



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10255 OF 2024

Vistacore Infraprojects Pvt. Ltd,
A Company incorporated under
The Indian Companies Act, 2013,
Through Its Authorised Representative
Hemchandra Arun Patil
Having office address at Flat No.1,
Highgate, Plot No.21,
Nilanjali, Housing Society,
Kalyani Nagar, Pune 411006.

Petitioner...

Versus

1. Chhatrapati Sambhajnagar
Municipal Corporation Through
Its Deputy Commissioner
Solid Waste Management Department,
Having address at Chhatrapati Sambhajnagar
Municipal Corporation – 431 001.
2. The State of Maharashtra
Through its Secretary,
Department of Urban Development
3. M/s. Royal Westn Projects LLP JV,
having its office at Vedant Residency,
Opp Serum Institute of India,
Gate No.5, Haweli (Maha),
Pune – 411 028.
4. Latur City, Municipal Corporation, Latur
Through its Municipal Commissioner,
Having its address at Latur MG Road,
Main Road, Latur, Maharashtra – 413512.

5. Malegaon Municipal Corporation
Through its Municipal Commissioner,
Having address at GGWJ+G7J, Gulshanabad
Malegaon, Maharashtra – 423203.
6. GNI Infra-CD Transport (JV)
Through its authorized representative
Ravindersingh Bindra having its office at
Gut No.107, GN House, Next to
Renukamata Mandir Kaman,
Beed Bypass Road,
Chh, Sambhajinagar-431 007.
Email- gniinfra.pl@gmail.com.

Respondents...

** Mr. P.R. Katneshwarkar, Senior Advocate alongwith Mr. Anuj Fulfagar i/by Mr. Amit Yadkikar alongwith Mr.Akshay Kulkarni, Mr. Shritej Surve, Mr. Akshay Kamble, Advocates for the Petitioner.*

** Mr. R.S. Wani, AGP for Respondent No.2/State.*

** Mr. S.S. Tope, Advocate for Respondent No.1.*

** Mr. Devdatta Palodkar alongwith Mr. Shubham Khoche, Advocates for Respondent No.6.*

WITH

WRIT PETITION NO. 10915 OF 2024

Royal Westin Projects LLP
A Company incorporated under
The Indian Companies Act, 2013,
Through Its registered office at
Survey No.169, Satyapuram Society,
Lane No.10, C-163,
Saswad Road, Phursungi, Pune – 412308.

Petitioner...

Versus

1. The State of Maharashtra
Through Ministry of Urban Development,
Having its address at
2. Chatrapati Sambhaji Nagar
Municipal Corporation Through
Its Commissioner, Having office at
Municipal Corporation Building,
Main Building, Town Hall,
Behind Post Office,
Chatrapati Sambhaji Nagar – 431 001.
3. GNI Infrastructures Limited
having office at Gut No.107, G.N. House,
Next to Renukamata Mandir Kaman,
Beed Bypass Road,
Chatrapati Sambhaji Nagar - 431 007.
4. Surat Municipal Corporation
Through its Chief Officer,
Having office at Mahanagar Seva Sadan
Muglisara, Surat – 395 003.

Respondents...

- * **Mr. Onkar Warange**, Advocate for the Petitioner.
- * **Mr. R.S. Wani**, AGP for Respondent No.1/State.
- * **Mr. S.S. Tope**, Advocate for Respondent No.2.
- * **Mr. Devdatta Palodkar**, Advocate for Respondent No.3.

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ..**

RESERVED ON : 21 OCTOBER 2024

PRONOUNCED ON : 14 NOVEMBER 2024

J U D G M E N T (Per Shailesh P. Brahme, J.) :

. Rule. Rule is made returnable forthwith. With the consent of the parties, heard these petitions together finally.

2. In both the petitions, technical evaluation of the bids on 10.09.2024, selection of the respondent no.6 and letter of intent issued in its favour on 14.09.2024, are under challenge. For the sake of convenience, we propose to refer to the papers of Writ Petition No.10255/2024.

3. These petitions pertain to the third attempt of tender process namely Disposal of Legacy Waste by Bio-remediation and by Bio-mining undertaken by the respondent no.1/Municipal Corporation. In all, seven bidders participated in the process including respondent no.3 and respondent no.6. Respondent no.3 and 6 qualified the technical bid, whereas the petitioner failed in it. Respondent no.6 is declared to be lowest one (L-1) bidder and respondent no.3 is lowest two (L-2) in the financial bids. The letter of intent was issued to the respondent no.6. Later on work order was issued to it on 14.06.2024.

