

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17609 of 2025****With****R/SPECIAL CIVIL APPLICATION NO. 17623 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE L. S. PIRZADA**

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Approved for Reporting	Yes	No
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HANSA VAHAN INDIA PRIVATE LIMITED**Versus****GUJARAT STATE ROAD AND TRANSPORT CORPORATION & ANR.**

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Appearance:**MR SHALIN MEHTA, SENIOR ADVOCATE WITH MR. HJ****KARATHIYA(7012) for the Petitioner(s) No. 1****ULLASH N GOHIL(8357) for the Petitioner(s) No. 1****MS NIRALI SARDA, AGP for the Respondent(s) No. 2****MR G H VIRK WITH MR HS MUNSHAW(495) WITH MR DEVANG R BHATT
for the Respondent(s) No. 1**

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE L. S. PIRZADA****Date : 24/12/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned Senior Advocate Mr. Shalin Mehta with learned advocate Mr. Ullash N. Gohil with learned advocate Mr. H.J. Karathiya for the petitioners, learned advocate Mr. G.H. Virk with learned advocate Mr. Devang R. Bhatt with learned advocate Mr. H.S. Munshaw for the respondent no.1 and learned Assistant Government Pleader Ms. Nirali Sarda for respondent no.2 State of Gujarat.

2. Rule returnable forthwith. Learned advocate Mr. Devang R. Bhatt waives service of notice of rule on behalf of the respondent no.1 and learned Assistant Government Pleader Ms. Nirali Sarda waives service of notice of rule on behalf of respondent no.2 State of Gujarat.

3. Having regard to the controversy involved in these petitions, which is in a narrow

compass, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

4. Issue involved in these petitions is identical and therefore, they have been heard analogously and would be disposed of by this common judgment.

5. In Special Civil Application No.17609 of 2025 preferred under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

"15. (a) issue a writ of mandamus or any other writ, order or direction in the nature of mandamus, directing Respondent No. 1 to issue a fresh Letter of Award in favour of the Petitioner with the rate modified to Rs. 24 per kilometer, in respect of 150 non-AC MIDI buses;

15(AA) Your Lordships may be pleased to issue a writ of mandamus, or a writ in nature of mandamus or any appropriate writ, quashing and

setting aside impugned communication dated 18.12.2025 (At Annexure-N hereto) declaring that the request made vide the letter dated 18.12.2025 calling upon the Petitioner to accept the LOA dt. 16.12.2025 is illegal and contrary to the RFP dated and further directing Respondent No. 1 to not act upon and/or pursuant to the said letter in any manner whatsoever,

b. in the alternative and without prejudice to prayer clause (a), issue a writ of mandamus or any other writ, order or direction in the nature of mandamus, directing Respondent No. 1 to withdraw the Letter of Award dated 16th December 2025, and to further not to take any steps pursuant to and/or under and/or in furtherance of the issuance of the Letter of Award dated 16th December 2025;

c. In the event Respondent No. 1 is directed to withdraw the Letter of Award dated 16th December 2025 in terms of prayer clause (b), issue a writ of mandamus or any other writ, order or direction in the nature of mandamus, directing Respondent No. 1 to forthwith return the EMD of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs Only) to the Petitioner within such time as this Hon'ble Court may deem fit and proper;

d. In the event Respondent No. 1 is directed to withdraw the Letter of Award dated 16th December 2025 in

terms of prayer clause (b), issue a direction / order to Respondent No. 1 directing it to permit the Petitioner to participate in any other fresh tender / bid which may be invited in the future in respect of the same contract or otherwise;

e. pending the hearing and final disposal of the present petition, restrain Respondent No. 1 from forfeiting the Earnest Money Deposit of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs Only) deposited by the Petitioner with the bid documents;

f. pending the hearing and final disposal of the present Writ Petition, restrain Respondent No. 1 by way of temporary injunction acting by itself and/or through any other employee, agent, contractor and/or any other person acting for and/or on its behalf from taking any adverse steps / actions against the Petitioner including but not limited to an action in the nature of blacklisting;..."

6. Brief facts of the case are that respondent no.1 Gujarat State Road & Transport Corporation ('GSRTC' for short) invited the bids on 17.07.2025 on the Government e-Market Portal (GeM Portal) for hiring 32-33 Seater

Midi AC and Non-AC buses.

7.The main objective of inviting the tenders was the selection of an agency through a public-private partnership for GSRTC. The tender was for requirement of 200 Midi AC (2x2) Seater Buses and 300 Midi Non-AC (2x2) Seater Buses.

8.Bid was to be submitted along with Earnest Money Deposit (EMD) of Rs. 50,000/- per bus to be offered and successful bidder was to submit a Performance Security of value of Rs.2,50,000/- per bus. As per the tender notice, the last date for submission of pre-bid queries was 27.07.2025.

9.As per Condition No. 3.3(4) of Request for Proposal ('RFP' for short), a bidder has to submit his offer as per the requirement of GSRTC of 200 /300 AC/Non-AC buses, but not

less than 100 buses in the category of Midi AC Buses and not less than 150 buses in the category of Midi Non-AC Buses. As per condition no.3.3(5) of RFP, GSRTC had reserved the right to increase or decrease the estimated quantity of the buses to be hired at any stage.

10. The bidders were required to file their bid on GeM Portal by giving per kilometer rate on the basis that each bus was to operate on an average of minimum of 350 kms per day for 365 days for five years. The Financial/Price Bid was to be provided in terms of the rate per kilometer without considering the cost of diesel.

11. As per condition no. 9.5 of RFP, evaluation was to be carried out pursuant to the provisions of the RFP and as per Indicative Price Bid Format as per Annexure-

2, the bidders were required to quote per kilometer rate payable by GSRTC to the operator for procurement, operation and maintenance of buses including the cost of fuel to be borne by the GSRTC.

12. It is the case of the petitioner that there was an extension of the deadline for the submission of bid till 25.09.2025. The petitioner submitted its Financial/Price Bid on-line within the prescribed date. It is the case of the petitioner that the petitioner has made bid for 100 Midi AC Buses and 150 Midi Non-AC Buses.

13. It is the case of the petitioner that the petitioner was notified as a successful bidder and GSRTC has issued Letter of Award ('LOA' for short) and as per Condition No. 10(c) of RFP, the petitioner is required to sign and return the duplicate copy of LOA

within 7 days, failing which, respondent no.1 is entitled to forfeit the EMD on account of its failure to acknowledge the LOA.

