



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

WRIT PETITION NO. 8861 OF 2023

M/s R. R. Kapoor

....Petitioner

VERSUS

The State of Maharashtra & others

.....Respondents

Mr. J. N. Singh, Advocate for the Petitioner.

Mr. V. M. Kagne, AGP for the State.

Mr. P. N. Khedkar, Advocate for the Respondent No. 4.

**CORAM : SHREE CHANDRASHEKHAR, CJ &
SMT VIBHA KANKANWADI, J.**

DATE : 30th SEPTEMBER 2025.

Per Shree Chandrashekhar, CJ

Aggrieved by the order dated 28th October 2021, dismissing the appeal under section 308 of the Maharashtra Municipal Councils, Nagar Panchayat & Industrial Township Act, 1965, the petitioner-Firm, namely, M/s R. R. Kapoor has filed this writ petition under Articles 226 and 227 of the Constitution of India.

2. By the order dated 28th October 2021, the Commissioner-cum-Director of the Municipal Administration held that the Government Resolution dated 12th February 2016 and Rule 142 of Account Code, 2013 shall be enforced in the cases of award of tender. It is further held that the petitioner-Firm which failed to deposit Performance Security and the additional Security Deposit incurred liability under Clause 6.5 of the Instruction to Bidders and forfeited the Earnest Money Deposit of Rs. 32,00,000/-.

3. Briefly stated, the petitioner-Firm participated in the tender process for the construction of 17 roads within the municipal area at Shrigonda and was declared as the lowest Bidder. However, no

Letter of Intent was issued to it and the work under the tender was also not allotted. Notwithstanding that, the petitioner-Firm was directed to submit Security Deposit vide letters dated 11th August 2016 and 6th September 2016. According to the respondent-Authority, a successful tenderer was required to submit additional Security Deposit as per Clause 30 of the Instruction to Bidders. While petitioner-Firm declined to furnish Security Deposit and the additional Security Deposit, a decision was taken in the General Body Meeting of the Municipal Administration held on 21st September 2016 to forfeit the Earnest Money Deposit by the petitioner-Firm.

4. In contractual matters, this is quite a well settled law that the parties shall be governed under the terms of the contract. A tenderer is also entitled to the protection under Article 14 of the Constitution of India which mandates that the tendering Authority shall demonstrate fair play in action. An arbitrary decision of the tendering Authority even though falling within the realm of tender matter is amenable to the jurisdiction of the writ Court under Article 226 of the Constitution of India. In *“Mahabir Auto Stores & Ors. v. Indian Oil Corporation & Ors.”* (1990) 3 SCC 752, the Hon’ble Supreme Court held as under:-

“Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable.”

5. We may also refer to the decision in *“Jagdish Mandal v. State of Orissa & Ors.”* (2007) 14 SCC 517 wherein the Hon’ble Supreme

Court held as under :-

“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.....”

6. The Instruction to Bidders under Clause 16 provides that the Bidder shall furnish a Bid Security commonly called Earnest Money Deposit as specified in the Bid document. It further provides under Clause 16.2 that any bid not accompanied by an acceptable Bid Security and not secured as indicated in sub-Clause 16.1 shall be rejected as non-responsive. Clause No. 16.3 provides that the unsuccessful bidder shall be entitled to receive Bid Security deposited by him within 28 days of the end of the bid validity period specified under Clause 15.1. It is the provision under Article 16.5 which has been emphasized by the respondent-Authority to hold that the petitioner-Firm forfeited its Bid Security because it failed to submit Performance Security within time. Under Clause 16.5, the

Bid Security “may be” forfeited if the Bidder withdraws the bid or seeks to modify, alter, add or subtract or put any rider on any ground whatsoever, after the bid opening during the period of Bid validity. It further provides that the Bid Security may be forfeited in case of a successful Bidder, if the Bidder fails within the specified time limit to sign the Agreement or furnish the required Performance Security.

7. Quite clearly, the conditions under sub-Clause (a) to Clause 16.5 are not attracted in the case of the petitioner-Firm. Insofar as the condition under sub-Clause(b) to furnish required Performance Security as provided under Clause 30 of the Instruction to Bidders is concerned, it speaks about Letter of Acceptance. Clause 30 of the Instruction to Bidders provides that a successful Bidder shall deliver to the Engineer a Performance Security within 10 days of receipt of Letter of Acceptance. Merely because the petitioner-Firm became the lowest Bidder, the condition under sub-Clause (b) of Clause 16.5 of the Instruction to Bidders shall not apply in its case. The decisions of the second respondent and the General Body of the Municipal Administration are clearly illegal and arbitrary.

8. This writ petition succeeds and the order dated 28th October 2021 vide Exhibit L-2 to the writ petition is quashed. The petitioner-Firm is held entitled to refund of the Earnest Money deposited by it pursuant to the Tender Notice. However, the petitioner-Firm is held not entitled to interest on the Security Deposit which was withheld by the respondent-Authority on account of a mis-conception of law.

9. Writ Petition No.8861 of 2023 is allowed.

[SMT. VIBHA KANKANWADI, J.]

[CHIEF JUSTICE]