

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

WRIT PETITION NO.9537 OF 2024

Balajikrupa Majdoor Kamgar
Sahakari Sanstha Ltd.

..... Petitioner

Vs.

The Chief Secretary & Anr.

..... Respondents

Mr. Aviraj S. Tarar a/w. Mr. Harshvardhan Suryawanshi for the
petitioner

Shri P. P. Kakade, Government Pleader with Shri O. A.
Chandurkar, Additional Government Pleader and Mrs. G. R.
Raghuwanshi, AGP for Respondent – State

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
AMIT BORKAR, J.**

DATE : JULY 23, 2024

P.C.

1. Rule. Rule is made returnable forthwith. With the consent of the learned Counsel representing the parties, the matter has been taken up for final disposal.

2. The petitioner is a labour cooperative society registered under the Maharashtra Cooperative Societies Act, 1960 and is also registered as a civil contractor in District Thane. By filing this writ petition under Article 226 of the Constitution of India, challenge has been made to the tender notice, dated 9th

November 2023, issued by respondent No.2 - council viz. Ambernath Municipal Council, Ambernath by which tenders were invited for various works of construction in the city. It is the submission of the learned Counsel for the petitioner that the respondent No.2 - council has published the tenders for various civil works in one e-tender, intentionally, where the value of each individual tender is more than Rs. 1 crore. His submission is that had the tenders been issued separately for each work, amount of the tender would have been less, which would have enabled the petitioner and other civil contractors to participate in the tender process.

3. Having considered the submissions made by the learned Counsel for the parties and perused the records available before us on this petition, we are unable to agree with the submissions made on behalf of the petitioner for the reasons which follow:

(a) It is well settled principle of law that tendering authority is the best judge of the conditions of tender and unless the conditions are found to be absolutely arbitrary and irrational or any condition is found to be suffering from the vice of *mala fide* or any condition is found to be

tailor-made to suit a particular party, no interference in matters of tender is permissible by the Courts.

(b) The submission of the petitioner that civil works ought to have been advertised separately so that the value of the work would not have exceeded Rs. 1 crore and by not doing so, the respondent No.2 - council has acted arbitrarily which has resulted in ousting the petitioner and other contractors from participation, in our opinion, is not tenable for the reason that it is for the tendering authority to classify its work depending on various factors which will include the value of tender as well. If the tenders have been advertised with the work worth Rs. 1 crore or above, we do not find any illegality in such a condition of the tender.

(c) We may also point out that the writ petition cannot be maintained by the petitioner for yet another reason. The last date of submission of bids pursuant to the impugned tender notice was 15th January 2024. The tender notice itself was published on 9th November 2023. If the petitioner was not eligible on account of certain alleged offending conditions, he ought to have challenged the same

before the last date of submission of the bid for the reason that it is settled principle of law that a tenderer, who has not participated in the bid process, does not have any *locus* to challenge the tender process. This petition, challenging the tender conditions has been filed only on 12th March 2024 i.e. much after last date of the bids pursuant to the impugned tender notice.

4. In view of the law laid down by the Hon'ble Supreme court in the case of ***National Highways Authority of India Vs. Gwalior-Jhansi Expressway Ltd.*** reported in ***(2018) 8 SCC 243***, this petition is not maintainable also for the reason that the petitioner did not participate in the impugned tender process.
5. Accordingly, the writ petition is dismissed.
6. However, there will be no order as to costs.
7. Rule stands discharged.

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(AMIT BORKAR, J.)

(CHIEF JUSTICE)