14. The petitioner on 19.09.2025 addressed an email to respondent no.1 for clarification regarding its bid submission stating that respondent no.1 was to consider the bid of the petitioner for 100 buses with an applicable EMD of Rs.50,00,000/- as per Condition No.3.3 of the RFP instead of amount being deposited by the petitioner of Rs.75,00,000/-, as it was not possible for the petitioner to change the requirement on GeM Portal, as EMD amount shown on the portal is Rs.75,00,000/- which was not possible to change for 100 AC buses as EMD amount per bus was fixed at Rs. 50,000/-.

15. It is also the case of the petitioner that such discrepancy was also brought to the

attention of GSRTC that while filing the bid on on-line portal, number of buses was preset to 300 for Non-AC buses and 200 for AC buses which was number of buses required and GeM Portal did not permit the petitioner to change the number of buses offered and the said figure was non editable.

16. It is also the case of the petitioner that representative of respondent no.1 one Shri Laxmikant as stated in para.5(w) [page 8 of the memo of the petition] called the representative of the petitioner and it was clarified that the petitioner should ignore the preset fields and only the number of buses which had been quoted by the petitioner in its clarification email would be considered so as to consider the Financial Bid as per Annexure-2 submitted by the petitioner with its Financial Bid documents.

17. It is the case of the petitioner that on 20.09.2025, another email was received from the office of respondent no.1 GSRTC wherein it clarification was made as per discussion, copy of which is placed on record at page no.109 (Annexure-E) of the petition.

18. According to the petitioner, there was a communication between the petitioner and respondent no.1 officials for clarifications which was followed by the petitioner by submitting its technical as well as Financial Bids. It is also contended by the petitioner that as bid documents being confidential documents, the same are not annexed with the petitions.

19. It appears that on 13.11.2025, the petitioner was informed that it had met the financial qualification and its technical bid has been accepted and thereafter Financial

Bids were taken up for evaluation on 15.11.2025 for supply of both AC and Non-AC buses by declaring the petitioner as lowest - L1 bidder. Thereafter reverse auction was published on 16.11.2025 on GeM Portal which came to end on 18.11.2025. The petitioner however did not participate in the reverse auction process.

20. It is the case of the petitioner that a meeting was held with one Mr. J.S. Jethava, Head, Commercial Department of respondent no.1 to clarify the price bid of the petitioner and accordingly, price bid was submitted by the petitioner as per 'Annexure-2' of RFP and it was also clarified that a High-Power Committee would be established to consider the bids which would also take into account the fact that some of the entries on the on-line portal were not editable.

21. It is also the case of the petitioner that representative of the petitioner was also informed that they would be invited for negotiations before LOA was issued to the petitioner in terms of the provisions of RFP.

22. The petitioner thereafter addressed an email dated 22.11.2025 with a detailed representation regarding both the tenders of AC and Non-AC buses contending that per kilometer cost worked out by the respondent no.1 is on the basis of number of buses required i.e. 200/300 for AC and Non-AC buses respectively and not on the basis of number of buses offered by the petitioner. It was pointed out that the petitioner has offered 150 Non-AC buses and 100 AC buses at the rate of Rs 24/- per km and Rs.30/- per Km respectively whereas considering number of buses required as 300 Non-AC buses and 200 AC buses, such rate is reduced to Rs.12/- per Km

and Rs.15/- per Km respectively by the respondent no.1 and therefore, LOA issued by the respondents is without considering the number of buses offered by the petitioner and total price rate offered by the petitioner per km per bus as per "Annexure-2" comes to double the rate per kilometer worked out by the respondent no.1.

23. The petitioner also contended that GSRTC has categorically informed the petitioner that the amount entered in Gem Portal would be overridden and Annexure-2 would be considered final for L1 evaluation.

24. The petitioner however did not receive any response to the said representation and on 16.12.2025, the LOA was issued by GSRTC stating that the petitioner has been awarded contract for 150 Non-AC buses at the rate of Rs.12/- per Km as against Rs.24/- per Km

offered by the petitioner and for 100 AC buses at the rate of Rs.15/- per Km instead of Rs.30/- per Km offered by the petitioner.

25. The petitioner, therefore, has challenged the LOA issued by the respondents of computation of rate for per km on the basis of nos. of buses required instead of number of buses offered by the petitioner for the total cost of contract for hiring the buses by preferring these petitions with the aforesaid prayers.

26. Learned Senior Advocate Mr. Shalin Mehta submitted that after filing of the petitions, respondent no.1 has issued letter dated 18.12.2025 in response to the email dated 17.12.2025 of the petitioner for re-issuance of Letter of Award/re-issue a revised or fresh Letter of Award at the rate of Rs.24/- per Km and Rs.30/- per Km for Non-AC buses

and AC buses stating that both the technical bid and the price bid shall be submitted only online on GeM Portal by quoting per Kilometer rate without considering the diesel cost.

27. It was submitted that rate per kilometer worked out by respondent no.1 is by taking total no. of buses required by the GSRTC and not the total no. of buses offered by the petitioner as per 'Annexure-2' of RFP- the bid document which is available at page 71 of the paper book in terms of condition no.7.3(a) of RFP for sealing and making of technical bids/eligibility and qualification submissions which provides that price bids to be submitted on-line as per 'Annexure-2'.

28. It was submitted that the computation of price per kilometer to be awarded to the petitioner as per condition no.9.5 of RFP provides for Evaluation of Price Bid and LOA

is wrongly made by respondent no.1 by reducing the rate per km by one half resulting into perverse computation and application by considering the number of buses required by GSRTC instead of number of buses offered by the petitioner.

29. Learned Senior Advocate Mr. Mehta referred to page no. 110 read with page no.71 of the of the paper book to point out that for Midi Non-AC buses, the petitioner has offered to provide minimum quota of 150 buses for 5 years without diesel cost at Rs.229,95,00,000/- and for application of condition no.9.5 to compute the rate per kilometer, learned Senior Advocate Mr. Mehta referred to the formula given in "Annexure-2" at page 71 of the of the paper book which provides that the Total Cost (In Rs.) = No. of buses offered x Daily Assured Km (350Km (Average Vehicle utilisation/day) x 1825 days

(5 years x 365 days) x offered rate per kilometer.

30. It was submitted that as per the price bid at page 110 of the of the paper book, total cost for 150 Midi Non-AC buses is Rs.229,95,00,000/- $(150 \times 350 \times 1825 \times 24)$ and total cost for 100 Midi AC buses is Rs.191,62,50,000/- $(100 \times 350 \times 1825 \times 30)$.

31. It was pointed out that number of daily assured kilometers and number of days are constant i.e. 350 Km and 1825 days and therefore, rate of kilometer is to be worked out by dividing the total cost (Rs.2299500000) by number of buses (150) x 350 x 1825 which comes to Rs.24/- per kilometer $[2299500000 \div 95812500 (150 \times 350 \times 1825)]$ for Non-AC buses and Rs.30/- per kilometer $[1916250000 \div 63875000 (100 \times 350 \times 1825)]$ for AC buses.

32. It was therefore, submitted that the LOA issued by the respondents by considering number of buses required as 300 Non-AC buses and 200 AC buses resulting into reduction of rate per kilometer offered by the petitioner to 50% is required to be either modified or revised to Rs.24/- per Kilometer for Non-AC buses and Rs. 30/- per Kilometer for AC buses instead of Rs.12/- and Rs.15/- per kilometer for both the categories respectively stated in LOA.

33. It was submitted that if the respondents are not interested in hiring the buses at the rates offered by the petitioner at Rs.24/- per kilometer for Non-AC buses and Rs.30/- per kilometer for AC buses, the price bid of the petitioner may be rejected and EMD may be refunded.

34. On the other hand, learned advocate Mr. G.H. Virk appearing for respondent no.1 GSRTC submitted that the petitioner has made suppression in this petition by not placing on record the Financial Bid details submitted on on-line GeM Portal.

35. By referring to 'Annexure-R1' at page 154 of the of the paper book annexed to affidavit in reply, it was pointed out by learned advocate Mr. Virk that the petitioner has given Base Fare (per month) inclusive of GST amounting to Rs.1,26,000/-and number of buses required is stated as 300 in the Financial Bid details and accordingly, respondent no.1 has calculated per kilometer rate of Rs.12/- to be paid to the petitioner for hiring of Non-AC buses and similarly referring to 'Annexure-R2' at page 155 annexed to the affidavit in reply, it was pointed out by learned advocate Mr. Virk that

the petitioner has given Base Fare (per month) inclusive of GST amounting to Rs.1,57,413.75 and number of buses required is stated as 200 in the Financial bid details and therefore, the respondent no.1 has calculated the per kilometer rate at Rs.15/- to be paid to the petitioner for hiring of AC buses.

36. Learned advocate Mr. Virk has also referred to Disclaimer at page 28 of the of the paper book which provides for instructions to the bidder, Clause No.3.3 - Scope of Work more particularly, condition no.3.3(4) and (5) at page 35 of the of the paper book, Clause No.5 pertaining to brief description of the Bidding Process, more particularly condition no.5.1 at page 40 of the of the paper book and condition no.5.12 pertaining to details of financial bid at page-44 of the of the paper book, Clause

No.7.3 pertaining to sealing and marketing of Technical Bids/ Eligibility and Qualification Submissions at page 49 of the of the paper book, Clause No.9.5 pertaining to evaluation of Price Bid and Award at page 58 of the of the paper book, Clause No.10 pertaining to notification of award at page 60 of the of the paper book and Annexure-2 which is Online Price Bid Format at page-71 of the of the paper book to submit that the LOA issued by the respondent no.1 is as per the above terms and conditions of the RFP and there is ambiguity therein.

37. In support of his submissions, learned advocate Mr. Virk has also placed on record the chart showing computation of per kilometer rate worked out by respondent no.1 in both the petitions as under:

SCA No. 17609/2025		SCA NO. 17623/2025
Nature of Tender	For hiring 300 Non-AC buses	For hiring 200 AC buses

Online, electronic Financial Bid submitted by the petitioner	"Base Fare (per month) inclusive of GST" Rs.1,26,000/-	"Base Fare (per month) inclusive of GST" Rs.1,57,413.75
Calculation	Rs.1,26,000/- per bus, per month Therefore, 030 days x 350 kms per day x 012 Rs.per km = Rs.126000	Rs.1,57,413.75/- per bus, per month Therefore, 030 days x 350 kms per day x 014.99178 Rs.per km =Rs.1,57,413.69
The per bus, per month bid submitted by the petitioner matches exactly with the "Total Price (INR)" on the GEM Portal	Total Price (INR) on GEM Portal Rs.2,300,760,000/- $2,300,760,000 \div 1825$ days (365 days*5 yrs) =1260690.41095 $1260690.41095 \div 350$ km per day per bus = 3601.97 $3601.97 \div 300$ buses =Rs.12.00/-	Total Price (INR) on GEM Portal Rs.1,916,250,050/- $1,916,250,050/- \div 1825$ days(365 days*5 yrs) = 1050000.02739 $1050000.02739 \div 350$ km per day per bus = 3000.00 $3000 \div 200$ buses =Rs.15.00/-

38. Referring to the above chart, it was submitted that the petitions should be dismissed only on the ground of suppression by the petitioner of the above facts by not

stating that the petitioner has quoted Rs.1,26,000/- Base Fare (per month) inclusive of GST in the Financial Bid details on on-line GeM Portal for Non-Ac buses and Rs.1,57,413.75 Base Fare (per month) inclusive of GST for AC buses and therefore, the petitioner now cannot contend that the petitioner has offered rate per kilometer at Rs.24/- for Non-AC buses and Rs.30/- for AC buses by considering the same for 150 Non-AC buses and 100 AC buses which is minimum quantity to be offered by the bidder.

39. Learned advocate Mr. Virk submitted that respondent no.1 has rightly calculated per kilometer rate of Rs.12/- for Non-AC buses and Rs.15/- for AC buses.

40. Learned advocate Mr. Virk also invited the attention of the Court to the following averments made in affidavit in reply which

explains the above chart in detail:

"22. I, now, respectfully proceed to explain Annexure R1, being the financial bid submitted by the Petitioner for Non-AC buses (SCA 17609 of 2025).

a. It is clearly stated that GSRTC required 300 Non-AC Buses. This figure of 300 cannot be changed by any bidder.

b. The only data entry that a bidder is to make on the GEM Portal is the entry regarding Base fare (per month) inclusive of GST.

c. For Non-AC buses, the figure that the Petitioner entered was Rs. 1,26,000/-

d. Therefore, Petitioner committed to offer a bus that would ply a minimum of 350 kilometres per day for 30 days at Rs. 12 per kilometre. $[350 \times 30 \times 12 = 1,26,000]$

e. Automatically, the final, right most column titled "total price" reflected the figure of 2,300,760,000/-.

f. When 2,300,760,000 is divided by 1825 days (365 days * 5 years); and the said figure is divided by 350 kilometres per day; and the said figure is further divided by 300 buses, the outcome is Rs. 12.00657/- (i.e. approximately Rs. 12/-).

g. Therefore, the Petitioner was fully conscious that the per kilometre rate that it offered for Non-AC buses was Rs. 12 per kilometre.

