



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13158 OF 2024

M/s. Ganesh Enterprises,
A registered Partnership Firm
Having Registration No.MA/21639
Having registered address
At Sagar Roadways, 1st Floor,
Opposite Congress Bhavan,
Lane No.1, Dhule
Through its authorized person
Shri Pawan Subhash Agrawal
Age: 46 years, Occupation : Business
Resident of : 104/2, Shanti Sadan,
Agrawal Nagar, Dhule

... Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Medical Education, Research
And Aayush Department,
Mantralaya, Mumbai
2. The Commissioner,
Medical Education, Research
And Aayush Department,
Government Dental College and
Hospital Building,
St. George's Hospital Compound,
Mumbai – 01

[Copies to be served on the
Government Pleader,
High Court, At Aurangabad]

3. Smart Services Private Limited,
An Establishment registered
Under Shops and Establishments
Act, 2017 having Registration No.

2331000318186895
And Registered office at :
403, Western Court,
Ganeshkhind road, Opp E Square,
Bhanburda, Shivajinagar,
Pune - 16

.... Respondents

Mr. Mukul Kulkarni a/w Mr. Sahil Choudhari, for the Petitioner.

Mr. Venkatesh Dhond, Senior Advocate (Special Counsel) a/w
Mrs. Neha S. Bhide, Government Pleader, Mr. O. A.
Chandurkar, Additional Government Pleader, Mrs. G. R.
Raghuwanshi, AGP, for Respondent Nos.1 and 2.

Mr. Atit Soni, for Respondent No.3.

**CORAM : ALOK ARADHE, CJ &
M. S. KARNIK, J.**

**RESERVED ON : 22nd APRIL, 2025
PRONOUNCED ON : 25th APRIL, 2025**

JUDGMENT (PER M. S. KARNIK, J.) :

1. This Petition under Article 226 of the Constitution of India by the Petitioner - M/s. Ganesh Enterprises a bidder in the tender process seeks to challenge the decision dated 2nd August 2024 of Respondent No.2 - The Commissioner, Medical Education, Research And Aayush Department whereby the Petitioner is held to be disqualified in the bidding process. A further relief is sought challenging the decision of

Respondent No.2 holding the Respondent No.3 - Smart Services Private Limited as qualified bidder.

2. The facts of the case in brief are as follows :-

Respondent No.2 floated a tender for providing foodgrains, fruits and vegetables to the patients admitted in Government hospital published on 18th June 2024. The term of the tender is for three years with extension of two years.

3. Mr. Kulkarni, learned counsel for the Petitioner assailing the impugned order rejecting the bid of the Petitioner submitted that the reason disqualifying the Petitioner on the ground that he did not fulfil the prescribed eligibility condition is completely illegal and bad in law. It is submitted that the Petitioner has the experience of loading and unloading and in support of such submission, our attention is invited to the documents on record to demonstrate that the Petitioner has done the works in the past. It is submitted that the Petitioner satisfies the essential requirement of the tender conditions. It is the submission of Mr. Kulkarni that in fact it is the Respondent No.3 who is

selected, does not have the requisite experience of loading and unloading. Relying on Clause 16 of the tender document, Mr. Kulkarni submitted that the requirement was that the bidder should have experience of having 50 persons employed for loading-unloading of goods at different sites in preceding three years from single work order.

4. In the pre-bid meeting dated 24th June 2024 the Petitioner's objection to the aforesaid condition was rejected. Learned counsel relied upon the certificate dated 4th July 2024 of Education Officer, Zilla Parishad, Dhule to show that he has the necessary eligibility fulfilling the criteria. Then a certificate by Dhule District Hamal Kamgar Sangathana, a registered Labour Society about the supply of 50-100 Hamals to the Petitioner is relied upon. So far as the bid of Respondent No.3 is concerned, it is submitted that Respondent No.3 is disqualified as the work order dated 1st January 2019 from Maharashtra State Warehousing Corporation would reveal that Respondent No.3 was given the contract for supply of skilled and semi-skilled manpower i.e. Attendants/Data Entry Operators/Drivers/Specialised technical hands/Engineers

(Diploma) which does not fulfil the eligibility criteria. Moreover, the certificate dated 11th November 2022 in favour of Respondent No.3 issued by the Maharashtra Warehousing Corporation is about supply of Attendant cum operator/Data Entry Operators/Drivers/Specialised technical hands/Refrigeration technicians/Jr. Engineers/Quality Control Personnel, which according to Mr. Kulkarni do not fulfil the essential conditions of the tender.

