



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15731 OF 2023

Dream Construction
Through its Power of Attorney
Shubham s/o Madhav Thakre,
Age: 26 years, Occu.: Contractor,
Having office at Survey No.598,
Raghuvanshi Nagar, Near Khodi
Mata Mandir, Nandurbar – 425412.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Public Works Department,
2nd Floor, Annex Building, Mantralaya,
Madam Cama Road, Nariman Point,
Mumbai, Maharashtra – 40003
2. The Executive Engineer,
Public Works Division,
Nandurbar.
3. Balaji Construction
Through its Proprietor
Vishwanath Mewalal Jaiswal
Age: Major, Occu.: Business,
R/o. At Near Maruti Vyayam Shala
Pardeshipura, Nandurbar 425412
4. M/s Kamlesh Patil
Through its Proprietor
Kamlesh Manohar Patil
Age: Major, Occu.: Business,
R/o. At 73, Amar Colony,
Near Kilbil Hospital,
Nandurbar 425412
5. Rohit Pravin Chaudhari
Through its Proprietor
Rohit Pravin Chaudhari
Age: Major, Occu.: Business,

R/o. At Sahara Town,
Nandurbar 425412.

6. M/s. V. V. Patil Constructions
Through its Proprietor
Tushar Vasant Patil
Age: Major, Occu.: Business,
R/o. At 21, Mangalya, Radhakrishna
Nagar, Near Navjeevan Hospital,
Nandurbar 425412.
7. Parth Infrastructure
Through its Proprietor
Pankaj Gautamchand Jain
Age: Major, Occu.: Business,
R/o. At 45 ML Town
Ahinsa Chowk Nalva Road,
Nandurbar 425412.
8. Giriji Construction
Through its Proprietor
Avinash Shankarrao More
Age: Major, Occu.: Business,
R/o. At 56, Girija Vardhaman
Nagar, Nandurbar 425412.
9. Laxman Patil
Through its Proprietor
Laxman Ramesh Patil
Age: Major, Occu.: Business,
R/o. At 62, Shriji Park,
Nandurbar 425412.
10. Rohan Trambakrao Khalkar
Through its Proprietor
Rohan Trambakrao Khalkar
Age: Major, Occu.: Business,
R/o. At 20, Surbhi Siddeshwar
Soc. Shivaji Nagar, Sinnar,
Maharashtra 422103.
11. Suryakant Bhagwan Jadhav
Through its Proprietor
Suryakant Bhagwan Jadhav
Age: Major, Occu.: Business,

R/o. At A/p. Londhare,
Tq. Shahada, Dist. Nandurbar

12. Swami Buildcon, Nandurbar
Age: Major, Occu.: Business,
R/o. At Mataji Mandir Taloba
Road 115, Girivihar Colony,
Nandurbar 425412.

.. RESPONDENTS

.....
Ms. Pradnya S. Talekar i/b Talekar and Associates, Advocate for
petitioner.

Mr. A. B. Girase, G.P. for respondent Nos.1 and 2.

Mr. V. D. Sapkal, Senior Counsel i/b Mr. S. R. Sapkal, Advocate for
respondent Nos.3, 4, 7, 8 and 12.

Mr. Sanjeev B. Deshpande, Senior Counsel i/b Mr. Swapnil Patunkar,
(J. P. Legal Associates) Advocate for respondent Nos.5, 6, 9 and 10.

Mr. Rahul S. Pawar, Advocate for respondent No.13.

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WITH
WRIT PETITION NO.15729 OF 2023

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Through its Principal Secretary,
Public Works Department,
2nd Floor, Annex Building, Mantralaya,
Madam Cama Road, Nariman Point,
Mumbai, Maharashtra – 40003
2. The Executive Engineer,
Public Works Division,
Nandurbar.