23. I, now, respectfully proceed to explain Annexure R2, being the financial bid submitted by the Petitioner for AC buses (SCA 17623 of 2025).

a. It is clearly stated that GSRTC required 200 AC Buses. This figure of 200 cannot be changed by any bidder.

b. The only data entry that a bidder is to make on the Portal is the entry regarding Base fare (per month) inclusive of GST.

c. For AC buses, the figure that the Petitioner entered was Rs. 1,57,413.75/-

d. Therefore, Petitioner committed to offer a bus that would ply a minimum of 350 kilometres per day for 30 days at Rs. 14.99178 per kilometre $[350 \times 30 \times 14.99178 = 1,57,500]$.

e. Automatically, the final, right most column titled "total price" reflected the figure of 1,916,250,050/-.

f. When 1,916,250,050 is dived by 1825 days (365 days* 5 years); and the said figure is divided by 350

kilometres per day; and the said figure is divided by 200 buses, the outcome is Rs. 15.0000003912/- (i.e. approximately Rs. 15).

g. Therefore, the Petitioner was fully conscious that the per kilometre rate that it offered for AC buses was Rs. 15 per kilometre.

24. It is respectfully submitted that these two online, electronic price bid submissions for the two tenders in question have not been placed on record by the Petitioner nor do they find (subject to correction) any reference in the pleadings made by the Petitioner in the two Petitions filed before this Hon'ble Court.

25. The Petitioner has, therefore, suppressed the most material fact concerning the matters at hand by not placing them on record before this Hon'ble Court and on this ground of suppression alone, both Petitions deserve to be dismissed.

26. For the sake of argument, even if the case of the Petitioner is considered as-is, what the Petitioner was required to offer at Annexure-2 in the physical bid was only the total number of buses out of 300 Non-AC buses/200 AC buses, as the case may be. The actual per month base fare for each bus was only required to be submitted in the online format, on GEM Portal, to maintain secrecy and avoid the

making of any allegations of disclosure of confidential price bid of the bidders."

41. Referring to the above averments, it was submitted that all other bidders i.e. 6 qualified bidders for Non-AC bus tenders and 7 qualified bidders for AC bus tenders have also understood the tender document in the manner that has been explained by the respondent no.1 in the aforesaid averments and on-line price bids submitted by other bidders have been considered by respondent no.1 in the same manner.

42. Learned advocate Mr. Virk also referred to the following averments made in the affidavit in reply filed by respondent no.1:

"28. In fact, a pre-bid meeting was organised for the tenders on 28.07.2025. 24 persons representing various entities remained present for the pre-bid meeting. However, the Petitioner did not remain present in the pre-bid meeting.

Furthermore, neither the Petitioner nor any other prospective bidder raised any pre-bid query in connection with the grievance raised in both the present petitions. The rojkam of the pre-bid meeting fated 28.- 7.2025 as also the corrigendum issued pursuant to the pre-bid meeting are annexed hereto and marked as Annexure R3.

29. It is respectfully submitted that the last date of submissions of bids for the Non-AC Bus Tender was 29.09.2025 and for the AC Bus Tender was 06.10.2025 (after one extension).

30. On 19.09.2025 (Page 107) for the purpose of tendering Earnest Money Deposit (EMD), the Petitioner addressed a letter to GSRTC wherein the Petitioner clarified that in so far as the Non-AC bus tender is concerned its bid was submitted for 100 buses only. Not a word was written in this letter about the per kilometre rate offered / to be offered by the Petitioner.

31. The first time that the Petitioner raised grievance regarding the per kilometre rate was on 22.11.2025 at 6:19 PM (Page 111), long after it submitted its bid.

32. It is respectfully submitted that having filled the price bid electronically on a per month basis, the Petitioner is now, as an afterthought, attempting to renege

from his undisputed financial commitment (which has been suppressed at the time of filing the petitions).

33. It is respectfully submitted, that, therefore, Letter of Award ("LOA") has been issued for each of the two tenders (Annexure R4 collectively).

34. It is respectfully submitted that the Petitioner cannot be forced to accept the LOA; but, having once submitted its financial bids in the month of September-October 2025, if the Petitioner, now, at the end of December, 2025, elects to not honour the financial commitments made by it, the consequences as prescribed in the tender would, respectfully, follow. This is because such a belated withdrawal by the Petitioner would de-rail the tendering process and would delay the deployment of buses for the entire State of Gujarat."

43. Referring to the above averments, it was submitted that the petitioner either has to accept LOA issued by respondent no.1 offering the per kilometer rate of Rs. 12/- for Non-AC bus and Rs.15/- for AC buses or as per condition no. 10(c) of the bid document,

Respondent no.1 is entitled to forfeit EMD.

44. In support of his submission reliance was placed on the following decisions:

1) Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and another reported in (2016) 16 Supreme Court Cases 318, wherein Hon'ble Supreme Court has held as under:

"9. It is submitted before us that an inter-city rail is completely different from a metro rail. An inter-city rail is between two cities and the trains are usually high speed trains. A metro rail is intra-city, it has a dedicated right-of-way, normally it does not have high speed trains and the frequency of trains is much greater than that of inter-city trains. A metro rail may extend, in some cases, to a suburb of a metropolitan city but it essentially remains an intra-city project. There is, therefore, a qualitative difference between an inter-city rail and a metro rail. By itself, this indicates a qualitative difference in a railway project that is inter-city and a railway project that is intra-city and the

construction of a viaduct for a railway project that is inter-city and a railway project that is intra-city.

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12. In *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay*, (1989) 3 SCC 293 it was held that the constitutional Courts are concerned with the decision making process. *Tata Cellular v. Union of India*, (1994) 6 SCC 651 went a step further and held that a decision if challenged (the decision having been arrived at through a valid process), the constitutional Courts can interfere if the decision is perverse. However, the constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was confirmed in *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517 as mentioned in *Central Coalfields*.

13. In other words, a mere disagreement with the decision making 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.

14. We must reiterate the words of caution that this Court has stated right from the time when *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489 was decided almost 40 years ago, namely, that the words used in the tender documents cannot be ignored or treated as redundant or superfluous - they must be given meaning and their necessary significance. In this context, the use of the word 'metro' in Clause 4.2 (a) of Section III of the bid documents and its connotation in ordinary parlance cannot be overlooked.