5. Mr. Kulkarni relied upon the provisions of the Maharashtra Mathadi, Hamal and other Manual Workers (Regulations of Employment and Welfare) Act, 1969 which deals with provisions relating to employment in connection with loading and unloading of goods in vegetable markets, loading of foodgrains which according to learned counsel clearly supports the Petitioner stand that it fulfills the eligibility condition. Mr. Kulkarni submitted that the decision making process is flawed and that in the pre-bid meeting held on 24th June 2024, all the objections raised were discarded on the basis of communication from the State Government dated 1st July 2024, which was not available on the date of pre-bid

meeting. One of the objection of Mr. Kulkarni to the tender process is that the technical bids were opened on 2nd August 2024, whereas, the food samples of "Technically Qualified Bidders" passed the laboratory test on 2nd August 2024 itself which according to him raises a doubt about the manner in which the tender process proceeded.

6. Mr. Dhond, learned Senior Advocate for Respondent Nos.1 and 2-State Government submitted that it is because the Petitioner who did not fulfil the eligibility criteria that the Petitioner was disqualified. Mr. Soni, learned counsel for Respondent No.3 made his submissions in line with those of Mr. Dhond, learned Senior Advocate.

7. Heard learned counsel. We have perused the Petition, the relevant exhibits and the pleadings on record. The Petitioner has challenged the decision of Respondent Nos.1 and 2 in holding him to be technically ineligible. The Petitioner also challenged the decision of Respondent Nos.1 and 2 in holding Respondent No.3 as being technically qualified. The Petitioner relies on the certificates at pages 287

and 328 of the paper-book to demonstrate that the petitioner fulfills the eligibility condition. At this stage it will be relevant to note that condition No.16 of the tender has been upheld by the Aurangabad Bench of this Court in its decision dated 20th July 2024 in the case of *Moreshwar Mahila Prathamik Grahak Sahakari Sanstha Limited and another vs. The State of Maharashtra and others* in Writ Petition No.7104 of 2024.

Paragraphs 8 to 14, 21 are relevant which read thus :-

"8. We have considered the rival submissions of the parties. Undisputedly, the condition nos. 15 and 16 of the tender notice dated 18.06.2024 are founded on clauses no. 19 and 20 of the government resolution dated 12.06.2024. The impugned condition nos. 15 and 16 in verbatim are as follows:

"15) At least one work in the last three years up to the last date of submission of tender to the tenderer for the said tender, including experience of supplying food grains, grocery materials, vegetables and fruits and other non-vegetable items to at least 45 Government/Semi-Government Institutions /Government Hospitals/Residential Schools/Hostels in Maharashtra or at least 6600 Individuals should have experience in daily food supply and should have completed work of at least Rs.12 crores by the last date of submission of tenders through the same service.

16. The tenderer shall also provide the manpower (loading-unloading etc.) required for the supply of goods to the Government/Semi-Government Institutions in the State, accordingly, in a single work order completed in the last three years till the last date of submission of tenders in Government/Semi-Government Establishments in Maharashtra at 25 different places should have experience of providing minimum 50 manpower elsewhere."

9. The tender in question is floated for supply of food grains, vegetables, fruits etc. to the Government Medical Colleges and Hospitals attached to it. The duration of the contract is of three years. The tender conditions are based upon the government resolution dated 12.06.2024. The impugned conditions correspond to clauses no. 19 and 20 of the government resolution dated 12.06.2024. Though an affidavit in reply is not filed in the present writ petition by the respondents, the purpose for incorporating the conditions can be gathered from the reply dated 01.07.2024.

10. Considering the duration of the contract and the nature of work, it would be reasonable for the respondent-employer to expect more experienced and competent contractors to participate in the bids. The condition no. 15 and clause no. 19 has an option. This indicates that there is rationale. It is the wisdom and discretion of the employer to choose the conditions/clauses which are best suited for the work to be performed.

11. The impugned conditions are stringent but they cannot be branded per se arbitrary or illegal. Even if the submission of the learned senior counsel for the petitioners are accepted that few bidders are likely to be excluded because of this stringent conditions, that would not lead to violation of principles of 'level playing field'. We have not been shown violation of any statutory or constitutional provision.

12. Though it is submitted that the impugned conditions are tailor made and incorporated with an oblique motive, no material is placed on record to show as to how the petitioners have been targeted for their exclusion in the tender process. There is no material to show that the impugned conditions are designed to favour a particular bidder. For want of necessary particulars, we are not inclined to accept the submissions of the learned senior counsel for the petitioners.

13. It is informed by the learned Addl. Government Pleader that there are 10 bidders in the fray. It means there are bidders, who are complying with the conditions and interested in participating the tender process. Had the impugned conditions been arbitrary and absurd per se, the respondents would not have received response.

