

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 5968 OF 2024**

DHD Infracon Pvt Ltd.
through The Director
Shri. Dattatray Hanmant Desai & ors. : Petitioners.

VERSUS

Public Work Department (West) Division
Satara, through The Secretary of Public
Work Department (Roads) PWD, & anr. : Respondents.

Mr. Abhijeet Desai a/w Mohini Rehepade, Vijay Singh and
Digvijay Kachare i/by Desai Legal for the Petitioners.

Mr. Sanjay Kadam, Special Counsel a/w Nitisha Lad, Netra Jagtap, P. P.
Kakade, Government Pleader, O.A. Chandurkar, Additional
Government Pleader and G. R. Raghuwanshi, AGP for Respondent
Nos.1 and 2.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 09th MAY, 2024**

P.C. :

1. The matter was on board today for compliance
pursuant to our judgment and order dated 30th April 2024 by
which we had required the following :-

"(ii) Petitioner No.1 is directed to file an Affidavit stating viz.

(a) the basis on which Petitioner Nos.2, 3 and 4 have been arrayed as Petitioners to the Petition and the authority based on which Petitioner No.1 had verified the Petition on behalf of Petitioner Nos. 2, 3 and 4.

(b) the date on which each of the Petitioners purchased the tender document by paying tender fee of Rs.47,200/- with supporting documents to that effect."

2. Mr. Desai, Learned Counsel appearing on behalf of the Petitioners, has today tendered two Affidavits dated 30th April 2024 and 6th May 2024. One Affidavit is filed by Petitioner Nos. 2, 3 and 4 and sets out that Petitioner Nos.2, 3 and 4 ratify all the acts done by Petitioner No.1 concerning Civil Writ Petition No.5968 of 2024. Mr. Desai then submitted that no objection had been raised by the Office regarding non-affirmation of the Petition by Petitioner Nos. 2, 3 and 4. He submitted that had any object been raised, the same, being a curable defect, would have been cured by the Petitioner.

3. In so far as next issue, i.e. the date on which the Petitioners had paid the tender fee, it was his submission that this Court had misconstrued what had been stated in paragraph 2 of the Petition. He submitted that paragraph No.2 of the Petition had to be read as a whole and not in a piecemeal manner. He submitted that from a plain reading of paragraph No.2 as a whole, the same did not mean that the Petitioners had obtained the tender document by making payment of the tender fees.

4. He then submitted that the tender document was available by downloading the same and thus requirement of paying any tender fee did not arise for obtaining the tender document. He submitted that the averment, contained in Paragraph No.2 in so far as payment of tender fee was concerned the same was only include as a narration of what was in the public domain as per E-Tender Notice.

5. When we impressed upon Mr. Desai that this

explanation was ex facie untenable given the plain wordings of paragraph 2 of the Petition, as also that the reason for seeking the said clarification was to ascertain the bona fides on the part of the Petitioners in participating in the tender, Mr. Desai submitted that reference to payment of tender fees in paragraph 2 was an inadvertent drafting error and requested the Court to accept the same. This explanation we are inclined to accept.

6. Having heard Mr. Desai, we find it fit to accept the explanations offered. We also make it clear that any observations made in the said order dated 30th April 2024 are confined only to the facts of the present case and are to be read and construed only in the context of the challenge raised in the Petition. The observations do not, in any manner, reflect upon the Advocates who appeared in the matter nor on the Petitioners personally/individually. Having accepted the explanation offered by Mr. Desai, we are inclined not to impose any costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)