15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given."

2) **National Thermal Power Corporation Limited v. Ashok Kumar Singh and others** reported in (2015) 4 Supreme Court Cases 252, wherein Hon'ble Supreme Court has held as under:

"10. In Ganga Enterprises case (supra) this Court was examining a similar question. The argument in that case, as is the position even before us, was that withdrawal of an offer before it was accepted could not result in forfeiture of the earnest money/security money given by the bidder. Repelling that contention this Court held that while a person may have a right to withdraw his offer at any time before the acceptance is conveyed to him if the offer is itself subject to the condition that the earnest money will be forfeited for not entering into contract or if some other act is not performed, then, even though he may have a right to withdraw his offer he will have no right to claim the refund of the earnest money. Forfeiture of the earnest money, in any such case, does not, observed this Court, infringe any statutory right under the Contract Act, 1872 for earnest/security is given and taken in such cases only to ensure that a

contract comes into existence. What is important is that this Court recognised that absence of any term stipulating forfeiture of the earnest money may lead to situations where even those who do not have the capacity or intention of entering into a contract venture into the bidding process for at times extraneous reasons. The purpose of such a clause providing for forfeiture of the earnest money clearly was to see that only genuine bids are received. This Court observed:

"... ..The Indian Contract Act merely provides that a person can withdraw his offer before its acceptance. But withdrawal of an offer, before it is accepted, is a completely different aspect from forfeiture of earnest/security money which has been given for a particular purpose. A person may have a right to withdraw his offer but if he has made his offer on a condition that some earnest money will be forfeited for not entering into contract or if some act is not performed, then even though he may have a right to withdraw his offer, he has no right to claim that the earnest/security be returned to him. Forfeiture of such earnest/security, in no way, affects any statutory right under the Indian Contract Act. Such earnest/security is given and taken to ensure that a

contract comes into existence. It would be an anomalous situation that a person who, by his own conduct, precludes the coming into existence of the contract is then given advantage or benefit of his own wrong by not allowing forfeiture. It must be remembered that, particularly in government contracts, such a term is always included in order to ensure that only a genuine party makes a bid. If such a term was not there even a person who does not have the capacity or a person who has no intention of entering into the contract will make a bid. The whole purpose of such a clause i.e. to see that only genuine bids are received would be lost if forfeiture was not permitted."

11. In A.P. Paper Mills (supra) this Court was dealing with almost similar situation where according to Clause 5 of the tender notice the tenderer would withdraw the tender only on the pain of forfeiture of the earnest money. While refusing to interfere with the forfeiture of the earnest money this Court observed:

"... ..But it is a case of withdrawal of tender and the effect of it is to be considered. Since the tender is valid for a period of 45 days and withdrawal is before expiry of the period the earnest money is to be forfeited. The stand of the respondent that because of delay in declaration of the

final sale results there was no bar on withdrawal of the tender is clearly untenable. Once the tender is withdrawn the result is that the tenderer who withdraws the tender cannot take the stand that since the final sale result has not been declared there is no bar on the withdrawal."

12. Reference may also be made to a decision of this Court in *Malik Traders (supra)*. Even in this case this Court was dealing with the effect of withdrawal of a bid before acceptance in the context of Section 5 of the Contract Act, 1872. Rejecting the submission that the bid can be withdrawn without any forfeiture in view of Section 5 of the Contract Act, this Court observed:

"... ..Thus, even though under Section 5 of the Act a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, the respondent was bound by the agreement contained in its offer/bid to keep the bid open for acceptance up to 90 days after the last date of receipt of bid and if the respondent withdrew its bid before the expiry of the said period of 90 [pic]days the respondent was liable to suffer the consequence (i.e. forfeiture of the full value of bid security) as agreed to by the respondent in Para 10

of the offer/bid. Under the cover of the provisions contained in Section 5 of the Act, the respondent cannot escape from the obligations and liabilities under the agreements contained in its offer/bid.

The right to withdraw an offer before its acceptance cannot nullify the agreement to suffer any penalty for the withdrawal of the offer against the terms of agreement. A person may have a right to withdraw his offer, but if he has made his offer on a condition that the bid security amount can be forfeited in case he withdraws the offer during the period of bid validity, he has no right to claim that the bid security should not be forfeited and it should be returned to him. Forfeiture of such bid security amount does not, in any way, affect any statutory right under Section 5 of the Act. The bid security was given by the respondent and taken by the appellants to ensure that the offer is not withdrawn during the bid validity period of 90 days and a contract comes into existence. Such conditions are included to ensure that only genuine parties make the bids. In the absence of such conditions, persons who do not have the capacity or have no intention of entering into the contract will make bids. The

very purpose of such a condition in the offer/bid will be defeated, if forfeiture is not permitted when the offer is withdrawn in violation of the agreement."

13. The upshot of the above discussion is that it is no longer possible for the respondents to contend that the right to withdraw the bid in terms of Section 5 of the Contract Act, 1872 would entitle them to withdraw without suffering forfeiture of the earnest money even in cases where the submission and receipt of bids is itself subject to the condition that in the event of a withdrawal of the bid the earnest money stand forfeited. Inasmuch as the High Court remained totally oblivious of the true legal position while directing refund of the earnest money, it committed an error."

45. In rejoinder, learned Senior Advocate Mr. Shalin Mehta for the petitioner referred to and relied upon the following averments made in affidavit in rejoinder :

"9. I also deny that Annexure 2, as annexed at Page 110 to the Writ Petition, was only submitted physically. I categorically state that this form was uploaded on the

GEM Portal. In fact, Annexure 2 itself states "Online Price Bid Format". Further, I say that paragraph 22(a) and 23(a) of the Affidavit in Reply are noteworthy. Both these paragraphs contain an admission on part of Respondent No. 1 that on the GEM Portal, the figure for the number of buses was not editable. Once that is so, reference would obviously be made to the number of buses specified in Annexure 2. In paragraph 22(f) and paragraph 23(f) of the Affidavit in Reply, Respondent No. 1 has divided the total cost by the number of buses and the other constants. Having accepted that the total number of buses on the GEM Portal was not editable, Respondent No. 1 could not have divided the total bid amount by the total number of buses. Respondent No. 1 certainly had to divide the total cost by the number of buses for which the Petitioner submitted a bid. This was the only course of action which Respondent No. 1 could possibly would have adopted. Respondent No. 1 could not have divided the total bid amount by a figure of buses that the Petitioner never bid for.

