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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9540 OF 2026

M/s Balraje Construction
Through Sole Proprietor
Bappasaheb Nathaji Ghatul,
Age – 64 years, Occ – Business
R/o Saraswati Colony, Georai
Taluka – Georai, District - Beed

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Principal Secretary
Public Works Department,
Maharashtra State, Mantralya,
Mumbai – 32
2. The Chief Engineer,
Public Works Department,
Bandhkam Bhavan,
Chh. Sambhaji Nagar 431 005
3. The Superintending Engineer
Public Works Department,
Public Work Circle, Dharashiv (Osmanabad)
Having office at Office of
Superintending Engineer,
Public Works Circle,
Near Collector Office Campus
Dharashiv (Osmanabad) 413 501
4. The Executive Engineer
Public Works Division Office, Beed
Taluka and District – Beed 431 122

RESPONDENTS

.....
Mr. Amol K. Gawali, Advocate for the Petitioner
Mr. Neha B. Kamble, AGP for Respondent - State
.....

**[CORAM : NITIN B. SURYAWANSHI, &
ABASAHEB D. SHINDE, J. J.]**

RESERVED ON : 2nd SEPTEMBER, 2026
PRONOUNCED ON : 29th SEPTEMBER, 2026

JUDGMENT (PER NITIN B. SURYAWANSHI, J.):

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned Advocates for the parties.
2. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner prays for the following relief :

“A. The Hon’ble High Court may be pleased to quash and set aside the action of the respondent No.3 and 4 to technically disqualify the present petitioner as per its order / communication uploaded on 31/07/2026 on the official website of www.mahatenders.gov.in, wherein it has been held that, the present petitioner had been technically disqualified by the Tender Scrutiny Committee headed by the respondent No.3 and 4 from the tender process initiated by the respondent No.4 for work of construction of approached road for Gopatpimpalgaon Bridge on SH-222 KM-233/00 to 234/440, Tq. Gevrai, Dist – Beed (2 Call).”

3. The Petitioner is a joint venture working in the name and style as M/s Balraje Construction and claims to be a reputed contractor working with Public Works Department. Respondent No.4 – Executive Engineer, Public Work Division, Beed had floated a tender for construction of approach road for Gopatpimpalgaon Bridge on SH-222 KM 233/00 to 234/440,

Taluka – Georai, District – Beed. The tender cost was Rs.6,29,37,818/- and the work was to be executed within 12 calendar months.

It is the case of the Petitioner that, since sufficient number of contractors did not participate in the first call, therefore, fourth Respondent recalled the tender and by virtue of the same tender notice, initiated tender process by way of a second call.

4. The Petitioner, since was satisfying the eligibility criteria of technical qualification mentioned in the tender notice, participated in the tender process by filing the tender. The Petitioner contends that, since sufficient number of contractors did not participate in the first call, Respondent No.4 recalled the tender by virtue of the same tender notice and initiated the tender process by way of a second call.

5. The Petitioner was required to fill up two envelopes. In the first envelope, the Petitioner was expected to submit all the documents satisfying technical criteria and in the second envelope, financial offer was to be submitted. The Petitioner uploaded 373 pages, which according to the Petitioner were fulfilling all the eligibility criteria.

6. On scrutiny of the technical bids of the tenderers, by the

Scrutiny Committee headed by Respondent No.3, the Petitioner was informed following deficiencies by communication dated 24th July, 2025.

- “i) Motor Grader : One number own / hired **not attached***
- ii) Wet Mix Macadam : 790.00 Cum. **Not attached***
- iii) Dense Bituminous Macadam : 151.00 **Not attached***
- iv) Quality Surveyor Engineer : B. E. (Civil) + 5 years Experience or D.C.E. + 7 years experience : 1 No. **Not attached**”*

7. The Petitioner was called upon to remove the deficiencies within 3 days or else the Petitioner was to be disqualified. The Petitioner claims to have removed all the deficiencies by forwarding all the necessary documents. Thereafter the Scrutiny Committee uploaded checklist of all the four participant contractors, based on the scrutiny of the documents and their compliance of technical criteria. The Petitioner is held to be disqualified on the following ground :

*“iii. Dense Bituminous Macadam : 151.00 Cum.
'physically submitted but not acceptable certificate'”*

8. The Petitioner noticed his disqualification on 1st August, 2026. Since 2nd August, 2026 was Sunday, the Petitioner approached office of Respondent No.4 on 3rd August, 2026 and pointed out by letter dated 3rd August, 2026 that, the Petitioner

had submitted a certificate showing that he had executed quantity to the extent of 1250 cum. of Dense Bituminous Macadam (BDM) as against the technical requirement of having executed 151 cum DBM, as per the tender condition. According to the Petitioner it has submitted the certificate issued by Assistant Engineer, Grade-I, PWD and it was sufficient compliance. The Petitioner also contended that Respondent Nos.2 and 3 had acted in arbitrary manner and the two contractors, who were held to be technically qualified, were in fact disqualified, as Bitumen plants which are shown to have been available with them, were at a distance of more than 60 kilometers from the work site. In fact, their plants were at a distance of more than 70 kilometers. The Respondents failed to consider clause 34 (A) to (a) and page 31 of the tender document, while wrongly qualifying the other contractors and disqualifying the Petitioner.

9. The Petitioner further claims that the two tenderers, whose bitumen plants were at a distance of more than 60 km from the work site, are wrongly held to be qualified in the technical bid.

10. The Petitioner claims that the mail seeking compliance of the documents and removal of deficiencies was received by the Petitioner on Friday and compliance was sought within 3 days.

Since the Executive Engineer was not available, he has submitted certificate of the Assistant Engineer, Grade-I, PWD, under whose supervision the work has to be carried out and that is sufficient compliance. Being aggrieved by its disqualification in the technical bid, the Petitioner has approached this Court.

11. The Respondents have opposed the Petition by filing affidavit in reply of Respondent No.4 – Executive Engineer, contending that after issuance of the tender and on scrutiny of the documents submitted online by all the four tenderers, it was revealed that, some documents were not uploaded online by the tenderers, which were supposed to be submitted by them at the time of submission of the tender, on 12th February, 2026. Therefore, the documents shortfall letters were forwarded to all the tenderers by official email, from Respondent No.4 on 13th April, 2026 and all the tenderers were asked to submit the shortfall documents within 3 days from that date. Two tenderers, excluding the Petitioner and M/s Sitai Constructions, submitted their shortfall documents within 3 days. Hence, the scrutiny was finalized and scrutiny sheets, qualifying two agencies, namely, M/s Rajkamal Construction Company and M/s Mhaske Infrastructure were uploaded on 13th May, 2026. Five days' time till 18th May, 2026 was granted for submission of objections.

12. The Petitioner took objection to the final tender scrutiny, on 15th May, 2026 (by offline letter) stating that the Petitioner has not received the email dated 13th April, 2026 from Respondent No.4. The Respondents, however, have annexed the email sent report to their affidavit in reply. Yet, by accepting the objection of the Petitioner, the Scrutiny Committee headed by Respondent No.3 – Superintending Engineer, by uploading the scrutiny sheet, unanimously decided on 4th June, 2026 to revoke the tender and to give one more chance to the Petitioner. Accordingly, the tender was revoked and revised letters for shortfall of documents were issued to all the tenderers by email, on 24th July, 2026 and they were called upon to submit reply by email / physically to the office of Respondent No.4.

13. This time, the Petitioner submitted shortfall documents physically, in the office. M/s Rajkamal Construction Company and M/s Mhaske Infrastructure submitted the valid documents, however, the Petitioner submitted the quantity certificate issued by the Assistant Engineer Grade-I, which was not acceptable, as per clause XV (c) and (f) of the tender document, in which it is clearly mentioned that this certificate must be given by the Officer not below the rank of Executive Engineer / Divisional Accounts Officer. The certificate submitted by the Petitioner

bears the date of issue as 27th July, 2026. The same was not acceptable, as the date of submission of the bid was 12th February, 2026 and the Petitioner was expected to submit the quantity certificate issued by the Executive Engineer, before the last date of submission of the tender i.e. 12th February, 2026. Therefore, the Petitioner was held disqualified in the technical bid, in the meeting held by the Scrutiny Committee on 31st July, 2026. The Scrutiny Sheet was uploaded on the website on 31st July, 2026 and objections were invited.

14. The Respondents have denied that the hot mix plants of the two tenderers who have qualified the technical bid, are beyond the distance of 60 kilometers. The certificate showing distance of 57.1 km for M/s Rajkamal Construction Company and 59.6 km of M/s Mhaske Infrastructure are also placed on record.

15. It is further stated that in view of the interim orders passed by this Court, the tender Scrutiny Committee has decided not to open the envelope – 2 of this tender, and hence the final bid is not yet opened. The Respondents, therefore, contend that there is no substance in the petition. In support of her submissions, learned AGP has placed reliance on the decision of the Apex Court in *“Tata Motors Limited V/s The Brihan Mumbai Electric Supply and Transport Undertake (BEST) and Others” 2023 LiveLaw (SC) 467.*

16. We have heard learned Advocate for the Petitioner and the learned AGP at length. We have perused the grounds raised in the Writ Petition, the Annexures thereto and the affidavit in reply filed by the Respondents, rejoinder filed by the Petitioner so also the citation relied on by the Respondents.

17. In the tender document, qualification criteria is mentioned in clause xv. Sub clauses "c" and "f" of said clause are as follows:

"c Satisfactorily executed in any one year of last Five years i.e. 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23 following minimum quantities of work. (Information to be given only in proforma of Statement No.VI on page No.33).

i.	G. S. B. (Granular Sub Base) / Water Bound Macadam Gr. I & II	: 810.00 Cum
ii.	Wet Mix Macadam	: 790.00 Cum
iii.	Dense Bituminous Macadam	: 151.00 Cum
iv.	Bituminous Concrete	: 91.00 Sqm
v.	C. C. M-20 & Above	: 55.00 Cum
vi.	Earth Work	: 7405.00 Cum."

"f. The necessary certificates as mentioned in qualification criteria from Sr. No. (a) to (c) are required to be obtained from the officer not below the rank of Executive Engineer / Divisional Accounts Officer. A copy of these certificates duly attested by a gazetted office along with availability of equipments for this work mentioned in Sr. No. (d) shall be put in envelope No.1 only. In absence of these certificates envelope No.2 (Financial Bid) shall not be opened."

18. The e-tender notice gives the time schedule as follows;

SN	Particulars	Date and time
01	Tender available for download	Dt.05.02.2026 to 12.02.2026 up to 18.00 Hrs.
02	Pre Bid Conference Date and Time for Work No.2, 3	Dt. 09.02.2026 @ 15.00 Hrs
03	Place fo Pre Bid Conference	At Office of the Chief Engineer, Public Works Region, Chh. Sambhajinagar
04	Bid Opening on or after	Dt. 13.02.2026 @ 18.05 Hrs.

19. Admittedly, after the first time scrutiny of the tender, all the tenderers were issued documents shortfall letters by Respondent No.4, on 13th April, 2026, asking them to submit shortfall documents within 3 days from 13th April, 2026. Two tenderers, i.e. namely M/s Rajkamal Construction Company and M/s Mhaske Infrastructure have submitted their shortfall documents within three days. Hence, the scrutiny was finalized and scrutiny sheets, qualifying those two agencies i.e. M/s Rajkamal Construction Company and M/s Mhaske Infrastructure in technical bid, were uploaded on 13th May, 2025. At that time, five days' time till 18th May, 2026 was granted for submission of objections.

20. It is a matter of record that, the Petitioner took objection to the final tender scrutiny, on 15th May, 2026, by offline letter contending that it has not received email dated 13th April, 2026 from Respondent No.4. Though Respondent No.4 has annexed

email forwarded to the Petitioner along with the affidavit in reply, yet, by accepting the objection of the Petitioner, the scrutiny committee headed by Respondent No.3 – Superintending Engineer, on 4th June, 2026, unanimously decided to revoke the tender and has decided to again scrutinize the tenders of all the tenderers.

21. On evaluation of the technical bid and the documents submitted by all the tenderers, on 24th July, 2026, all the tenderers were issued revised letters for shortfall documents by email, calling upon them to submit reply by email / physically, to the office of Respondent No.4. This time, the Petitioner submitted shortfall documents physically. The Petitioner submitted quantity certificate issued by Assistant Engineer, Grade -I and M/s. Rajkamal Construction Company and M/s Mhaske Infrastructure submitted valid documents.

22. Indisputably, qualification criteria are mentioned in clauses a to c of clause xv of the tender document. These are the essential criteria. Sub Clause 'f' of Clause xv of the tender document stipulates that the necessary certificate is required to be obtained from the officer not below the rank of Executive Engineer / Divisional Accounts Officer and in absence of certificates mentioned in clause "f", envelope 2 (financial bid)

shall not be opened. Thus, in spite of giving several opportunities, the Petitioner has failed to submit quantity certificate issued by officer not below the rank of Executive Engineer / Divisional Accounts Officer. By submitting certificate issued by the Assistant Engineer, the Petitioner has failed to fulfill the essential qualification criteria. Therefore, no fault can be found with the disqualification of the Petitioner in the technical bid.

23. Even if, for the sake of argument, the Petitioner's contention is accepted that the Petitioner has submitted the certificate issued by the Executive Engineer, subsequently, on 27.07.2026, it is mentioned in the said certificate that the Petitioner is given the work of improvement of the Georai – Kolher – Revaki road Egima 117, KM. 0/200 to 3/000, on 15th July, 2024 and till 27th July, 2026 the Petitioner has completed 1250 cubic meter work. This certificate does not meet the qualification criteria, as the Petitioner was expected to submit the certificate of completion of the said work prior to the last date of filing of the tender form i.e. 12.02.2026.

Along with the rejoinder, the Petitioner has annexed certificate dated 14th August, 2026 issued by the Executive Engineer, certifying that the Petitioner has completed 2287.84

Cubic Meter DBM, in the year 2023-24 and 2024-25. However, since this certificate is issued after the appointed date, the same cannot be accepted. The Petitioner ought to have submitted this certificate within stipulated time.

24. There is no merit in the contention of the Petitioner that the plants of the tenderers who are held qualified in technical bid, are beyond the distance of 60 km. Respondents No.1 to 4, in their affidavit in reply, have annexed the distance certificates of these two tenderers, which show that the plant of M/s Rajkamal Construction Company is within 57.1 km via Beed – Pimpalner – Majalgaon Road and plant of M/s Mhaske Infrastructure is within the distance of 59.6 km via Beed – Pimpalner – Majalgaon road.

25. Record indicates that the Petitioner was given fair opportunity to submit shortfall documents. The Petitioner failed to submit the certificate contemplated in qualification criteria clause "C", within the extended time. Therefore, the Petitioner is rightly held disqualified by the Respondents in the technical bid.

26. In "*Tata Motors V/s Best*" (supra), the Apex Court has held that there shall not be judicial review in commercial matters unless case of arbitrariness, *mala fides*, bias or irrationality is made out. The relevant observations of the Apex Court are as

follows :

“48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See: Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489)

52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a

three-Judge Bench decision of this Court in Association of Registration Plates v. Union of India and Others, reported in (2005) 1 SCC 679.

53. The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd., reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

54. As observed by this Court in Jagdish Mandal v. State of Orissa and Others, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”

27. Applying aforesaid ratio to the facts of the present case, we are of the considered view that, the Petitioner has failed to make out a case of arbitrariness, *mala fides*, bias or irrationality.

The record indicates that, the entire tender process is held in transparent manner and since the Petitioner failed to meet the qualification criteria, it is rightly disqualified by the Respondents in the technical bid. We do not find any merit in the challenge raised by the Petitioner in the present petition. The Writ Petition is, therefore, dismissed. The Interim relief stands vacated. Rule stands discharged.

[ABASAHEB D. SHINDE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE