

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11160 OF 2025

Kshatriya Construction.

...Petitioner.

Versus

Government of Maharashtra and Others.

...Respondents.

Mr. R. S. Sasawade for the Petitioner.

Mr. S. B. Kalel, AGP for the Respondent-State.

**Coram : M. S. Karnik &
Sharmila U. Deshmukh, JJ.**

Date : September 23, 2025.

Judgment (Per Sharmila U. Deshmukh, J.):

1. **Rule.** Rule made returnable forthwith and with consent, taken up for final hearing.
2. The present petition has been filed for quashing and setting aside the order dated 28th August 2025 passed by the Executive Engineer, Public Works Department, Kolhapur disqualifying the Petitioner at the stage of technical bid on the ground that Maintenance, Operation and Safety Team certificate [for short "*MOST certificate*"] of Batch Mix Plant (Asphalt) was not obtained by the Petitioner on 29th July 2025, which was the last date for bid submission.
3. Facts of the case are that the Government of Maharashtra through Public Works Department, Kolhapur had floated e-tender vide

Notice No. 25 comprising of 2 projects, out of which Tender No.1 was "Improvement to Road Starting from SH 196 Kolhapur ITI Pachgaon Vadgaon Khebawade to Bamni MDR 30 Km. 0/00 to 14/400 Tal Karveer Distr Kolhapur" of B2 type" i.e., "Road Tender", which is subject matter of present petition.

4. As per tender schedule, the date of publication of tender was 8th July 2025 and the bid submission starting date was 8th July 2025, the pre-bid meeting was scheduled on 10th July 2025 and the bid submission closing date was 15th July 2025. The tender schedule came to be revised by the Respondent and the bid submission closing date was revised to 29th July 2025. As per the tender condition, it was necessary for the bidders to obtain MOST certificate from the competent officer, namely, the Assistant Chief Engineer (Mechanical) of Public Works Department, Region Pune, which is a fitness certificate of machinery to be used by the contractor for the proposed work, i.e., Batch Mix Asphalt Plant (Tar mixing machinery). On 24th July 2025, post installation of machinery, the Petitioner made an application to the Assistant Chief Engineer for inspection of the plant for the purpose of issuance of MOST certificate. The reminder was given on 28th July 2025. As the certificate was not received, the Petitioner submitted the bid on 29th July 2025 annexing the copy of application made by it to the Assistant Chief Engineer, indicating that inspection is pending on the

part of officer of the Respondent– Department. Post submission of bid, the positive MOST certificate was issued on 6th August 2025 which was uploaded by the Petitioner on Respondent's portal. It is the case of Petitioner that rate quoted by Petitioner is competitive as the same is below 11.69% of the estimated cost of the project. The Petitioner was disqualified by the impugned order dated 28th July 2025 as the MOST certificate was not submitted by the Petitioner at the time of submission of bid by the Petitioner, i.e., on or before 29th July 2025.

5. Mr. Sasawade, learned Counsel for the Petitioner submits that the Petitioner has filed application on 24th July 2025 seeking inspection of machinery by the Assistant Chief Engineer and it was on account of delay by the Assistant Chief Engineer that the MOST certificate could not be submitted at the time of submission of bid on 29th July 2025. He would further submit the inspection was thereafter duly carried out by the Assistant Chief Engineer and points to the certificate dated 6th August 2025 issued by the Assistant Chief Engineer certifying that the batch mix plant is conforming to the Ministry of Road Transport and Highways specifications 5th revision August 2013 and that the plant is modern, efficient and in good condition, equipped with SCADA system. He submits that in view of the fitness certificate granted on 6th August 2025, though after the period prescribed by tender, the disqualification of the Petitioner on that ground is arbitrary and

unreasonable.

6. He would further submit that before disqualifying Petitioner, the Respondent did not call for explanation from the Petitioner which is against Government Resolution dated 29th September 2018. In support of his submissions, learned Counsel for the Petitioner relies upon the decision of this Court in ***Balaji Surgical, Nashik v. State of Maharashtra***¹.

7. *Per contra*, Mr. Kalel, learned AGP would submit that last date for submission of bid was 29th July 2025 and application by the Petitioner for issuance of MOST certificate was made on 24th July 2025 and, therefore, it cannot be said that delay is attributable to the Respondent–Department. He would further point out the communication dated 8th September 2025 by the Assistant Chief Engineer to the Respondent No. 3 – Executive Engineer stating that on 4th August 2025, when the Assistant Chief Engineer had visited the site, it was found that work in respect of the bottom hopper, cable laying, control panel, piping fabrication and plant calibration was in progress and it is only on 6th August 2025 that batch mix plant could be inspected after completion of work and certificate was issued. He would submit that on 4th August 2025, the work of installation of machinery was going on, which was beyond the time period stipulated

1 2024 SCC OnLine Bom 480.

for submission of bid. He would submit that the Government Resolution dated 27th September 2018 provides for calling for an explanation if upon opening of tender bid, there are deficiencies, however, in the present case as the fitness certificate itself was not submitted along with the tender document, there is no question of calling upon the Petitioner to submit any explanation.

8. We have considered the rival contentions.

9. Though the petition essentially seeks to challenge the disqualification of Petitioner from the tender process, the Petitioner has not annexed the tender document to the petition. Perusal of the material placed on record by the Petitioner indicates that bid submission date was 15th July 2025 which was revised to 29th July 2025. It is not debated that MOST certificate in respect of batch mix plant was required to be issued by the Assistant Chief Engineer. The communication of 28th July 2025, addressed by the Petitioner to the Assistant Chief Engineer, copy of which is annexed at page 24 of petition, would indicate that the Petitioner had installed the said plant on 24th July 2025 and application was made on 28th July 2025 to the Assistant Chief Engineer requesting for site inspection for issuance of MOST certificate. The tender document was floated on 8th July 2025 and the availability of batch mix asphalt plant along with fitness certificate from the Assistant Chief Engineer was a requisite document

to be submitted on or before 29th July 2025 along with the bid. The installation of the machinery is subsequent to the floating of tender. The communication of 8th September 2025 addressed by the Chief Engineer to the Executive Engineer specifically mentions that on 4th August 2025 when the site was visited, the installation work was in progress. Given the said communication, it is clear that on the last date of submission of bid, i.e., 29th July 2025, the work of installation of plant was not complete and the fitness certificate could not have been issued. The Respondent had imposed the tender condition of obtaining MOST certificate which certifies the fitness of the plant, which is not assailed as an unreasonable tender condition. The Petitioner had not complied with the tender condition of submission of MOST certificate on 29th July 2025, i.e., within the prescribed time period resulting in the Petitioner being disqualified.

10. It is well settled that in tender matters, unless arbitrariness, irrationality or bias is demonstrated, the Court does not exercise its power of judicial review. In *Tata Cellular v. Union of India*² it has been held that the modern trend points to judicial restraint in administrative action and the Government must have the freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-

² 1996 AIR SC 11.

administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness but must be free from arbitrariness not affected by bias or actuated by *mala fides*.

11. In ***Michigan Rubber (India) Ltd. v. State of Karnataka***³ the Hon'ble Apex Court had opined that in exercise of power of judicial review in tender matters the Court has to pose a question to itself whether the process adopted or decision made by the authority is mala fide or intended to favour someone or whether the process adopted or decision made is so arbitrary and irrational that judicial conscience cannot countenance.

12. There is no submission canvased by the Petitioner that requirement of obtaining the MOST certificate in respect of batch mix plant was mala fide or intended to favour someone. The Petitioner itself has admitted that the plant was installed on 24th July 2025 and at the time of initial bid submission start date of 8th July 2025 did not have the specialized machinery available at its command. As the requirement of tender condition had not been fulfilled, the Respondent-Department has disqualified the Petitioner. We do not find that the decision to be manifestly arbitrary or irrational that this Court needs to step in and exercise its power of judicial review.

³ (2012) 8 SCC 216.

13. The bid submission closing date of 15th July 2025 was revised to 29th July 2025 and despite thereof, the Petitioner could not obtain the MOST certificate leading to disqualification by the Respondent Department for non adherence to the tender condition, which cannot be said to be arbitrary. There is some sanctity attached to the period prescribed for submission of requisite document before the bid closing date.

14. Insofar as the reliance placed on Government Resolution dated 27th September 2018 is concerned, as the MOST certificate was not submitted by the Petitioner with the bid document, there was no question of calling for any explanation from the Petitioner on the documents. As pointed out by learned AGP, by Government Resolution dated 21st September 2024, the State Government has mandated every bidder to compulsorily obtain the MOST certificate and as there is no compliance, Respondent–Department has rightly disqualified the Petitioner.

15. Reliance placed by learned Counsel for the Petitioner on the decision in ***Balaji Surgical, Nashik v. State of Maharashtra*** (supra) is misplaced as the facts are distinguishable. In that case, the original tender did not have the condition for submission of a “no conviction certificate” and the condition was inserted by way of a corrigendum and it was neither published nor communicated to the Petitioner

therein and at the last hour, the Petitioner was granted time to submit the certificate which the Petitioner submitted and despite thereof the Petitioner came to be disqualified. It is in that factual scenario that the Hon'ble Division Bench of this Court found the conduct of Respondent Bank arbitrary, unreasonable and actuated with bias or malafides. The said decision does not assist the case of petitioner as it is clearly distinguishable on facts.

16. Resultantly, we do not find any merit in the petition. Petition stands dismissed with no order as to costs.

17. Rule is discharged.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik, J.]