10. Lastly, as far as Annexure R-1 and Annexure R-2 are concerned, the Petitioner was informed that the total bid amount in that portal entry must match the total cost specified in Annexure 2. Obviously, since the number of buses was not editable, the entry for the per

month cost per bus came to be halved automatically. When the Petitioner expressed this concern to Respondent No. 1, it was assured that the same was immaterial because as per Clause 7.3 read with Clause 9.5 of the RFP, only Annexure 2 would be considered to evaluate the Petitioner's price bid. Even in the Affidavit in Reply, Respondent No. 1 has failed to point out any provision in the RFP which could support its reliance upon the screenshots annexed at Annexure R-1 and Annexure R-2, as opposed to Annexure 2 to the RFP."

46. Referring to the above averments, it was submitted that respondent no.1 have computed the rate per kilometer by applying the number of buses required instead of number of buses offered. It was also pointed out that there was no suppression on part of the petitioner as the respondents have clarified during the course of pre-bid meeting that the respondents shall not consider the number of buses required which is not possible to change in GeM Portal and only consider the number of buses offered by the petitioner for

total cost of the contract quantified by the petitioner.

47. Heard the learned advocates for the respective parties and considered the documents placed on record together with the Request for Proposal for AC and Non-AC buses which are similar except the change of the data regarding the requirement of buses by respondent no.1 Corporation for hiring on public-private partnership.

48. It would therefore be germane to refer to the relevant conditions of RFP to consider as to whether the dispute raised by the petitioner regarding LOA issued by respondent no.1 by offering Rs.12/- per Km for Non-AC buses and Rs. 15/- per Km for AC buses should be interfered and if answer to such question is in the affirmative, whether the respondents were justified in issuing LOA at

the aforesaid rate per Kilometer in juxtaposition to the price bids offered by the petitioner or not. The relevant Conditions of RFP are as under:

"Volume 1: Instruction to Bidders

1. Disclaimer

The Information contained in this Request for Proposal (RFP) document or subsequently provided to bidder's, whether in document or verbal or any other form by or on behalf of Gujarat State Road Transport Corporation (GSRTC) by any of it's employees or advisors, is provided to bidder on the terms and conditions set out in this RFP document and such other terms and conditions subject to which such information is provided.

The purpose of this RFP document is to provide interested parties with information that may be useful to them in eliciting their proposals pursuant to this RFP. This RFP may not be appropriate for all persons, and it is not possible for GSRTC, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP.

This RFP includes statements, which reflect various assumptions and

assessments made by GSRTC in relation to the project. Such assumptions, assessments and statements do not purport to contain all the information that each bidder may require. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this document to the bidder is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. GSRTC accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

GSRTC shall in no case whatsoever be held liable for any compensation or damages in case of subsequent changes or alterations being made to the information provided in this RFP/Tender document. GSRTC shall also not be held liable for any compensation or damages in case of failure to conduct due diligence or its lack thereof on the part of Tenderer / Bidder / Successful Bidder. Past experiences suggest that

Public-Private Partnership Projects are dynamic in nature and subject to foreseeable as well as unforeseeable changes on account of the public nature of the GSRTC. Hence, it shall be duly expected from the Tender /Bidder/Successful Bidder to observe and operate flexibility with respect to the performance of the work / contract which is being proposed to be tendered vide this RFP/Tender document,

GSRTC, it's employees and advisors make no representation or warranty and shall have no liability to any person, including any applicant or bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this bid stage or further stage."

3.3 Scope of Work

(4) The bidder has to submit his offer as per the requirement of GSRTC but not less than 100 buses.

(5) GSRTC reserves the right to increase or decrease the estimated quantity of the buses to be hired at any stage.

5. Brief Description of the Bidding Process

5.1 Brief Description

a) The Authority invites Bid through Online Bid system (Collectively referred as the "Bidding Process/ Operation Selection Process") for selection of a competent Bidder for the award of the Project. Technical Bid and Price Bid shall be submitted online at <https://gem.gov.in>. Physical submission containing price Bid shall lead to summary rejection of entire bid and the Bid shall not be opened for evaluation.

b) The Bidders shall have to meet eligibility and qualification criteria provided in the RFP. Bidders would be required to quote one Base Kilometre Charge for Bus as per the contract conditions. Price bid of the bidders who are meeting eligibility and qualification criteria shall be opened. The Bidder whose Price Bid determined to be lowest and responsive as per clause 9.5 shall be considered as Preferred Bidder (the "Preferred Bidder") for award of the Project.

c) Complete Bid with the prescribed bid forms should be submitted online at the designated place on or before the time and date fixed for submission of bid ("Bid Due Date"). Bid submitted after Bid Due Date and time will be rejected.

5.12 Details of Financial Bid

The successful bidder has to submit the financial bid for implementing the assignment as per the format enclosed. The financial bid should contain all expenses involved in the assignment like taxes, transportation, maintenance of vehicle, accommodation, staff expenses, etc. The rate per K.M. should be provided without considering diesel cost. The financial bid is to be filled only through www.gem.gov.in only. The reverse e-auction on the L1 rate will be carried out and bidders will be finalised. by GSRTC.

(A) 2 X 2,32-33-SEATER -MIDI ACBUSES

Sr. No.	Number of buses offered	Rate per K.M.In Rs. (without diesel cost)
1		

Sr. No.	KM	Reduction percentage in per KM
1	351-400	1.50%
2	401-450	5.10%
3	451-500	11.60%
4	501-550	14.05%
5	551-600	16.26%
6	601-650	18.02%
7	651-700	19.72%
8	801-750	21.32%
9	751 onwards	22.82%

Note:-The hiring rate given by the bidder per k.m. will remain same up to 350 k.m. per day, However, if a vehicle operation is above 350 k.m. per day then the rate of reduction shall be applicable as per calculation given here under for the operation of each additional 50 k.m. operation per vehicle per day and that will be acceptable to the selected operator. If vehicle operates 525 kms then for first 350 km basic rate (quoted) will be paid and for next 50 km and onwards the payment will be made according to the reduction slab shown above.

NOTES:-

1. The bidder must have to justify the rates quoted in the commercial bid by the split up / bifurcation / break up of costing.

2. It is hereby expressly clarified that no reference or reliance shall be placed upon any methodology of calculation adopted or implemented in any of the previous or existing ongoing RFP, Tender or agreement of identical nature between GSRTC and any other party of such aforesaid RFP, Tender or agreement. The methodology of calculation once adopted and implemented between the GSRTC and the successful bidder in pursuance to the present Tender/Agreement shall become final and binding upon the parties and shall not be subject to any change

or modification unless mutually agreed to by both the parties in writing.

(A) to be filled only through www.gem.gov.in

7.3 Sealing and Marketing of Technical Bids / Eligibility and Qualification Submissions

a) The Bidders shall submit Technical and Price Bid Online only at designated space on <https://gem.gov.in>. Only DD/ BG containing for RFP fee and EMD to be submitted physically in sealed envelope on or before the date and time specified in the Bidding Schedule and at the address mentioned in the bidding schedule. The bid shall be submitted in the following manner.

No	Submission	Submission type	Envelope to be titled as	Format as per clauses/ Annexure	Except Price bid signed and original scanned copies of documents to be uploaded online
1	EMD	Online & Physically	EMD		Scanned copies to be uploaded online and physically. To be submitted by end of the last day & time of bid submission

2	Technical Bid	Online only	Not applicable	Clause 8.3 of volume 1 of the RFP	All documents as mentioned in Clause 8.3
3	Price Bid	Online only	Note applicable	Online Format	Price Bid format as per Annexure 2

The Envelope consisting of EMD shall be sealed and superscripted as:

"Selection of Agency for Hiring Midi NON-AC Buses through Public Private Partnership for Gujarat State Road Transport Corporation (GSRTC)." - PHYSICAL SUBMISSION.

Physical Submission may be made by RPAD / Speed Post or in person. Authority shall not be responsible for and shall not take any cognizance of delay/ loss in transit. Submission made through courier and in person/hand delivery shall not accepted by the Authority.

Each page of the original documents to be uploaded as part of a technical bid shall be colour-scanned. Stamps/ Franking and seal of the Notary wherever required shall be visible and displayed clearly. The documents shall be scanned in JPEG or any other data light but visible formats available.

9.5 Evaluation of Price Bid and Award

a) Bidders, pursuant to the

provision of the RFP and as per indicative Price Bid format, are required to quote per Kilometre rates payable by the Authority to the Operator for Procurement, Operation and maintenance of Buses, including the cost of fuel to be borne by the GSRTC.

b) All prices shall be quoted in Indian Rupees.

c) The Authority shall prepare a Rank List for all the Bidders in which the Bidder quoting the Lowest Per km rate shall be considered highest in order of the list

("Rank List"). For the purpose of evaluation of price bids and subsequent award of contract, the Authority shall consider the Bidder Quoting the lowest per km rate as per the online Price Bid as the Preferred Bidder. ("The Lowest Bidder")

d) Upon opening of the Price bids, in case Price quoted by Lowest Bidder is found to be seriously unbalanced or doubtful or incredulous by Authority in relation to the market rate or its internal estimate or Good Industry Practice, the Authority shall be entitled to solicit, at its sole discretion, detailed price analysis for any or all items specified in Price Bid, from the said bidder to demonstrate the internal consistency of those prices

e) In case of the Price Bid of the Lowest Bidder is to be unrealistically lower or unrealistically higher than internal estimate or market rate or Good Industry Practice and which could not be substantiated satisfactorily by the bidder, it may be rejected as non-responsive and will not be considered any further for award.

f) If the per km rate quoted by the Bidders are found to be reasonable and realistic the Authority shall declare the Lowest Bidder as the Preferred Bidder ("Preferred Bidder"). The Authority retains right to negotiate with the Preferred bidder. The Authority however does not bind itself to accept the Preferred Bid before or after the negotiations and it reserves the right to accept or reject any bid, in whole or in part.

g) The Authority, after negotiation, shall declare the Preferred Bidder as Successful Bidder if it's/ their bid(s) is most favourable as per the provisions of RFP and shall enter into Bus Operator Agreement with the Successful Bidder ("Successful Bidder"). The Successful Bidder is required to open the Project Office in Ahmedabad and adequately trained and qualified manpower should be deployed for this project.

10. Notification of Award

a) After Opening of Price Bid, the Authority will notify the successful bidders to be confirmed in writing that his bid has been accepted vide a Letter of Award ("LOA"). LOA shall name the sum (i.e., Kilometre Charges) which the Authority will pay to the Operator in consideration of operation and maintenance services as per terms of Contract. LOA shall also specify amount of performance security which the Service Provider shall pay/ furnish to the Authority and likely Bus Deployment/ Delivery Schedule.

b) The notification of award through LOA will constitute the formation of the contract which shall be formalized and detailed further through the Bus Operator Agreement as executed by the parties.

c) The Letter of Award (LOA) shall be dispatched through 'Speed Post/ Regd. post/ Fax/ email' with a duplicate copy, upon receipt of which the Preferred Bidders shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Preferred Bidders is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, forfeit the EMD of such Preferred Bidders as Damages on account of its failure to acknowledge the LOA, and the next

eligible Bidder may be considered for award.

Annexure-2:- Online Price Bid Format

(A) 2X2 32-33-SEATER- MIDI NON-AC BUSES

Sr. No.	Number of buses offered	Total amount for 5 years (without diesel cost)	Rate in words
1			
2			

(B) Break up/Split up/ Bifurcation of Rate

Sr. No.	Rate per KM in Rs (without Diesel Cost)	Break up/ Split up/ bifurcation of quoted rate (costing) item wise
1		
2		
3		
4		

Note:

1. The bidder has to upload price breakup as per above table (B) on GeM portal only.

2. For GSRTC tender of Midi NON-AC (2x2) 32-33 seater bus on GeM.gov.in portal, following equation for TOTAL COST Will be considered and calculated for financial evaluation and selection of bidder.

a. Midi NON-AC 2x2, 32-33 buses, for cost calculation:

Total cost (in Rs.) = No. of Buses (i.e.100) x Daily Assured Km (350 km(Avg.vehicle Utilization/day) x 1825 days (5 years x 365 days) x offered rate per km.

Example: If Bidder wants to quote 10.00 Rs. Per km, Total Cost = 100 x 350 x 1825 x 10 = 638750000

3. In case of any discrepancy between figures and words, the words shall prevail.

4. The services availed by the operator from its own vendors for services such as Annual Maintenance Contracts, driver providing agencies etc. represent the Service Provider's own costs and Authority shall not pay any costs or reimburse any taxes to these vendors."

