluded for awarding the contract to run Pantdeep parking to successful bidder, respondent no. 5 may continue to run or in alternative, respondents may take decision for alternative arrangement to run the parking so that public at large, who visit the holy place Haridwar may not suffer.

48. Since we are of the *prima facie* view that in the present case, there is loss to the public exchequer, which has been caused at the hands of respondents and officials of the respondent - Department, who appears to be in connivance with the firm namely M/s Riddhim Associates and M/s Arun Construction, owned by real brothers, based at District - Amroha, Uttar Pradesh, so a proper investigation is required in the matter.

49. The Constitution Bench of Hon'ble Supreme Court in **State of West Bengal and Others Versus Committee For Protection of Democratic Rights, West Bengal and Others, (2010) 3 SCC 571**, observed as under:

*"69. .... Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.*

*70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude*

*of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.*

*71. In **Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya**, this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."*

50. In the present case, after receiving various complaints, disciplinary inquiry was initiated against the then Superintendent Engineer but before this disciplinary proceeding came to its logical end, it was dropped on unsubstantiated grounds. There are certain questions that need to be answered like as to how respondent no. 5 and M/s Arun Construction managed to get this tender; why the tender stipulated a condition of the bidder being a "AA" Class contractor registered with the Irrigation Department was retained, when the tender did not require the bidders to carry out construction work; why the e-tendering process was given up and only manual tenders were invited; why tender notice was not re-advertised when only two bidders i.e. two firms owned by real brothers, having same address, were left in the field, to get more tender value; how the experience

certificate issued by one brother / bidder in favour of the other brother / bidder was accepted, when the contract in respect whereof the certificate was issued, could not be sublet or assigned to another party; how could the contract be awarded without respondent no. 5 submitting the stamp duty; why the higher officers gave different figures of parked vehicles; why higher officers increased the parking fee and reduced the time of parking without any justification, and; why respondents gave unnecessary extension for the period of parking; why the proceedings against the Superintendent Engineer were closed on the specious ground of a writ petition being pending in this Court; who are the persons involved in this matter and what is the estimated amount of loss incurred to the public exchequer and so on. These are the questions, which can be answered only through meticulous and impartial investigation only.

51. The conduct of the concerned officials of the respondent department in awarding the parking contract to respondent no. 5 by giving undue advantage, by ignoring the norms in awarding the tender *prima facie* shows that they were in clutches of these two firms namely M/s Arun Construction and M/s Riddhim Associates, owned by two real brothers, running their firms from same place and same address and they appear to be very influential persons. The involvement of even higher ranking officers of the State is apparent, as the Superintendent Engineer managed to have the inquiry against him dropped. If the investigation is conducted by the State Police Authorities, there are little chances of fair investigation and it will be nothing, but a futile exercise. Therefore, this Court is of the view that the conduct of the concerned officials, who appears to be hand in glove with the two firms owned by real brothers and the role of the said two firms should be investigated by an independent



investigating agency like CBI and as such, after considering the material on record, this Court comes to the conclusion that the present matter falls within the principles enunciated by the Constitution Bench of the Supreme Court and we are satisfied that the material available on record does disclose a prima facie case calling for an investigation by the Central Bureau of Investigation.

52. Therefore, the matter is referred to CBI for proper, impartial and fair investigation, in accordance with law.

53. Let the copy of this order be sent immediately to the Director, CBI, New Delhi for doing the needful. All the State Authorities are directed to preserve the record, and make it over to the CBI. They are directed to cooperate with the CBI and render all cooperation and assistance to them. The petition is allowed, with costs quantified at Rs. 50,000/-, which shall be payable by the State to the petitioner within four weeks.

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VIPIN SANGHI, C.J.

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RAKESH THAPLIYAL, J.

Dated: 20.10.2023  
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