14. Though, previously such type of conditions were not incorporated, that would not preclude the respondents

from introducing the impugned conditions. The impugned conditions are fall out of a policy decision. The petitioners fail to point out any perversity, patent illegality and arbitrariness in the government resolution dated 12.06.2024.

21. The case in hand represents that respondent no. 1 issued the government resolution dated 12.06.2024 and impugned conditions are based on it. It is prerogative of the respondents to settle the terms of the tender based on policy. We, therefore, do not find any substance in the petition."

8. According to Respondent Nos.1 and 2, the Petitioner is not technically qualified. The tender condition No.16 provides that the tenderer shall also provide the manpower (loading and unloading) required for supply of goods to the Government/Semi-Government Institutions in the State, accordingly, in a single work order completed in the last three years till the last date of submission of tenders in Government/Semi-Government Establishments in Maharashtra at 25 different places, should have experience of providing minimum 50 manpower elsewhere. The certificate at page 287 relied upon by the Petitioner indicates that the Petitioner has successfully for three years supplied foodgrains to the schools. So far as the certificate at page 328 is concerned, the same indicates that the Dhule District Hamal Kamgar Sangathana has supplied 50-100 Hamals to the

Petitioners for enabling them to provide foodgrains to the various schools. Respondent Nos.1 and 2, in our opinion, are best suited to know their requirements and are at liberty to interpret the tender conditions to further the objective of the tender unless the same is arbitrary, irrational or malafide. The Technical Scrutiny Committee of the Respondents, on considering and analysing the petitioner's documents found the Petitioner to be *ex facie* ineligible. Thus, if Respondent Nos.1 and 2 are of the opinion on considering all the relevant factors that the petitioner has experience of supplying foodgrains and not that of supplying manpower while coming to the conclusion that the petitioner does not fulfil the essential eligibility criteria, is not a view that is palpably arbitrary or irrational. We therefore do not see any reason to interfere with the decision of Respondent Nos.1 and 2 in disqualifying the Petitioner in the bidding process.

9. The next ground of challenge is as regards the decision of Respondent Nos.1 and 2 holding the Respondent No.3 to be technically eligible. At this juncture it would be material to rely upon the decision dated 2nd September 2024

of this Court in *Just Universal Pvt. Ltd. vs. State of Maharashtra and others*¹. Paragraphs 31 to 35 is relevant which read thus :-

"31. The relevant clause PQ5 of RFP/Tender document is extracted hereunder:

#	Requirement	Basic Eligibility Criteria	Documents to be Submitted as per RFP
PQ5	Other Experience	The experience of Bidder shall loading, unloading, [or] handling of food grains, following food items etc. to be provided by bidder. Hence, bidder should have experience of Orders or Contract providing at least 200 labourers in 70 multiple locations in Government or LoI. and Semi-Government establishment within Maharashtra in single work order completed during last 3 years (upto the last date of submission of Tender). The value of such work shall not be less than Rs. 25 Crores.	1. Relevant Work Orders or Contract Agreements or Award of Contract Completion certificates should be submitted clearly stating the scope of work performed.

32. According to the petitioner, the experience certificates annexed to the petition at Exhibit C, D and E unambiguously fulfill all parameters of condition PQ5. However, according to the respondents, the petitioners in both the petitions failed to meet ingredients of condition No. PQ5. For the purpose of adjudicating the issue of eligibility of petitioners to fulfill requirement under condition PQ5, it is necessary to dissect condition PQ5 as under:

""loading", "unloading [OR] "handling" Food grains/food items, etc.

AND

(a) should have been Providing 300 labourers in number; [AND]

¹ 2024 SCC OnLine Bom 2848

(b) in 80 multiple locations; [AND]

(c) under a Single Work Order, which should be completed during last 3 years (upto the last date of submission of Tender) [AND]

(d) such experience shall be in Government or Semi Government Establishment [AND]

(e) the value of such completed work should not be less than Rs. 25 crores."

33. The dispute primarily hinges on the interpretation of the term 'providing labourers' as eligibility condition set out in the tender document. The term 'providing manpower/labourers' may contemplate a situation where the agency provides workers along with the execution of specific tasks or projects as per the scope of work defined in the tender. The workers remain under the control of the agency, and the agency is responsible for the work outcome. The service provided is generally considered a 'works contract' or 'contract for services', where the agency not only provides manpower but also assumes responsibility for the completion of tasks or projects. In other words if an agency provides manpower along with the responsibility to perform a particular Job or service, it may fall under the category of a contract for services. Providing Manpower/Labourers implies a more integrated role where the contractor not only supplies personnel but also manages and oversees their activities as part of a broader service delivery. Providing manpower/labourers can imply a range of responsibilities, including recruitment, management, and even ensuring that the manpower meets certain standards or qualifications required for the specific tasks outlined in the tender. It is imperative to observe that 'providing manpower/labourers' may carry different connotations depending on the context and objectives of the tender. In the wake of these aspects, the interpretation of 'providing manpower/labourers' may vary significantly based on the context of the tender. The tendering authority, familiar with the project's requirements, is in the best position to determine whether the term encompasses merely the supply of personnel or extends to a broader set of obligations. In conclusion, the term 'providing labourers' within tender conditions must be interpreted in its full context, considering the technical and commercial aspects of the project.