4. The technical evaluation of the bids was conducted on 10.09.2024. The petitioner's technical bid was rejected. It immediately approached High Court by filing Writ Petition No.10255/2024, claiming quashment of technical evaluation and ancillary prayers. Due to supervening events, petition was amended with addition of prayers for putting up challenge to

letter of acceptance dated 14.09.2024 issued to respondent no.6 with further ancillary prayers. In another petition, technical evaluation and the work order are challenged.

5. Respondent nos.1, 3 and 6 contested the petitions by filing affidavits-in-reply. The litigating sides submitted on record written submissions as well as number of judgments to support their contentions.

6. Learned Senior Counsel Mr. P.R. Katneshwarkar appearing for the petitioner made following submissions :

(i) The technical evaluation and the selection of respondent no.6 is arbitrary and against the procedure prescribed in Request for Proposal (RFP).

(ii) There is violation of procedural norms laid down in Clause No.11.3 and 31. Technical and financial bids were opened on the same day.

(iii) The petitioner was having requisite qualification especially experience in bio-mining and bio-remediation, but still its bid was rejected highhandedly.

(iv) Respondent no.6 was not having essential qualification and it misled the tendering authority by suppressing material facts while disclosing its bid capacity.

(v) The tendering authority was biased and favoured respondent no.6. The rate quoted by respondent no.6 was Rs.67.10 Crores including GST and other taxes but while awarding work, value was shown to be Rs.79.05 Crores.

(vi) The entire tender process stands vitiated and causes loss to the public exchequer.

(vii) Petitioner relies on the following judgments :

(a) Banshidhar Constructions Pvt. Ltd. Vs. Bharat Coking Coal Limited and Others, Special Leave Petition (Civil) No.17383/2024.

(b) Union of India and Others Vs. Dinesh Engineering Corporation and Another, (2001) 8 SCC 491.

7. Learned Counsel Mr. Sambhaji Tope appearing for respondent/Municipal Corporation vehemently opposed the submission of the petitioner by referring to affidavit-in-reply. It was submitted that the terms and conditions were approved by the Central Government which were strictly followed by the Corporation. He would submit that there is no room for any favoritism or bias. Due procedure was followed by the Corporation in selecting respondent no.6. It is further submitted that there is automatic calculation of unit rates and quantities as per Clause 33.1 of RFP. Attention is invited to Clause 36 also. It is strongly refuted that respondent no.6 was not having essential qualification. A reference is made to Clause 3 of RFP and its Clause 2.6. Learned Counsel would submit that the shortfalls were communicated on 11.06.2024 and there was response from petitioner on 18.06.2024. Petitioner failed to submit the documents as contemplated by 11.3 of RFP.

8. Learned Counsel for the Corporation further submits that hearing was not contemplated. Already work order has been issued to respondent no.6 on 23.09.2024 and it started the work which cannot be halted. The tender process has been undertaken

in a transparent manner and no interference is called for. The following judgments are relied upon by the Corporation :

- i. Balaji Ventures Pvt. Ltd. Vs. Maharashtra State Power Generation Company Ltd. & Anr., 2022 LiveLaw (SC) 295.
- ii. Bakshi Security and Personel Services Private Limited Vs. Devkishan Computed Private Limited and Others.
- iii. Montecarlo Limited Vs. National Thermal Power Corporation Limited, 2016 AIR(SC) 4946.
- iv. Michigan Rubber (India) Ltd. Vs. State of Karnataka & Ors., 2012 AIR(SC) 2915.
- v. Tata Cellular Vs. Union of India, 1996 AIR(SC) 11.
- vi. JSW Infrastructure Limited and Another Vs. Kakinada Seaports Limited and Others, 2017 AIR(SC) 1175.
- vii. Meerut Development Authority & Anr. Vs. Association of Management Studies & Anr., 2009 AIR(SC) 2894.
- viii. Gautam Mangilal Katariya Vs. the State of Maharashtra and Another, Writ Petition No.12450/2017.
- ix. Amjad s/o. Mastan Pathan and Another Vs. State of Maharashtra and Others, 2024(1) AIR Bom R 62.
- x. Watergrace Products Vs. State of Maharashtra and Others, Writ Petition No.7446/2024.
- xi. Tata Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST) and Others, 2023 AIR(SC) 2717.
- xii. N.G. Projects Limited Vs. Vinod Kumar Jain and Others, 2022 AIR(SCW) 1531.

9. Respondent no.3 which qualified technical bid has filed Writ

Petition No.10915/2024 as well as contested Writ Petition No.10255/2024. Its case is that petitioner in the first petition did not have essential qualification. It was rightly disqualified. It is submitted that the decision making process of the tendering authority was arbitrary and discriminatory. Respondent no.6 also did not qualify the technical bid. No proper procedure was followed in selecting respondent no.6. The work order issued in favour of respondent no.6 is illegal and liable to be quashed.

10. The petition filed by respondent no.3 is contested by respondent no.1/Corporation. The Corporation reiterated its defense. Additionally it is submitted that respondent no.6 was found to be lowest bidder and was selected. In the affidavit-in-reply, various judgments are quoted in support of its defense.

11. Respondent no.6 contested both the petitions by filing separate reply. Additionally written submissions alongwith judgments are submitted by learned Counsel, Mr. Palodkar. He would submit that respondent no.6 was not a party to the Writ Petition No. 2921/2024. No allegations were made against respondent no.6 initially. It is contended that even the work order issued in its favour has not been challenged. Learned Counsel submits that respondent no.6 opted for qualification of TQ-3 of Clause 2.3 of Section III of RFP. It was permissible for a tenderer to follow only one criteria. Therefore the Corporation is justified in selecting his client. It is submitted that the petitioner has been rightly disqualified in the technical bid evaluation. He would further submit that the petitioner did not challenge

technical qualification of respondent no.6. It is submitted that bid capacity certificate was not required to be signed or approved by a Chartered Accountant. It is further submitted that the rate has been quoted by respondent no.6 excluding GST as per norms of RFP.

12. In answer to Writ Petition No.10915/2024, it is submitted by respondent no.6 that the Writ Petition was filed on 26.09.2024, challenging technical qualification of respondent no.6 when by that time letter of acceptance and work order were issued. The petitioner in that petition is estopped from challenging the qualification of respondent no.6 having participated in the process without any objection. It is submitted that respondent no.6 was qualified as per Condition No.TQ-3 and having all the requisite and qualifying documents. Lastly, it is submitted that the work has commenced and no interference is called for in larger public interest.

13. Learned Counsel Mr. Palodkar for respondent no.6 relies on the judgments of Supreme Court in the matters of **Raunaq International Ltd. Vs. I.V.R. Construction Ltd. And Others**, (1999) 1 SCC 492 and **Silppi Constructions Contractors Vs. Union of India and Another**, (2020) 16 SCC 489.

14. Having heard rival submissions of the parties, we find it necessary to examine as to whether the petitioner was qualifying the technical bid as a first fact in issue. The technical bids were opened on 19.04.2024. By letter dated 11.06.2024, respondent/

Corporation called upon the petitioner to remove the defects by apprising it the shortfalls. The communication dated 11.06.2024 has not been disputed by the petitioner. The petitioner failed to satisfy the tendering authority. In technical evaluation conducted on 10.09.2024, it was disqualified.

15. The petitioner was a member of Joint Venture while executing earlier work which was submitted as experience for the present tender process. The petitioner opted for TQ-1 as the minimum qualification requirement prescribed by Clause 2.3 of Section III of RFP. It had submitted experience of its earlier work executed through its Joint Venture. It was bound to submit the necessary documents of Joint Venture. There is no rebuttal to the contention of respondent no.1/Corporation that the petitioner was apprised of following shortfalls in its bid :

- 01. Experience in service of a similar nature and size for each of the seven years.
- 02. Consortium/JV registered agreement should be produced at Chatrapati Sambhajanagar.
- 03. 11.Process of Bid Submission-
11.3 (ii) original affidavit regarding correctness of information furnished with bid document.

16. The petitioner was given opportunity vide letter dated 11.06.2024 to submit above documents. No attempt was made by it to furnish the documents and that is the cause for incurring the disqualification. In the petition and during the course of arguments, no endeavour has been made to overcome the shortfalls or to justify its qualification in technical bid. We are of

the considered view that petitioner was non-responsive to essential technical conditions laid down by Clause 10.5, 11.3 and 2.2 of Section III of RFP. We do not find any illegality or perversity in disqualifying it in the technical bid evaluation.

17. The petitioner was given sufficient opportunity to remove the shortfalls. The technical evaluation is an administrative order. It is not imperative for the tendering authority to extend the opportunity of hearing or to assign reasons. The tendering authority is not a quasi judicial authority. Respondent no.6 rightly relied on law laid down by the Supreme Court in the matter of Silppi Constructions Contractors (supra). Following is the relevant extract of the judgment :

“25. That brings us to the most contentious issue as to whether the learned single judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a state within the meaning of [Article 12](#) of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. The Respondent nos. 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done.”

18. Respondent no.6 had submitted the bid by opting the minimum qualification requirement as per TQ-3 of Clause 2.3 of Section III of RFP. Though the contract pertains to Disposal of Legacy Waste by Bio-remediation and by Bio-mining, still it was permissible for a bidder to participate in the process if it was having experience in mining, excavation and material handling of coal or road construction etc. This is specifically provided by TQ-

3 of Clause 2.3. It was open for a bidder to choose either one out of TQ-1, TQ-2 and TQ-3. Respondent no.6 chose TQ-3 which is in-consonance with RFP. Therefore the grievance made by the petitioner that respondent no.6 had no experience in the Disposal of Legacy Waste by Bio-remediation and by Bio-mining, is totally misplaced. The tendering authority has rightly qualified respondent no.6 in the technical bid. The bid capacity certificate submitted by respondent no.6 is also in-consonance with Clause 15.4.

19. The petitioner has not qualified technical bid and it failed to demonstrate that its disqualification was either perverse or arbitrary or its decision making process was defective. In this back drop, it is not permissible for it to question the qualification of respondent no.3 or respondent no.6. We propose to rely on our judgment rendered in Writ Petition No.8525/2024 in the matter of **M/s. Surendra Infrastructure (P) Ltd. Vs. State of Maharashtra and Others**. Relevant paragraph is as follows :

28. Before we proceed to examine the other relief being claimed by the petitioner questioning eligibility and qualification of respondent no. 5, we need to emphasize that once having found that there was no error or illegality in disqualifying the petitioner, it would be a matter wherein the situation would be like a bidder, who has been disqualified is questioning the qualification of the other bidders, who could get through the technical evaluation. It is in this context, following observations in paragraph no. 27 of the decision in the matter of ***Raunaq International Ltd. vs. I.V.R. Construction Ltd. and others; (1999) 1 SCC 492***, particularly the portion emphasized by the Supreme Court in the matter of **Tata Motors (supra)** is important. Para No. 27, with the emphasis supplied in **Tata Motors (supra)** reads as under:

"27. In the present case, however, the relaxation was permissible under the terms of the tender. The relaxation which the Board has granted to M/s. Raunaq International Ltd. is on valid

*principles looking to the expertise of the tenderer and his past experience although it does not exactly tally with the prescribed criteria. **What is more relevant, M/s I.V.R. Construction Ltd. who have challenged this award of tender themselves do not fulfil the requisite criteria. They do not possess the prescribed experience qualification. Therefore, any judicial relief at the instance of a party which does not fulfil the requisite criteria seems to be misplaced.*** Even if the criteria can be relaxed both for M/s Raunaq International Ltd. and M/s I.V.R. Construction Ltd., it is clear that the offer of M/s Raunaq International Ltd. is lower and it is on this ground that the Board has accepted the offer of M/s Raunaq International Ltd. We fail to see how the award of tender can be stayed at the instance of a party which does not fulfil the requisite criteria itself and whose offer is higher than the offer which has been accepted. It is also obvious that by stopping the performance of the contract so awarded, there is a major detriment to the public because the construction of two thermal power units, each of 210 MW, is held up on account of this dispute. Shortages of power have become notorious. They also seriously affect industrial development and the resulting job opportunities for a large number of people. In the present case, there is no overwhelming public interest in stopping the project. There is no allegation whatsoever of any mala fides or collateral reasons for granting the contract to M/s. Raunaq International Ltd. (Emphasis supplied)”

These observations more particularly emphasized in **Tata Motors Limited (supra)**, would demonstrate that since the petitioner’s disqualification is being upheld by us, it would not be appropriate to undertake any scrutiny regarding challenge to the eligibility and qualification of respondent no. 5 at its instance. Therefore, even though the petition has been filed challenging petitioner’s disqualification and simultaneously disputing qualification of respondent no. 5, the judicial enquiry into the latter would be contingent upon grant of relief to the petitioner in the former. Therefore, it would not be necessary for us to undertake any scrutiny on merits in respect of the part of the petition putting up a challenge to the disqualification of respondent no. 5.

20. Respondent no.3 filed Writ Petition No.10915/2024 on 26.09.2024. The technical evaluation was disclosed on 10.09.2024. The financial bids were open on the same day. The letter of acceptance was issued on 14.09.2024. The work order was issued to respondent no.6 on 23.09.2024. Respondent no.2

did not object the technical evaluation timely. It was taking chances.

21. In the financial bid, respondent no.6 was found to be the lowest bidder for having quoted amount of Rs.67.10 Crores, whereas respondent no.3 quoted amount of Rs. 87.50 Crores. The tender was based on quality and cost based selection method. We do not find any arbitrariness or discrimination in selecting respondent no.6 in the financial bid. We have already recorded that respondent no.6 was having the technical qualification. Therefore the challenge of respondent no. 3 in Writ Petition No.10915/2024 also fails.

22. The financial bid of respondent no.6 is regulated by following provision:

C. FINANCIAL PART

1. Evaluation (ITB 32.1(d))

In addition to the criteria listed in ITB 32.1 (a) to (c) the following criteria shall apply :

- a) The Bidder shall quote the quoted price must include the price for remediating legacy waste on per ton basis ("Bid Price") in the Letter of Bid-Financial Part but excluding GST, which shall be quoted separately in the Price Bid format.
- b) Price Bids shall be evaluated taking into account the Price quoted for all services including applicable GST (CGST & SGST/UTGST or IGST).

. The format of the financial bid is prescribed by RFP. In the foot note, it has been clarified that the rates were exclusive of GST and any other applicable taxes. Accordingly, respondent no.6 quoted the rates which were accepted. We do not find any infirmity in the rate quoted and the amount shown in the work order.

23. Learned Counsel Mr. Sambhaji S. Tope has cited various judgments which were also reflected in the affidavit-in-reply of the Corporation. We do not propose to burden our judgment by referring to all the judgments cited by the learned Counsel. We have gone through the ratio. Those are applicable. Similarly the judgments cited by Mr. Palodkar in the matter of Raunaq International Ltd. (supra), lays down parameters while exercising our powers in the tender matters. We have gone through the scope prescribed in paragraph nos.11, 14 and 15 of the judgment which we propose to follow.

24. Learned Senior Counsel for the petitioner referred to judgment of Supreme Court in the matter of Banshidhar Constructions Pvt. Ltd. (supra). Our attention is adverted to its paragraph nos. 20, 21 and 29. The technical bid of the appellant before the Supreme Court was rejected on extraneous ground and technical bid of successful bidder (respondent no.8) was accepted in utter non-compliance of mandatory requirement of Clause No.10 and thereafter the successful bidder was permitted to furnish the shortfall of documents after opening technical bid. The facts are distinguishable. The legal proposition laid down in paragraph no.21 cannot be disputed. On facts, we are of the considered view that the judgment is not applicable.

25. Reliance is placed on judgment of Union of India and Others (supra). We have gone through paragraph nos. 12, 15 and 16 of the judgment. We do not notice any arbitrary use of discretion by the respondent/Corporation in accepting offer of respondent

no.6. The petitioner failed to prove that its disqualification in technical bid evaluation, was arbitrary or in flagrant abuse of statutory or constitutional provision. This judgment is also not applicable.

26. We are guided by the principles laid down by the Supreme Court in the matter of Jagdish Mandal. The scope for the judicial review has been laid down in paragraph no.22 of the judgment. We are also aware of the law laid down by the Supreme Court in the matter of N.G. Projects Limited (supra), especially pertaining to the infrastructural project. We prefer to reiterate paragraph no.23.

“23. In view of the above judgments of this Court, the 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. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

27. Learned Counsel Mr. Sambhaji S. Tope has rightly referred to judgment of the Supreme Court in the matter of Tata Motors Limited (supra). We propose to follow what is laid down in

paragraph no.48 which is as under :

“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).”

28. The upshot of the above analysis, both the petitions are devoid of substance. Both are dismissed. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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