49. On perusal of the above terms and conditions of RFP, it is not in dispute that the bidder has to offer per kilometer rate for plying the buses on payment of hire charges. Annexure-R1 annexed to affidavit in reply at page-154 of the petition which is a screenshot from GeM Portal for Non-AC buses

shows as under:

Annexure-R1

Financial Bid Detail

**Bus Hiring Service: Regular Basis - Outstation
24*7 32-33 Non Ac Semi Deluxe, As per RFP**

Consignment	Number of Buses required	Base-Fare (per month) inclusive of GST	Total Price (INR)
Con 1	300	126,000	2,300,760,000.00
		Sub total	2,300,760,000.00
Total price 2,300,760,000.00 (INR) (inclusive GST)			

50. The above screenshot clearly shows that Base-Fare (per month) inclusive of GST is to be filled in by the bidder whereas number of buses required is fixed which is 300 for Non-AC buses and similarly number of buses required is 200 for AC buses which is admittedly non editable by the bidder.

51. As per Clause 7.3, it appears that the price bid is to be given in 'Annexure-2' which is not in dispute. The anomaly and

perversity which has crept in, in the computation of rate per km by the respondent no.1, is by relying upon the GeM Portal which has fixed the required number of buses so as to arrive at per kilometer rate computed by the respondent no.1 without considering the number of buses offered by the bidder.

52. It is not in dispute that the contract is to be awarded for the total cost to be worked out as per 'Annexure-2' to the RFP. On perusal of Annexure-2, the formula given for computation of total cost is as under:

Total cost (In Rs.)= No. of Buses (i.e.100) x Daily Assured Km (350 km (Avg. vehicle Utilization/day) x 1825 days (5 years x 365 days) x offered rate per km.

53. The example also clarifies this aspect. If a bidder wants to quote Rs.10/- per km

then Total Cost = $100 \times 350 \times 1825 \times 10 = 638750000$. This example is required to be considered for the purpose of number of buses offered i.e. 150 Non-AC buses, whereby number of assured kilometer is 350 and number of days is 1825 [5 years $\times$ 365] which is constant is applied to the total cost worked out by the petitioner would give the rate per kilometer computed as under for Non-AC buses and for AC buses :

For Non-AC buses

Total Cost offered by the petitioner is $2299500000 \div 95812500 (150 \times 350 \times 1825) =$
Rs.24/-

For AC buses

Total cost offered by the petitioner is $1916250000 \div 63875000 (100 \times 350 \times 1825) =$
Rs.30/-

54. If the same formula is applied to Base Rate (per month) for number of buses offered as pointed out in Financial Bid document, it would be computed as under:

For Non-AC buses

$$2299500000 \div 638750 (1825 \times 350) = 3600$$

$$3600 \div 150 \text{ buses} = \text{Rs.}24/-$$

For AC buses

$$1916250050 \div 638750 (1825 \times 350) = 3000$$

$$3000 \div 100 \text{ buses} = \text{Rs.}30/-$$

55. Therefore, the chart supplied by learned advocate for the respondent no.1 which is reproduced herein above, is fallacious and computation error is in nature of sheer perversity as amount of 3600 is to be divided by 150 buses and not 300 buses as **300 buses is the no. of buses required and**

not the no. of buses offered by the petitioner.

56. Similarly for AC buses amount of 3000 is to be divided by 100 buses and not 200 buses as 200 nos. of buses are the buses required and not the nos. of buses offered.

57. Therefore, the entire computation made by respondent no.1 on the basis of nos. of buses required is nothing but a perversity by calculating such rate per kilometer in a truncated matter. Thus, it is apparent that the respondents for the reasons best known to them ignored the rate per kilometer offered by the petitioner for number of buses offered and has computed the rate per kilometer for number of buses required without realizing that field of "buses required" is to be considered as "buses offered" in the GeM Portal as it is apparent from the screen shot

placed on record that it is only showing the number of buses required and not the number of buses offered and instead of making any efforts to rectify the GeM Portal, respondent no.1 GSRTC has computed the rate per kilometer on the basis of false details by considering the number of buses required as number of buses offered for hire by the petitioner. This has resulted into perversity in issuing LOA on behalf of the respondent and therefore, the petitions are entertained as held by Hon'ble Supreme Court in the aforesaid decisions which provides that in case of perversity, this Court is entitled to exercise the extra ordinary jurisdiction under Article 226 of the Constitution of India.

58. It is also pertinent to note that if the required number of buses is more than 300 i.e. 500 or 1000 then respondent no.1 have

further computed the rate by considering the number of buses required. For example if the number of buses required would have been 1000, the rate would have been worked out to Rs.40/- instead of Rs.12/-. Therefore, the entire method of computation adopted by respondents to arrive at rate per kilometer is perverse.

59. With regard to the allegation of suppression is concerned, the petitioner has disclosed the fact that it has offered rate per kilometer at Rs. 30/- and Rs.24/- respectively for AC and Non-AC Buses which commensurate with the base rate per month reflected in the Financial Bid. Therefore, there is no suppression on part of the petitioner which has resulted into any fact which can be said to have been suppressed.

60. It is not in dispute that the column

stating "number of buses required" in the Financial Bid document on the GeM portal is wrongly stated on the portal. The details shown in the Portal considering the number of buses required can never result into total cost for the bid and the same is also contrary to the terms and conditions of the RFP read with Annexure-2 to the RFP.

61. As per the terms and conditions of RFP, rate per kilometer is required to be computed on the basis of the number of buses offered for average 350 kms per day for 5 years i.e. $5 \times 365 \text{ days} = 1825 \text{ days} \times 350 \times \text{rate per km}$ which gives the total cost and it is a trite to say that total cost offered in a bid is to be computed to arrive at rate per kilometer by the formula given in Annexure-2 in the RFP and not as per the GeM Portal giving wrong data of buses required instead of buses offered.

62. In view of foregoing reasons, both the petitions are allowed. The respondents are directed to consider the rate per kilometer of Rs.24/- for Non-AC buses and Rs.30/- for AC buses for 150/100 Non-Ac/Ac buses offered for hire by the petitioner and thereafter, if necessary carry out the process of working out the bid of each of the bidder by considering the number of buses offered as per the Formula given in Annexure-2 of RFP and thereafter find out who is the lowest bidder and issue the LOA accordingly.

63. Therefore, impugned LOAs issued by respondents are hereby quashed and set aside. The respondents are directed to carry out the process of computation of rate per kilometer for each bidder after considering number of buses offered for hire and not number of buses required by the respondent no.1- GSRTC.

64. Petitions are accordingly disposed of.
Rule is made absolute to the aforesaid
extent. No order as to cost.

(BHARGAV D. KARIA, J)

(L. S. PIRZADA, J)

RAGHUNATH R NAIR

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RAGHUNATH RAVINDRANATHAN NAIR(HC00196), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 13/01/2026 17:39:47