3. Ridhi Construction
Through its Proprietor
Shirish Mahendra Patil,
Age: Major, Occu.: Business,
R/o. At Savalde Po. Korit,
Tq. And Dist. Nandurbar.
4. Kamlesh Manohar Patil
Age: Major, Occu.: Business,
R/o. At 73, Amar Colony,
Near Kilbil Hospital,
Nandurbar 425412.
5. Shantaram Sahebrao Patil
Age: Major, Occu.: Business,
R/o. At 48, Ambika Colony,
near Dhula Chaufully,
Nandurbar 425412.
6. M/s. V. V. Patil Constructions
Through its Proprietor,
Tushar Vasant Patil,
Age: Major, Occu.: Business,
R/o. At 21, Mangalya Radhakrishna
Nagar, Near Navjeevan Hospital
Nandurbar 425412.
7. Rohit Pravin Chaudhari
Age: Major, Occu.: Business,
R/o. At Sahara Town,
Nandurbar 425412.
8. Akshay Bhaidas Patil
Age: Major, Occu.: Business,
R/o. At near Ram Mandir A/p.
Dhadgaon, Maharashtra.
9. Subhash Purshottam Chaudhari
Age: Major, Occu.: Business,
R/o. At Jalka Bazar,
Near Old Post Office,
Nandurbar 425412.
10. Laxman Ramesh Patil
Age: Major, Occu.: Business,

R/o. At 62, Shriji Park,
Nandurbar 425412.

11. Rakesh Dattu Patil
Age: Major, Occu.: Business,
R/o. At Shingavhan,
Tq.and Dist. Nandurbar 425412.
12. Balaji Construction
Through its Proprietor
Vishwanath Mewalal Jaiswal
Age: Major, Occu.: Business,
R/o. At Near Maruti Vyayam Shala
Pardeshipura, Nandurbar 425412
13. Sagardada Construction
Through its Proprietor
Dilip Madhavrao More,
Age: Major, Occu.: Business,
R/o. At 19, Hindlaj Mata Nagar,
Bhone Road, Nandurbar.
14. Bhavesh Tukaram Patel
Age: Major, Occu.: Business,
R/o. At 25, Yashadhan Colony,
Shahada, Dist. Nandurbar.
15. Swami Buildcon, Nandurbar
Age: Major, Occu.: Business,
R/o. At Mataji Mandir Taloba
Road 115, Girivihar Colony,
Nandurbar 425412.

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Mr. Sanjeev B. Deshpande, Senior Counsel i/b Mr. Swapnil Patunkar,
Advocate (J. P. Legal Associates) for respondent Nos.3, 5, 6, 7, 8, 10,
13 and 14.

Mr. V. D. Sapkal, Senior Counsel i/b Mr. S. R. Sapkal, Advocate for
respondent Nos.4, 9, 11 and 12.

Mr. Rahul S. Pawar, Advocate for respondent No.15.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : JANUARY 24, 2024.

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. In both these petitions, the issue involved is similar and, therefore, taken up together for disposal.

3. The petitioner in Writ Petition No.15731 of 2023 is challenging its disqualification in E-tender Notice No.19 communicated via impugned E-mail communication dated 11.12.2023 (Exhibit-J) issued by respondent No.2, whereas the Petitioner in Writ Petition No.15729 of 2023 is challenging its disqualification in E-tender Notice No.17 communicated via impugned E-mail communication dated 11.12.2023 (Exhibit-J) by respondent No.2.

4. The factual matrix as pleaded in the petitions are that the petitioner – Company in both the petitions is a Class-I Contractor, who has past experience of having undertaken projects of more than 100 Crores and has been in this industry for more than a decade. On 09.10.2023, Respondent No.2 - Executive Engineer, Public Works Department, issued a common E-tender Notice No.19 for 29 works

and E-tender Notice No.17 for 59 works. The E-tender forms were available from 10.00 a.m. of 03.10.2023 to 6.00 p.m. of 10.10.2023. The technical and financial bids were to be opened on 11.10.2023 at 6.00 p.m. in the office of the Executive Engineer, Public Works Department, Nandurbar. The petitioner in both the petitions contended that the time for filling the bids was extended upto 17.10.2023 and the petitioner being a Class-I contractor and more than eligible under the tender conditions had applied for 28 works from E-tender Notice No.19 and for 31 works from E-tender Notice No.17 during 09.10.2023 to 17.10.2023. The technical bids were opened on 19.10.2023. Thereafter, the petitioner received a letter/E-mail from respondent No.2 on 06.11.2023 seeking clarification regarding incomplete documents submitted by the petitioner along with its bid for E-tender Notice No.19 and E-tender Notice No.17. It was mentioned in the said letter that the technical bids were opened on 19.10.2023 and the petitioners had not submitted some documents i.e. (i) A list of completed and pending works to determine the bid capacity of the petitioner, (ii) 26AS Form, from 2018-2019 to 2022-2023; and (iii) A scanned copy of valid certificate as a registered contractor with the Government of Maharashtra Public Works Department as per paragraph 1.4.2 of the E-tender document and Government circular dated 21.09.2017. Thereafter, the petitioner replied to the communication dated 06.11.2023 stating that there is no mention of

Form 26AS in the tender document, so also the petitioner has already submitted CA Turnover Certificate and furnishing the Tax Audit report for the financial year 2022-2023. It is further stated in the said reply that as the tender was for 'Class IV and above' and the petitioners were registered as Unlimited Class Tenderers, the petitioner did not require registration to bid for a tender. Thereafter, respondent No.2 issued further communication on 08.12.2023 stating that it was found in the technical scrutiny that the registration certificate uploaded by the petitioner was invalid (expired) and since the petitioner had failed to submit a 'Valid Registration Certificate as registered contractor with the Government of Maharashtra, the petitioner was held ineligible. It was further stated that in the said communication that the petitioner should respond till 11.12.2023 upto 2.00 p.m., failing which it would be presumed that the decision of the scrutiny committee is accepted by the petitioner. It is the case of the petitioner that in fact there was no requirement of registration for the contractors having a body of work more than Rs.1.5 Crores, it is only for the smaller contractors having less than Rs.1.5 Crores work, who were required to be registered with the Public Works Department. In fact, various government resolutions have been issued regarding the mandate of registration of contractors for different works. The petitioner by showing legal position submitted a response to the communication dated 08.12.2023 vide E-mail dated 11.12.2023 and clarified that

Government Resolution dated 21.09.2017 does not mention possession of P.W.D. registration for bidding, for the works upto Rs.1.50 Crores, for those contractors who fulfill the requisites for work beyond Rs.1.50 Crores. Thereafter, it is contended that respondent No.2 without considering the reply submitted by the petitioner has informed the petitioner regarding its disqualification from the technical evaluation for E-tender Notice No.19 for the year 2023-2024 and E-tender Notice No.17 for the year 2023-2024 on the ground that the petitioner has failed to produce the registration certificate. It is the case of the petitioner that the petitioner was having registration certificate in Class I-A for several years and lastly from 06.12.2017 to 05.12.2020. The petitioner could not renew the said registration since the procedure for registration in all class of contractors, except those working below Rs.1.5 Crores, was terminated after 2017 and no proposals could be submitted. Thereafter, respondent No.2 issued a common letter dated 11.12.2023 to all the participating bidders informing them about the opening of financial bid on 12.12.2023 at 10.30 a.m. at the department office. The petitioner in both the petitions contended that on 12/13.12.2023 the technical evaluation for E-tender Notice No.17 for 2023-2024 and on 13/14.12.2023 the technical evaluation for the E-tender Notice No.19 for 2023-2024 were uploaded on the official website of Maharashtra Tenders regarding their disqualification for the technical evaluation of the E-Tender Notice

No.17 for the year 2023-2024 and E-tender Notice No.19 for the year 2023-2024 respectively. It is contended that the petitioner was neither permitted to be present during the opening of financial bids, nor the same were uploaded on the website of E-tender Notice No.17. The petitioner contends that for some of the works only two bidders were found eligible, yet respondent No.2 has proceeded to open the bid rather than to re-tender the works. It is the case of the petitioner that there is no condition in the tender that the bids to be submitted only by registered contractors under Rs.1.5 Crores category and even if there is any such condition, it would be absurd, as the contractors with more experience, who would not get the registration in a lower class, could not be excluded from the tender process. The petitioner in both the petitions further contended that since its past works as well as ongoing works and Income Tax Returns do not show the capacity upto Rs.1.5 Crores, the petitioner would not be eligible to a certificate of registration in the category of contractors below Rs.1.5 Crores. The petitioner is unable to seek registration in its original category of Class-I contractor as the registration in said categories has been terminated since 2017 in view of Government Resolution dated 16.08.2017 and corrigendum dated 21.09.2017. Thus, there is no gain in saying that the petitioner was required to submit a registration certificate since the works are below Rs.1.5 Crores. Hence, these petitions.

5. In Writ Petition No.15729 of 2023, affidavit-in-reply on behalf of respondent No.3, Shirish Mahendra Patil, Sole Proprietor of M/s. Riddhi Construction, has been filed. Further, in Writ Petition No.15731 of 2023, affidavit-in-reply on behalf of respondent No.9, Pratik Champalal Jain, has been filed. The contentions raised in both these affidavits are almost same and similar. It is contended that no fault could be found in both the impugned orders which are just, legal and proper in all the senses, especially when the petitioner failed to submit requisite documents. It is further contended that the tender condition of required documents mentioned in clause 2.9.1-A is a mandatory condition, which compels participants of tender process to submit scanned copy of the Valid Certificate as a Registered Contractor with Government of Maharashtra, Public Works Department. The petitioner was well aware that he does not fulfill the eligibility criteria of the tender condition and now the petitioner is submitting that the registration certificate is not required for him in the wake of experience gained by him. Further, it is contended that the petitioner has participated in approximately 60 works for which tender was floated and at no stretch of imagination it could be digested that the petitioner was unaware of the mandatory conditions. It has been further contended that the tender works are part of most aspired project of Government in Tribal region of Maharashtra. The project works shall necessarily be completed in most expeditious manner and,

therefore, the present petition has been preferred with intention to delay the project. It has been further contended that the petitioner has not challenged the tender Condition No.2.9.1-A, but he has tried to pose that he fulfills all tender conditions by submitting invalid document. Therefore, the disqualification of the petitioner is legal.

6. In Writ Petition No.15729 of 2023, affidavit-in-reply on behalf of respondent No.5, Shantaram Sahebrao Patil, has also been filed and he has reiterated the contentions raised on behalf of respondent No.3 and prayed for dismissal of the petition.

7. The petitioner has filed rejoinder to the affidavit-in-reply filed by respondent Nos.3 and 5 in Writ Petition No.15729 of 2023 as well as the petitioner has filed rejoinder to the affidavit-in-reply filed by respondent No.9 in Writ Petition No.15731 of 2023 and denied all the contentions raised on behalf of the respective respondents.

8. Heard learned Advocate Ms. Pradnya S. Talekar for the petitioner in both the petitions, learned Government Pleader Mr. A. B. Girase for respondent Nos.1 and 2 in both the petitions, learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. S. R. Sapkal for respondent Nos.3, 4, 7, 8 and 12 in Writ Petition No.15731 of 2023 and for respondent Nos.4, 9, 11 and 12 in Writ Petition No.15729 of 2023, learned Senior Counsel Mr. Sanjeev B. Deshpande instructed by learned Advocate Mr. Swapnil Patunkar (J. P. Legal Associates) for

respondent Nos.5, 6, 9 and 10 in Writ Petition No.15731 of 2023 and for respondent Nos.3, 5, 6, 7, 8, 10, 13 and 14 in Writ Petition No.15729 of 2023 and learned Advocate Mr. Rahul S. Pawar for respondent No.13 in Writ Petition No.15731 of 2023 and for respondent No.15 in Writ Petition No.15729 of 2023.

9. Learned Advocate for the petitioners in both the petitions vehemently submitted that the tender that was invited was for different works, but it was in single E-tender notice. In some of those works, the petitioner has filled the bid and the ground on which their bid has been not accepted by respondent No.2 is that his valid registration certificate as registered contractor with the Government of Maharashtra, Public Works Department, was not annexed/uploaded. Learned Advocate for the petitioner tried to distinguish the requirement as per Government Resolution dated 16.08.2017 between the works 'as compared to contractor.' The wordings of said Government Resolution would show that it was made applicable to the contractor. It was specifically stated that after 21.08.2017 there will not be categorization of the contractors in Class III, II, I-C, I-B and I-A. There would be only two types of contractors, one below Rs.1.50 Crores and another above that amount and in that, there would be two types of contractors below Rs.1.50 Crores as registered and unregistered. When it was made known to the petitioner that he was required to upload the documents as a contractor, he had uploaded the

documents and then it was said that the duration of the said certificate had expired on 05.12.2020. In fact, in view of Government Resolution dated 16.08.2017, there was no further registration as such and, therefore, renewal of the said certificate was not possible. By way of additional affidavit, the petitioner has produced the web document/Know Your Company KYC Application Form from the website of Public Works Department, which says that the contractor should not register for KYC for Class I, II, III, as those classes are now unavailable in the system. She also submitted that by adopting this process the respondents had intention to deprive the experienced contractors, who could have taken the work of more than Rs.1.50 Crores. This classification is arbitrary and, therefore, it can be certainly said that on the basis of such classification, the petitioner has been deprived of participating in the tender process fairly or it can be said that the disqualification of the petitioner is arbitrary. She relied on the decision in **Tata Cellular Vs. Union of India, (1994) 6 SCC 651**, wherein it has been held that the principles of judicial review would be applicable to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. She further relied on the decision in **Michigan Rubber (India) Limited Vs. State of Karnataka and others, (2012) 8 SCC 216**, on the same point, that when it comes to the arbitrary and irrational exercise of powers by the executives, the judicial review is available. She further relied on the decision in

Pawan Hans Helicopters Ltd. Vs. Nidheesh Tours and Travels Pvt. Ltd., 2023 SCC OnLine Del 1574 : (2023) 302 DLT 262 and submits that the technicalities and procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause and, therefore, the case cannot be simply dismissed on technical grounds of procedural irregularities. She further submitted that though the petitioner had participated in the tender process, it cannot be said that the petitioner cannot challenge the legality or illegality involved. In order to support her said submission, she relied on the decision in **Dr. (Major) Meeta Sahai Vs. State of Bihar and others, (2019) 20 SCC 17**. Further, she relied on the decisions in **B. S. N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. And others, (2006) 11 SCC 548** and **Poddar Steel Corporation Vs. Ganesh Engineering Works and others, (1991) 3 Scc 273** and submits that the requirement of registration was not applicable to the petitioner and, therefore, it cannot be considered as essential requirement and the principles of strict compliance could not have been then applied. She further relied on the decision in **Reliance Energy Ltd. and Another Vs. Maharashtra State Road Development Corpn. Ltd. And Others, [(2007) 8 SCC 1]**. She relied on paragraph No.36 of the above decision and submitted that when Article 19(1)(g) of the Constitution of India confers fundamental right to carry on business to a company, then it is entitled to invoke the said doctrine of "level playing field". The said doctrine provides space within which

equally placed competitors are allowed to bid so as to subserve the larger public interest. She further relied on the decision in **Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another**, (2016) 16 SCC 818, **Silppi Constructions Contractors Vs. Union of India and another**, (2020) 16 SCC 489 and **M/s. Agmatel India Private Limited Vs. Resoursys Telecom and others**, (2022) 5 SCC 362 to support her contention that the Court can intervene when the tender condition has been interpreted *mala fide*. She, therefore, prayed for quashing the impugned communications disqualifying the petitioner and allowing the petitioner to take part as well as consequential reliefs.

10. Per contra, learned Senior Counsel Mr. S. B. Deshpande instructed by learned Advocate Mr. Swapnil Patunkar (J. P. Legal Associates) appearing for respondent Nos.5, 6, 9 and 10 in Writ Petition No.15731 of 2023 and for respondent Nos.3, 5, 6, 7, 8, 10, 13 and 14 in Writ Petition No.15729 of 2023 submitted that the petitioner had taken part in the tender process knowing fully well what are the requirements and which documents the petitioner was required to upload. It was one of the mandatory condition to produce the said certificate and when it has not been uploaded, no fault can be found. Further, the petitioner had taken part in respect of only few works, but the interim protection is in respect of all the works under the same tender notice and, therefore, it has halted further process. As regards

four works, work order has been issued and the work has progressed. Now, the petitioner cannot be allowed to take part when it has been rightly disqualified.

11. Learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. S. R. Sapkal for respondent Nos.3, 4, 7, 8 and 12 in Writ Petition No.15731 of 2023 and for respondent Nos.4, 9, 11 and 12 in Writ Petition No.15729 of 2023 submitted that the tender notice itself makes it clear that tenders were invited from नोंदणीकृत कंत्राटदार (registered contractors) and, therefore, it was obvious that only the registered contractors should participate in the tender process. The petitioner has not challenged the Government Resolution dated 06.08.2017 by which the earlier classification of the contractors came to be abolished and only two categories were considered, one below Rs.1.50 Crores and another above the said amount. In the said Government Resolution itself it was made clear as to how registration application can be made online, which documents were required to be uploaded and after completing the said procedure, the registration certificate would be available online. Thereafter, by a corrigendum on 21.09.2017, it was clarified that for the works upto Rs.1.50 Crores, there is necessity to register contractors and, therefore, the registration as was available earlier for the works upto Rs.1.50 Crores it would be available. Further, there is Government Resolution dated

27.09.2018 which gave instructions to the registered contractors. The bifurcation was made on the basis of the value of the tender. An opportunity appears to have been given to the petitioner to upload the document, but he has uploaded the contractors registration certificate of Class I-A for three works from 06.12.2017 to 05.12.2020. That means it had expired much prior to the tender notice. Petitioner could not produce the document showing the registration was in force on the date of tender notice. Therefore, the disqualification is legal.

