



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5091 OF 2025

Rishu Kishu Industries Pvt. Ltd.,
Through its Director,
Sanjay Manikrao Thorat
Age : 54 years, Occu : Director,
R/o : Sai Sadan, Shankar Parvati Nagar,
Parali – V, Tal. Parali – V. Dist. Beed

.. Petitioner

Versus

1] Parali Municipal Council, Parali (V)
Tal. Parali (V), Dist. Beed

2] The Chief Officer,
Parali Nagar Parishad, Parali (V),
Tal. Parali (V), Dist. Beed

3] The Engineer [Civil],
Parali Nagar Parishad, Parali (V),
Tal. Parali (V), Dist. Beed

4] Consultant Project Director,
Parali Nagar Parishad, Parali (V),
Tal. Parali (V), Dist. Beed

.. Respondents

...
Senior Advocate for petitioner : Mr. N.B. Khandare i/by Mr. M.V. Nagargoje
Advocate for respondents no. 1 and 2 : Mr. Vivek Bhavthankar
...

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 21 APRIL 2025

ORDER (MANGESH S. PATIL, J.) :

Heard learned senior counsel Mr. Khandare for the
petitioner, learned advocate Mr. Bhavthankar, who appears *suo motu*

for respondents no. 1 and 2 and also tenders across the bar their affidavit-in-reply.

2. The petitioner is seeking following prayers:-

*“(A) This Hon’ble Court may kindly be pleased to issue any appropriate writ, order or direction in the nature of writ, and thereby quash and set aside the impugned tender notice No. 2025_DMA_1164763_1 for proposed construction of retaining wall part A and B on water storm drainage within city limits of Parali V dist. Beed dated 25.03.2025 to the extent of **city area**.*

*(B) This Hon’ble Court may kindly be pleased to issue writ of mandamus or writ or order in the nature of writ, and thereby to direct the respondent tendering authority to issue fresh tender notice after modify minimum qualifying requirement i.e. **city area** inserted in tender condition.*

3. Mr. Khandare would submit that without having any nexus with the object to be achieved while undertaking construction of a retaining wall pursuant to the tender notice no. 2025_DMA_1164763_1 dated 25.03.2025, a stipulation has been incorporated in the tender document requiring previous experience of a similar type of work but executed in ‘city area’. He would submit that there is no point and rationale in providing such qualification. It is merely a matter of construction of a retaining wall which, even a normal contractor engaged in the business, could easily be able to do. He submits that the petitioner had participated in the pre-bid meeting held on 08.04.2025, however, his objection to delete this condition / qualification was turned down and the process was taken further

arbitrarily and with the objective of preventing the petitioner from participation in the tender process. The stipulation is prompted by political pressure and at the instance of a local MLA interested in allotment of the tender work to a particular contractor. He would submit that since it is a matter of public work to be undertaken by a public body, there has to be a fair play. It is being designedly sought to be circumvented by laying down such unprecedented condition of having experience of doing a similar type of work in 'city area'.

4. Learned advocate Mr. Bhavthankar for respondent nos. 1 and 2, by referring to the affidavit-in-reply, would submit that the reason for providing the stipulation has been expressly explained. Since it is a work of construction of a retaining wall over a *nallah* passing through Parali town, retention wall running into 845 Square Meters having 15 Meter width, a bidder who does not have experience to carry out such construction in the midst of the town where there is likelihood of obstruction being caused to the traffic during the period of construction, the condition was put in regard to the previous experience. It has been put to reduce the period of construction and which can happen only if a bidder has capacity to discharge such work in similarly busy area. He would submit that it is a policy matter and cannot be subjected to any judicial scrutiny. The allegations of bias and political pressure are vague and omnibus. The petitioner had not submitted any bid. Last

date for submission of the bid is already over on 19th and the petitioner, without participation in the tender process, cannot be heard regarding sustainability of a stipulation in the tender document.

5. To repel the submissions of the learned advocate Mr. Bhavthankar, Mr. Khandare would refer to the decision in the matter of ***Ramana Dayaram Shetty V. International Airport Authority of India and others; (1979) 3 SCC 489.***

6. We have considered the rival submissions and perused the papers.

7. As far as right of a prospective bidder to raise objection to the conditions in the tender document / notice is concerned, in the light of ***Ramana Shetty*** (supra), it is trite that even before actual participation in the tender process, a person has a right to object to a condition in the tender notice. For, if he participates with the condition without any demur and seeks to put up a challenge after participation, his claim against rejection would be met with an argument that he had participated in the tender process with open eyes without raising objection to the conditions and cannot be heard.

8. However, the decision in the matter of ***Ramana Shetty*** (supra) will not come to the rescue of the petitioner, for the reason that the tender notice was issued on 25.03.2025, the pre-bid meeting was

to be held on 08.04.2025 *albeit* it was held on some other day, the petitioner had raised the query during that pre-bid meeting. It was considered after hearing him and still the decision was taken by respondent nos. 1 and 2 to maintain the condition of having experience of a similar work discharged in 'city area'. The minutes of the pre-bid meeting were recorded on 11.04.2025 and the last date for submission of the bids was 19.04.2025.

9. Though the petition was filed on 15.04.2025, the papers have been circulated before us today. There is nothing on the record to demonstrate that any circulation praecipe was moved particularly, seeking any early hearing, may be prior to the last date for submission of the bid on 19.04.2025. The situation today is to the effect that the last date for submission of the bids is already over and the petitioner cannot participate in the process hereafter. Even if now he is allowed to object and question the condition, regarding previous experience, the bidders who have already submitted their bids being not parties before us, the petition cannot be entertained on this ground.

10. Even if, as submitted by Mr. Khandare, the petitioner is ready to add all the bidders as party respondents, the fact remains that in spite of having the time, the petitioner has failed to obtain even first order when he had some time left to put up a bid within the time.

11. It is in the light of the afore-mentioned state-of-affairs, we put up a query to Mr. Khandare, as to what had prevented the petitioner from participating in the tender process, on instructions, he would respond that the petitioner was not having necessary documents to put up his bid in time. If this is the case, when the petitioner admits the fact that irrespective of the tender condition under challenge, he was not eligible to submit his bid for lack of documents, in our considered view, he cannot take shelter of the decision in the matter of ***Ramana Shetty*** (supra).

12. So far as the allegations regarding bias and *mala fides* are concerned, the averments in the petition are vague and omnibus. Except alleging that a local MLA is interested in allotment of work to a particular contractor and in order to exclude the petitioner deliberately, the impugned condition has been put, in our considered view, cannot be heard for lack of material particulars. Certainly, the averments are vague and omnibus. It does not mention as to how when there would be number of bidders, the local MLA would be able to procure the contract for the person he is interested in. Again, neither the MLA nor the contractor, he is alleged to be interested in, have been named or even made parties.

13. It is trite that the parameters for this Court to exercise the powers under Article 226 of the Constitution of India in tender matters

have been circumscribed time and again, the latest being ***Tata Motors Ltd. v. BEST and Ors.; AIR 2023 SC 2717.***

14. We find no merit in the petition. It is dismissed.

[Y. G. KHOBRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/