34. For the purpose of interpreting eligibility criteria PQ5 and considering involvement of public interest, it is necessary to understand the nature and scope of work which is the subject matter of tender process. Respondent No. 1 took a decision to distribute food kits-Anandacha Shidha consisting of four items vide Government Resolution dated 12th July 2024. It was decided to distribute the said food kits to 1,70,82,086 beneficiaries having ration card of NFSA (National Food Security Act) and APL

(Above Poverty Line) farmers scheme. It is stated that during the course of hearing that the number of eligible beneficiaries on verification have been reduced to around Rs. 1.56 Crore. Gauri-Ganpati festival is to be celebrated on 7th September 2024 and this supply is intended to be distributed well in advance within a short time. Respondent No. 1 oversees nearly 900 Taluka godowns spread over 357 Talukas in 42 food districts in Maharashtra and the MTRA (Mumbai Thane rationing area) region. The quantity of 68,328 Metric Ton food grains commodities comprising "Anandacha Shidha" has to first reach these Taluka godowns and from there, there will be further dispatch of food grains to 52500 fair price shops. Thereafter, the food grains packets will be supplied to the eligible beneficiaries. According to respondent No. 1, ordinarily to execute the work of subject matter of tender, a supplier procures items in bulk which are unloaded at their packaging unit(s). At these unit(s), the items sourced in bulk are sorted, cleaned, aggregated and packed as per the directions of the Government of Maharashtra in packets of 1 Kg. The packed food kits/goods are thereafter loaded on to trucks and sent to the Taluka godowns. There are around 900 Taluka godowns to which deliveries are to be made. Considering such scope of work and past experience of similar contract, supplier may need to carry on the packaging at multiple locations. Therefore, it was thought necessary that in order to assess the ability of the supplier and their past experience to provide 300 labourers at 70 locations need to be considered and was therefore made a criteria in RFP/Tender document. In the opinion of the Court, this condition is a reasonable condition, imposed to assess the minimum past experience of bidder which in the opinion of the tendering authority will enable him to make such supplies. The validity of PQ5 has already been upheld by this Court.

35. Having considered the eligibility criteria PQ5 in the context of purpose and scope of work of tender condition and having scrutinized Exhibits C, D and E, what we find is that the respondents are justified in contending that the experience of engaging manpower for cooking and supplying meal is not the same as 'providing labourers' as per tender condition PQ5."

10. The Technical Committee relied upon the documents which were produced by Respondent No.3 to hold that the Respondent No.3 is technically qualified since it has the requisite experience for supply of manpower. Respondent

Nos.1 and 2 are of the opinion that Respondent No.3 has relied upon the document issued by Maharashtra State Warehousing Corporation for the purpose of establishing its technical eligibility to show that it has the requisite experience for supply of manpower. The essence of Clause 16 was experience in manpower supply. Though we have adverted to the eligibility of Respondent No.3 since a serious objection was raised by the Petitioner, we must remind ourselves that the Supreme Court in *Raunaq International Ltd. vs. IVR Construction Ltd. and others*² in paragraph 27 has clarified that judicial relief sought at the instance of a party which does not fulfil the criteria itself is misplaced. This Court in *Reliance Infrastructure Ltd. vs. Maharashtra State Road Development Corporation Ltd.*³ in paragraph 15 has stated that a bidder who does not meet the eligibility criteria, cannot complain of award of a contract on the ground that its financial bid offers better terms. Financial bids can only be compared amongst eligible bidders. The financial bid of the Petitioner was never opened as he does not fulfil the eligibility criteria. Learned counsel for the Petitioner however insisted that the bid of the

² (1999) 1 SCC 492

³ 2020 SCC OnLine Bom 1679

Petitioner is the lowest which aspect should be given due weightage. In our opinion such a submission is misplaced. We therefore do not find any merit in this Writ Petition. The Writ Petition is dismissed with no order as to cost.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

11. At this stage learned counsel for the Petitioner requested for staying this order for a period of four weeks.

12. We are not inclined to accede to the said request. The request is rejected.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)