12. Learned Senior Counsel Mr. V. D. Sapkal relied on the decision in **Tata Motors Limited Vs. The Brihan Mumbai Electric Supply and Transport Undertaking (Best) and others, 2023 LiveLaw (SC) 467**, wherein it is held that there should not be judicial review in commercial matters, unless a case of arbitrariness, *mala fide*, bias or irrationality is made out. He further relied on the decision in **Ramanna Dayaram Shetty Vs. The International Airport Authority of India and others, AIR 1979 SC 1628**, wherein in respect of a tender condition, it was observed that, "on a proper construction what the notice required was that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to submit a tender. This was a condition of eligibility and it is difficult to see how this condition could be said to be satisfied by any person who did not have five years' experience of running a IInd Class

hotel or restaurant. The test of eligibility laid down was an objective test and not a subjective one.” He further relied on the decision in **M/s. N. G. Projects Limited Vs. Vinod Kumar Jain and others, 2022 LiveLaw (SC) 302**, which was then relied by this Court in **M/s. Pharmaveda (I) Pvt. Ltd. Vs. Chief Executive Officer, Zilla Parishad, Nandurbar**, in Writ Petition No.14938 of 2023 decided by this Court on 18.01.2024.

13. Learned Government Pleader Mr. A. B. Girase submitted that it is not the case that the entire registration procedure has been withdrawn. The registration is still compulsory for those contractors, whose bid capacity is below Rs.1.50 Crores. To save the government money, a collective tender was published, but the bidders were entitled to submit bid in respect of one or more and not all the bids/work. Accordingly, even the petitioner had filed the bid for few works, it was not in respect of all. The bids were invited from the registered contractors and when in spite of opportunity given, the mandatory condition has not been fulfilled. The petitioner has been disqualified. There is no question of *mala fides* in this case.

14. It appears from the documents that by communication dated 06.11.2023 by the Deputy Executive Engineer, Public Works Department, Nandurbar to the petitioner, the petitioner was called upon to cure the defects i.e. to place the documents on record which

were not uploaded or which were incomplete. There were three such documents, which were found to be having defect. The first was to produce the update work done by the petitioner as it was not possible to calculate the bid capacity and, therefore, the certificates in respect of work done were called. Secondly, the petitioner was called to produce 26AS Form between 2018-2019 to 2022-2023. The third was that no document in the form of scanned copy of valid certificate as a registered contractor with the Government of Maharashtra, Public Works Department was appended, which was compulsory in view of Government Resolution dated 21.09.2017 for the work upto Rs.1.50 Crores. In response to the same, it appears that E-mail was sent by the petitioner on 11.11.2023, wherein it was stated that in respect of form 26-AS, they have submitted the CA turnover certificate and also the Tax Audit report for the financial year 2022-2023. According to the petitioner, Form 26AS is not required for the tender as it was not mentioned in the technical tender documents. It is then said that in the tender notice it was stated that the tenderer must be Class IV and above and they had registered as unlimited class tenderer as per the Government Resolution, therefore, they do not require registration to bid tender. Thereafter, it appears that a document was still uploaded which was in respect of the registration between 06.12.2017 to 05.12.2020. Again by communication dated 08.12.2023, it was made known to the petitioner that the registration duration has expired and

the said condition to upload the certificate is a mandatory requirement and, therefore, the petitioner would be ineligible, yet if petitioner want to say something, then he can canvass the say upto 2.00 p.m. on 11.12.2023. It appears that still there was no compliance and ultimately the petitioner has been disqualified. Now, this disqualification has been challenged.

15. Before considering the factual matrix, it is required to be considered that the petition is on two counts, firstly to challenge the petitioner's own disqualification and secondly, to challenge the qualification of other respondents We would like to rely on the observations from the recent decision by the Hon'ble Supreme Court in **M/s. N.G. Projects Limited (Supra)**, in which the earlier decisions have been taken note of and it has been observed that :-

"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 *mala fide* 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 they present-day Governments are expected to work.”

16. We are aware of the decision in **Jagdish Mandal Vs. State of Orissa, (2007) 14 SCC 517**, wherein Hon’ble Supreme Court has held that :-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality; unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public

interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil Court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a Court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

- (i) 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 the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

- (ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

17. Thus, taking into consideration the well settled law on this point, we have limited scope. We are to see whether the petitioner has

demonstrated firstly that the petitioner was eligible, as it had complied with all the tender requirements, then only we can go to the second aspect i.e. challenge by the petitioner to the decision of respondent No.2 to qualify other respondents in the technical bid, otherwise the course is open to the petitioner as aforesaid in **M/s. N.G. Projects Limited (Supra)** and **Jagdish Mandal (Supra)**.

18. At the outset, we would like to say that the petitioner has not challenged the Government Resolution dated 16.08.2017 in specific works in the petition. Rather, the petitioner's pleading and submission on behalf of the petitioner would show that it has been tried to be interpreted to show as to how it is not applicable to the petitioner, who was in Class IV category i.e. for unlimited cost. Therefore, we need not go into the aspect as to whether the said Government Resolution creates unnecessary classification and there was no rational behind the same. It will not be out of place to mention here that we had made a query to learned Government Pleader for putting this condition that for a particular amount the registration is required and to the contractors having capacity of more than Rs.1.50 Crores, the registration is not required. He draws our attention to the Preamble/History/Prastavana of Government Resolution dated 16.08.2017 and submits that to have more competition and a fair one and to protect the class of persons having small capacity, this classification appears to have been made. As aforesaid, when the said

Government Resolution dated 16.08.2017 and the Corrigendum thereto on 21.09.2017 is not under challenge, we need not have a deliberation on the same. The plain reading of the Government Resolution and Corrigendum would make it clear that the contractor upto Rs.1.50 Crores i.e. the capacity should possess the registration of the Public Works Department of the Government. Even the procedure has been stated as to how the registration can be applied and can be sought. Therefore, it cannot be taken that registration is no longer available as tried to be contended on behalf of the petitioner. If we consider each work in the tender notice, then it is below the said required amount. It is to be noted that in the tender itself it is stated that the tender is invited from registered contractors and the said tender was for 29 and 59 works respectively. If the petitioner had any objection as regards clubbing or if there was confusion in the mind of the petitioner, it could have been got clarified or the tender itself could have been then challenged on the basis that it is for a class of persons. Now, it is said that the petitioner has been excluded. This submission cannot be accepted, as there was no ambiguity in the tender conditions or tender itself. The petitioner participated in the same knowing it fully well that it was for the registered contractors and one of the term was to submit a valid registration issued by the competent authority to be uploaded. When knowing fully well the petitioner participates, then upon disqualification on the inherent

defect the petitioner cannot say that he has been ousted or cannot challenge the term or interpret it in different way. We do not find any illegality or error in the disqualification of the petitioner.

19. Objection has now been raised on behalf of the petitioner that when the matter was on board on 22.12.2023, statement was made by learned Government Pleader, on instructions, that though the financial bids have been opened and the bidders, who are not qualified, have been permitted to deposit earnest amounts, work orders have not been issued. On the basis of said statement, then respondents were directed to defer the allotment of work orders until further hearing and orders in this matter, yet work orders have been issued. Learned Government Pleader now, on instructions, says that in fact tender was for 132 works and now, the work order is issued only in four matters. Taking into consideration the large number of matters in which work orders have not been issued, he had made the said statement. In fact, it appears that it was not specifically brought to the notice of this Court that the petitioner had applied for 31 works in E-tender Notice No.17 and for 28 works in E-tender Notice No.19 only. If the petitioner had not participated in all 132 works, interim relief could not have been asked for all the works. Be that as it may, now we have come to the conclusion that the disqualification of the petitioner in both the matters was justified and, therefore, the petitions should fail.

20. No case is made out for exercising the constitutional powers of this Court and, therefore, both the writ petitions stand dismissed.

21. Interim relief, thus, stand vacated.

22. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

LATER ON :-

. After the pronouncement of Judgment, learned Advocate for the petitioner seeks continuation of the interim relief granted earlier for a period of four weeks. However, taking into consideration the reasons mentioned in the Judgment upholding the disqualification of the petitioner, the interim relief cannot be extended. The oral prayer is, therefore, rejected.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm